The Meaning of Privatization

Paul Starr*

Privatization is a fuzzy concept that evokes sharp political reactions. It covers a great range of ideas and policies, varying from the eminently reasonable to the wildly impractical. Yet however varied and at times unclear in its meaning, privatization has unambiguous political origins and objectives. It emerges from the countermovement against the growth of government in the West and represents the most serious conservative effort of our time to formulate a positive alternative. Privatization proposals do not aim merely to return services to their original location in the private sphere. Some proposals seek to create new kinds of market relations and promise results comparable or superior to conventional public programs. Hence it is a mistake to define and dismiss the movement as simply a replay of traditional opposition to state intervention and expenditure. The current wave of privatization initiatives opens a new chapter in the conflict over the public-private balance.

This Article attempts to clarify the meaning of privatization as an idea, as theory and rhetoric, and as a political practice. In the process I hope to explain why I generally oppose privatization, even though I favor some specific proposals that privatization covers. But apart from this political judgment, I take privatization seriously as a policy movement and as a process that show every sign of reconstituting major institutional domains of contemporary society.

I. Privatization as an Idea

In the ideological world we inhabit, contesting interests and parties use "public" and "private" not only to describe but also to celebrate and condemn. Any serious inquiry into the meaning of privatization must begin, therefore, by unloading the complex

* Professor of Sociology, Princeton University. Work on this Article was supported by a grant from the Pew Charitable Trust for the study of "Public Sector Reform and Privatization." An earlier version was completed at the Institute for Advanced Study at Princeton, New Jersey and delivered at a conference there on "The Public Sector and Its Problems." The Article will also appear in a slightly different version in a volume on privatization and the welfare state edited by Alfred Kahn and Sheila Kamerman. I wish also to express my general debt to Stephen Holmes, Jeffrey Weintraub, the members of the Yale Legal Theory Workshop, and others from whom I received ideas and suggestions.

freight that the public-private distinction carries. In this section I analyze, first, the general uses of the public-private distinction and, second, the recent political application of the concept of privatization.

A. The Public-Private Distinction and the Concept of Privatization

The terms public and private are fundamental to the language of our law, politics, and social life, but they are the source of continual frustration. Many things seem to be public and private at the same time in varying degrees or in different ways. As a result, we quarrel endlessly about whether some act or institution is really one or the other. We qualify the categories: This group is quasi-public, that one is semi-private. In desperation some theorists announce that the distinction is outdated or so ideologically loaded that it ought to be discarded, or that it is a distinction without a difference.[1] Yet the terms can hardly be banished nor ought they.[2] To speak intelligently about modern societies and politics without using the words public and private would be as great an achievement as writing a novel with the word "the." However, neither is necessarily the sort of achievement that other theorists or novelists would care to imitate.

The frustration with these ubiquitous categories partly arises because public and private are paired to describe a number of related oppositions in our thought. At the core of many uses are the two ideas that public is to private as *open* is to *closed*, and that public is to private as the *whole* is to the *part*. In the first sense, we speak of a public place, a public conference, public behavior, making something public, or publishing an article. The private counterparts, from homes to diaries, are private in that access is restricted and visibility reduced. The concepts of publicity and privacy stand in opposition to each other along this dimension of accessibility. Public is to private as the transparent is to the opaque, as the announced is to the concealed. Similarly, a person's public life is to his or her private life as the outer is to the inner realm.

On the other hand, when we speak of public opinion, public health, or the public interest, we mean the opinion, health, or inter-

1. *See, e.g.*, Klare, The Public/Private Distinction in Labor Law, 130 U. Pa. L. Rev. 1358 (1982); Kennedy, The Stages of the Decline of the Public/Private Distinction, 130 U. Pa. L. Rev. 1349 (1982); Freeman & Mensch, The Public/Private Distinction in American Law and Life, 3 Tikkun 24-30 (Mar./Apr. 1988).

2. Starr, A Response to Mensch and Freeman, 3 Tikkun 31 (Mar./Apr. 1988).

est of the whole of the people as opposed to that of a part, whether a class or an individual. Public in this sense often means "common," not necessarily governmental. The public-spirited or public-minded citizen is one concerned about the community as a whole. But in the modern world the concepts of governmental and public have become so closely linked that in some contexts they are interchangeable. The state acts for the whole of a society in international relations and makes rules binding on the whole internally. Public thus often means official. In this sense a "public act" is one that carries official status, even if it is secret and therefore not public in the sense of being openly visible. Indeed, according to the Oxford English Dictionary, private originally signified "not holding public office or official position." As Albert Hirschman points out, this is a meaning that survives in the army "private," that is, the "ordinary soldier without any rank or position."[3] Now, of course, private is contrasted with public to characterize that which lies beyond the state's boundaries, such as the market or the family.

These different contrasts between public and private lead to some apparent conflicts in defining what lies on each side of the boundary. One such conflict concerns the location of the market. To an economist, the marketplace is quintessentially private. But to a sociologist or anthropologist concerned with culture, the marketplace is quintessentially public—a sphere open to utter strangers who nonetheless are able to understand the same rules and gestures in what may be a highly ritualized process of exchange. While economists use the public-private distinction to signify the contrast between state and market, analysts of culture—particularly those concerned with the roles and relations of men and women—take the public sphere to include the market as well as politics and contrast them both with the private domain of the family. In this sense, the public-private distinction is sometimes taken to mark out the contested boundaries of the male and female worlds—a usage that takes us back to the notion of the private as being more closed, more shielded from contact and view, than the open encounters of public life.[4]

3. A. Hirschman, Shifting Involvements: Private Interest and Public Action 121-22 (1982).

4. *See, e.g.*, J. Elshtain, Public Man, Private Woman (1981); Rosaldo, Woman, Culture and Society: A Theoretical Overview, in Woman, Culture and Society 17-42 (M. Rosaldo & L. Lamphere eds. 1974); L. Imray & A. Middleton, Public & Private: Marking the Boundaries, in The Public and the Private 12-16 (E. Gamarnikow, et al. eds. 1983).

From these varying uses of the categories come several contrasting conceptions of the public sphere. The public sphere may be conceived of as the open and visible—the sphere of public life, public theater, the public marketplace, public sociability. The public sphere also may be conceived of as that which applies to the whole people or, as we say, the general public or the public at large, in which case the public may consist of an aggregate or a mass who have no direct contact or social relation—the very opposite of a sphere of sociability. Or the public sphere may be conceived specifically as the domain circumscribed by the state, although exactly where to draw the state's boundaries may be difficult indeed.

The general meanings of privatization, then, correspond to withdrawals from any of these variously conceived public spheres. Historians and sociologists write about the withdrawal of affective interest and involvement from the sphere of public sociability. For example, in their work on the development of the modern family, Peter Willmott and Michael Young argue that as the modern household became equipped with larger homes, private cars, televisions, and other resources, more time and capital came to be invested in the private interior of the family and less in public taverns, squares, and streets.[5] Similarly, Richard Sennett suggests that since the eighteenth century modern society has seen a decline of public culture and sociability, a deadening of public life and public space, a privatization of emotion.[6] Such arguments shade into a second meaning of privatization: a shift of individual involvements from the whole to the part—that is, from public action to private concerns—the kind of privatization that Hirschman describes as one swing in a public-private cycle of individual action.[7] In this sort of public-to-private transition, the swing is not from sociability to intimacy but from civic concern to the pursuit of self-interest.

Privatization can also signify another kind of withdrawal from the whole to the part: an appropriation by an individual or a particular group of some good formerly available to the entire public or community. Like the withdrawal of involvement, privatization in the sense of private appropriation has obvious implications for the distribution of welfare.

From these meanings it is but a short step to the sense of privatization as a withdrawal from the state, not of individual involve-

5. *See* M. Young & P. Willmott, The Symmetrical Family (1973).
6. *See* R. Sennett, The Fall of Public Man 16-24 (1977).
7. *See* Hirschman, *supra* note 3, at 121-30.

ments, but of assets, functions, indeed entire institutions. Public policy is concerned with privatization at this level. But the two forms, the privatization of individual involvements and the privatization of social functions and assets, are certainly related, at least by ideological kinship. A confidence that pursuit of private gain serves the larger social order leads to approval for both self-interested behavior and private enterprise.

Thus far I have been talking about privatization as if both spheres, public and private, were already constituted. But in a longer perspective, their constitution and separation represent complementary processes. Much historical experience corresponds to Simmel's paradoxical dictum that "what is public becomes ever more public, and what is private becomes ever more private."[8] This is true specifically of the histories of the state and the family. The difference between patrimonial domination and modern bureaucracies, as Weber describes the two, is precisely that in the patrimonial state public and private roles were mixed and in the modern state these roles are more clearly distinguished.[9] The modern state distinguishes offices and persons. The office is public, and its files, rules, and finances are distinct from the personal possessions and character of individuals. As public administration and finance were separated from the household and personal wealth of the ruler, the modern state became, in effect more public; the person and family of the ruler, more private.[10] That the domestic sphere has generally become more private is one of the classic themes of modern sociology and the history of the family.[11]

The rise of the liberal state specifically entailed a sharpening of the public-private distinction: on the one hand, the privatizing of religious and moral belief and practice and of economic activity formerly regulated by the state; on the other, a commitment to public law and public political discussion. Classical liberalism is often represented as a purely privatizing ideology, but liberals were committed to suppressing markets in votes, offices, and tax collection, not to mention human beings. Strengthening the public character of

8. *See* G. Simmel, The Secret and the Secret Society, in The Sociology of Georg Simmel 337 (K. Wolff ed. 1950). *See also* Horwitz, The History of the Public/Private Distinction, 130 U. Pa. L. Rev. 1423 (1982).

9. M. Weber, 3 Economy & Society 1028-31 (G. Roth & C. Wittich eds. 1968).

10. *See, e.g.*, R. Braun, Taxation, Sociopolitical Structure, and State-Building: Great Britain and Brandenburg-Prussia, in The Formation of National States in Western Europe 243-46 (C. Tilly ed. 1975); C. Webber & A. Wildavsky, A History of Taxation and Expenditure in the Western World 148-51 (1986).

11. *See* P. Ariés, Centuries of Childhood 411-15 (1962).

the state is a continuity in liberal thought from its classical to contemporary phases. Moreover, as Stephen Holmes argues, the liberal effort to privatize otherwise rancorous religious differences promoted a civilized public order.[12] Some kinds of privatization are not the enemy of the public realm but its necessary support.

In liberal democratic thought, public and private are central terms in the language of claims-making. In particular, they provide a deeply resonant vocabulary for making claims against the state. These are of two kinds. First, the concept of a public government implies an elaborate structure of rules limiting the exercise of state power. Those who wield power are to be held publicly accountable—that is, answerable to the citizens—for their performance. Government decisions and deliberations must be publicly reported and open to general participation. In short, the citizens of a liberal state are understood to have a right to expect their government to be public not only in its ends but also in its processes. Second, when the members of a liberal society think of their homes, businesses, churches, and myriad other forms of association as lying in a private sphere, they are claiming limits to the power of that democratic state. The limits are not absolute—private property rights, for example, are not an insuperable barrier to public control or regulation—but when crossing from public to private the presumptions shift away from the state and any state intervention must meet more stringent tests of the public interest.

Public and private in liberal thought have become pervasive dualities—or, perhaps better said, polarities—associated with the state in one direction, the individual in the other. Intermediate entities, such as corporations typically have been divided between the two categories. Until the nineteenth century in the United States, there was no clear legal distinction between public and private corporations. Initially, cities were not sharply distinguished in the law from business enterprise; but in the mid-1800s cities became classified as agencies of the state, while business corporations came to be treated as individuals. As public agencies, cities were allowed only such powers as states delegated to them; as fictive individuals, private corporations came to enjoy rights protected by the Constitution.[13] This bifurcation between powers and rights lies at the foundation of

12. S. Holmes, Benjamin Constant and the Making of Modern Liberalism 241-52 (1984).

13. *See* Frug, The City as a Legal Concept, 93 Harv. L. Rev. 1059 (1980).

the contemporary legal distinction between the public and private sectors.

Behind the legal categories, of course, the boundaries are blurred. On the one hand, private interests reach into the conduct of the state and its agencies; on the other, the state reaches across the public-private boundary to regulate private contracts and the conduct of private corporations and other associations. Through tax preferences and credit guarantees, the state shapes private economic choices and relations. The state is immanent in the economy and society, but the degree of penetration varies, and the public-private system of classification is used to express these variations. So, for example, among private corporations, we distinguish those that are privately held from those that are publicly traded and subject to the regulations of the Securities and Exchange Commission. The latter are often called public corporations, by which we actually mean *public private* corporations. Among those public private corporations are some subject to more extensive regulation, such as the utilities, which are especially *public, public private* corporations. And since the utilities, in turn, have some lines of business defined as public and others as private, the public-private boundary runs within them as well as around them.

It is as if, on finding two boxes labeled public and private, we were to open the private box and find two more boxes labeled public and private, which we would do again—and again—opening ever smaller boxes until we reached the individuals far inside, whom we could then split into respective offices and persons.[14] Moreover, if the boxes have been assembled by reasonably competent lawyers, they may be extremely intricate and some will have misleading labels. But this complexity and the legal manipulation of the categories do not invalidate their usefulness or underlying meaning. To speak of a public corporation in the private sector ought really to be no more confusing than saying that North Carolina is in the South. Public and private give us relative locations.

A further source of frustration with the public-private distinction is that the terms do not have consistent meanings from one institutional sphere to another. In the United States, the difference between public and private schools is not the same as the difference between public and private television broadcasting. An American public school is public, not only in that it is state owned and fi-

14. I am grateful to Gerald E. Frug for this analogy.

nanced, but also because it is open to all children of eligible age in its area. Private schools can reject applicants, but public school systems are denied that option. Public is to private, not only as state is to nonstate, but as open is to closed. However, in television broadcasting, the viewing public has open access to commercial as well as public channels. The difference lies in financing and programming. The public channels receive government support and do not choose programming to maximize audience ratings, though in fact even public broadcasting now competes for private corporate sponsorship, and some public stations are legally organized as private nonprofit corporations.[15] To make matters still more complicated, the differences between public and private institutions do not follow parallel lines in other countries. To take broadcasting again, public television or radio in the United States is more dependent on private financing, less subject to control by political authorities, and less the symbolic voice of the state than the state-owned networks of other Western nations, not to mention the Soviet bloc and Third World.

To say public or private, therefore, is not sufficient to specify a form of organization or even its relation to the state. Consequently, it is extremely risky to generalize about public versus private organizations—and, therefore, about the merits of privatization as public policy—beyond a particular institutional or national context. No general theory about the performance of public versus private organizations is likely to succeed if it fails to distinguish among political systems and the structural variety of public and private institutions. Privatization describes a direction of change, but it does not denote a specific origin or destination. Its meaning depends on the point of departure—the public-private balance previously struck in a particular domain. And it is a critical question whether moving from public to private in the sense of state to non-state entails a movement in the other senses: from open to closed (in access to information) or from the whole to the part (particularly in the distribution of benefits).

B. The Political Meaning of Privatization

The term privatization did not gain wide circulation in politics until the late 1970s and early 1980s. With the rise of conservative gov-

15. Powell & Friedkin, Politics and Programs: Organizational Factors in Public Television Decision Making, in Nonprofit Enterprise in the Arts 245-69 (P. Dimaggio ed. 1986).

ernments in Great Britain, the United States, and France, privatization has come primarily to mean two things: (1) any shift of activities or functions from the state to the private sector; and, more specifically, (2) any shift of the *production* of goods and services from public to private.[16] Besides directly producing services, governments establish the legal framework of societies and regulate social and economic life, and they finance services that are privately produced and consumed. The first, broader definition of privatization includes all reductions in the regulatory and spending activity of the state. The second, more specific definition of privatization excludes deregulation and spending cuts except when they result in a shift from public to private in the production of goods and services. This more focused definition is the one that I shall use here. It leaves open the possibility that privatization may not actually result in less government spending and regulation—indeed, may even unexpectedly increase them.

Several further points about my definition need clarification. First, the public sector here includes agencies administered as part of the state and organizations owned by it, such as state enterprises and independent public authorities like the British Broadcasting Corporation (BBC) or the Port Authority of New York and New Jersey. In the private sector I include not only commercial firms but also informal and domestic activities, voluntary associations, cooperatives, and private nonprofit corporations.[17]

Second, in the definition I am using, privatization refers to shifts from the public to the private sector, not shifts within sectors. Thus the conversion of a state agency into an autonomous public authority or state-owned enterprise is not privatization, though it may well put the enterprise on a commercial footing.[18] This was the objec-

16. E.S. Savas defines privatization as "the act of reducing the role of government, or increasing the role of the private sector, in an activity or in the ownership of assets." E. Savas, Privatization: The Key to Better Government 3 (1987). I see nothing wrong with this broad definition, so long as one realizes that some actions may reduce one role of government while increasing another. For example, selling government-owned utilities may result in establishing a new system of public regulation. Setting up a voucher plan for education and housing may produce more public regulation of private schools. In other words, policies conceived as privatization may have unintended consequences for other dimensions of state intervention.

17. On the ambiguities of such classification, see generally Musolf & Seidman, The Blurred Boundaries of Public Administration, 40 Pub. Admin. Rev. 124 (1980); A. Walsh, The Public's Business (1980).

18. Glade uses the term "simulated privatization" to refer to the effort to put a public enterprise on a commercial footing. Glade, Sources and Forms of Privatization, in State Shrinking: A Comparative Inquiry into Privatization 2, 12-13 (W. Glade ed. 1987). S. Henrique Abranches refers to the same process as "privatization of the logic of opera-

tive, for example, of the conversion of the United States Post Office into a public corporation, the United States Postal Service, in 1971.[19] Similarly, the conversion of a private nonprofit organization into a profit-making firm also is not privatization, though it, too, may orient the firm toward the market. Both of these intrasectoral changes might be described as commercialization; in the case of public agencies, commercialization is sometimes a preliminary stage to privatization.

Third, shifts from publicly to privately produced services may result not only from a deliberate government action, such as a sale of assets, but also from the choices of individuals or firms that a government is unwilling or unable to satisfy or control. In many countries, private demand for education, health care, or retirement income has outstripped public provision. As a result, private schooling, medical care, and pensions have grown to relatively larger proportions. This is *demand-driven privatization*. When privatization is a demand-driven process, it does not require an absolute reduction in publicly produced services. Stagnation or slow growth in the public sector may be the cause. In some socialist societies the growth of an "underground" economy represents a form of privatization that is not a planned development (though it may well result from development planning). In other words, as a process, privatization encompasses more institutional changes than those brought about by self-conscious privatization policies. It seems useful, then, to distinguish instances of privatization according to whether they are predominantly *policy-* or *demand-driven*.

Fourth, if one shifts attention from the sphere of production to the sphere of consumption, one may alternatively define privatization as the substitution of private goods for public goods. A public good, in the economist's sense, has two distinguishing properties: One person's consumption does not preclude another's; and excluding anyone from consumption is costly, if not impossible. The prototypical example is fresh air. A public good need not be produced by government. A broadcast television program is a public good even if it is provided by a commercially owned station; but videotape is not, nor is programming on subscription cable services. Any shift toward these forms of nonbroadcast television represents

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tion" of state enterprises. Abranches, State Enterprise and Modes of Privatization: A Critical View Based on Brazilian Examples, in State Shrinking, *supra*, at 75, 79.

19. Willey, Taking the Post Office Out of Politics, Pub. Interest, Spring 1969, at 57-71.

a privatization of consumption, even if the local cable service is municipally owned.[20]

Depending on whether one is talking about the locus of production or the forms of consumption, privatization can mean rather different things. In regard to production, "privatization of health care" might mean a transfer of medical facilities from public to private ownership; regarding consumption, it might refer to a shift in expenditures from public health (environmental protection, vaccinations, etc.) to individual medical care. Similarly, "privatization of transportation" might refer to the conversion of an urban bus system from public to commercial ownership; or it might mean a shift in ridership from buses to private automobiles, regardless of whether the bus company is municipal or commercial. Strictly speaking, public transportation is not a public good, since exclusion is possible and only one person at a time can sit in a seat; however, because buses and trains are open to the public at large, common carriers are a distinctively public form of consumption compared to private cars. More generally, the historical process described by Willmott and Young—the concentration of consumption activities in the home—represented a shift toward more privatized forms of consumption. This shift has been the source of much criticism of contemporary society, as in John Kenneth Galbraith's famous contrast of private opulence and public squalor in *The Affluent Society*.[21] In this discussion, whenever referring specifically to a shift from public goods to private goods, or from common carriers to private carriers, I use the phrase "privatization of consumption." Otherwise, I take privatization to mean a shift in the locus of the production of services from public to private.

Four types of government policies can bring about such a shift. First, the cessation of public programs and disengagement of government from specific kinds of responsibilities represent an *implicit* form of privatization. At a less drastic level, the restriction of publicly produced services in volume, availability, or quality may lead to a shift by consumers toward privately produced and purchased substitutes (called "privatization by attrition" when a government lets public services run down). Second, privatization may take the *explicit* form of transfers of public assets to private ownership, through sale or lease of public land, infrastructure, and enterprises. Third, in-

20. Starr, Television and the Public Household, in Television in America's Future—A Search for the Right Public Policy (M. Rice ed.) (forthcoming).

21. *See* J. Galbraith, The Affluent Society 195 (3rd ed. 1976).

stead of directly producing some service, the government may finance private services, for example, through contracting-out or vouchers. Finally, privatization may result from the deregulation of entry into activities previously treated as public monopolies.

These forms of privatization vary in the extent to which they move ownership, finance, and accountability out of the public sector. The spectrum of alternatives runs from total privatization (as in government disengagement from some policy domain) to partial privatization (as in contracting-out or vouchers). As I define the term, privatization may include policies anywhere along this spectrum; however, the implications of privatization vary with its degree. In cases of partial privatization, the government may continue to finance but not to operate services, or it may continue to own but not to manage assets. Privatization may, therefore, dilute government control and accountability without eliminating them. Where governments pay for privately produced services, they must continue to collect taxes. Privatization in this sense diminishes the operational but not the fiscal or functional sphere of government action. By putting the delivery of services into the hands of a third party, governments may divert claims and complaints to private organizations, but they also risk seeing those third parties become powerful claimants themselves. Whether this sort of partial privatization achieves any reduction in government spending or deficits must necessarily be a practical, empirical question.

Even asset sales sometimes involve only the transfer of a partial interest. Often governments sell some voting stock in an enterprise but refuse to surrender control. In these instances, privatization may amount to little more than a revenue-raising measure, as there may be no change in management, management behavior, or the enterprise's relation to state authorities. Although it may seem odd, the product of privatization is not always a private firm: Privatization also yields hybrid enterprises with varying balances of influence.

The different techniques used to privatize assets affect what emerges from privatization. Among the methods used are sales to private bidders, sales by public stock offering, conversion to employee ownership, and transfer of title to the firm's current managers. In the case of unprofitable businesses, far from charging a price, governments sometimes guarantee the new owners future public contracts, tax benefits, or the monopoly on a franchise.

These variations in privatization policy complicate simple-minded predictions of the effects of privatization on economic efficiency.

Just as there are various methods for the divestiture of assets, so too, various methods are available for shifting from publicly produced services to publicly financed private provision. Governments face a basic choice as to whether state agencies or private parties will do the purchasing. If the state purchases the service, it may enter into contracts or grants. If, on the other hand, the government allows private parties to purchase services, it may distribute vouchers, offer tax credits or other tax preferences, indemnify beneficiaries directly for some proportion of their costs, or pay providers chosen by beneficiaries. (The latter shades into contracting-out if the transactions become routine.) To introduce yet a further complication, the private parties whose costs the government defrays in whole or part may be individuals (the consumers of services) or employers. Privatization policy might, for example, call for the use of tax preferences to induce a shift from publicly provided retirement benefits to benefits provided by employers or to benefits provided through individual retirement accounts.[22] When governments give up producing services, they can "empower" many different parties.

Privatization should not automatically be equated with increased competition. Two related processes, privatization and liberalization, need to be carefully distinguished. By liberalization one generally means a reduction of government control; in this context, it refers to the opening up of an industry to competitive pressures. Entry deregulation of public monopolies is a form of privatization that is also liberalizing. However, it is entirely possible to privatize without liberalizing. When the Thatcher government sold shares of British Telecom and British Gas, it substituted private monopolies for public ones and introduced new regulatory agencies to perform some of the functions previously undertaken through public ownership. The option of putting liberalization first—that is, encouraging greater competition—was expressly rejected, perhaps for fear that it

22. *See, e.g.*, Ferrara, Social Security and the Super IRA: A Populist Proposal, in Social Security: Prospects for Real Reform 193 (P. Ferrara ed. 1985); Goodman, Private Alternatives to Social Security: The Experience of Other Countries, in Social Security, at 103; O'Higgins, Public-Private Interaction and Pensions Provision, in Public-Private Interplay in Social Protection (M. Rein & L. Rainwater eds. 1986); Starr, Social Security and the American Public Household, in Social Security: Beyond the Rhetoric of Crisis (J. Mashaw & T. Marmor eds.) (forthcoming).

would reduce the share price of the companies.[23] Conversely, it is also possible to liberalize without privatizing—that is, to introduce competition into the public sector without transferring ownership. For example, governments may allocate funds to schools according to student enrollments where families are free to choose among competing public schools; or they may require public enterprises or operating agencies to compete for capital or contracts from higher-level authorities. Indeed, it is even possible to nationalize and liberalize at the same time, as the French socialists demonstrated in the early 1980s when they first nationalized banks and later liberalized financial markets.[24]

Finally, just as there are different routes out of the public sector, so there are numerous destinations in the private sector to which privatization may lead. The alternative possibilities may be classified according to organizational complexity and proprietary status: first, the personal, domestic, or informal sector, thought to exemplify the virtues of self-reliance, mutual aid, and sensitivity to individual preferences; second, the voluntary nonprofit, or "independent," sector, consisting of formal, complex organizations, thought to display the same virtues as the informal sector, plus the advantages of professional leadership and management; third, the small-business sector, acclaimed for entrepreneurship and revered as a fountain of new jobs; and fourth, the large-scale corporate sector, where hopes for improved performance rest not only on the profit motive but also on professional management and economies of scale. The first two of these destinations, the informal and nonprofit sectors, remind us that privatization does not necessarily mean a reliance on commercial markets. Indeed, instead of one destination and one map, the advocates of privatization have several, distinctly different conceptions of where they are going. I turn now to the theories that provide the movement with its logic, intellectual coherence, and rhetoric.

II. Privatization as Theory and Rhetoric

The normative theories justifying privatization as a direction for public policy draw their inspiration from several different visions of

23. *See, e.g.*, Privatization and Regulation: The U.K. Experience (J. Kay & D. Thompson eds. 1987); Brittan, The Politics and Economics of Privatisation, 55 Political Q. 109, 116-21 (1984).

24. Francis, French Financiers Marvel at "Capitalists in Socialists' Clothing," Christian Sci. Monitor, June 20, 1985, at 21.

a good society. By far the most influential is the vision grounded in laissez-faire individualism and free-market economics that promises greater efficiency, a smaller government, and more individual choice if only we expand the domain of property rights and market forces. A second vision, rooted in a more socially minded conservative tradition, promises a return of power to communities through a greater reliance in social provision on families, churches, and other largely nonprofit institutions. Privatization, in this view, means a devolution of power from the state to ostensibly nonpolitical and noncommercial forms of human association. Yet a third perspective sees privatization as a political strategy for diverting demands away from the state and thereby reducing government "overload." This last view, identified particularly with recent neoconservative thought, does not necessarily conflict with the other two—indeed, some advocates of privatization draw on all three—but each vision suggests a different framework for analysis and policy.

A. The Economic Theory of Privatization

Even within the economic theory of privatization, there are some subtle but important differences between two approaches: the radical view of privatization as a reassignment of property rights and the more moderate, conventional view of privatization as an instrument for fine-tuning a three-sector economy.

1. Economic Model 1: Privatization as a Reassignment of Property Rights. Private ownership and competitive markets are normally thought to go hand in hand, but the two issues of ownership and market structure are often separate. For the economist devoted to both, the question then arises as to which object of affection is more beloved: private ownership or competition. Here a difference of opinion appears among economists that corresponds to a preference for either privatization or liberalization. Those who believe that efficient performance depends on private ownership per se favor privatization, even in cases generally regarded as natural monopolies. Conversely, those who see competition as the critical spur to efficiency are more skeptical about the benefits of privatizing monopolies and often put more emphasis on other policies, such as deregulation. In the case of a government telecommunications monopoly, for example, those who stress ownership may be willing to privatize the monopoly intact, whereas those who stress competition may prefer to break it up before sale or even to keep it in public

ownership while allowing private firms to compete with it on equal terms.

Thus the perspective that unequivocally points to privatization as desirable policy holds that property ownership is the fulcrum of political economy. Curiously, the two unlikely bedfellows sharing this appreciation of ownership are marxism and Chicago economics, which draw from it opposite but equally strong conclusions about the overriding importance of getting ownership into the right sector. From the Chicago tradition come two closely related clusters of work: the theory of property rights and the theory of public choice. Both attempt to enlarge the conventional economic paradigm by treating the classical firm and modern package of property rights as only one of various possible institutional forms. In this enlarged model, public institutions merely represent an alternative property rights configuration, which, on theoretical grounds, the Chicago School predicts regularly will perform less efficiently than private enterprise.

As developed by economists such as Armen Alchian, Ronald Coase, and Harold Demsetz, the theory of property rights explains differences in organizational behavior solely on the basis of the individual incentives created by the structure of property rights.[25] In this view, property rights specify the social and economic relations that people must observe with each other in their use of scarce resources, including not only the benefits that owners are allowed to enjoy but also the harms to others that they are allowed to cause. A right of ownership actually comprises several rights, chiefly the rights to use an asset, to change it in form, substance, or location, and to transfer all or some of these rights. Insofar as the state restricts these rights, they become "attenuated." Thus the key issues for the theory are, first, to whom are property rights assigned? and second, how, if at all, are they attenuated?

Like other branches of microeconomics, the property rights school conceives of human action as purely individualistic. The more individuals stand to gain from tending to their property, the better will it be tended. Conversely, the more attenuated and diluted their property rights, the less motivated individuals will be to use property under their control efficiently. Private ownership con-

25. *See, e.g.*, Alchian, Some Economics of Property Rights, 30 Il Politico 816 (1965); Demsetz, Toward a Theory of Property Rights, 57 Amer. Econ. Rev. Papers & Proc. 347 (1967); E. Furubotn & S. Pejovich, The Economics of Property Rights (1974); Furubotn & Pejovich, Property Rights and Economic Theory: A Survey of Recent Literature, 10 J. Econ. Lit. 1137 (1972); De Alessi, Property Rights and Privatization, 36 Proc. Acad. Pol. Sci. 24 (S. Hanke ed. 1987) (volume entitled Prospects for Privatization).

centrates rights and rewards; public ownership dilutes them. The property rights school does not recognize any fundamental change in the working of private enterprise as a result of the separation of ownership and management in the modern corporation. To be sure, shareholders in large corporations cannot monitor management as closely as the owner of the classical firm could oversee his enterprise. However, in this view, the market generates the needed spur to prevent corporate management from dissipating value through excessive salaries or slack attention. If returns from the enterprise are low, shareholders will sell their stock and the price will be depressed. In the extreme case, the firm may be acquired by outsiders and the managers may lose their jobs. These crucial deterrents to inefficient management are missing from the public sector. Since "shareholders" (citizens) have no transferable property rights in public enterprise, they cannot sell stock as a signal of dissatisfaction with performance; even moving to another jurisdiction is costly. Moreover, there is no "market for corporate control": public enterprises cannot be taken over by bidders who believe that they can make more efficient use of the assets. Hence, according to the theory, there is no check on the dissipation of value by the management of public enterprises.

It is worth taking note of the premises and implications of the property rights approach. First, the theory holds that the form of ownership is the predominant explanation for the varying performance of different organizations. The theory gives no importance whatsoever to organizational characteristics such as size, centralization, hierarchy, or leadership. Nor does it recognize any variation in performance that might stem from task characteristics, such as poor information or ambiguity about goals. The theory does not even recognize the effects of economic incentives unrelated to property rights, such as those originating in various types of contracts. The theory does not point to any contingencies in generalizing about public-private differences; it does not identify any particular conditions or characteristics that might cause public institutions to perform well. The disease the theory diagnoses in the public sector is, so to speak, genetic and incurable.

Second, the theory takes the market as the standard for judging value and finds public institutions deficient because they fail to measure up to that standard, e.g., their "shareholders" cannot sell stock. Survival in the market, of course, depends on the capacity of organizations to produce a residual reward for the owners—a profit. This is not the standard that public institutions generally need to meet. The property rights approach says that society would be better off if,

instead of meeting approval in the political process, public organizations or their assets were privately owned and had to meet the test of profitability.

Third, the property rights theory assumes that the market for corporate control is highly efficient and that the chief reason corporations are acquired is their management's poor performance. In the United States today, however, some corporations are acquired because they have built up large pools of cash, while other corporations avoid being acquired because their managers take preventive but inefficient measures, such as piling up debt. Frequently, behemoths with large cash flow but low returns on equity and other indicators of poor performance have taken over firms with much better records.[26] Virtue is not always rewarded in the market for corporate control; nonetheless, according to the property rights view, market discipline forces managers of private firms to be more efficient than public managers. The theory gives no weight at all to the monitoring capacities of the state, the public at large, and the various institutions of a liberal democracy, such as the press, that routinely scrutinize the performance of public institutions. The reasons for this dim view of public monitoring are spelled out in the theory of public choice.

"Public choice," ill-named because the only choices it recognizes are essentially private, is both a branch of microeconomics and an ideologically-laden view of democratic politics. Analysts of the school apply the logic of microeconomics to politics and generally find that whereas self-interest leads to benign results in the marketplace, it produces nothing but pathology in political decisions.[27] These pathological patterns represent different kinds of "free-riding" and "rent-seeking" by voters, bureaucrats, politicians, and recipients of public funds. Coalitions of voters seeking special advantage from the state join together to get favorable legislation enacted. Rather than being particularly needy, these groups are likely to be those whose big stake in a benefit arouses them to more effective action than is taken by the taxpayers at large over whom the costs are spread. In general, individuals with "concentrated" interests in increased expenditure take a "free ride" on those with "diffuse" interests in lower taxes. Similarly, the managers of the "bureaucratic firms" seek to maximize budgets, and thereby to ob-

26. The acquisitions by General Motors, U.S. Steel (now USX), and W.R. Grace corporations provide illustrations.

27. *See, e.g.*, J. Buchanan & G. Tullock, The Calculus of Consent (1962); W. Niskanen, Bureaucracy and Representative Government (1971); Budgets and Bureaucrats: The Sources of Government Growth (T. Borcherding ed. 1977).

tain greater power, larger salaries, and other perquisites. Budget maximization results in higher government spending overall, inefficient allocation among government agencies, and inefficient production within them. In addition, when government agencies give out grants, the potential grantees expend resources in lobbying up to the value of the grants—an instance of the more general "political dissipation of value" resulting from the scramble for political favors and jobs.

Thus, like the theory of property rights, the public choice perspective indicts public ownership and management across the board. The exponents of these views have developed their position through studies of the public management of land, forests, water, and other natural resources and comparative analyses of public and private enterprises in a variety of industries, including airlines, fire protection, and solid waste disposal.[28] The property rights view of natural resource management exemplifies application of the theory. Public ownership, in this view, inexorably leads to what Garrett Hardin has called "the tragedy of the commons."[29] Acting out of rational self-interest, individuals abuse and ultimately destroy the commons but take good care of their own private property. Thus publicly managed grazing land and forests purportedly suffer from worse management than privately owned land and forests. Moreover, the public agencies responsible for resource management, such as the Forest Service, dissipate value through self-aggrandizing expansionary policies. Consequently, privatizing the public domain would better ensure its conservation and efficient use.[30] One plan for "privatizing the environment" calls for the sale to private investors of federal lands, including national parks, or their transfer to private associations such as the Audubon Society; the same author even recommends solving the problem of endangered species by creating new property rights in wildlife.[31]

In short, starting with an individualistic model of human behavior, the public choice school makes a series of empirical claims: (1) that

28. *See, e.g.*, Ahlbrandt, Efficiency in the Provision of Fire Services, 16 Pub. Choice 1 (1973); Davies, The Efficiency of Public Versus Private Firms, the Case of Australia's Two Airlines, 14 J. Law & Econ. 149 (1971); Bennett & Johnson, Public Versus Private Provision of Collective Goods and Services: Garbage Collection Revisited, 34 Pub. Choice 55 (1979).

29. Hardin, The Tragedy of the Commons, 162 Science 1243 (1968).

30. *See, e.g.*, Forestlands: Public and Private (R. Deacon & M. Johnson eds. 1985); Hanke & Dowdle, Privatizing the Public Domain, 36 Proc. Acad. Pol. Sci. 114 (S. Hanke ed. 1987) (volume entitled Prospects for Privatization).

31. *See* Smith, Privatizing the Environment, 20 Pol. Rev. 11 (1982); Smith, Resolving the Tragedy of the Commons by Creating Private Property Rights in Wildlife, 1 Cato J. 439 (1981).

democratic polities have inherent tendencies toward government growth and excessive budgets; (2) that expenditure growth is due to self-interested coalitions of voters, politicians, and bureaucrats; and (3) that public enterprises necessarily perform less efficiently than private enterprises.

A thorough analysis of the claims of the public choice school would be a book in itself, but the general lines of criticism may be at least briefly suggested. First, while the theory presents voters as narrowly self-interested, considerable evidence suggests that, even on economic issues, voters identify their interests with the overall performance of the economy, rather than simply voting in line with their private experience.[32] Voters, in other words, are capable of recognizing a collective interest apart from their own. Indeed, the whole point of "government by discussion" is to discover and express common interests not easily voiced or achieved in the private sphere. The public choice approach simply does not comprehend this preference-shaping function of political democracy. It also neglects the restraints built into the architecture of liberalism. While the theory holds that government is systematically biased toward dissipating value and increasing expenditure, it disregards the checks and balances among branches of government and within them. The scrutiny of spending programs by Congress and the Office of Management and Budget is an example. According to the theory, spending programs get approved because they have concentrated benefits and diffused costs; however, the same arguments apply to tax reductions for specific interests (that is, tax expenditures). Thus "fiscal illusions" should be symmetrical on the spending and tax sides of the budgetary process and cannot explain long-term tendencies toward higher tax levels. The "Leviathan theorists," as Richard Musgrave calls them, also overstate the historical trend toward higher government expenditure; the evidence does not show an accelerating increase as a proportion of national income.[33]

The empirical evidence comparing efficiency in public and private organizations is also more complex than the property rights and public choice schools acknowledge. To take the example of resource management again, Carlisle Ford Runge points out that the evidence suggests that federally owned rangeland is in better condi-

32. The evidence against the public choice view of political behavior is summed up in Orren, Beyond Self-Interest, in The Power of Public Ideas 13 (R. Reich ed. 1988). *See also* Kelman, Why Public Ideas Matter, in The Power of Public Ideas, *supra*, at 31.

33. Musgrave, Leviathan Cometh—or Does He?, in Tax and Expenditure Limitations 77 (H. Ladd & T. Tideman eds. 1981).

tion than nonfederal rangeland.[34] In one of the few relevant studies of forestland, a survey in Minnesota indicates that extremely few private purchasers of tax-forfeited public forests did anything whatsoever to maintain them.[35] The "tragedy of the commons" argument confuses resources in common ownership with resources in public ownership; it fails to give any credit to the democratic process or to professional management in raising the time horizons of voters, politicians, and bureaucrats to a level higher than that prevailing in the marketplace. Many observers have noted the propensity of American managers for concentrating on short-term profits; the property rights school, by contrast, bravely asserts that private firms have sufficient incentive to preserve wildlife and wilderness for future generations.[36]

The rhetoric of the public choice school is a kind of hard-nosed realism. The theory dismisses as naive civic ideals such as public service; it denies the capacity of voters or politicians to act on the basis of a national interest wider than their own private aggrandizement. Rather like marxism, public choice theory claims to face up to the self-interested basis of democratic politics and therefore treats all claims of higher purpose as smoke and deception. And also like marxism, the theory presents itself as a scientific advance over earlier romantic and idealized views of the state. But rather than being an advance of science over intuition, the appeal of the public choice school is precisely to those who are intuitively certain that whatever government does, the private sector can do better. Together, the property rights and public choice schools show only that, if you start by assuming a purely individualistic model of human behavior and treat politics as if it were a pale imitation of the market, democracy will, indeed, make no sense.

2. Economic Model 2: Privatization as a Relocation of Economic Functions. Compared to the right-wing schools that condemn the public sector as irredeemably inefficient, policy analysts trained in conventional microeconomics tend to have a more qualified, though still highly critical, view of public institutions. Rather than attribute the performance of public organizations to the incentives created by public ownership per se, mainstream policy analysts generally think of designing the right incentives within the framework of public or-

34. Runge, The Fallacy of "Privatization," J. Contemp. Stud., Winter 1984, at 3,12.

35. Ellefson, Palm, & Lothner, From Public Land to NonIndustrial Private Forest: A Minnesota Case Study, J. Forestry, Apr. 1982, at 219.

36. Krutilla, et al., Public versus Private Ownership: The Federal Lands Case, 2 J. Pol. Analysis & Mgmt. 548 (1983).

ganization. Of course, the overwhelming consensus is that private ownership is more efficient in providing private goods in competitive markets; hence it is rare to find any respectable opinion in favor of government ownership of factories producing high-performance sports cars. Mainstream views do vary, however, about the proper role of public institutions in producing public goods and managing natural monopolies. Viewing competition as the critical issue, the neoclassically trained are inclined to favor privatization insofar as it represents a move toward competition under conditions when markets should be expected to work efficiently. However, in recent years the requirements for efficient markets have come to be understood more liberally, while the reputation of public enterprise has markedly declined. Hence, the prevailing consensus in economics and policy analysis has become more sympathetic to privatization than it was two or three decades ago.

While the property rights view is parsimonious and unambiguous in analyzing the basis of public-private differences, the more conventional approach is a patchwork of theories about the conditions under which the market, the state, and the nonprofit sector fail to perform efficiently. In this tradition, the theory of market failure is the historical point of departure. According to the received neoclassical wisdom, imperfect information, externalities, increasing returns to scale, and (in some versions) inequalities of wealth prevent the market from achieving optimal performance; it is then a short—though not a necessary—step to say that where the market fails, some form of public ownership or regulation is justified. (The theory says nothing about the choice between regulation and ownership.) However, two recent developments have suggested more caution about public intervention. First, markets need not be perfectly competitive to perform efficiently; they only need to be contestable—and the requirements for contestability are more easily met.[37] Second, public choice theory has successfully raised the challenge that where markets fail, so, too, may government; indeed, the theory suggests that government's performance will only be worse. Attempting to state the argument symmetrically, Charles Wolf, Jr., has spelled out a series of conditions for "nonmarket failure."[38]

These twin theories of market and nonmarket failure have, in turn, suggested a role for the nonprofit sector; for if states and markets have peculiar weaknesses, perhaps philanthropy can be ex-

37. W. Baumol, J. Panzar & R. Willig, Contestable Markets and the Theory of Industry Structure (1982).

38. Wolf, A Theory of Non-Market Failures, Pub. Interest, Spring 1979, at 114.

plained as an attempt to fill the void.[39] But, rather than define the voluntary sector as residual, Lester Salamon has argued that in the United States nonprofits are the "preferred" mechanism for delivering public services and that government programs arise to meet the problems of "voluntary failure."[40] The upshot is a theoretical amalgam that defines the limits of the three sectors and suggests in what form different kinds of activities are most efficiently organized. From this perspective, privatization becomes a way to move activity from a less efficient to a more efficient form—a tool of economic adjustment rather than radical reconstruction.[41]

The expanded theory of sector failure is a kind of ecological approach to institutional choice. The various sectors provide alternative environments, and the problem is to decide whether a particular set of tasks is best carried out in one or more locations. However, the theory does not exhaustively assign all activities. No sector gets high marks for performing tasks for which there is poor information. The theory is also ahistorical; it makes no allowance for sunk investments in organizational capacity. Relocating an industry in a different sector is not, after all, a costless exercise. However, the most serious defect of this approach is that, like all the economic models, it is principally concerned with efficiency and has little to say about the effects of organizational design on other values. To subject an organization to market forces is to push it to maximize the returns to residual claims holders; perhaps it will generate those returns more efficiently, but as George Yarrow has observed, some activities have been turned over to the public sector precisely to be protected from such pressure.[42] The economic models cannot say whether or not that is a sensible choice.

B. Privatization as Community Empowerment

A different set of arguments, not chiefly concerned with efficiency, comes from a more sociological theory of privatization that emphasizes the strengthening of communities. In the most noteworthy exposition of this position, Peter Berger and Richard Neuhaus propose that government "empower" voluntary associations, com-

39. J. Douglas, Why Charity? (1983).

40. Salamon, Partners in Public Service: The Scope and Theory of Government-Nonprofit Relations, in The Nonprofit Sector: A Research Handbook 99, 113 (W. Powell ed. 1987).

41. For an analysis of this perspective, see Young & Brodkin, The Political Economy of Privatization, in Privatization and the Welfare State (S. Kamerman & A. Kahn eds.) (forthcoming).

42. Yarrow, Privatization in Theory and Practice, 2 Econ. Pol'y 324, 331-32 (1986).

munity organizations, churches, self-help groups, and other less formal "mediating" institutions that lie between individuals and society's "alienating megastructures."[43] In their view, the modern liberal state has undermined these "value-generating," "value-maintaining," "people-sized institutions" by establishing service bureaucracies that take over their functions. Berger and Neuhaus are not opposed to the provision of social welfare, but they urge that, wherever possible, public policy rely on mediating institutions for the delivery of publicly financed services.

The view of privatization as community empowerment stands in sharp contrast to the conception of privatization as an extension of property rights. Berger and Neuhaus emphatically reject a narrowly individualistic view of human motivation. Indeed, they criticize liberalism precisely for defending individual rights over the rights of social groups to assert their own values; for example, they defend the capacity of neighborhoods to sustain "democratically determined values in the public sphere" by exhibiting religious symbols in public places.[44] They also suggest that attacks on the ideals of voluntary service "aid the expansion of the kind of capitalist mentality that would put a dollar sign on everything on the grounds that only that which has a price tag has worth."[45] Their concern is not to expand the domain of the profit motive but rather to strengthen local, small-scale forms of social provision. This is privatization with a human face, and it bears some resemblance to left-wing interest in community organizations and cooperatives.[46]

Although I find the community empowerment view more attractive than the property rights perspective, the Berger and Neuhaus claim that the liberal state undermines mediating institutions ignores the historical partnership between the two. The history of social provision in the United States does not, in fact, betray a disregard for the virtues of voluntary institutions. Salamon points out that the twentieth-century expansion of social spending in the United States has been largely a growth of what he calls "third-party" government (the third parties including local government as well as private nonprofit agencies).[47] Many nonprofit community

43. P. Berger & R. Neuhaus, To Empower People: The Role of Mediating Structures in Public Policy (1977).

44. *Id.* at 11.

45. *Id.* at 36-7.

46. *See, e.g.*, Donnison, The Progressive Potential of Privatisation, in Privatisation and the Welfare State 45 (J. LeGrand & R. Robinson eds. 1984).

47. Salamon, *supra* note 40, at 110.

organizations have depended for their survival on government subsidies. Moreover, today there is often a division of labor between the public and voluntary sectors. A still greater reliance on the nonprofit sector might pose serious problems for the voluntary institutions themselves. To be sure, privatization is taking place in many social services, but the growth is chiefly of new for-profit organizations that are far from the local "people-sized" institutions envisioned by Berger and Neuhaus. Some of them, like the national chains of nursing homes, are every bit as alienating as other corporate "megastructures." It is probably an illusion to think that a major shift toward private social services would lead to a proliferation of community organizations, if only because the private institutions would need much more capital than they traditionally have had available. If not supplied by the state, the capital must be supplied by the financial markets. In health care, the demand of capital formation is one of the principal pressures producing a shift from nonprofit to commercial organization, often national in scale.[48] Community empowerment might be a good idea, but if it is to come at all, it will come from more government intervention, not from privatization.

C. Privatization as a Reduction of Government Overload

A final theory justifying privatization holds that privatization is desirable for its likely political effect in deflecting and reducing demands on the state. In the 1970s, some critics suggested that the Western democracies were suffering from an "overload" of pressure, responsible for excessive spending and poor economic performance.[49] In that framework privatization represents one of several policies encouraging a counterrevolution of declining expectations. In a similar vein, Stuart Butler of the Heritage Foundation has argued that privatization can cure budget deficits by breaking up the kind of public spending coalitions described by public choice theory. Privatizing government enterprises and public services, in this view, will redirect aspirations into the market and encourage a more entrepreneurial consciousness.[50]

The political theory of privatization has several different, overlapping elements. First, the privatization of enterprises is a privatiza-

48. Starr, Social Transformation of American Medicine (1982).

49. S. Huntington, M. Crozier & J. Watanuki, The Crisis of Democracy 163-64 (1975).

50. S. Butler, Privatizing Federal Spending: A Strategy to Eliminate the Deficit 43-62 (1985).

tion of employment relations. The advocates of privatization hope to divert employees' wage claims from the public treasury, with its vast capacity for taxing and borrowing, to private employers, who presumably will have more spine in resisting wage demands. Moreover, the proponents hope for a trickle-down of entrepreneurship from the newly privatized managers to the workers; for that very reason, privatizers often are perfectly willing to sell to the workers, at an advantageous price, whole enterprises or at least some proportion of the shares. In addition, by shifting to private contractors even in a few selected areas, government might signal a harder line on wage concessions and thereby weaken public employee unions.

Second, the advocates of privatization hope also for a privatization of beneficiaries' claims. Instead of marching outside of government offices when things go wrong, the privatizers want them to direct their ire to private service providers—or better yet, simply to switch to other providers. In other words, privatization could mean a wholesale shift, in Hirschman's terms, from "voice" to "exit" as the usual and preferred tactic of coping with dissatisfaction.[51]

Third, the privatization of public assets and enterprises is also a privatization of wealth. Advocates such as Margaret Thatcher want privatization to increase the proportion of the population who own shares of stock and therefore take a more positive view of profit-making.[52] "People's capitalism" is an old idea, but using privatization of public assets to bring it about is new. Moreover, by privatizing other assets such as public housing and Social Security trust funds, privatizers hope to turn public claimants into property owners and engender in them a deeper identification with capitalism. They expect the worker who receives a retirement income from a private pension or individual retirement account to have a more conservative view of the world than that of the worker who depends on rent subsidies and a government check every month.

This political theory of privatization, like the economic and sociological theories, contains empirical predictions as well as normative judgments. The predictions concern the probable effects of privatization on political consciousness and action; the normative judgments concern the desirability of weakening the political foundations of public provision. Empirically, it seems unlikely that contracting-out, vouchers, and other arrangements for paying pri-

51. A. Hirschman, Exit, Voice, and Loyalty (1970).

52. Francis, Britain Pushing "People's Capitalism," Christian Sci. Monitor, July 17, 1985, at 21; Smith, The British Scene, 64 Foreign Aff. 923, 930-31 (1986).

vate providers will reduce pressure on government spending; the contractors are as likely as public employees to lobby for larger budgets.[53] However, some forms of privatization may, indeed, change the underlying political values, understandings, and capacities for action in society. Turning public tenants into private homeowners, public employees into private employees, and Social Security beneficiaries into investors in private retirement accounts could very well change their frame of social and political thought. These prospects raise rather different issues from the usual efficiency-minded discussions of privatization; they demand that we consider the meaning of privatization not only as a theory but also as a political practice.

III. Privatization as a Political Practice

I said earlier that the structural variety of public and private organizations, political systems, and national contexts makes it difficult to generalize about public-private differences and the effects of privatization. The task of generalization is still more complex because the forms of privatization vary so greatly. In this section, I spell out some of the contextual factors and critical choices that shape what privatization means in practice and that help to explain why political practice often conflicts with theory.

A. The Political Contexts and Uses of Privatization

The meaning of privatization depends in practice on a nation's position in the world economy. In the wealthier countries it is easy to treat privatization purely as a question of domestic policy. But where the likely buyers are foreign, as in the Third World, privatization of state-owned enterprises often means denationalization—a transfer of control to foreign investors or managers. Since state ownership often originally came about in an act of national self-assertion, privatization appears to be a retreat in the face of international pressure. In that sense, national memory colors the meaning of privatization. However, even in the United States, privatization would be understood rather differently if public assets up for sale or contracts up for bid were likely to be taken over by the Russians or even the Japanese. The more dependent a nation is on foreign investment, the greater the likelihood that privatization will raise the

53. Starr, The Limits of Privatization, in 36 Proc. Acad. Pol. Sci. 124, 128 (S. Hanke ed. 1987) (volume entitled Prospects for Privatization).

prospect of diminished sovereignty and excite the passions of nationalism. Where privatization raises such issues, it is often blocked, or citizens and domestic firms are reserved exclusive rights to publicly offered assets, shares, or contracts. In many Western countries, state ownership owed more in the first place to nationalist than to socialist sentiment; hence it is scarcely surprising that nationalism is liable to derail or distort privatization plans.

Throughout the world, the privatization of enterprises with strategic military or economic significance raises especially sensitive questions of sovereignty and security. In most oil-producing countries, for example, no government is likely to try to privatize the state oil companies because of the likely domestic political reaction. Even in Great Britain, the prospective sale of a helicopter company to an American company caused a political stir.[54] Despite its commitment to free markets, the Reagan Administration intervened in 1987 to prevent the sale to a Japanese corporation of a private American semiconductor company with important defense contracts.[55] On the other hand, the Reagan administration has sought to privatize some of NASA's satellite launch operations partly in the hope of strengthening the private American space industry in its competition with the Europeans.[56] Yet this case only reinforces the general point: The conflict between privatization and national interests depends on the relative power of a given state in the world system—the weaker the state, the more likely the conflict. Economically strong nations, knowing that they can privatize without jeopardizing their sovereignty, lecture the weak on the perils of state enterprise and restrictions on investment.

Like national interests, the more parochial concerns of politically dominant racial and ethnic groups may also confound privatization plans. In many countries, ethnic minorities, such as Indians in East Africa, make up disproportionate numbers of the potential domestic buyers of public assets. When a country's bureaucratic and entrepreneurial classes differ in ethnic composition, privatization may be understood as a transfer of wealth and power from one group to another and be politically resisted for that reason. Even if privatiza-

54. Marshall, Copter Firm's Bail-out Splits British Cabinet, L.A. Times, Dec. 31, 1985, § 4 at 2, col. 5.

55. Rempel & Walters, The Fairchild Deal: Trade War: When Chips Were Down, L.A. Times, Nov. 30, 1987, § 1, at 1, col. 1.

56. Broad, Space Drive's Tilt to Industry Gains Wide New Impetus, N.Y. Times, Jan. 24, 1988, § 1, pt. 1, at 1, col. 4.

tion is adopted, the field of potential buyers may be so restricted that potential gains from more efficient management evaporate.

The larger point in these examples of "distorting" influences on privatization is that private sectors are not only characterized by private ownership in the abstract. The potential private owners of public assets and contractors for public services represent specific interests and groups. Privatization is unlikely to be carried out with indifference to those social facts.

In general, the political uses of privatization are bound to compromise the avowed efficiency objectives. Governments that are in a hurry to sell state-owned enterprises may make concessions to current managers, whose cooperation is instrumental in divestiture. Privatization then becomes an occasion for managerial enrichment and entrenchment. It is striking that in Great Britain, France, and other countries that have privatized state-owned enterprises, privatization usually brings about little or no change in top management.[57] Moreover, governments commonly offer assets and enterprises up for sale to political allies. Some of these properties, such as broadcasting stations, are not simply economic but political assets; the incumbent government gains obvious advantage by placing them in the hands of political allies. The same patterns have long been evident in the contracting of public services; indeed, contracting is the *locus classicus* of the political pay-off. Even public offerings are not immune from political use. When governments underprice shares—as has been the overwhelming pattern in Britain[58]—they may be seeking to ensure not only that privatization is successfully realized, but also that happy shareholders have the opportunity to repay the government at the next election. Indeed, rather perversely, one could turn the whole force of public choice analysis on privatization itself: The logic of concentrated benefits and diffuse costs makes it altogether likely that the diffuse efficiency gains of privatization will be sacrificed in the effort to satisfy the big stakeholders—incumbent politicians and bureaucrats and their allies and supporters.

Politically inspired privatization is all the more likely because privatization attracts support not only from economists with a disinterested belief in liberalized markets but also from a privatization

57. Seminar with Helène Ploix, Executive Director, International Monetary Fund, Privatization Successes in Developed and Developing Countries, Princeton University, Jan. 14, 1988.

58. Mayer & Meadowcroft, Selling Public Assets: Techniques and Financial Implications, in Privatization and Regulation: The U.K. Experience, *supra* note 23, at 322.

lobby consisting of investment banking firms, government contractors, and other corporations whose businesses stand to benefit if the public sector cedes ground. Rather than being an escape from interest group influence and the politicization of resource use, privatization typically provides a prime example.

I do not want to suggest, however, that the view of politics as pure self-interest captures all that is going on, even in the case of privatization. Privatization is a worldwide policy movement carried along by a combination of objective forces, imitative processes, and international financial sponsorship. Many countries whose public sectors expanded sharply in recent decades now find themselves confronted by rising debt and strong resistance to higher taxes. Privatizing state-owned firms promises to bring some fiscal relief, particularly where the treasury has been heavily subsidizing unprofitable enterprises. Privatization may help both to cut expenditures and boost revenues, and, by converting debt to equity, states may improve the overall financial structure of their economies and reduce pressure for even less palatable austerity measures. Privatization is not the only possible response, but as in other institution-shaping movements, like the postwar spread of public enterprises, organizational forms spread by imitation. Institutional models are disseminated through a variety of political networks and the direct influence of international lending organizations. Privatization is now one of the policies that the International Monetary Fund promotes in negotiating loans with developing countries.[59]

Of course, proponents of privatization see the process more as learning than as imitation or imposition. In their view, the poor performance of public enterprise and, more generally, overexpanded public sectors has simply taught that privatization makes sense. But experience is never so transparent. Even where state enterprises are generally agreed to be highly inefficient, it is not necessarily clear that privatization will be a remedy. Moreover, the performance of some state-owned enterprises—for example, in Malaysia and France—has been excellent, and it is simply not true that

59. *See, e.g.*, Brooke, International Report: Guinea Booms as Markets Replace Marxism, N.Y. Times, Dec. 28, 1987, at D8, col. 1; Killen, West Africa Turns to Private Sector for Efficiency, Reuter Bus. Rep., Sept. 4, 1987 (BC cycle); IMF Approves $1.7 Billion Standby Loan for Mexico, 47 Wash. Fin. Rep. (BNA) No. 21, at 880 (Dec. 1, 1986). However, see also Gains From Privatization May Be Small Without Measures to Boost Competition, IMF Survey, March 23, 1987, at 82.

as public sectors grow, rates of economic growth fall.[60] To be sure, the record of central government planning is dismal, but that experience cannot simply be extrapolated to all publicly owned organizations, particularly in states with more autonomous forms of public sector management.

The property rights approach predicts politically imposed inefficiency on the basis of public ownership alone, but the variety of public sectors and state-owned enterprises in the world suggests instead that performance may be contingent on political culture, the structure of the state, and public policy toward enterprises. In some countries public management is well-established, professional, and prestigious, whereas in others the political party in power expects to give its own people jobs at every level. The mode of public sector control depends also on the structure of political-administrative relationships. It is a mistake in this context to view the state as a unitary actor. Public sectors often comprise a vast sprawl of organizations in public ownership, many of them, like public universities in the United States, only loosely connected to the centers of political decisionmaking. A great array of institutional devices, such as independent governing boards with self-perpetuating membership and earmarked financing, can serve to insulate public organizations from political intervention. In their legal status, public organizations variously include agencies under direct political authority, independent authorities incorporated under public law, state-owned enterprises incorporated under private law, and private companies in which the government has some ownership. Of course, the legal differences may or may not matter; autonomy is never guaranteed purely by formal structure. Finally, as a matter of policy, governments may or may not require public enterprises to be run on a commercial, business-like basis. Privatization may have little impact on the efficiency of organizations already operated on a commercial basis, and the effect of privatizing more politicized organizations depends on their previous political uses, some of which may be eminently defensible.

Political culture and preexisting administrative capacities are not unreasonable bases for choices about state versus private ownership. Where the state is the only domestic institution capable of sustaining the confidence of foreign creditors or administering large

60. *See generally* Saunders, Public Expenditure and Economic Performance in OECD Countries, 5 J. Pub. Pol'y 1 (1986); R. Kuttner, The Economic Illusion: False Choices Between Prosperity and Social Justice (1984).

undertakings and where it has demonstrated management competence, the case for state enterprise may be correspondingly strong. On the other hand, in some regimes the penchant for political intervention produces endemic overstaffing, poor location of plants, extravagant wages, and prices far out of line with market levels. Like alcoholics unable to cut down except by quitting altogether, these governments may be unable to avoid disrupting public enterprises, except by privatizing them altogether. Moreover, in much of the world, state enterprise gives the dominant elites too powerful a grip over civil society. For example, the Argentine military is said to use its huge network of industrial enterprises as an instrument of patronage and power.[61] In such cases, privatization may well be justified as a means of releasing society from bureaucratic domination.

Whether the advanced capitalist societies suffer from too strong a bureaucratic grip is, of course, exactly where the right and left disagree. In this respect, the United States, which has never nationalized industry in the first place, stands in a position fundamentally different from the Western European countries with extensive public enterprise sectors. The sphere of public ownership in the United States has been so limited that I find implausible the view that Americans suffer from an oppressive government role in the production of goods and services. The relations between the public sector and political leadership are drastically different in the United States from those prevailing in Latin America, the Soviet bloc, and even many Western European countries. If political meddling is the chief problem in public sector organizations, the United States has an effective alternative to privatization in the establishment of public corporations (often called public authorities in the United States). Their insulation from political control, the independence of the judiciary, and the decentralization of power in the federal system prevent public authorities from being easily bent by political caprice.

Indeed, the problems of the American public sector seem to be of the opposite kind. So deeply entrenched are the barriers to unitary control that legitimate interests in coordinated management are thwarted. American public institutions at all levels of government suffer from rampant credentialism and proceduralism that hamper the ability of managers to hire and fire, reward, and motivate their subordinates. Ironically, many of these rigidities result from previous reforms, passed in the name of curbing corruption. For a vari-

61. Fontana, Armed Forces and Neo-Conservative Ideology: State Shrinking in Argentina, 1976-81, in State Shrinking, *supra* note 18, at 62-74.

ety of reasons, public organizations also do not respond quickly to change, such as the emergence of new technologies and consumer demands. The long lead times required by the appropriations process often prevent agencies from adapting quickly. Privatization is one route out of the procedural thicket; however, we might achieve some of the same ends by making public administration more flexible and giving public managers more independent authority.

To be sure, government cannot be run "just like a business" in part because its more elaborate procedures are meant to produce something else besides the specific services that the private sector provides. Reviews by advisory committees and congressional hearings, designed to increase accountability or to give a fair hearing to complaints by clients, contractors, or employees, cannot be dismissed simply as a source of inefficiency. Democratic government cannot narrowly concern itself with getting the job done, which is one reason why it should not concern itself with all the jobs that need doing. Privatization is a legitimate tool for sharpening the focus of government on those activities most important to the general welfare, but it is never simply efficiency that is at stake in such decisions.

B. Privatization as a Reordering of Claims

Privatization needs to be understood as a fundamental reordering of claims in a society. As I indicated earlier, in the liberal world the terms public and private sum up a whole structure of rules and expectations about the proper conduct and limits of the state. To say some activity is public is to invoke claims of public purpose, public accountability, and public disclosure. To say something is private is to claim protection from state officials and other citizens. The theory of property rights sees privatization as a reassignment of claims to the control and use of assets, but it misses the special claims of the public sphere in a democratic society—claims for greater disclosure of information, which should improve the social capacity to make choices, and for rights of participation and discussion, which permit the discovery and formation of preferences that are more consistent with long-term societal interests. As a general movement of institutional design, privatization undermines the foundation of claims for public purpose and public services.

This reordering of claims holds distributive implications. It shifts power to those who can more readily exercise power in the market. It also may shift income and wealth, depending on the specific form

that privatization takes. Some forms of privatization do not logically require a reduction in public benefits to the poor. It is hypothetically possible to conceive of a privatization program with highly progressive effects on income distribution. Imagine, for example, a program involving the sale of heavily subsidized, poorly managed public enterprises: the conversion of a publicly budgeted health service, covering only a minority of employed workers, into a voucher system covering the whole population; and the empowerment of local nonprofit, grassroots organizations with funds stripped from elite-dominated central bureaucracies. Taken together these steps would redistribute benefits to previously excluded or short-changed groups.

In practice, however, a progressive effect on income distribution seems highly improbable. The same political forces that support privatization generally also support cutbacks in public spending for social welfare; the same arguments about incentives and efficiency used in favor of privatizing public services are also cited by those who want to terminate public financing for the services altogether. In addition, private service providers often maximize profits by seeking out the least costly clients or by employing lower-wage workers, often on a part-time basis. Since wages tend to be more equal in the public sector, privatization is likely to skew the income distribution in the direction of greater inequality. Furthermore, while unions have lost ground in the private sector, they have generally made advances in organizing public employees. Privatization tends to undermine those gains—an effect not overlooked by advocates of privatization.

In the extreme case, privatization is an instrument of class politics. Where privatization is used to break up public employee unions and reduce the provision of services, it effectively represents a means of reordering class relations. Privatization in Chile in the mid-1970s had this character. A vast shift in wealth took place with the privatization not only of industry but of the financial assets of the social security system, which ended up concentrated in the hands of a few private financial groups.[62] At the other extreme, privatization is a relatively modest tool of public management. In many cases of contracting, the private firms receiving contracts are as unionized as the public sector and there is no change in wage levels. When New York City privatized its school busing, the drivers

62. A. Foxley, Latin American Experiments in Neoconservative Economics 106-07 (1983).

continued to be represented by the same union, and service costs did not change.[63] But this is scarcely the kind of example that privatization advocates hope to imitate. Once again, while privatization hypothetically does not mean wage reductions, the intentions behind the policy raise strong and entirely reasonable suspicions that it will.

Privatization is not only a policy; it is also a signal about the competence and desirability of public provision. It reinforces the view that government cannot be expected to perform well. If, to many Americans, private means better, it is partly because of long-existing restrictions on the scope and quality of public provision. We commonly limit public services to a functional minimum and thereby guarantee that people will consider the private alternative a step up. This niggardliness shows itself in ways large and small. In the 1960s, one congressman who was indignant over the costs of a public housing program succeeded in persuading his colleagues specifically to forbid flower boxes as an unnecessary extravagance.[64] The restricted quality of public provision is a self-reinforcing feature. Because the poor are the principal beneficiaries of many programs, the middle-class public opposes expenditures to produce as high a quality of service as they must pay for privately; and because the quality is held down, the poor as well as the middle class develop a contempt for the public sector and an eagerness to escape it. The movement toward privatization reflects and promotes this contempt, and therein lies part of its political danger.

Some individual proposals for privatization have considerable merit, but the overall message is clearly to call into doubt the nation's capacity and need for collective provision. The possibilities for change being discussed are not symmetrical. Privatization advocates raise questions exclusively about the adequacy of the public sector; the comparable questions about the private sector do not receive the same attention. Even though privatization is logically distinct from questions of distributive justice, the privatization debate puts the advocates of more generous public programs entirely on the defensive. This one-sidedness is why I am opposed to privatization. I am opposed to the political consequences that are likely to flow from pursuing privatization as a solution to the difficulties of administering democratic government.

63. Bailey, Uses and Misuses of Privatization, 36 Proc. Acad. Pol. Sci. 138, 145-46 (S. Hanke ed. 1987) (volume entitled Prospects for Privatization).

64. Talk by Lester Thurow, Williamsburg, Va. (Dec. 1984).

Privatization, as some advocates themselves point out, represents an effort to alter the conditions of political competition by breaking up the coalitions supporting public provision and by promoting more market-oriented political values. In other words, it is an attempt to fix in place the conservative orientation that has emerged forcefully in the 1980s. No one need doubt that public institutions, like private ones, are bases of wealth and power. They are environments that encourage those who work within them to develop different political orientations. To alter the public-private balance is to change the distribution of material and symbolic resources influencing the shape of political life. Privatization ought to be frankly recognized as part of an effort of conservatives to reinforce their own power position. Since I do not share the values for which that power is deployed, I distrust privatization. Ultimately I fear that one form of privatization does entail another—that as we move public provision into the private sector, we move from the realm of the open and visible into a domain that is more closed to scrutiny and access. And in the process, whether or not intending to change, we are likely to narrow our involvements, interests, and vision of a good society and a good life.