

# OF PRIVATE, COMMON, AND PUBLIC PROPERTY AND THE RATIONALE FOR TOTAL PRIVATIZATION

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I HAVE THREE GOALS. First, I want to clarify the nature and function of private property. Second, I want to clarify the distinction between “common” goods and property and “public” goods and property, and explain the construction error inherent in the institution of public goods and property. Third, I want to explain the rationale and principle of privatization.

## I. Theoretical Preliminaries

I will begin with some abstract but fundamental theoretical considerations concerning the sources of conflicts and the purpose of social norms. If there were no interpersonal conflicts, there would be no need for norms. It is the purpose of norms to help avoid otherwise unavoidable conflicts. A norm that generates conflict, rather than helps avoid it, is contrary to the purpose of norms, i.e., it is a dysfunctional norm or a perversion.

It is sometimes thought that conflicts result from the mere fact of different people having different interests or ideas. But this is false, or at least very incomplete. From the diversity of individual interests and ideas alone it

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does not follow that conflicts must arise. I want it to rain, and my neighbor wants the sun to shine. Our interests are contrary. However, because neither I nor my neighbor controls the sun or the clouds, our conflicting interests have no practical consequences. There is nothing that we can do about the weather. Likewise, I may believe that A causes B, and you believe that B is caused by C; or I believe in and pray to God, and you don't. But if this is all the difference there is between us nothing of any practical consequence follows. Different interests and beliefs can lead to conflict only when they are put into action—when our interests and ideas are attached to or implemented in physically controlled objects, i.e., in *economic goods* or *means of action*.

Yet even if our interests and ideas are attached to and implemented in economic goods, no conflict results so long as our interests and ideas are concerned exclusively with different—physically separate—goods. Conflict only results if our different interests and beliefs are attached to and invested in one and the same good. In the *Schlaraffenland*,<sup>1</sup> with a superabundance of goods, no conflict can arise (except for conflicts regarding the use of our physical bodies that embody our very own interests and ideas). There is enough around of everything to satisfy everyone's desires. In order for different interests and ideas to result in conflict, goods must be *scarce*. Only scarcity makes it possible that different interests and ideas can be attached to and invested in one and the same stock of goods. Conflicts, then, are physical clashes regarding the control of one and the same given stock of goods. People clash because they want to use the same goods in different, incompatible ways.

Even under conditions of scarcity, when conflicts are possible, however, they are not necessary or unavoidable. All conflicts regarding the use of any good can be avoided if only every good is privately owned, i.e., exclusively controlled by some specified individual(s) and it is always clear which thing is owned, and by whom, and which is not. The interests and ideas of different individuals may then be as different as can be, and yet no conflict arises so long as their interests and ideas are concerned always and exclusively with their own, separate property.

What is needed to avoid all conflict, then, is only a norm regarding the privatization of scarce things (goods). More specifically, in order to avoid all conflict *from the very beginning of mankind on*, the required norm must concern the *original privatization* of goods (the first transformation of nature-given "things" into "economic goods" and private property). Further, the original privatization of goods *cannot* occur by verbal declaration, i.e., by the mere

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<sup>1</sup>See the Wikipedia entry for "Cockaigne," <http://en.wikipedia.org/wiki/Cockaigne>.

utterance of words, because this could work and not lead to permanent and irresolvable conflict only if, contrary to our initial assumption of different interests and ideas, a prestabilized harmony of the interests and ideas of all people existed. (Yet in that case no norms were needed in the first place!)

Rather, to avoid all otherwise unavoidable conflict, the original privatization of goods must occur through actions: through acts of original appropriation of what were previously “things.” Only through actions, taking place in time and space, can an objective—intersubjectively ascertainable—link be established between a particular person and a particular good. And only the *first* appropriator of a previously unappropriated thing can acquire this thing without conflict. For, by definition, as the *first* appropriator he *cannot* have run into any conflict with anyone in appropriating the good in question, as everyone else appeared on the scene only *later*. All property must go back, then, directly or indirectly, through a chain of mutually beneficial and hence likewise conflict-free property-title transfers, to original appropriators and acts of original appropriation.

As a matter of fact, this answer is apodictically, i.e., nonhypothetically, true. In the absence of a prestabilized harmony of all individual interests, only private property can help avoid otherwise—under conditions of scarcity—unavoidable conflict. And only the principle of property acquisition by means of original appropriation or mutually beneficial transfer from an earlier to a later proprietor makes it possible that conflict can be avoided throughout—from the very beginning of mankind until the end. No other solution exists. Every other ruling is contrary to the nature of man as a rational actor.

In conclusion, even under conditions of all-around scarcity it is possible that people with divergent interests and ideas can peacefully—without conflict—coexist, provided they recognize the institution of private (i.e., exclusive) property and its ultimate foundation in and through acts of original appropriation.

## II. Private Property, Common Goods and Public Property

Let me now move from theory to practice and application. Let us assume a small village with privately-owned houses, gardens, and fields. In principle, all conflicts regarding the use of these goods can be avoided, because it is clear who owns and has exclusive control of what house, garden, and field, and who doesn't.

But then there runs a “public” street in front of the private houses, and a “public” path leads through the woods at the edge of the village to some lake. What is the status of this street and this path? They are not private property. Indeed, we assume that no one claims that he is the street's or

path's private owner. Rather, street and path are part of the natural *environment* in which everyone acts. Everyone uses the street, but no one owns it or exercises exclusive control regarding its utilization.

It is conceivable that this state of affairs with ownerless public streets can go on forever without leading to any conflict. It is not very realistic, however, because this requires the assumption of a stationary economy. Yet with economic change and growth, and in particular with a growing population, conflicts concerning the use of the public street are bound to increase. While "street conflicts" initially might have been so infrequent and so easy to avoid as not to cause anyone to worry, now they are ubiquitous and intolerable. The street is constantly congested and in permanent disrepair. A solution is required. The street must be taken out of the realm of the environment—of external "things" or *common property*—and brought into the realm of "economic goods." This, the increasing economization of things previously considered and treated as "free goods," is the way of civilization and progress.

Two solutions to the problem of managing increasingly intolerable conflicts concerning the use of "common property" have been proposed and tried. The first—and correct—solution is to privatize the street. The second—incorrect—solution is to turn streets into what is nowadays called "public property" (which is very different from the former, unowned "common" goods and property). Why the second solution is incorrect or dysfunctional can best be grasped in contradistinction to the alternative privatization option.

How is it possible that formerly unowned common streets can be privatized without thereby generating conflict with others? The short answer is that this can be done provided only that the appropriation of the street does not infringe on the previously established rights—the easements—of private-property owners to use such streets "for free." Everyone must remain free to walk the street from house to house, through the woods, and onto the lake, just as before. Everyone retains a right-of-way, and hence no one can claim to be made worse off by the privatization of the street. Positively, in order to objectify—and validate—his claim that the formerly common street is now a private one and that he (and no one else) is its owner, the appropriator (whoever it may be) must perform some visible maintenance and repair work on and along the street. Then, as its owner, he—and no one else—can further develop and improve the streets as he sees fit. He sets the rules and regulations concerning the use of his street so as to avoid all street conflicts. He can build a hot dog or a bratwurst stand on his road, for instance, and exclude others from doing the same; or he can prohibit loitering on his street and collect a fee for the removal of garbage. *Vis-à-vis* foreigners

or strangers, the street owner can determine the rules of entry regarding uninvited strangers. Last but not least, as its private owner he can sell the street to someone else (with all previously established rights-of-way remaining intact).

In all of this, it is more important *that* a privatization takes place than what specific *form* it assumes. On one end of the spectrum of possible privatizations we can imagine a single owner. A wealthy villager, for example, takes it upon himself to maintain and repair the street and thus becomes its owner. On the other end of the spectrum, we can imagine that the initial maintenance or repair of the street is the result of a genuine community effort. In that case, there is not just one owner of the street, but every community member is (initially) its equal co-owner. In the absence of a prestabilized harmony of all interest and ideas, such co-ownership requires a decision-making mechanism regarding the further development of the street. Let us assume that, as in a joint-stock company, it is the majority of the street owners that determines what to do or not to do with it. This, i.e., majority rule, smacks of conflict, but it isn't so in this case. Every owner who is dissatisfied with the decisions made by the majority of owners, who believes that the burdens imposed on him by the majority are greater than the benefits he can derive from his (partial) street ownership, can always and at all times drop out or "exit." He can sell his ownership share to someone else, thus opening the possibility for the concentration of ownership titles, conceivably in a single hand, all the while retaining his original right-of-way.

In contrast, a very different sort of street property is created if the exit option does *not* exist, i.e., if a person is not permitted to sell his share of street property or he is stripped of his former right-of-passage. This is, however, precisely what defines and characterizes the second "public"-property option. The public street in this modern sense of the word "public" is not unowned as it once was. There *is* a street owner—whether it is a particular individual, the king of the road, or a democratically elected street government—who has an exclusive say in setting the traffic rules and determining the future development of the street. But the street government does not permit its electors, i.e., the people, who supposedly are the street's equal co-owners, to sell their ownership share (and so renders them compulsory owners of something of which they might rather want to divest themselves). And neither government nor king allow the village residents unrestricted access and passage on the formerly free street but make its further use conditional on the payment of some user fee or contribution (thus rendering the village residents compulsory street owners again if only they want to continue using it as before).

The results of this arrangement are predictable. In denying the “exit” option, the owner of the “public” street has gained a stranglehold on the village population. Accordingly, the fees and other conditions imposed on the village residents for the continued use of the formerly “free” street will tend to become increasingly more burdensome. Conflicts will not be avoided; quite to the contrary, conflicts are institutionalized. Because the exit option is closed, i.e., because the public-street users must now pay for what they formerly had for free, and no resident can sell and divest himself of his supposed street-ownership but remains continuously bound by the decisions made by the street government or king, not only are conflicts regarding the further use, maintenance and development of the street itself rendered permanent and ubiquitous. More importantly, with “public” streets conflict is also introduced into areas where it formerly did *not* exist. For if the private owners of the houses, gardens, and fields along the street must pay contributions to the street owner in order to continue doing what they had done before, i.e., if they must pay taxes to the street owner, then, by the same token, the street owner has thereby gained control over their private properties. A private owner’s control concerning the use of his own house is then no longer an exclusive one. Rather, the owner of the adjacent street can interfere with a house owner’s decisions regarding his own house. He can tell the house owner what to do or not to do with his house if he wants to leave or enter it as before. That is, the public-street owner is in a position where he can limit, and ultimately even eliminate, i.e., expropriate, all private property and property rights and thus render conflict unavoidable and all-around.

### III. The Rationale of Privatization

It should be clear now why the institution of public property is dysfunctional. Institutions and the norms underlying them are supposed to help avoid conflict. But the institution of “public” property—of “public” streets—creates and increases conflict. For the purpose of conflict avoidance (of peaceful human cooperation), then, public property must go. All public property must become private property.

But how to privatize in the “real world,” which has developed far beyond the simple village model that I have so far considered? In this “real world” we have not just public streets, but also public parks, land, rivers, lakes, coastlines, housing, schools, universities, hospitals, barracks, airports, harbors, libraries, museums, monuments, and on and on. Further, on top of local governments we have a hierarchy of “superior” provincial and ultimately “supreme” national or central governments as the owners of such goods. Predictably, moreover, parallel to the territorial extension and expansion of the domain of public goods, in which private-property owners

have become implicated without any “way out,” the range of choices left to people regarding their private property has been increasingly limited and narrowed. Only a small and increasingly smaller realm is left wherein private-property owners can still make free decisions, i.e., free from possible intrusion or interference by some public authority. Not even within the four walls of one’s own house is one left free and can one exercise exclusive control over one’s property. Today, in the name of the public and as the owner of all “public goods,” governments can invade your house, confiscate any and all of your belongings, and even kidnap your children.

Obviously, in the “real world,” the question of how to privatize is more difficult than in the simple village model. But the village model and elementary social theory can help us recognize the *principle* (if not all the complicating details) involved and to be applied in this task. The privatization of “public” goods must occur in such a way that does not infringe on the preestablished rights of private-property owners (in the same way as the first appropriator of a formerly unowned *common* street did not infringe on anyone’s rights if and insofar as he recognized every resident’s unrestricted right-of-way).

Because “public” *streets* were the springboards from which all other “public goods” sprang, the privatization process should begin with streets. With the transformation of formerly *common* streets into “public” streets the expansion of the domain of public goods and the powers of government started, and here one should begin with the solution.

The privatization of “public” streets has a twofold result. On the one hand, no resident is henceforth forced to pay any tax for the upkeep or development of any local, provincial, or federal street. The future funding of all streets is solely the responsibility of their new private owners (whomever they may be). On the other hand, insofar as a resident’s rights-of-way are concerned, the privatization must leave no one worse off than he was originally (while it also cannot make anyone better off). Originally, every village resident could travel freely on the local street along his property, and he could proceed equally freely from there as long as things around him were unowned. However, if in his travels he came across something that was visibly owned, whether a house, a field, or a street, his entrance was conditional on the owner’s permission or invitation. Likewise, if a nonresident stranger came across a local street, entrance to this street was subject to its (domestic) owner’s permission. The stranger had to be invited by some resident onto his property. That is, people could move around, but no one had an entirely unrestricted right of passage. No one was free to move just anywhere without ever requiring anyone’s permission or invitation.

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The privatization of streets cannot change this fact and remove such original, natural restrictions on the “freedom of movement.”

Applied to the world of local, provincial, and federal streets, this means that as the result of the privatization of streets every resident must be permitted to travel freely on every local, provincial, and federal street or highway as before. Entrance onto the streets of *different* states or provinces, and especially of *different localities*, however, is not equally free, but conditional on the permission or invitation of the owners of such streets. Local streets always—praxeologically—precede any inter- or translocal streets, and hence entry into different localities was never free but always and everywhere conditional on some local permission or invitation. This original *datum* is reinstated and reinforced with privatized streets.

Today, on “public” streets, where everyone is essentially permitted to go everywhere and anywhere, without any “discriminatory” access restriction whatsoever, conflict in the form of “forced integration,” i.e., of having to accept uninvited strangers into one’s midst and onto one’s property, has become ubiquitous. In distinct contrast, with every street and in particular every local street privatized, neighborhoods and communities regain their original right of exclusion, which is a defining element of private property (just as much as the right of inclusion, i.e., the right to invite someone else onto one’s property). The owners of neighborhood and community streets, while not infringing on any resident’s right-of-way or right to invite, can determine the entrance requirement for uninvited strangers (undocumented aliens) onto their streets and thus prevent the phenomenon of forced integration.

Yet who *are* the streets’ owners? Who can claim, and validate his claim, that he owns the local, provincial, or federal streets? These streets are not the result of some sort of community effort, nor are they the result of the work of some clearly identifiable person or group of persons. True, literally speaking, the street workers built the streets. But that does not make them the streets’ owners because these workers had to be paid to do their work. Without funding, there would be no street. Yet the funds paid to the workers are the result of tax payments by various taxpayers. Accordingly, streets should be regarded as these taxpayers’ property. The former taxpayers, in accordance with their amount of local, state, and federal taxes paid, should be awarded tradable property titles in local, state, and federal streets. They then can either keep these titles as an investment, or they can divest themselves of their street property and sell it, all the while retaining their unrestricted right-of-way.



The same essentially applies to the privatization of all other public goods, such as schools, hospitals, etc. As a result, all tax payments for the upkeep and operation of such goods stop. The funding and development of schools and hospitals, etc., is henceforth solely up to their new, private owners. Likewise, the new owners of such formerly “public” goods are those residents who actually financed them. They, in accordance with their amount of taxes paid, should be awarded saleable property shares in the schools, hospitals, etc. Other than in the case of streets, however, the new owners of schools and hospitals are unrestricted by any easements or rights-of-way in the future uses of their property. Schools and hospitals, unlike streets, were *not first common* goods before being turned into “public” goods. Schools and hospitals simply did not exist at all as goods before, i.e., until they had been first produced; and hence no one (except the producers) can have acquired a prior easement or right-of-way concerning their use. Accordingly, the new private owners of schools, hospitals, etc., are at liberty to set the entrance requirements for their properties and determine if they want to continue operating these properties as schools and hospitals or prefer to employ them for a different purpose.

## Addendum

### Privatization: Principle and Applications

The only effective solution to the problem of conflict, i.e., the only rule or norm that can assure conflict avoidance from the beginning of mankind onward and produce “eternal peace” is the institution of private property, ultimately grounded in acts of original appropriation of previously unowned or “common” resources. In contrast, the institution of public property begins with conflict, i.e., with an act of original expropriation of some formerly private property (rather than the appropriation of previously unowned goods); and public property does not end conflict and expropriation but institutionalizes them and makes them permanent. Hence arises the imperative of privatization—and hence the principle of restitution, i.e., the notion that public property be returned *qua* private property to those from whom it had been forcibly taken. That is, public goods should become the private property of those who financed or otherwise funded these goods and who can establish an objective—intersubjectively ascertainable—claim to this effect.

Applying this principle to the existing world is often complicated and requires considerable legal effort. I shall only consider three realistic privatization cases in order to address some central questions and decisions.

The first case, most closely approximated by the former Soviet Union, is that of a society where each and every property is public property, administered by a state government. Everyone is a state employee and works in public offices, enterprises, factories, and shops; and everyone moves and lives on public land and in public housing. There is no private property except in immediate consumer goods, in one's underwear, toothbrush, etc. Moreover, all records concerning the legal past are lost or destroyed such that no one, based on such records, can substantiate a claim to any identifiable part of public property.

In this case, the principle that every claim to public property must be based on objective, intersubjectively ascertainable "data" would lead one to award private ownership (and saleable property titles) based on present or past occupancy: the bureaus go to the bureaucrats who occupy them, the factories to the workers, the fields to the farmers, and the houses to the residents. Retired workers are awarded property titles in their former workplaces in accordance with the duration of their employment. As present or past occupants of the property in question, only they have an objective tie to this property. They are the ones who have maintained the property as it is while others were working elsewhere at other public workplaces.

Everything else, i.e., all public property that is *not* currently occupied and maintained by anyone (e.g., the "wilderness") becomes "common" property and is opened up to all members of the society for privatization by way of original appropriation.

This solution only leaves out one important question. All legal documents are presumably lost. But people have not lost their memories. They still remember past crimes. There are victims and witnesses to acts of murder, battery, torture, and imprisonment. What to do with those who committed these crimes, who ordered or commissioned them, or who cooperated in their execution? Should the torturers of the secret police and the Communist *nomenklatura*,<sup>2</sup> for instance, be included in this privatization scheme and become the private owners of the police stations and government palaces where they administered and planned their crimes? Justice requires instead that every alleged criminal offender be brought to trial by his supposed victims and, if sentenced and convicted, not only be excluded from obtaining any public property whatsoever, but also possibly be handed much harsher punishment (such as having his throat cut).

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<sup>2</sup> See the Wikipedia entry for "Nomenklatura," <http://en.wikipedia.org/wiki/Nomenklatura>.

The second case differs from the first one in only one respect: the legal past has not been wiped out. Documents and records exist to prove past expropriations, and based on such documents specific people can lay objective claim to specific pieces of public property. This was essentially the case in the Soviet Union's former vassal states, such as East Germany, Czechoslovakia, Poland, etc., where the Communist takeover had taken place only some 40 years or about one generation before (rather than more than 70 years, as in the Soviet Union).

In this case, the original, expropriated owners or their legal heirs should be restored as private owners to the public property in question. But what about capital improvements? More specifically, what about newly erected structures (of houses and factories)—that would come to be privately owned by their current or past occupants—that were built on land restored to a different, original landowner? How many property shares should the landowner receive and how many the owners of the structure? Structures and land cannot be physically separated. In terms of economic theory, they are absolutely specific, complementary production factors whose relative contribution to their joint-value product cannot be disentangled. In this case no alternative exists for the contending parties but to bargain.

The third case is that of the so-called mixed economies. In these societies a public sector exists side by side with a nominally private sector. There are public goods and public employees next to nominally private property and the owners and employees of private business. Typically, the public employees who administer public property do not produce goods or services that are sold on the market. (For the atypical case of value-productive public enterprises, see below.) Their sales revenue and their market income are zero. Their salaries and all other costs involved in the operation of public goods are instead paid for by *others*. These others are the owners and employees of *private* business. Private business and employees, in contrast to their public counterparts, produce goods and services that are sold in the market and thus earn an income. Out of this income, private business does not merely pay the salaries of its own employees and provide for the maintenance of its own property; it also pays—in the form of income and property taxes—the (net) salaries of all public employees and the operating costs of all public property.

In this case, the principle that public property should be restored *qua* private property to those who actually funded it would lead one to assign ownership titles exclusively to *private* owners, producers, and employees in accordance with their past property and income tax payments, while *public* managers and employees would be excluded. All government offices and palaces, for instance, would have to be vacated by their current occupants.

Public-sector salaries were paid only—and public property exists only—because of the funding provided by private-business owners and their employees. Hence, while public employees may keep their private property, they have no claim to the public property that they used and administered.

(This is different only in the atypical case where a public enterprise, such as a government-owned car factory, produced marketable goods and services and thus earned a market income. In that case, the public employees may have a legitimate claim to ownership, depending on the circumstances. They have a claim to full ownership of the factory, if no previously expropriated owner exists who can lay claim to the factory *and* if the factory never received any tax subsidies. If a previous owner exists, the factory employees can claim at best partial ownership and must bargain with the owner concerning their relative share of ownership titles. And if and to the extent that the factory had been tax subsidized, the factory workers would have to further divide their proportion of ownership titles with private-sector employees *qua* taxpayers.)

Simultaneously with the privatization of all public property, all *nominally* private property would be restored to its original state as *real* private property. That is, all nominally private property would be freed of all property or income taxes and of all legislative restrictions on its use (while previously concluded agreements concerning the use of property between private parties remain in effect). Without taxes, then, there are no government expenditures, and without government expenditures all public employees will be unsalaried and must look for productive work to earn a living. Likewise, every recipient of government grants, subsidies, or purchase orders will see his income reduce or disappear entirely and must look for alternatives.

This solution leaves still one important question unresolved. Once all net *taxpayers* have been allotted their appropriate number of public-property shares, how do they take hold of this property and exercise their rights as private-property owners? Even if an inventory of all public property exists, most people do not have the faintest idea of what it is that they now (partially) own. Most people have a fairly good idea of *local* public property, but about the public property at other, distant locations, they know next to nothing, except regarding a few “national monuments.” It is practically impossible for anyone to reach a realistic appraisal of the “correct” price for all of public property, and hence also of the “correct” price of an individual share in this property. Consequently, the prices asked and paid for such shares would be highly indeterminate and widely fluctuating and divergent, at least initially; and it would be rather unwieldy and highly time-consuming until some investor or group of investors had bought up the majority of all

shares in order to then begin operating or selling off parts of this property to earn a return on its investment.

This difficulty can be overcome by bringing the idea of original appropriation back into play. The titles in the hands of net taxpayers are not only saleable tickets. More importantly, they entitle their owners to repossess formerly public and now-vacated property. Public property is opened to original appropriation, and the tickets are claims to vacated, momentarily unowned public property. Everyone can take his titles to specific pieces of public property and register as their owner. Since the first one to register with a particular piece of property would be its initial owner, it is assured that all pieces of public property would be almost instantly repossessed. More specifically, most public property would thus, at least initially, come to be owned by *local* residents, i.e., by people living in close proximity to a given piece of property and most knowledgeable concerning its potential value productivity. Moreover, because the value per property share increasingly falls as additional ticket holders register with one and the same piece of property, any oversubscription or undersubscription of specific properties would be avoided or weeded out quickly. Very quickly, each piece of property would be appraised realistically according to its value productivity.

### Further Readings

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