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PRIVATIZATION AND THE NEW PUBLIC MANAGEMENT*

*E.S. Savas***

Privatization is now commonplace throughout the world: in communist, socialist, and capitalist countries; in developed and developing countries; in democracies and dictatorships. In the United States privatization is being practiced by Democrats and Republicans, liberals and conservatives, blacks and whites. It is no longer a partisan or ideological issue, but rather a pragmatic and increasingly routine approach to governing and to managing public services.¹

Privatization means greater reliance on the private institutions of society and less dependence on government to satisfy people's needs. Those private institutions are: (1) the marketplace and its participants; (2) voluntary associations of all kinds, formal and informal; and (3) the family, which is, after all, the original Department of Housing, Social Services, Health, and Education.

Privatization takes many forms: contracting, franchising, and "vouchering"; selling and leasing government-owned assets to the private sector; and shedding services and deregulating. The various forms of privatization all operate by allowing markets to provide desired goods and services to consumers.

Contracting out common government services and selling off government-owned businesses and assets continues, but has advanced far beyond the conventional contracting out of garbage collection and selling off of in rem properties. Private towing services rescue foundering pleasure boats for a fee, something the U.S. Coast Guard once did at taxpayers' expense.² Privatized approaches are protecting the environment: North Atlantic salmon are protected by private environmental entrepreneurs who use market forces to buy and retire fishing rights, an improvement over

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1. Dennis Daley, *The Politics and Administration of Privatization*, 24 *POL'Y STUD. J.* 629, 629-631 (1996).

2. Joyce Wadler, *Belying the Legend of the Crusty Old Salt*, *N.Y. TIMES*, July 1, 1998, at B2.

government conservation efforts.³ Private groups are saving open space: in ten years, 1200 local land trusts permanently protected 2.7 million new acres from development.⁴ A market-based approach, namely, international emissions trading, is called for in the Kyoto Protocol to reduce pollution that is said to contribute to global warming.⁵

New York State has turned over Stewart and Niagara Falls Airports to foreign airport operators—British and Spanish respectively—on ninety-nine year leases. New Hampshire and Georgia have leased state parks and resorts to private firms.⁶ Churches in Indianapolis maintain neighborhood parks under city contracts.⁷ Bryant Park, in the middle of Manhattan, was transformed from a crime-ridden haven for junkies to a six-acre jewel by a voluntary local business association. Nearby Central Park, one of the world's most famous urban open spaces, is managed by another private, nonprofit organization.⁸ New York sold its popular convention center, the Coliseum, to developers who will take advantage of its premier location,⁹ and is selling hundreds of millions of dollars of other prime real estate.¹⁰ The federal government is auctioning 27,000 acres of land near Las Vegas, Nevada, worth 500 million to one billion dollars.¹¹

A relatively new area for local-government contracting can be found in Riverside County, California, which contracts with a pri-

3. Orri Vigfusson, Political Econ. Research Ctr., *How Markets Save Salmon* PERC REP., Sept. 1998.

4. James Brooke, *Land Trusts Multiplying, Study Shows*, N.Y. TIMES, Oct. 1, 1998, at A20.

5. Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 37 I.L.M. 22 (1998); John H. Cushman Jr., *Washington Skirmishes Over Treaty on Warming*, N.Y. TIMES, Nov. 11, 1998, at A11. See Brendan P. McGivern, Introductory Note, Conference of the Parties to the Framework Convention on Climate Change: Kyoto Protocol, 37 I.L.M. 22 (1998) (containing Kyoto Protocol and introductory remarks). The Kyoto Protocol is commonly referred to as the Kyoto Agreement.

6. Wade Hudson, Reason Pub. Pol'y Inst., *New Hampshire and Georgia Lease State-Owned Resorts*, PRIVATIZATION WATCH, Oct. 1998.

7. Lisa Snell, Reason Pub. Pol'y Inst., *Indianapolis Parks Bloom Under Church Management*, PRIVATIZATION WATCH, Oct. 1998.

8. Tony Walker, *Private Sector Revitalises New York's Mean Streets*, FIN. TIMES, July 1, 1998, at 8.

9. Charles V. Bagli, *A Deal Is Struck for Coliseum Site*, N.Y. TIMES, July 28, 1998, at A1.

10. Douglas Feiden, *City's Land Sale: Prime Real Estate Is Up for Grabs*, N.Y. DAILY NEWS, Oct. 26, 1998, at 3.

11. *U.S. to Auction Land Near Las Vegas and Give State the Money*, N.Y. TIMES, Oct. 25, 1998, at 33.

vate company to manage its twenty-five branch library system.¹² Whereas contracting out individual services such as solid waste management is now commonplace, a private firm, appropriately named City Municipal Services, Inc., is serving as a public-works department for several towns in Michigan, performing the entire array of traditional public works functions.¹³ The same type of work is being done in Monmouth, Illinois.¹⁴ Municipal parking also is being privatized in interesting ways. The City of Richmond, Virginia contracted with a company to manage its on-street parking program, including enforcement.¹⁵ Parking tickets in New York City can be paid automatically by credit card twenty-four hours a day via a toll-free number from any telephone in the United States. A computer checks the validity of the card and the availability of funds during the transaction. This innovation, pioneered by a private contractor, is convenient for ticketed car owners and highly cost-effective for the city, reducing the handling of hundreds of thousands of checks a year.¹⁶ The system is being expanded to collect many other kinds of fees and payments from the public.

The last state-owned vaccine laboratory in the United States, which made anthrax and rabies vaccines, lost millions of dollars annually and was finally sold by the State of Michigan.¹⁷ The United States is turning over governance of the Internet to a private, nonprofit, multinational corporation to assure a hands-off, market-driven approach to regulation rather than risking a slowdown in the Internet's growth under government intervention.¹⁸ American embassies abroad are guarded not only by U.S. Marines, but primarily by private guard firms under contract to the State

12. Robert Hanley & Steve Strunsky, *Jersey City Weighs Private Management of Libraries*, N.Y. TIMES, June 29, 1998, at B1.

13. W. Stanley Jordan, *A Private Operator's Viewpoint: The Turnkey Approach*, PUB. WORKS, Sept. 1997, at 63.

14. Shawn J. Gillen & Robin A. Johnson, Reason Pub. Pol'y Inst., *Small Town Enters into Cutting-edge Public-Private Partnerships*, Privatization Watch, Mar. 1999, at 7.

15. *Central Parking Corporation Awarded Contract to Manage On-Street Parking in Richmond; Contract Highlights Continued Growth in Privatization of Municipal Parking Programs*, BUS. WIRE, July 13, 1998.

16. *24 x 7 Automated Parking Ticket Payment Program Introduced by Nextlink Interactive in NYC*, PR NEWSWIRE, Oct. 5, 1998.

17. Judith Miller, *Company Led by Top Admiral Buys Michigan Vaccine Lab*, N.Y. TIMES, July 8, 1998, at A19.

18. Amy Harmon, *U.S. Expected to Support Shift in Administration of the Internet*, N.Y. TIMES, Oct. 20, 1998, at C1; Jeri Clausung, *Clinton's Envoy to the Internet Will Resign by Year's End*, N.Y. TIMES, Nov. 9, 1998, at C2.

Department.¹⁹ NASA turned to private contractors to manage its numerous unmanned satellites in space at a cost of \$3 billion over ten years.²⁰ The contracted work includes data acquisition from spacecraft, data transmission to the end user, data processing and storage, ground and space communications, and operations at the mission-control center. The International Telecommunications Satellite Organization, INTELSAT, also is being privatized.²¹ The Department of Defense is teaming with the private sector to build, renovate, and manage military housing,²² although the expected savings have been questioned.²³ U.S. Army ammunition plants, managed by private contractors, are being used in part by various manufacturers for commercial purposes. Under the Armament Retooling and Manufacturing Support ("ARMS") initiative enacted by Congress, sixteen plants with 187 commercial tenants employing 2882 workers were in the program by 1998.²⁴ Surplus military material—equipment, building materials, electrical supplies—worth more than \$8 billion when initially acquired, is being sold for the Department of Defense by one of the nation's largest disposition firms.²⁵

The Canadian government also is venturing into privatization. The St. Lawrence Seaway, owned by the Canadian government, is now being managed by a private group comprised of the major users, who hope to restore the Seaway's fortunes by making it more competitive with other forms of transportation.²⁶ (The U.S. government, however, continues to own the corporation that operates and maintains the part of the Seaway in U.S. waters.)

19. *The Wackenhut Corporation Wins Contract for Embassy Security*, PR NEWSPWIRE, Oct. 15, 1998.

20. Greg Schneider, *Lockheed Gets NASA Space Pact*, BALT. SUN, Sept. 26, 1998, at 12C.

21. *Conny Kullman Outlines Vision of INTELSAT Privatization in the Competitive Global Market*, PR NEWSPWIRE, Sept. 30, 1998.

22. RON LOBEL & JAY BROWN, NAT'L COUNCIL FOR PUB.-PRIVATE P'SHIPS, COUNCIL INSIGHTS NEWSL., *PRIVATIZATION PROMISES TO BUILD MILITARY FAMILY HOUSES BETTER, FASTER, CHEAPER* (May 1998); RON LOBEL & KIM MARCHAND, NAT'L COUNCIL FOR PUB.-PRIVATE P'SHIPS, COUNCIL INSIGHTS NEWSL., *MILITARY HOUSING PRIVATIZATION—THE NUTS AND BOLTS* (June 1998).

23. John Diamond, *Savings Low for Pentagon Homes Plan*, AP ONLINE, July 22, 1998, available at 1998 WL 6707860.

24. *U.S. Army "ARMS" Program Receives National Recognition*, BUS. WIRE, Oct. 15, 1998.

25. *Arizona Firm Wins Contract to Sell \$8 Billion in Military Surplus*, BUSINESS WIRE, Sept. 23, 1998.

26. *The Seaway Goes Private—Ottawa Gives Up Management*, TORONTO STAR, Oct. 1, 1998, at E2.

In Britain, the first Labor government in almost twenty years stunned some of its supporters by abandoning its obsolete economic creed of nationalization and continuing the privatization policy initiated by the former Conservative Prime Minister, Margaret Thatcher. The government announced plans to sell \$4.9 billion of state assets over three years by divesting fifty-one percent of the air-traffic-control system, entering into public-private partnerships for the state-owned betting service, and for privatizing the Royal Mint, which produces coins and banknotes.²⁷ Parliament also is proceeding with plans to privatize the Underground, London's subway system. As a final, striking example of the limitless opportunities for privatization, the British Defense Ministry is seeking proposals to privatize the Queen's airline, the Royal Air Force squadron that transports the royal family, government ministers, and VIPs around the world.²⁸

Privatization also is being carried out by the private sector itself, in a manner of speaking. "Outsourcing" is a growing phenomenon in the United States as companies subcontract with specialized firms to operate their computers, handle their logistics (warehousing and delivering), assemble parts, run their company cafeterias, process their mail, do their advertising, marketing, and public relations, staff their telephone order and help lines, administer their payrolls, manage employee benefits, and perform other mission-critical functions, thereby becoming virtual corporations. Private companies are stripping to the bare essentials, even leasing employees. When done properly, this does not hollow out the corporation; it reduces internal bureaucracies, flattens the organization, and affords greater strategic focus. Thus, outsourcing brings many of the same benefits to private corporations that privatization brings to governments.²⁹

Privatization has advanced beyond the point of no return. The next major areas in the United States to benefit from privatization, I believe, will be government-owned businesses (such as Amtrak), infrastructure (such as toll highways, through the implementation of congestion pricing), and social insurance, specifically Medicare and Social Security. Therefore, it is appropriate, especially when

27. Nicholas Bray, *Britain's Labor, Miming Tories, Unveils 3-Year Privatization Plan*, WALL ST. J., June 12, 1998, at A9.

28. *Queen's Flight to Bring in Private Industry*, AGENCE FRANCE-PRESSE, Nov. 15, 1998.

29. David W. Bridger et al., *Business Process Outsourcing: Shattering Boundaries, Maximizing Shareholder Value*, PRICEWATERHOUSE REV., Dec. 1997, at 1-11.

considering the theme of this issue of the *Fordham Urban Law Journal*, to review major changes occurring in the ever-evolving field of public management, changes that bear directly on privatization.

THE NEW PUBLIC MANAGEMENT

Public-administration reforms are underway, and they have common characteristics. "New Public Management" is the label applied to this set of innovative reforms, one of the defining features of which is the infusion of market principles into the political world. Specifically, this means:

1. striving for efficiency, in addition to effectiveness and equity, in the delivery of public services;
2. utilizing economic market models for political and administrative relationships: public choice, negotiated contracts, transaction costs, and principal-agent theory; and
3. applying the concepts of competition, performance-based contracting, service delivery, customer satisfaction, market incentives, and deregulation.³⁰

Privatization, in the mainstream of the New Public Management, exhibits all these characteristics. Public managers operating in this environment are introducing managed competition and are contracting competitively with the private sector to deliver services more efficiently and effectively. They are expanding customer choice by introducing voucher systems and they are creating public/private partnerships to satisfy public needs. Managers are selling off real property, getting rid of government-owned businesses, and deregulating to allow market forces to achieve public benefits. Governments can no longer monopolize, or even concentrate on, program delivery alone. Increasingly, they recognize that voluntary action is needed to address social ills, as President George W. Bush stated in his inaugural address.³¹

Governments, now more than ever, must persuade and motivate citizens to secure their support. Because many societies, even in advanced market economies, are becoming less coherent, less unified, more fragmented, and have less respect for political authority, public officials must bring together the various stakeholders and gain consensus on common action. Public officials need to spend less time managing service delivery and more time communicating,

30. Linda Kaboolian, *The New Public Management: Challenging the Boundaries of the Management vs. Administration Debate*, 58 PUB. ADMIN. REV. 189, 189-93 (1998).

31. *The Inauguration: "I Ask You to be Citizens,"* N.Y. TIMES, Jan. 21, 2001, at 14.

persuading, negotiating, and articulating their demand for services with their citizens.

Public managers and decision makers face complex choices about which public services and functions should be kept in the public sector and which should be privatized. Should privatization be carried out, and if so, what kind of supervision should public managers exercise over the private sector? One critical challenge is managing the process for eliciting the participation of the private sector in ways that protect public interests while still allowing businesses to earn a reasonable return on their investments. Public and private sector managers will need to gain a better understanding of the changing roles of government, and will have to find effective ways to forge public/private partnerships that can provide services and an infrastructure for which neither sector alone has sufficient and appropriate resources. Governments must be restructured to authorize, partially finance, oversee, and assure access to many types of services and infrastructure rather than deliver them directly.

Governments must develop the capacity to manage contractual relationships and public/private partnerships. As functions shift from state enterprises and public agencies to the private sector, governments must take on more responsibility for carefully crafting and enforcing cost-effective regulations. These regulations must protect the collective welfare, ensure open competition, and take advantage of market discipline without imposing unrealistic controls, constraining businesses unnecessarily, and sabotaging the achievement of goals. Because they are responsible for overseeing those privatized enterprises that are “natural monopolies” or that provide services that directly affect the social and economic well being of citizens, public officials and employees must be trained in negotiation and interaction, effective regulation, and how markets and private companies operate. Finally, public officials must play an essential role in mitigating any temporary negative impacts of the transition to a more privatized system.³²

In short, privatization, properly carried out, works well and produces proven benefits. It requires a different role for government, and it calls for more brain cells and fewer muscle cells in the public service—more steering and less rowing.³³

32. Dennis A. Rondonelli, *Privatization, Governance, and Public Management: The Challenges Ahead*, 10 *BUS. & CONTEMP. WORLD* 149, 149-170 (1998).

33. E.S. Savas, *quoted in* DAVID OSBORNE AND TED GAEBLER, *REINVENTING GOVERNMENT* 25 (1992).

