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THE LEGITIMACY OF COLLECTIVE VALUES:
THE CASE OF THE PUBLIC LANDS*

JOSEPH L. SAX**

In the spring of 1982, a proposal put forward by the Reagan administration to sell a substantial fraction of the federally owned lands (some thirty-five million acres was the figure most commonly mentioned) attracted considerable attention. By midsummer, the issue had become a leading news item, reaching the first page of the New York Times and the cover of Time magazine. As summer waned, so did enthusiasm for selling the public domain, as strong reservations to the proposal began to be expressed by numerous spokesmen for western public land states.

There are sufficient practical and political reasons to make it unlikely that any large-scale disposition of federal lands is in the offing. But the issue is a perennial in American political discourse because some profound issues of public policy are raised by substantial public land ownership and management in a nation deeply committed to private proprietorship of major resources and industries. It is those issues which I intend principally to address in the pages that follow. Before doing so, however, a few preliminary observations about some of the practical questions raised by recent proposals for disposition of public domain lands may help to set the larger issues in their contemporary context.

Despite some of the flamboyant journalistic accounts of the issue, there was nothing in any plan put forward by the Reagan administration to suggest that the national parks might be put on the auction block or that the administration planned to dispose of designated wilderness areas. Whether there was some secret and nefarious agenda behind the public words is beyond my knowledge, but the fact is that discussion was limited to unspectacular lands largely used for commodity purposes (such as grazing) held by the Bureau of Land Management (BLM) and the Forest Service. However obvious it may be to many people that the United States should own and control Yellowstone National Park or the Lincoln Memorial, it is far from self-evi-


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dent why the United States should also have charge of hundreds of millions of acres of rather ordinary land.

The question is one that deserves serious consideration. It should be kept in mind that federal ownership is not based on any long tradition or constitutional principle. For many years it was everywhere assumed that the United States would dispose of its landholdings, and it did dispose of much of what it owned until the mid-1930s. As late as the 1890s it was still considered a serious constitutional question whether the United States could acquire land for the purpose of establishing a memorial to the Civil War. But it was not until 1976 that the Congress, in the Federal Land Policy and Management Act (FLPMA), declared its general intention to retain in permanent federal ownership the remaining public lands, which then constituted about three-quarters of a billion acres.

In the light of this rather recent commitment to permanent public ownership, one might wonder why there was such clamor at the prospect of disposition. Alternatively, since the federal government has, in fact, owned so much of the West for so long, one might equally wonder at the sources of enthusiasm for disposition. Several practical considerations engendered the most recent controversy.

The first is symbolic and strongly related to the identity of the proponents of disposition. FLPMA was enacted at a time of intense interest in environmental protection and contains (among many other things) strong provisions dealing with wilderness and the management of areas of critical environmental concern. The Reagan administration is widely perceived as being indifferent or even hostile to such interests. It is not surprising then that its sale proposals are taken as a signal of that indifference. While—as I shall explain more fully below—no necessary relationship exists between proprietorship and the imposition of environmental controls on land use, disposition would be an easy way to be rid of such responsibilities. There was little in former Interior Secretary Watt's behavior or rhetoric to allay such anxieties.

A related concern—and for the same reasons—is the fear of what is usually called a "giveaway." The administration has taken pains on numerous occasions to identify itself as a friend of private enterprise. It is hardly astonishing if there is some fear that land sales might be made at less than their full value, causing what some fear would be a redistribution of wealth in favor of the rich, and not merely a change in the form of capital from land to cash. The fact that laws can be enacted to demand fair and full value for any sales does not fully allay

such fears. Appraisal of land values is an inexact art, and its inadequacies are intensified in areas where sales are relatively infrequent or where the lands in question do not have exact counterparts. It is easiest to appraise a conventional house in a suburban subdivision, for example, and most difficult to appraise Yosemite Valley. Most of the lands in question lie between these extremes.

It is not irrelevant to note also that the history of public land disposition in the United States is replete with instances of nefarious dealing. Nor is it irrelevant to ask what mechanisms might be imagined to ensure against resurgence of such problems. One of the many ironies in the debate over the public domain is that advocates for disposition are largely those who are most skeptical over the performance of federal bureaucrats as managers. How can they be confident that these same bureaucrats as land sellers would perform satisfactorily?

Concerns about the practical outcome of land sales have not been alleviated by the suggestion that the proceeds of such sales should be applied to the payment of the public debt. (It should be noted that whether it is desirable to diminish the public debt is an entirely separate question from whether the public domain should be sold. The debt could be reduced by diminishing defense spending, or selling aircraft carriers, or by reducing welfare payments. There is no necessary relationship between the desire to lessen a debt and the identity of the resources used to achieve that end.) Emphasis on the size of the public debt as a reason for selling public lands has probably stirred, rather than relieved, suspicions about the motives of the administration. Since carrying charges on the debt come largely from tax revenues that are progressive, it is quite possible that the principal beneficiaries of debt reduction would be high-bracket taxpayers. It is possible, of course, that the bulk of current beneficiaries of the public lands are taxpayers in equally high brackets, but that is far from clear. In any event, the possibility exists that a land-sale/debt-payment project would result in a redistribution of wealth favoring the wealthy.

Claims that significant reductions of the public debt would result from land sales have caused confusion of another kind that engendered suspicion of the administration’s plan. If the government only intended to sell millions of acres of low-value grazing, forest, and desert lands, the proceeds would hardly make a dent in the trillion-dollar national debt. The big money is in the high-value lands, those rich in mineral, timber, and recreational resources. If those are the lands in question, quite different public responses might be expected.

Another wholly different matter has restrained enthusiasm for land disposal that would likely be decisive against any large-scale sale. It is simply the fact that the existing arrangement for use of the public domain reflects decades of political and economic bargaining under which many interest groups have obtained benefits that suit them and to which they have adapted. The existing system, however imperfect it may appear from the perspective of economic efficiency or resource management, is, after all, a "mature" system that incorporates some highly developed expectations. Changes that unsettle long-held expectations are, simply by virtue of that fact, costly. This is not to assert that change should never be made; it is only to say that it is unrealistic to expect people to respond to proposed changes of an established system as if they were being written on a blank slate. Water may be sold from federal projects at excessively low prices; stockmen may have indefensible advantages on federal grazing land; inefficient timber management may be supporting marginal mills; but existing communities and industries have grown up around these practices.

This leads to my final preliminary observation. Ownership, although it is the focus of the current debate over the future of the federal lands, is, in fact, a poor measure of the real relationship that exists between government control and private market decision-making on the public lands. For example, nothing in the fact of government ownership itself prevents the government from managing its lands precisely as a private entrepreneur would do. Following the same model of behavior that the proprietor of an office building uses in leasing space in a skyscraper, the federal government could lease lands for mineral or timber production to maximize net economic returns. By the same token, government could sell off all its lands and subsequently impose through regulation any of a variety of constraints that would impair the economically efficient use of the property. Both such models of behavior, and many in between, can be found somewhere in the vast recesses of the federal government. To those who yearn for economic efficiency as the governing principle, it need only be said that public ownership does not negate its possibility any more than private ownership in a regulatory milieu ensures it.\(^3\)

\(^3\) In theory, there is very little constraint on private users of the public lands accomplished through public ownership that could not be accomplished by regulation of private owners. The scope of federal authority to regulate interstate commerce, for example, has been interpreted with great liberality by the courts, and there are very few regulatory schemes (other than management wholly for preservation in a natural state) the Congress might wish to enact that would not pass muster with the courts. Sax, Helpless Giants: The National Parks and the Regulation of Private Lands, 75 Mich. L. Rev. 239, 256 (1976). Indeed, there is a good deal of privately owned land that is at least as rigorously regulated at both the state and local level as is most federally owned land. For some examples, see Sax, Some Thoughts on the Decline of Private Property, 58 Wash. L. Rev. 481 (1983). A great deal of public
It is often said that government bureaucrats are poor managers or that public ownership is excessively influenced by powerful interest groups, and there is evidence to support those observations. Selling the public lands will not cause those problems to disappear, for to the extent that the government as a proprietor is a source of mischief, there is little reason to believe that the government as regulator will be less mischievous.

My observation is that whatever popular support there has been recently for sale of the public domain was generated largely by fears incited by the Carter administration's more aggressive public land-management policies. Commodity users saw the specter of increasing environmental regulation, greater restrictions on leasing, and increasing prices for such users as stockmen. To the extent that those fears were justified, sale to private owners might have been advantageous. With the advent of the Reagan administration, many of those fears have been stilled. Insofar as the desire for privatization is a battle cry from a war that was won at the ballot box in 1980 and again in 1984, it is hardly surprising to observe that it has lost much of its force.

And what of those who oppose sale of the public domain? They would note that whatever the theoretical possibility of extensive regulation (for environmental protection, as an example) of private lands, it is much easier in practice to control lands in public ownership than it is to control those in private hands. Many people who are enraged at the idea of federal zoning of private lands, are less exercised when the same controls are imposed on publicly owned lands through contract or lease. Thus, sale opponents might say that ownership is important not in itself but simply because such concerns as ecosystem protection are in practice easier for government to implement as proprietor than as regulator. My own experience tends to confirm this observation, but it also suggests that the content of regulation depends a good deal more on the identity of the occupant of the White House than on the identity of the proprietor of the lands.

I conclude these preliminary observations with the thought that both proponents and opponents of sale overestimate the importance—as such—of ownership. I do not mean to suggest that ownership is never critical. Plainly certain kinds of uses, such as parks, weapons-testing sites, or wilderness, are extremely difficult to provide without proprietorship. But I do suggest that a profound controversy over the legitimacy and the importance of public values is often obscured by excessive focus on ownership.

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land has been made available commercially for timber harvesting, mining, hydrocarbon development, grazing, and entrepreneurial recreation (such as downhill skiing).
The debate over ownership of the public lands is basically part of a much larger controversy over the legitimacy of collective versus individualistic values. In essence, the argument in principle for disposal of the public lands is this: each person knows best what is best for him or her, and, therefore, the best system is one that permits the real preference of individuals to be revealed and implemented. With rare exceptions, the best mechanism for implementing these preferences is a private marketplace where each individual expresses his or her desires through bidding. Private ownership advances this goal, and public ownership impedes it. If, for example, I want to use land for hiking and you want to use it for timber harvesting, public ownership which sets it aside for hiking permits me to get what I want without paying its true cost, since the losses engendered by prohibiting timber harvesting will be spread throughout the taxpaying population and will not be borne by me. The outcome, unlike that which would be achieved by market bidding between the hikers and the loggers, will thus be imperfect.

To be sure, it is not ownership alone that raises the problem of "distorted preferences," but control through government. If, it is sometimes asked, proponents of continued public ownership give as their reason the need to control externalities, why do they not urge the government to buy up all the McDonald's restaurants, for they are certainly generators of external harms with no less impact than many users of the public domain? The simple answer is that ownership and regulation are often used as alternative means of accomplishing the same end (one of which is to control external harm). Those who advocate the sale of public lands would not be any more content if the lands were sold into private ownership and immediately subjected to a wide range of regulatory controls than they are with a continuation of public proprietorship.

The real issue that divides advocates of sale from those who seek retention is found in the unstated assumption that underlies discussion of "preference." Advocates of disposition assume that the only real or legitimate preferences are those that are expressed by individuals behaving atomistically. Thus, if an outcome differs from that which would have occurred through the expression of individual preference (the sort that occurs in market transaction), ipso facto it must be wrong (except in those relatively rare instances where the market does not reveal true preferences). Those on the side of public ownership believe that individuals have more than one kind of preference, and that because individual behavior in the market reveals only one species of preference, it therefore is incomplete. There is, they say, a kind of
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preference that people hold solely in their capacity as members of collectivities, and for which only collectivities speak. One such collectivity is the political community, or the government. When the government regulates, or controls use as owner, it is expressing a collective preference.

Thus, for example, if the government restrains timber harvesting to the advantage of hikers, it is expressing a preference no less real or legitimate than the preference I express if I decide to keep my land as a nature preserve rather than sell it to a timber company at a given price. The collective decision may differ from that which any individual or group, acting as individuals would have made, but that is simply because the political community as a collectivity has some interests which differ from those of any individual or group. The outcome is not “wrong” because it differs from that which individual action in the market would have produced. Nor is it wrong because somehow the collectivity does not “pay” for its preferences. If the government owns a tract of land and decides to forgo the potential benefits from timber harvesting in order to maintain recreational use, that decision is no different from the one I make in forgoing a large cash payment to maintain my land in its natural condition. Of course, the way in which that willingness to pay is felt differs in a collectivity—it is more indirect, for example, and more diffuse—but that is the only way a collectivity can operate. To characterize its behavior as inappropriate or illegitimate, or to hold it to some specified test of efficiency is simply to deny the possibility of a distinctive collective “preference.”

All that I shall say henceforth will expand upon the notion of collective preference set out in the two preceding paragraphs. Perhaps a word about the terms we use is a useful way to open the discussion. I have thus far employed “preference” to refer to both individual and collective interest. One may object that it is misleading to so designate collective decisions by nonvoluntary entities such as the state. There may be a consensus expressed by such an entity, but it hardly can be called the preference of every member of the collectivity, including dissenters.

The word is an awkward one, and for more than one reason, but so also is the problem. If we start by saying the implementation of preference is the only sure means to the maximization of both individual and social benefits, and we say also that preference can only describe individual, wholly voluntary choice, then we deny at the outset the possibility that collectively expressed choices can be legitimate, the very question I propose to discuss. Let us then examine the following question: why is it assumed that the only choices worthy of considera-
tion are those individually expressed by individuals acting atomistically, or by groups where the collective expression is simply the sum of voluntary individual desires?

Indeed, there is more to the use of the term preference than meets the eye. For one thing, the word usually implies indifference about the significance of the preference. We say, for example, you prefer blue shirts and I prefer white shirts. Preference has that connotation. Conversely, collectively expressed interests routinely imply normative values to which social significance is attached. To take only the most familiar examples, it would grate on the ear to describe such collective statements as the Ten Commandments or the Bill of Rights as the Ten Preferences. The reason is that we all sometimes want to invest a “preference” we are expressing with normative content. Using a single word that does not differentiate among “preferences” can be very misleading. Saying, for example, “I disapprove of this; do so as well,” does not have the same force as saying “that is bad.”

These semantic observations suggest that basically the preference/individual/private-market advocates are skeptical about the desirability and the legitimacy of collective “preferences” (which are, as I shall suggest, often put forward collectively precisely to invest them with normative force) and of the imposed loyalty they demand. To the extent that public landownership encourages the imposition of such values, such ownership simply becomes a particular example of a larger issue of social collectivism. Stated most starkly, the concern is that, as collective values increase, individual autonomy declines. And the corollary premise is that the maintenance of individual autonomy is the premier virtue, so important and so obvious that it barely needs to be defended. At the heart of my thesis here is that even if one accepts mere preference as the sole source of legitimacy, there is no necessary connection between preference and autonomy, or atomistic behavior. Collectivities (even such involuntary collectivities as the political community) can have preferences too. What I need to demonstrate is that one preference people can, and do, have is to yield some of their autonomy in order to obtain the benefits of collective action. To the extent this is demonstrable, there is an answer to the familiar question, what makes you think that the state or some bureau-

4. The philosophical position that identifies all evaluative judgments as nothing but expression of preference is called “emotivism.” A. MACINTYRE, AFTER VIRTUE 11 (1981). The literature distinguishes between “held values” (individual preferences) and “assigned values” (held values treated as norms). Brown, The Concept of Value in Resource Allocation, 60 Land Econ. 231, 234 (1984).

5. A. MACINTYRE, supra note 4, at 19.

6. Emotivism “emphasized the rejection ... of all claims on behalf of social action conceived as a worthwhile end.” A. MACINTYRE, supra note 4, at 16.
crat knows better than I do what is best for me? The answer is that I may very well decide it is worth the sacrifice of autonomy to vest some of my preference power in a collectivity, and be willing to accept the consequences—not all of which, individually, I would myself choose—precisely because I think that the dynamics of the group enterprise will create a distinctive player in the political and economic marketplace that I think ought to have some "preference power" to exert. Not only is this a possible course; as the following observations suggest, it is descriptive of the way people routinely behave.

It is far from clear that the maintenance of individual autonomy is the primary goal of most people most of the time. Indeed, there is a great deal of evidence to suggest that one of our strongest urges is to identify ourselves with a source of moral or communal authority, and to subordinate our autonomy to it; that we draw strength from values external to our purely personal convictions; and that we draw values from collective solidarity. Much modern literature focuses on exactly this longing in its pathological extreme, suggesting just how powerful an element of personality it is. For example, Thomas Mann's great short story *Mario and the Magician* contains the following passage:

The master had but to look at him, then this young man would fling himself back as though struck by lightning, place his hands rigidly at his sides, and fall into a state of military somnambulism, in which it was plain to any eye that he was open to the most absurd suggestion that might be made to him. He seemed quite content in his abject state, quite pleased to be relieved of the burden of voluntary choice.7

Or consider this celebrated passage from Dostoevski's *The Brothers Karamazov*: "I tell thee that man is tormented by no greater anxiety than to find someone quickly to whom he can hand over that gift of freedom with which the ill-fated creature is born. But only one who can appease their conscience can take over their freedom."8

The individual who has yielded all autonomy is, as these passages reveal, only a slave. But they also suggest that the individual who is all autonomy is beyond the limits of human nature.9 Almost all of us, almost all the time, operate somewhere between these extremes, and it

9. It has often been observed that individuals differentiate between what they believe to be in their personal interest and what they believe to be good for the community of which they are members. Maass, *Benefit Cost Analysis: Its Relevance to Public Investment Decisions*, 80 Q.J. ECON. 208, 216 (1966), citing experimental work by T.M. Newcomb and W.W. Charters. See also Sagoff, *We Have Met the Enemy and He Is Us, or Conflict and Contradiction in Environmental Law*, 12 ENVT'Y. L. 283, 286-87 (1982).
is within this intermediate position that such public controversies as landownership are likely to find their focus. For it would be difficult to locate a wholly autonomous individual anywhere in the normal range of behavior we daily observe. Let me illustrate "normal" behavior with a commonplace example.

Imagine an average individual happily using a tract of land he owns as a rose garden. Another offers him $1,000 for the land, intending to use it to build a house. The owner makes a counteroffer to sell at $2,000, and settles with the builder for $1,500. This individual is operating in the realm of pure preference.

This average individual may well decide to give the tract to the church as an annual contribution—not an unprecedented thing to do. The church then refuses the highest offer made—$1,500—and determines to maintain the rose garden as a senior citizen project. Assume, further, that the outcome differs from that which would have occurred in any individual transaction. The church, as an entity, has different "preferences" than the original owner, or any sum of church members, acting as individuals, would have revealed. And assume finally that the original donor and his co-members of the church are perfectly happy with the result, though it diverges from what any one of them would have done had they retained ownership of the property.

What has happened here? Why would someone give up autonomy over the land and permit it to be used this way? Why is it, in short, that people often choose not to express their interests individually, but through the medium of a collectivity?

One possibility is that some collectivities are administratively efficient units which, by summing the property of a number of owners, can more effectively achieve the result each individual wants than would have been possible were each participant to act individually.

Another possibility is that, since information is not costless, the collectivity can obtain information that the individual needs but cannot obtain. The collectivity, once informed, will make the decision each individual would have made if he or she had access to the information.10

Still another possibility is that the individual wants the collectivity to help formulate his or her preferences. Such an individual may feel it is important that some fraction of his resources should be used to promote benevolence toward the less fortunate, and that this result can best be accomplished through an institution whose stated goals are benevolent. It may further be believed that by empowering such an

10. An example is the individual who consults and relies upon Consumer Reports before purchasing goods. See T. Scitovsky, The Joyless Economy 271 (1976).
institution the mere preference that certain individuals have for such benevolence will be transformed into a stronger, mutual sense of responsibility to be benevolent. The person who makes such contributions, and endows such institutions, may want the institution to have a transforming effect on him, strengthening or modifying his own pre-existing preferences by creating an atmosphere of mutual obligation. In short, one may have a preference to have his own preferences change. One result, and one goal, may be to change what were simply the "held" preferences of a number of individuals into "assigned" preferences that then operate themselves as a source of felt obligation.

One might say that nothing very interesting is revealed by all this since such collectivities are voluntary, allowing any member to resign at any time that the organization does not fully reflect what is desired. Thus the collective decision, whatever it may be, is nothing more than the sum of the then preferences of its members; and the "different" decision of the collectivity is no different than the preferences an individual might express at two different points in time, depending on what information is available. Thus, the atomistic model still holds.

Yet—whatever the precise mechanism by which collectivities operate—the very decision to empower a specific collectivity, even provisionally, has consequences. Even if it does nothing more than provide information, it is not the same information that was available to the individual before he or she had made the endowment. The decision whether to resign subsequently is inevitably affected by the information, or advice, provided to the individual.

This is why action by collectivities cannot be dismissed as simply the implementation of the purely individual decision of each of the members, where the member's nonresignation is treated as a subsequent ratification. The critical period is not the moment after the collective decision is made (at which time one decides whether to resign) but the period between entry into the organization and the moment the decision is made. That is, what happens up until the decision is made—which may be viewed as the information flow from the collectivity to the individual member—will itself change the person (by supplying new data at the least, or, if the entity, like a church seeks to persuade prescriptively, by creating a changed value milieu) and thus itself affect the decision whether to resign. At the very least, one who joins an organization yields autonomy in the sense that individual

11. This phenomenon is discussed in Jeffrye, Preference Among Preferences, 71 J. Phil. 377 (1974) (the tug of war between appetite and will). The example given is (1) I now prefer smoking. But (2) I prefer to prefer not smoking.

12. An analogous effect has been demonstrated by Arrow and Fisher, showing that where there are uncertain future effects of irreversible developments, the expected benefits of an irreversible decision
authority is transferred to another to obtain information that will inform subsequent decisions.

Of course, people yield to all kinds of collectivities, and the commitments they make vary enormously. Joining the Mormon Church is a much greater commitment (a greater yielding) than is subscribing to the New York Times, even though each group serves as a source of information and has a power to shape the individual "subscriber." However much people may value having their individual preferences implemented, they are also very interested in expressing themselves through collectivities, though doing so demands a price, and often a quite heavy one, in individualism.

It is customary to ignore the evidence of individual yielding of autonomy to institutions like churches on the supposition that they are merely "voluntary" organizations, from which one can freely resign whenever his or her wishes cease to be those of the organization. Too little attention has been paid to the fact that all voluntary organizations are not equally voluntary in the exit opportunities they offer, except at the most theoretical level. Some collectivities so restrain the exit opportunities they offer that one is compelled to conclude that people would never join them if what they were seeking was the sort of free exit that is usually connoted by the term "voluntary." People join despite the fact that exit is very difficult, demonstrating that loss of autonomy (the essence of the atomistic model) is a price perceived as worth paying for the opportunity to participate in a collective identity as an important element of one's own identity.

If we wanted to ensure that use of our resources and our choices were always reflective of an individualized perspective, we would ensure the greatest ease of exit for all the collectivities we join. But that is plainly not the case. While some sorts of collectivities, such as business corporations, are obviously designed to assure the greatest ease of entrance and exit to stockholders, others have precisely the opposite characteristics. How does one explain the commitment to lifetime loyalty and mutual obligation that so many churches have developed for their members in ceremonies that are administered to those born into the church at the time they attain the age of reason? Why, indeed, do ideas like patriotism and loyalty attain so much support in involuntary collectivities like the state, whereby we bind ourselves far more than we have to, to an involuntary collectivity, rather than simply affirming

should be adjusted downward to reflect the loss of options it entails. Arrow and Fisher, Environmental Preservation, Uncertainty and Irreversibility, 88 Q.J. Econ. 312, 319 (1974).

13. Perhaps it is more precise to describe exit as painful and costly. It is not difficult in the sense that one is legally or physically prevented from resignation.
the minimal obligations and loss of autonomy essential to the maintenance of the night watchman state?

Consider, as a striking illustration, the way in which collectivities such as churches operate. Imagine an individual who is a member of the Catholic Church, and who makes contributions to it. If the Church were functioning as a mere information-gathering and exit-maximizing entity, it would talk in the following terms: “we have studied the question of abortion and for the following reasons have come to the conclusion that abortion is immoral. We intend to use contributions to oppose abortion. Those who are in accord should stick with us; others should resign, or should remain in the church only for further information bulletins on moral issues that will be sent out from time to time.”

In fact, the institution is structured to produce precisely the opposite reactions: to generate commitment and obligation, and to discourage resignation. Indeed, it is structured to encourage the assimilation of individually held views into a collective view in the name of what good Catholics believe. It encourages its members to have a position on abortion as a Catholic, rather than as an isolated individual whose source of information includes the Catholic Church.

Surely those people who associate themselves with such collectivities are aware that membership in these institutions is entangling, and that one does not cease being a member with as little psychic cost as one ceases to be an Exxon stockholder. Surely there is an awareness that with each dollar contributed, one contributes to the capacity of the institution to shape tastes and values in less than costlessly reversible ways. Does anyone who gives a child a religious education think that such a decision is fully described by saying, “well, he can always resign.” Or that the kind of society being created by people who behave like him is no different from one in which people maintain the maximum of personal autonomy to behave atomistically? Yet, obviously such organizations as churches do not disappear, as would be expected if volunteerism, in the sense of ease of exit, or if maximizing autonomy, were the critical element.

Let me make clear at this point that I suggest no absolute. I am certainly not suggesting that people do not want any atomistic autonomy and want to submerge themselves totally in collectivities. Nor do I suggest that even the most tightly knit collectivities like churches are, or are desired to be, wholly involuntary, without possibility of exit, and without possibility of an interplay between the autonomous individual and collectivity. Indeed, I seek to make quite a different observation: That there is a complex interplay, a mixture and a ten-
sion, between atomistic behavior and collective behavior, and that both kinds of behavior are reflected in routine preference-expressing activity.

The import of these observations is that since people join collectivities and yield a good deal of autonomy to them, despite the onerousness of resignation, they must join because they deem participation in collective expression important. People yield to particular collectivities because they think it important that expression, or the effectuation of preference power, in the name of those collectivities is important. The church, the labor union, the political party, are all speakers and actors for a community of interest. If I think it important that some resources be used in behalf of moral authority (the church), I may equally believe that some resources should be expended in the name of the political community (America).

Are there distinctive values that can be expressed only through the political community? Certainly there are. Is there any need to use the coercive mechanism of the state to express them, rather than relying upon purely voluntary action? Certainly there is. I now turn to illustrate my answers to these two questions.

A simple example will do. There is poverty in Latin America. Poverty incites political instability. Political instability in Latin America is bad for the United States. One way to dampen revolutionary pressures in Latin America is for the United States to demonstrate that it is concerned with the well-being of the people there, since many of those in Latin America attribute their woes to U.S. policy. All this may be true; what is more important, I may believe it to be true.

In such a case, I may believe that the most effective way to promote Latin American political stability is to provide foreign aid to that region for the purpose of demonstrating that America cares about Latin America. Such outcomes can be accomplished only through the official collective action of the United States, acting as such; that is, acting as the political community. I may thus prefer that the United States—as such—give foreign aid to Latin America.

What I want to accomplish cannot be achieved through mere voluntary action, however great it might be, since my goal is not simply to alleviate poverty, but to demonstrate that “America cares.” It is perfectly possible that even if some high-minded organization like the Quakers could raise the money needed, their contribution would not have the same political effect as the same contribution made in the name of the American people. Indeed, I may not myself care very much about the destiny of those people; my interest may be limited to

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14. I need not, of course, specify my goals so narrowly.
their perception of the United States and its role in the hemisphere. And, as this illustration suggests, my interest may be entirely selfish, though it is nonetheless distinct from my interest as an individual.15

It is important to note that the case for collective action here is not the usual problem of free riders (voluntary action is insufficient because even those who don’t contribute will benefit). While it is true that all Americans will benefit—under these assumptions—from better U.S.-Latin American relations, my concern is separate from that. Even if I could somehow solve the free-rider problem, collective action in the name of the United States would still be required. If the issue is whether America cares, only official action by the government can do the job. And official action requires coercion of some Americans (those who dissent from my analysis and coercion of me when I am a dissenter) because the government cannot operate by unanimity.

The question is whether we want to be able to act in situations such as that presented above, where in order to effect preferences we have to act through a coercive collectivity, or whether in order to protect autonomy we should feel compelled to forego such action. I urge nothing more there than that it legitimate (and at least in many situations appropriate) to opt for collective action even at the cost of coercion. Since the political community (America) is an objective reality to which people react, it has interests that are objectively different from those of any individual or voluntary group within the society. Just as in the hypothetical example given above, if a foreigner asks, How does America treat its Black population, it may be deemed important to respond that it assures Blacks equal opportunity officially. No amount of individual concern, however great in the aggregate, is an exact substitute for an official policy.

For the same reasons protection of wilderness or the grizzly bear may be sought through public action. The belief that America cares about some things may be thought important to the well-being and solidarity of the country, considered as a community. To demonstrate that America cares about saving the grizzly can be thought as important as demonstrating that America cares about protecting democracies around the world. In the latter case, such a belief would define the scope of our national defense policy; in the former, it would define the scope of our environmental policy.

This situation, though it may seem complicated, is just a version

15. Collective action—especially enforced collective action—may be the only solution to a “prisoners” dilemma. It is in everyone’s interest that the poor be fed, but it is in each individual’s private interest, acting atomistically, to spend on themselves rather than on the poor, absent an assurance of contributions by everyone else.
of what is sometimes called the bandwagon effect (I want designer blue jeans only because everyone else considers them fashionable). Something becomes a value to everyone in the community only if the community, acting as such, affirms it as such. It is not less a community act even though there are dissenters; and it would not be a community act if the same number of dissenters absented themselves from a voluntary decision about the same subject. It is rather like the situation where the Pope is recognized as Pope by an act of the Church, even though it is not unanimous. Whereas the notion of a Pope recognized only those Catholics who wish to recognize him explodes the very idea of a papacy—of a community of Catholics.

Where expression by the political collectivity—the state—is deemed important, there is, however, a special problem since the state offers the least opportunity for resignation. The political community is at the furthest extreme on the spectrum of voluntarism. The tension between retaining autonomy and yielding it in behalf of desired action is greatest. One may believe that this difference must always be decisive; that the coercion the state imposes is always more harmful than the benefits that collective action by the state provides. But unless one believes this, then the question of collective action by the state is not one of legitimacy, but of prudence in balancing the communal action against loss of autonomy. Is the game worth the candle?

Is one compelled to believe that such coercion is always to be avoided? I have already suggested that the observed experience with "not-so-voluntary" entities is some evidence against the proposition that retaining maximum autonomy is the premier virtue. But there is stronger evidence than that, for in organizing governments the public routinely (perhaps uniformly) yields to them more than the absolutely necessary minimum. The so-called night watchman, or minimal, state is in fact more a theoretical construct than a reality. Everywhere one looks, now and in the past, states take on functions such as the promotion of national solidarity by building monuments to what they value, and history is replete with evidence that they often value commitments to solidarity more than mere single-minded devotion to individual autonomy. Perhaps this is only evidence of the sort that simply asserts the importance of something because people have found it important over long periods of time. But those who think the maintenance of untrammeled autonomy is the central good to be achieved have no evidence more compelling to support their conclusion.

It should also be noted that, at least in a democratic government, the degree of autonomy one yields to the state is not fixed. If the state begins to take on ever more functions in the name of national solidar-
ity, or collective values, or if it uses its power toward unwanted ends, it is possible to reduce the ambit of its activities through the same political process by which it was empowered (always keeping in mind that one has been changed to some degree in the interim). Indeed, we appear to be in the midst of just such a reaction against expansive government at the present time. One may view such oscillations as part of an ongoing (and, again, perfectly legitimate) interplay between maintaining individual autonomy and yielding it in favor of collective action. There is no perfect or final appropriate balance between these two competing interests.

The dynamic nature of the relation between the individual and the collectivity could be viewed as implying that the degree to which individuals submit to collectivities is not a measure of the importance they attach to collective action, but is rather only a prudential judgment on their part that their individual preferences are more likely to be effectuated through collective action (a sort of interest group politics) than through atomistic action. This is the claim that people join simply because they think they will be winners in terms of their preexisting individual preferences. I do not doubt that some collective action—particularly that effected through single interest collectivities—pro-gun or pro-abortion organizations—is best described this way. But it seems to me highly unlikely (I doubt the point could be conclusively proven either way) that this is a sufficient explanation for such long-term, entangling commitments as one has with government or makes to a church or to other complex, multiple-issue organizations which engage, among their other functions, in transforming their members through religious, patriotic, or moral persuasions.

The most important test of the implausibility of this “winners’ gamble” explanation of collective action may be the broad acceptance of a multitude of action—whether favorable or not to the individual member—that simply would not have occurred in the absence of the collectivity. Plainly, there are some collective actions with which members passionately disagree, and which generate resignations, these latter being the ultimate tests of their loyalty to the community. No doubt there is some important relation between winning sometimes, or winning on some issues, and continued loyalty to the collectivity. But the notion that individuals commit themselves to collectivities only because they expect to be routine winners in terms of their preexisting personal preferences seems as unlikely as the view, discussed above, that people join on the assumption of perfectly costless exit.

To assert the legitimacy, and even the desirability, of collective action by the state does not, of course, reject the importance of the
individual. An intermediate position between the totally autonomous individual and the totally dominating state is what has most often commended itself to every society that takes account of the individual's importance. Rather than saying it is the duty of society to maximize personal autonomy to the greatest extent possible, societies have said that some elements of personal autonomy are too important to be exposed to collective coercion. At least in the broad sense, those elements are eminently familiar: for example, freedom of speech, association, belief, and religion.

This position—which roughly describes the standard American stance—as well as that of almost all political communities that share essentially in the same philosophical tradition, is significant in recognizing more than one kind of interest as both legitimate and important, despite the tensions that exist among them. It thus adopts a posture that does not embrace either value (collective expression or maximum autonomy) as of dominating and exclusive importance.

The mere fact that a community-adopted value refrains from intruding on fundamental individual rights does not make it desirable. That leaves the question, should anything that can garner a fifty-one percent vote in the legislature be blandly accepted as a worthy statement of the collective values of the political community? Certainly not. Only a fool would suggest that everything the Congress does is sensible any more than it could be suggested that everything Joe Doakes or some business does (like the manufacture of Edsels or thalidomide) is sensible. Preferences, whether individual or collective, whether consumptive or prescriptive, are good or bad only by reference to some external framework of values. Nothing I am saying here speaks to any particular moral philosophy, except insofar as I have noted some widely accepted limits on governmental action imposed by the Constitution, such as a preference for autonomy over collective action in the area of speech and religion.

One might believe, as some do, that, in general, government does more mischief than good and that, in general, private interests do the opposite. At one level, there is no arguing with one's perception of the reality perceived by an individual, but it may be useful to disaggregate these perceptions as much as possible. One argument is that individuals and businesses are more disciplined because they pay for their mistakes. By and large, they are in business to make money and, if they fail, they will be thrown out.

This observation calls for several responses. One is that the goal of the individual or entrepreneur in the market is, generally, more straightforward than the goals of the state, or of most collectivities. It
It is easy to test whether one who is trying to make a profit is succeeding. It is a great deal more difficult to test whether one who is trying to advance charitable goals or encourage morality (like a church), or promote education (like a school), or strengthen national solidarity (like the hypothetical state described above) is succeeding. Indeed, one might point out the one governmental role that almost everyone accepts—promoting national defense—and note how much controversy that activity generates. Are we succeeding in making the country more secure by throwing more money at the problem? Are we failing because we try to prop up weak dictatorships? Would a worldwide income redistribution do more to make us secure than continuing the arms race? There are no easy answers and no easy tests of success.

Similarly, there is thus no objective test as to whether we are sacrificing too much to save the grizzly bear, any more than there is a clear answer (either for an individual or for a public entity) as to whether too much is being spent for education or for the support of art museums. And there is no obvious way to know whether either grizzly bears or art is worth saving. It should, however, be noted that even governments are not willing to spend endlessly (or endlessly to forego other benefits). Its values may be different, and it may be more forebearing than individuals because its losses are less immediately evident (as critics never tire of pointing out).

It is important to observe that government is not immune to the claims of competing values, including those of economic efficiency and material well-being. Whether or not one thinks the government has designated too much wilderness, it can hardly be denied that those who would like to use that land for other purposes, such as hydrocarbon development or mineral mining, have ample opportunity to make their case in the Congress. And it could hardly be said that Congress is deaf to commercial and industrial interest groups or that it is insensitive either to the economic benefits it could reap from commercial activity or to the implications of such choices on questions like tax rates.

Another complaint frequently made by opponents of public ownership is what might broadly be called the “corruption” of the governmental process. It is suggested, for example, that bureaucrats have dominant control over public programs and that they act selfishly to promote their own well-being rather than the public interest. I do not see how anyone could deny the existence of such a problem, but it must be recognized that this problem exists with any organization employing intermediaries. The tension between corporate managers (who have interests of their own) and stockholders is a staple of the
business literature. Every private, collective entity—churches, the universities, labor unions—are prey to this problem. This is a problem doubtless more attributable to the size, complexity and attenuation characteristic of large bureaucracies than to their character simply as private or public organizations.

It also has been emphasized that the state may be, and often is, at the mercy of powerful interest groups which turn government to their own limited interests. Again, there is no doubt that this is a problem, and a serious one. It is likewise true that elected officials are far from perfectly accountable to their constituents. Some are fond of noting how few Americans even know the name of their representative in Congress, and even if they do, how difficult it is to make a periodic vote reflect any constituent’s view of the legislator’s vote on the myriad of issues on which he will express himself in the interim between elections. Of course, all these are common, and familiar, failures of politics. No sensible person denies them; no knowledgeable person can dispute them. It is not the existence of the problem that is in controversy, but the solution suggested.

The answer in effect given by those who urge disposition of the public lands is to give up on politics, to view it as irredeemable. The suggested response is abolition, rather than reform; or, to put it rather more modestly, to remove from government as much power as possible to do mischief, by limiting its functions to the minimum possible level. Again, I concede that this is a legitimate philosophical view, but I must emphasize that it incorporates a very controversial assumption: that most of the things government seeks to do—the sort of things that are distinctively the product of collective values held by the political community—are relatively unimportant. Thus, in view of these critics, to give up most collective values is to lose little or nothing. The critique reduces to the proposition that only those values which we hold as individuals, acting atomistically, are worthy values. ¹⁶ There simply is nothing beyond personal preference. If one is persuaded by such a view, of course there is no point in working at reform of public decision making. My goal here has been to suggest that the assumptions underlying such a position are far from obvious.

Having said this, let me return to the question of whether there is any standard by which the propriety of public collective values, or preferences, can be judged. The answer is both yes and no. Yes, of

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¹⁶ Or, to put it another way, "an individual may have as part of his value structure precisely that he does not think it proper to influence consequences outside a limited realm." This is a perfectly coherent position, but I find it difficult to insist that this judgment is of such overriding importance that it outweighs all other considerations." Arrow, Values and Collective Decision Making, reprinted in Collected Papers of Kenneth J. Arrow: Social Choice and Justice 67 (1983).
course, at a moral and ethical level, collective values can be judged just as personal preferences can be. At a less profound level, however, I hope I have shown that they cannot be judged simply by measuring them against the preferences that individuals, acting atomistically, would have revealed.

What the content of such collective values or preferences should be, however, outside of the profoundest moral judgments, cannot be identified any more than the values of an individual. A community (or an individual) may invest with a high value the efficient production of commodities, and may value very little the preservation of the grizzly bear or the provision of public recreation. Or it may adhere to precisely the opposite priorities. At various times, people have held widely divergent views. Abortion, once the subject of almost universal consensus, has become a deeply divisive issue. Free public education was not always thought fundamentally important; public parks are a rather recent invention, though today they are widely considered indispensable. One could extend the list of changing public values almost endlessly.

If there is to be a place for the expression of civic values, the only means available (unhappily, perhaps) is through the decision-making apparatus of the state. That the state is imperfect and corrupted in many respects (as are churches and labor unions) is an inevitable price of representing the interests of the political community. That the expression of political community values involves even more coercion than do "voluntary" collectivities makes the price even higher, though not necessarily intolerably high. Whether the interests are important enough to bear the price of corruption, and whether efforts at reform are worthwhile, is a question on which no indisputable statements can be made. I respect the judgments of skeptics on this question, although I do not share them. I do insist, however, that they are judgments only and nothing more. They fall far short of making a case against the legitimacy of collective values.