Fashioning a Recreation Policy for Our National Parklands: The Philosophy of Choice and the Choice of Philosophy

Joseph L. Sax

Follow this and additional works at: https://scholarship.law.berkeley.edu/facpubs

Recommended Citation

Fashioning a Recreation Policy for Our National Parklands: The Philosophy of Choice and the Choice of Philosophy, 12 Creighton L. Rev. 973 (1978)

This Article is brought to you for free and open access by Berkeley Law Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
FASHIONING A RECREATION POLICY FOR OUR NATIONAL PARKLANDS: 
THE PHILOSOPHY OF CHOICE AND THE CHOICE OF PHILOSOPHY*

JOSEPH L. SAX**

A few years ago the National Park Service put forward a proposal for one of the less well-known areas that it manages. It recommended the construction of an aerial tramway to the top of Guadalupe Peak in Guadalupe Mountains National Park, the highest point of elevation in Texas.1 The plan seemed harmless enough. Guadalupe Peak is a place of considerable scenic merit, the park receives very few visitors, and it is located on the much-travelled road from El Paso to Carlsbad Caverns. Yet the tramway proposal elicited a surprisingly substantial and vehement opposition, and the Park Service soon shelved the plan.

The more one thinks about the Guadalupe incident, the more puzzling it becomes. For in one form or another it is repeated almost daily in the management of the public recreation lands. Should we permit the construction of a ski resort in a relatively pristine mountain valley?2 Should motor boats be permitted on the Colorado River in Grand Canyon?3 Should hotels be removed from the parks, or should they remain but without such facilities as swimming pools and tennis courts?4 These are all only particular instances of a general question that is a great deal more puzzling than it at first seems: What recreational policy ought we to want for the National Parks?

* Copyright © 1979 by Joseph L. Sax. This address was delivered at Creighton University on March 22, 1979 as part of the Dean Louis J. TePoel Lecture Series.
It is customary to believe that controversies of the sort just mentioned revolve around disputes over protection of the parks' natural resources, but a moment's reflection makes clear that environmental or scientific principles are rarely decisive. Every human use impairs the natural setting to some extent and whether a tramway impairs it "too much" is a question of policy, not of science. As with the question whether to build a road, to allow the noise of motorboats and snowmobiles, or even to establish a hiking trail, the issue we are really deciding is what kind of recreation we want to facilitate, and how much intrusion upon the untrammeled ecosystem we are prepared to tolerate for that purpose.

To be sure, some uses are far less disruptive than others, but to say that we want to minimize damage is to restate the problem rather than to solve it. Five hundred visitors a year on the river in Grand Canyon would put a great deal less pressure on the canyon ecosystem than 5,000 or the 15,000 whom we now permit to use it, and there is a great range of opinion on the point at which development, or use, becomes a spoiling factor. Some people don't want motors on wild river trips because they drown out the bird-song; other defend such trips as their only reasonable means of access to the place and find a good deal in the experience even at the expense of some quietude.

Just as these questions cannot be resolved as matters of science, neither can they be decided by economics. Should the Guadalupe Peak tramway have been built in response to public demand? The Park Service estimated that with the tramway, visitations to the Park would have increased from about 60,000 to some 500,000 persons per year.\(^5\) Demand is simply a measure of how people are willing to spend their time and money. No doubt many more people would be prepared to ride up Guadalupe Peak than can, or will, walk it. But just as clearly, there are many people who would patronize gambling casinos, race tracks, elegant restaurants or high rise condominia if we were willing to build them in the parks. There is demand, perfectly legitimate it may be assumed, for all these activities. Yet, at least so far, we have been unwilling to meet that demand in the parks.

Another common view is that parks should be reserved for activities that require the special resources parklands uniquely contain, or that cannot be provided by private enterprise. That position seems to explain why we have traditionally resisted building swimming pools, golf courses and tennis courts in the parks, but it does not adequately respond to the individual who aspires to

\(^5\) Note 1 *supra*, at 58, 117.
play tennis in the grand setting of Yosemite Valley rather than to hike there. Nor does it explain whether those who like the solitude and silence of the parks should be preferred to those who find pleasure in a motorized, people-filled tramway or safari down the river. To assert that solitude is the essence of the park experience is to state a preference, not a fact. Each of these experiences is unique in its way, and unavailable in the private market.

Nor, finally, can we avoid the problem by asserting that government should simply hold parklands available and permit each of us to decide for ourselves how to enjoy them. This is another way of describing a policy of variety or diversity. But such a policy can only avoid preferences on the assumption of unlimited abundance. If there were many Yosemite Valleys, we could provide the Yosemite experience as everyone, in his own way, chose it. Of course there are not *many* Yosemites; and though the parks are varied enough to accommodate much diversity, someone—and not each visitor for him or herself—must decide what will happen in the one Yosemite Valley, and the one Grand Canyon, that we do have. It is at these special kinds of places that conflict is at its most intense.

Management decisions must perforce be made, and those decisions themselves imprint an agenda on the landscape. If we decide to build hotels, supermarkets and shops in Yosemite Valley, the valley will necessarily provide a different kind of experience than if it were left undeveloped. And if we determine not to build such facilities, those who desire something other than a camping experience will be effectively excluded. To a significant extent, management decisions effectively determine who the visitors will be, what they will do, and in what numbers, by choices that *must* be made, one way or the other.⁶

To say that none of these management theories is decisive is not to suggest any of them is irrelevant. It is only to say that before we can think usefully about how much natural impairment we should tolerate, or where we want to draw the line in meeting demand, we need to decide what we are trying to achieve by having a public recreation policy.

If it were evident to everyone that the National Parks should be used simply to accommodate a portion of the enormous quantity of leisure time that Americans have to spend, a proposal to build

---

⁶ The point is strikingly illustrated by comparing the most recent Park Service Plan for Yosemite Valley, note 4 *supra*, with the now-rejected plan for intense development of a few years ago. U.S. DEP'T OF THE INTERIOR, NATIONAL PARK SERVICE, YOSEMITE NATIONAL PARK, PRELIMINARY DRAFT MASTER PLAN (1974).
CREIGHTON LAW REVIEW

a tramway that could increase recreational opportunities nearly ten-fold with a rather modest impact on the land would not have produced anything like the vigorous outcry it actually elicited. Nor would the familiar controversies over motorized recreation, ski resorts and commercial facilities in the parks have anything like the intensity that is now so evident. Beneath the multitude of specific disputes is a much deeper battle over the question whether park policy should reflect a preference for certain kinds of recreational experiences.

It is customary to see these disputes as a conflict between popular and elitist values, between contending constituencies of different people vying for dominance over a scarce resource. I would like to suggest a different way of "seeing" the problem and—though the limits of time permit only a preliminary sketch—I would like to outline that "different way" by asking you to share with me a hypothetical effort to go back to the beginning, to assume that we are for the first time thinking about fashioning a recreational policy for the national parks.

Suppose we are a self-governing community in the model of the town hall meeting, where everyone votes directly. One citizen suggests the desirability of having a public park in the nearby mountains with scenic driveways, picnic sites and access ramps for fishing on the lake. The idea is overwhelmingly popular, but it is impracticable to buy the necessary land by private negotiation, or to manage it as private property. Therefore we vote to acquire and manage the area as a public park, using as a precedent existing public service enterprises like the bus system and the fire department. We thus establish a service park.

Suppose, however, that our park-promoting citizen now suggests a second plan. He urges that some portion of the area to be acquired should be reserved, without roads or other facilities, as a nature park to be devoted solely to activities like hiking, nature study, and mountain climbing. A few citizens think this is a splendid idea, but the majority are quite indifferent to it. They have no personal interest in such activities and they quite properly perceive that the area sought to be reserved will reduce the acreage they would like to devote to auto-touring and picnicking. They reject the plan by a vote of 95 to 5. Here, at least as a matter of practical politics, the resolution is simple. There is no way to compel the majority to establish a nature park. While in some philosophical sense the vote may be wrong, if the majority is determined, no lively issue of public policy is presented.

It is only with these simple cases out of the way that the inter-

HeinOnline -- 12 Creighton L. Rev. 976 1978-1979
esting problems begin to arise. Imagine now that our park advocate returns to the meeting with a different theory. In voting previously, he suggests, you asked yourselves only what your current recreational preferences were, assuming that was the only measure of what you want. Now I urge that you ask an additional question: “Do I also want to provide opportunities for some experiences I do not now desire, but believe I ought to desire?” If you can be persuaded that the answer to this question is yes, he says, you should be willing to reconsider your vote. The reason is that while your vote should reflect what you want, you have taken too narrow a view of that question. What you want reflects not only what you are, but what you would like to be. Thus, for example, you may not now want to read poetry, though you may well believe that poetry is a fine thing, and do not want to deprive yourself of the opportunity to read it. Therefore, it would be perfectly sensible for you to vote for the public library to acquire some books of poetry; and indeed you have traditionally done just that.

If then, the advocate continues, I can persuade you that nature parks are like poetry (that is, they speak for values you hold in high esteem, even though they are not reflected in your present behavior), you should be ready to agree that nature parks are something you want, even though they are not something you now use. In short, such parks should be added to the calculus of your wants. In making this decision, you will have to go beyond consideration of the present value of providing yourself a future opportunity, which is what economists call option value; for that is simply a prediction of the quantity and direction of change in public demand. You will have to decide whether you want encouragement of change to be stimulated as something desirable in itself. For example, the likelihood that you will read poetry in the future may well depend upon how many books of poetry are in the library, or upon whether you are willing to vote funds to bring in poets to give readings in the library. So, I not only urge you to take a broader view of the question, what do you want, but ask you to recognize that deciding what you want can be more complicated than you have believed it to be.

At this point a skeptical citizen rises with some comments of

---

7. The conventional economic view is that there is a case to be made for public support of activities if some of the benefits come to us without having to pay for them and if we value those benefits. Baumol & Bowen, On the Rationale of Public Support, in Performing Arts—The Economic Dilemma 369 (1967). The question with which I am concerned is whether, and to what extent, we should want to value the benefits that the presence of public institutions like parks or museums provides.
his own. I do not think, he says, that you have yet told us the full story. For even if you persuaded me that I ought to want nature parks to be available (as I do poetry); and even if I were further persuaded that I ought to give substantial weight to that want, including use of my tax monies to encourage me to modify my present leisure-time practices; I still have serious reservations about the implications of what you are asking me to do. Here are my concerns.

First, if I may use the analogy of poetry that you suggested, I have to recognize that we are only going to devote a certain amount of money to the library. While there may be some flexibility in the budget, it is nonetheless true that every time I finance the acquisition of a book of poems I reduce the number of best sellers in the library, and it is best sellers that I now like to read. For that reason, it is not simply a question of expanding my views of what I want to embrace both popular novels and poetry, but rather of putting two different kinds of wants that I have in competition with each other. I may be quite ready to concede to you that I want some poetry in the library, but I am not all sure how much I am willing to sacrifice of the opportunity to do what I know I want to do (that is, to read best sellers) in order to have a stock of poems that I may never read. And the displacement problem is even more serious with parks than with books. To buy the book of poems you think most important for me, I don't have to give up the best sellers I like most. I can defer purchase of the least desired popular books. But the nature park you want most to reserve is highly likely to be the same place I most want as a vacation site.

Aren't you really telling us that we should subordinate our current wants for public services to what you would call "aspirational wants"? Are you just a philosopher in disguise who is asserting that we ought to want to be good, rather than to be happy? Or do you impliedly assert that poetry, by making us good, will inevitably make us happier than we are now? Put another way, aren't you trying to make us believe that something you think we ought to want is something we do in fact want?

That is only the first of a number of questions I have, Mr. Advocate. Even if I were persuaded that I wanted what you say I want, how could I ever decide in what proportions to provide myself with the artifacts of both the things I want, best sellers and books of poetry? At least when I think about what I now know I want, I can look to demand in the marketplace, and decide how many best sellers to buy. But I don't have the vaguest idea how to decide how many poetry books to buy, for all I know is that I might
someday want to read some of them, and perhaps my appetite will increase by experience.

I am also uneasy about giving up some of my autonomy (which I value highly) in the name of what you have called aspirational wants. If I decide that we ought to have some poetry in the library, still, I don't really know anything about it. I therefore have to let somebody else decide which books of poetry to purchase. Of course I admit that I don't know what poems to buy, but why should I have confidence that you know; and if I am not simply going to put myself in your hands as a sort of unchallengeable authority, how can I keep some control over the process, for this is, after all, a democratic government. It is true that today we have town meetings in which we have a direct referendum on every question of public policy. But you know as well as I do that this situation will not long prevail. Soon we will have to govern through elected representatives, and those representatives will have to rely on a cadre of appointed bureaucrats. In fact some librarian whom I never see and don't elect will be deciding what poems to put in the library. It seems to me you are giving us a prescription for uncontrollable government.

You have asked some penetrating questions, the Advocate responds, and I readily admit I will not be able to give you conclusive answers to any of them. I am, however, confident I can convince you to give your aspirational wants a more prominent place than you now afford them.

Your questions themselves suggest one of the points I would most strongly emphasize: That the conflict we observe in the fashioning of park policy is not simply an antagonism between different constituencies of citizens, with different recreation preferences, but reflects tension within ourselves between the satisfaction of present wants and a sense that we ought to aspire to something more worthy of us. This tension is no more easily resolved in its external (public policy) form than it is when it takes the form of a personal decision.

All of us know the desire for improving ourselves, the difficulty of taking decisive action to that end, and the lengths to which we go to induce ourselves not to falter. A standard joke invokes a picture of the vacationer who annually lugs his copy of Proust with
him to the seashore, only to slip into reading Agatha Christie novels, dragging Proust back to his library for the winter, to be aired again the next summer and the next. Similar rituals are familiar in registrations for adult education courses, buoyed by the hope that the investment in tuition will be a discipline not to give up; or in the acquisition of sports paraphernalia that collect dust in the attic. Our aspirations and our behavior are in a continual battle; certainly they both reflect something we want, and both represent something we are willing to vote for (though in the personal setting we usually vote with our pocketbook rather than with ballots).

These personal examples also say something revealing about the relation between what we want and our attitudes about autonomy, or—to use the political term—democratic principles. We are willing to impose coercion on ourselves to some degree (as in paying for lessons that we know we may never pursue) precisely because we recognize that left wholly to pursuit of our conventional preferences we are not likely to do and be all that we want. At the same time, the kind of self-coercion we undertake is rather limited; we bear the burden of dragging Proust along, but we would not be prepared to be seriously penalized for failing to read him, or even to remove wholly the opportunities to read Christie mysteries instead. Our wants accommodate aspiration and mild coercion, but stop short of total displacement of conventional preferences.

These individual behavior patterns have counterparts in public action. Public television is perhaps the most obvious example. It is a fair guess that most of us are happy to have public television. It is something we want, though we use it very little. We want the opportunity it provides, and we are willing to coerce (that is, to tax) ourselves to some degree to have that opportunity. Indeed, we want to be induced to view it, even though we know we will probably resist the temptation most of the time. If public broadcasting gave us only what we already knew would be popular, it would simply add one additional outlet to the functions served by the existing plenitude of commercial stations. If, conversely, it was giving us something we knew we didn’t want, it would be plainly unworthy of our support. Moreover, public broadcasting cannot be explained simply as a service to the wide diversity of public preferences; except as an experiment we would not provide ordinary public services (like the subway) to as few people as those who constitute the audience for most public television. The most plau-

---

in modern psychology are described in C. HALL & G. LINZEY, THEORIES OF PERSONALITY (2d ed. 1970).
sible explanation is that we are institutionalizing incentives to pursue some things we believe we ought to want.

Note, however, that it is temptation, and not coercion, for we would surely strongly resist the total displacement of commercial by educational broadcasting, both because we need and want conventional entertainment, and because we do not want temptation and encouragement to trench too sharply on our autonomy.

Public television suggests another, additionally complicating, factor in the calculus of our wants. It is not only our own uses that we take into account. It is perfectly possible to favor public TV because of its indirect benefits. We may get some satisfaction out of the mere fact that we live in a society that is supportive of an elevated culture. We may benefit from the work of others who are exposed to programs we do not watch ourselves—filmmakers, or writers or popularizers of scientific knowledge. We may have a stake in the interests of others, our children or associates, whose satisfactions give us satisfaction. Of course we are perfectly capable of evaluating all these things in theory, and at least roughly in practice. The point is that they require us to resolve a competition among different wants we have, and are not simply things we want or don't want, simply extracted from our own behavior as consumers. To suggest the prospect that government might be foisting on us something we don't want and wouldn't vote for, merely because it is not conventionally popular, is to fail to see just how difficult the choice of the thoughtful citizen can be.

You also ought not to assume that a validating test of such wants is whether, at some time in the future, they displace what I have called conventional desires and themselves become popular. It is perfectly possible that your aspirational wants could be significantly met even if you never in fact act upon them. To know that poetry is in the library, available to you, even though you may never take advantage of the opportunity, may itself provide important satisfactions. Alternatively, even if you do decide to read poetry, you may never commit more than a tiny fragment of your leisure time to it. The value of poetry to you is not at all necessarily measured by how many poems you read, or by how the number of poems read compares to the number of best sellers read.\(^9\) These observations suggest that as a citizen maker of public policy you are never likely to draw much solace from playing the numbers

---

\(^9\) The failure of ordinary market behavior to reveal the intensity of our wants is explored by the economist Tibor Scitovsky in T. Scitovsky, The Joyless Economy: An Inquiry into Human Satisfaction and Consumer Dissatisfaction (1977).
game (how many poems read, how many public TV watchers, how many visitors to wilderness parks).

Where does all this leave you? As an individual voter you might decide that taking account of your aspirational wants is simply too burdensome, too expensive, or too unlikely to pay dividends. Just as you are free as an individual never to add Proust to your vacation baggage, you are free as a citizen to oppose using your tax money to support public television or to support a park system that doesn’t meet your current recreational preferences. If the majority of the citizenry makes that decision, that will be the end of the matter; I will continue to urge you to reconsider that decision, but I certainly will not claim that you are duty bound to follow the path I have suggested.

Let me now turn to your concern about autonomy, for it raises a fundamental problem: What sort of political philosophy would you be adopting if you were persuaded by my claim that nature parks, or poetry, ought to be viewed by you as something you want? You asked whether vesting in the librarian authority to decide what books of poetry to buy would so remove you from the process that in the name of meeting your (aspirational) wants, you would in fact be turning over to an official the power to decide what you ought to want.

This is a very penetrating question indeed. At one level, as I noted earlier, no government can ever decide to make its people good despite themselves so long as they retain ultimate political power. In this sense, you are always in a position to force the government to manage parks exactly as you wish, or to force it to abolish parks altogether. However, if you want to pursue a philosophy that entirely prevents others from imposing on you what they think you ought to want, you have to pay a heavy price for that choice. You must be ready to specify your desires exactly and you must give up any use of government to aid you in meeting your aspirations.

If I may draw on a private analogy again, I ask you to consider the choice between coming to a doctor and asking him to remove your appendix, and coming to him and asking him to help you become healthy again. In the first instance you maintain a maximum of control over your own destiny, but at the risk of having to specify exactly what it is that you want. If you know what you want only in aspirational terms (you want to feel better), then to pursue that aspiration you must give up some of your autonomy. You must let someone else decide what is good for you, though he or she is doing so only in response to something you generally want.
The problem is even more complicated when your aspirations include a desire for opportunities to modify the sorts of things you want. If avoiding fixity in your desires is one of your aspirations, your ability to specify your wants is especially limited. To say "I would like to be a more cultured person" requires even more deference to others than to say "I want to be a healthy person."

In this respect, the traditional question, am I getting what I want, or what someone else thinks I ought to want, should be seen as excessively simplistic. You are getting both, and the degree to which one or the other dominates depends upon the kind of needs you have, your ability to prescribe for yourself, and your willingness to give up autonomy in pursuit of those needs.

The problem is created not only by your lack of knowledge, but by whether you are willing to confine your life within the limits of your knowledge. In the simple medical example, your problem is created merely by the fact that you lack certain information or experience. Even there, if you were willing to risk your life by the limits of your own knowledge, you would never have to put yourself in the hands of a doctor. Similarly, in the political situation, if you were willing to limit your aspirations only to what you already know, you could retain a very high degree of autonomy. You could say that libraries should stock only the books you are familiar with, even specifying the titles if you wished. Or you could establish a university and direct the teachers to teach you only what you already know you want to learn.

It is precisely because our aspirations are not generally so limited, and because we consider our aspirations important, that we establish institutions like public libraries and universities and give up some autonomy to librarians and professors. The long-accepted presence of such institutions is evidence of our willingness to adopt a political philosophy that empowers public officials to decide for us—to some degree—what we have to do to pursue our aspirations. The persistent tension between popular and "elitist" pressures in institutions like public art museums demonstrates that we never make commitments to yield autonomy comfortably. Again the public controversy reflects inner tensions. Since

10. To some degree we must yield autonomy even in the routine functions of government. W. LIPPMAN, THE PHANTOM PUBLIC (1925).

we are supporting the museum, we want it to be responsive to us. At the same time, we know that one of the values of the museum is its capacity to open our eyes to things we would never see on our own. Even the most ardent believer in the proposition that government should serve us would doubtless quail at the prospect of a public museum or a university class being run simply by popular opinion polls.

Your problem, then, is not to choose exclusively between contrasting philosophies, but to identify a means for avoiding undesirable extremes—on the one hand, not binding the majority of citizens to the narrow limits of their present interests; and on the other, resisting a government set wholly adrift from the values of its own constituency. You should find this an attractive prospect, consistent with your personal behavior in which you draw a balance between free pursuit of contemporary preferences and self-imposed discipline that prompts pursuit of your aspirations.

I offer you three basic strategies in pursuance of this political philosophy.

First, you need to decide whether nature parks do present the prospect of meeting some important aspirations you have. This is a wholly separate question from whether parks provide some services you want. Despite the abundant flowery rhetoric about nature parks, you will discover that this is a question that has never been carefully explored. It has often been assumed that nature is good for us, but that assumption deserves careful probing, and you will have to decide for yourself whether proponents of parks devoted to a restricted class of recreational opportunities have any claims equal in persuasiveness to those that have doubtless persuaded you about public institutions like libraries, universities or museums.

Second, since you are quite right that critical decisions about “what’s good for you” will be made by bureaucrats or professionals (like librarians or teachers), you ought to assure yourself that there is some verifiable principle or a professional cadre upon which you can rely not to substitute purely personal judgments for a kind of neutral judgment tied to your aspirations. Physicians

To the extent that publicly supported museums have been persuaded to seek popularity by dramatic exhibitions of celebrated, and well-publicized works, there has been an intense critical response within the profession: “The need has never been greater for rigorous standards and their most scrupulous observance.” Robertson, The Museum and the Democratic Fallacy, in MUSEUMS IN CRISIS 83 (B. O’Doherty ed. 1972). See Kramer, The Considerable But Troubling Achievements of Mr. Hoving, New York Times, Nov. 11, 1976, § 2, at 1. See also N. BURT, PALACES FOR THE PEOPLE 5 (1977).
and university professors and librarians know some things and are constrained by a professional tradition, a critical literature and validating experimental methods. Academic freedom, for example, is not a full-blown idea of personal liberty. It is rather a freedom within the framework of an established professional and intellectual tradition. Is there any analogous self-limiting "tradition" for park managers?

This concern leads to my third strategic suggestion. Your goal ought to be to provide both service and aspirational recreation and to maintain a tension between them. Requiring government to be responsive to demands for service recreation helps to assure that it will not go too far astray from its constituency in promoting aspiration. Therefore, you want to be sure to mandate a policy that offers you a choice rather than one thing to the exclusion of the other. At the same time such a strategy will require you to acquiesce to some extent in the restriction of preferences you genuinely feel. For example, if you want to have some wilderness as an aspirational opportunity, you will have to recognize that at times the maintenance of wilderness will interfere with other uses you will want to make of that land.

The precise balance between service and aspiration you will experience will turn on the content you give to this third strategy, should you decide to adopt it. You might, for example, decide that the government should provide ample opportunities for scenic auto touring, but not permit auto touring in certain designated very scenic spots (such as Yosemite Valley). This would require you to give a somewhat restricted meaning to service of the demand for scenic auto touring, more restricted than the actual demand (which includes touring in Yosemite Valley), in order to hold Yosemite Valley solely for what I have called aspirational use.

Only you as a citizen can decide whether you want to take the risks involved in these three strategies. The choice you make will turn on the importance you ultimately attach to what I have called aspirational recreation, on the losses of autonomy it entails and on the benefits you think it may produce. My goal at this point is only to persuade you that the fashioning of public policy for the parks is quite a different and more complicated task than you thought it was.