

New Directions in Road Privatization¹

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Introduction

Generally, a road network is seen and presented as a public good [Lévêque, 1998], [Crozet, 1997]. And because of that, governmental agencies must insure the road provision.

Some authors, however, contest this perspective and show that these propositions are erroneous [Roth, 1996]. From a theoretical point of view, there is no way to contest that a road network is a private good, which can be produced by the private sector [Block, 1983 (a) and (b), 1980, 1979]. Indeed, if we take the current definition of a public good given by Samuelson, it can be easily shown that the prerequisites are not respected. The case of congestion is sufficient to justify our point of view. When a driver uses a particular part of a road, that one is not available for others anymore and its use implies the exclusion for the other drivers³. This wasteful particular situation shows there is exclusion from and rivalry for the same part of a

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³ It is physically impossible that two cars are on the place of the road.

road. The waiting line implies the impossibility of a simultaneous consumption. Consequently, it is not a situation of a public good in its current meaning. On the contrary, we deduce that it is a private good.

From an historical point of view, different studies illustrate the potentialities of the private sector to build roads and manage them [Klein, 1996], [Roth, 1996], [Foldvary, 1994], [Majewski, Baer and Klein, 1993], [Klein, 1990]. So there is no reason that the road network could not be managed by the private sector. We deduce that a road network is a private good whose provision can be insured by the private sector or private entrepreneurs.

Because roads are private goods but at present are managed by the public sector, we must define the path to put them back into the hands of the private sector. This process is called de-socialization⁴ or privatization [Rothbard, 1995], [Hoppe, 1991]. In the first section, we specify the meaning of this process and the constraints we must face. We answer the question how to proceed. In the second section, we present the Rothbard's theory of appropriation. His theory is very useful to define the true owner in a free or in a libertarian society. In the third section, we present our personal point of view of the process of privatization of the road sector, which could be extended to other sectors. This solution is restitution and when it is impossible, we must turn to the taxpayer solution. In the fourth section, we criticize other propositions, which constitute alternatives methods of privatization and we explain why they are not the good way to proceed.

The Importance of Defining a Correct Theory of Privatization

The consequences of the socialized means of production

There are only two ways of managing the scarce resources [Rothbard, 1977]. The first way is the use of power or coercive tools to exploit resources without assuming all the responsibilities, (which rests with the

⁴ More accurately, the de-socialization process is characterized by the privatization of assets and by the removal of all types of governmental interventionism [Herbener, 1992], [Rothbard, 1992].

owner), or to benefit from the good without having produced the efforts needed to acquire it. The second way is based on free exchange.

Two situations can be distinguished for the coercive way of managing the resources. The first situation can be described as the situation where the exploiters take the gains and leave the costs to the exploited. They take the good without making the efforts for the production. The only efforts they make is to take the resources by violence [Fesser, 2000], [Rothbard, 1998, 1970]. These situations can be called as forced labor (the case of slavery) or theft. In the case of slavery, the slave supports the pains and does not benefit from the fruit of his labor on which he has a right. In the case of theft, the victim consents to make some efforts and to renounce to some opportunities (leisure for example) in order to acquire a good that another person then steals from him⁵. We can find similarities to the case of the road sector financed by taxation⁶. The government takes money by force to build roads without the consent of the people. So it can be analyzed as an *imposed production*. This situation is not particular to the road sector because it is a general characteristic of the governmental intervention. In that sense, it is more the consequence of governmental hindrances in the transport sector.

The other situation is to claim a benefit from a monopoly position on a particular sector. You insure the production without assuming all the duties or obligations. For instance, a government agency can have a monopoly on money and print many banknotes. The result is *fiat* money, which is valueless [Rothbard, 1978, 1977]. It is only paper without any counterpart. In the same way, some government agencies benefit from a monopoly to manage a health care system or retirement funds. They extract money in exchange of a product or some "rights". Unlike these promises, the taxpayers lose their rights in part or in totality⁷. The health care is of bad quality and the pensions will be less than expected. There is a similar situation in the case of the road sector. For instance, government employees insure the public supply of roads without being fully or partly liable. When there is an accident caused by a hole in the road and although it

⁵ The first case is different from the second one, because it is sure that the slave will not benefit from the fruit of his labor. It is more uncertain for the victim of the theft. He can invest in protection against thieves.

⁶ Taxation can be seen as a mix of slavery and theft without totally having the characteristics of both. Indeed, taxation is not forced labor or slavery in the sense you can choose to work or not to work and choose the work you want to do.

constitutes a default (a failure) in the good provision, the employees' liability is not engaged [Carnis and Facchini, 2000]. The costs are left to the taxpayers, which must pay for the damage done to the victim. When the law provides no compensation, the victim must support the damage alone. In the same way, government agencies can determine the conditions of using the roads without taking into account the desires of drivers. The problems of congestion in the downtown and urban area and the important number of accidents testify to this inability to deal with the problem and show little concern for them [Winston and Shirley, 1998], [Small, Winston and Evans, 1989], [Block, 1983]. Consequently, government agencies provide a good independently of the needs of the drivers [Mises, 1996 (1944)]. In that sense, there are no firms and no customers, but only a bureaucracy, which imposes its norms and its view on the population. The relationship is not contractual but hierarchical. So the situation can be seen as a *forced consumption*.

Because of the monopoly of the government on "legitimated violence", it is impossible for the drivers to choose another provider, nor apply pressure to have a better product⁸. They have no choice. They must adapt their driving to these conditions. They must spend more time than necessary and they must face up to the higher level of risk to die because they have no true control on the entry to the network. To sum up, there is no choice, no contract, only the imposition of a product and the prohibition to turn to private providers. Not only do the government agencies have the monopoly of the provision of the good, but they also impose by violence its consumption in specific conditions [Mises, 1998 (1940)].

In the literature, we describe this situation as the socialization of the means of production [Hoppe, 1989]. Because there is no legal owner of the infrastructure (in the physical sense)⁹, we assume that everybody is

But as the slave, you must give up a part of your income. It is not theft, because you know you must pay taxes according your revenue, but as the victim, yours rights are violated.

⁷ In fact, the value of these rights is devaluated.

⁸ The only available way is political pressure. It means you must violate the rights of other people to protect you rights by enacting a new law for a specific purpose. Consequently, there is contradiction. You assume the government violates your rights by its hindrances and it must be condemned for that or either you fight for enacting a law and you accept the rules of the game. In the first case, you do not proceed in the same way. In the second case, you denounce an act that you commit also. This is contradictory. Consequently, you accept that the game is legitimate and the use of coercive means can be approved. The only way to proceed is to influence the legislators to stop the actual intervention.

⁹ In this sense, the concept of liability has no meaning, because there is nobody legally in charge of the infrastructure. Consequently, there is nobody to sue when the agency is judged responsible for the damage.

the owner of the property¹⁰. In fact, there is a confusion on this point, because some people manage the infrastructure, they benefit from the property without assuming all the duties¹¹¹². They are not owners in the legal meaning of the word but they behave as if they were owners¹³. In this sense, the socialization of road provision characterizes a particular situation concerning the rights and the duties of the *manager* and the production conditions. The property rights are deteriorated. The owner is not clearly identified.

The meaning of free market provision

The second way of managing scarce resources is a voluntary provision of roads. The producer and the consumer agree to exchange a good with some characteristics at a specific price that satisfy the both parties [Rothbard, 1977]. In this situation, the exchange expresses a legal transfer of property rights¹⁴. The owners before and after the exchange are identified. This is the basis of a free market order [Friedman, 2000]. Both parties benefit from the exchange. Moreover, competition insures that the consumers are satisfied and that their desires are taken into account. The firms, which do not take care about this, are driven out the market [Kirzner, 1996], [Rothbard, 1993].

Defining the privatization process

Privatization is a process to transfer property rights to a private owner. That is to say, the management of resources is shifted from the coercive one to the voluntary sector. [Rothbard, 1995]. Henceforth all the voluntary exchanges of this good are legal and legitimate. Moreover, the process of privatization specifies who owns the property right and it clarifies the duties of this owner. In the example we took previously, if the hole in the road is the cause of the road accident, it follows that the owner of the road must pay for the damage he caused. Similarly, the owner must take into account the desires of his consumers. He must

¹⁰ This is one reason that there is no control on entry. Yet there are some police forces who control what is determined, arbitrary, dangerous, but it does not correspond to the characteristics the people desire.

¹¹ These persons behave as if they were the owners, but they benefit from immunity from legal proceedings and bad management. In the both cases, the taxpayers bear losses.

¹² In the case where they assume all the duties, they would be the owners. However, it is another question to determine whether if they are the legitimate owners.

¹³ They behave as owners but they are only impostors. Their property titles are not legal.

determine appropriated norms to maximize his revenues and control the drivers, who could cause him damage by adopting an uncorrected way of driving [Block, 1983].

However, it is insufficient to define privatization as a process that transfers property rights to an owner and clarifies the liabilities. The process must determine the true owner. In this way, the process of privatization can be shown to be a search for justice. The goal is to restore the victim in his rights. In our view, privatization implies a concept of justice. It must restore the chain of legal exchanges and end the period of illegitimate exploitation.

Imagine a country called Syldavia, where the government owns all the roads. Because it is impossible for it to keep controlling the whole economy, it decides to sell the roads. For this purpose, it can use different means (selling through auctions, selling shares of firms it has created or even giving these firms to members of the *nomenklatura* or to political friends...). The result is the privatization of property. Yet, this process is not satisfactory. It neglects the dimension of justice, which is to determine whether the property titles are legally owned¹⁵. Indeed, although the process of privatization is based on voluntary exchanges, it is not sufficient. The exchanged titles of property must be appropriated by legal means. Consequently, there must be no interruption in the legal dimension of the previous exchanges. Therefore, privatization must put the property rights in the hands of the legitimate owner. The market order insures the realization of the efficient use of resources.

In this perspective, the socialization of the means of production is not only the inefficient use of resources by government agents, but also the illegal exploitation of resources, which are not legally owned. Accordingly the purpose of privatization is not only to transfer property rights to people who have the ability to manage the resources efficiently, but also to transfer the property titles to the true owner. It is a historical search for justice. Privatization is concerned not only with efficiency but also with justice. The government generally forgets this latter component, for the simple reason that it has not the right to sell the

¹⁴ We assume that the money and the good are the legal property of the exchangers. Their origins must prove that their appropriation was made in a legal way.

property and cannot benefit from the financial gains. They should recognize they are thieves and exploit resources unfairly.

The theory of property according Rothbard:

The previous point assumes the existence of a true owner of the resources the government manages illegally. This proposition supposes, consequently, you are able to define a correct way to identify the true owner. Finally, it is based on a theory of appropriation. For this purpose, you use the theory of appropriation, refined by Rothbard [Rothbard, 1998].

For Rothbard, in a libertarian society, the criterion for determining the owner of a good is that of self-ownership. The first man who finds a resource and mixes it with his labor becomes the just owner [Ibid. p. 40]. Consequently, in the Rothbard's theory of appropriation, ownership can be reduced to three principles: 1) man's ownership of his own body and labor (self-ownership); 2) the ownership of land and other resources that he found unused and then he transformed by using labor (homesteading); and 3) the ownership of goods with other persons who produced them under the conditions defined before (exchange) [Ibid. p. 41].

These three simple principles allow us to identify the just owners of goods, and in our case of the roads. They are the people who for the first time used the piece of land on which the roads were built. In case these original owners sold their rights on these goods, the just owners would be the buyers of the roads.

These considerations, however, are valid for a libertarian society, whose members respect clearly identified property rights. Unlike this ideal case, society today is honeycombed with interventions by a coercive government. Most pieces of land were seized by violence. The case becomes more complicated, because in some situations, some owners received compensation. Who is the just owner when a property was seized and then developed by non-owners?

¹⁵ We know these persons exist. Indeed, the government cannot work without resources extracted illegally.

A new theory of privatization: restore the victims and allocate fairly the assets

The problem when the properties were seized

Rothbard offers a clear solution to this problem [Rothbard, 1998]. Each victim must be granted restitution of his property so that he can have the same status as before the aggression. Indeed, the seizure of property can be seen as a violation of property rights. The government took the property by violent means without the consent of the original owner. In this sense, this government property has a criminal origin.

By applying these results to the case of roads, we deduce the government and its agents cannot be the just owner. Because the State, according to some authors, is by definition organized violence on a large scale, its title deed is not valid and legitimate. Moreover, the present exploiters must be deprived of these illegitimate rights, by which they exploit the resources unfairly [Hoppe, 1991, p.98], [Rothbard, 1978]. So all the land and roads for which the original owners can be found, must be reverted to them immediately. This raises still further questions.

Privatizing Roads: the case of restitution

The libertarian theory of property rights helps us to understand who the owner must be. But some complications arise. The questions of expropriation, voluntary sales, and entangled properties constitute important challenges for the process of the privatization of roads. For each specific problem, we will propose a solution, respecting the libertarian principles, defined in the previous section.

Because the State (and particularly its representatives) is an illegitimate owner, all properties taken by violent means must be reverted to their original owners as we showed. Therefore, expropriation grants no rights to the new owners, whose rights derive from a government distribution¹⁶. In some cases, the original

Consequently, there is always an owner. The existence of an owner results from the process of imposed production.
¹⁶ The current owner can be the government, firms who benefit from concessions, or individuals to whom the government attributed pieces of land. For instance, in France some firms manage the highways. A price is demanded

owner benefited from an amount of money received as a compensation for the lost land. The government determined the compensation. These transfers of property rights cannot be considered as a voluntary exchange. By definition, in the case of a theft, it is assumed that the victim did not consent. It is clearly again a violation of property rights. For this reason, expropriation is the same as a forced exchange. According to the principles defined in the libertarian framework, the property must be restored to the victim of the forced exchange. The restitution of property rights to the original owner does not imply the restitution of the money he received in compensation. Indeed, he bore the abusive use of violence on the part of the government, so he need not return compensation.

Another case occurs when the government proposes a compensation to which the potential seller agrees. In this case, the exchange is legal and the new owner becomes the legitimate owner. Therefore, the original owner loses its right on the property. This situation is radically different from the first one, where it is supposed that the original owner is not seller and he refuses the transaction. Because of that, the government seizes the property and imposes an arbitrary compensation. In this first case, it is clearly expropriation and in the second case is only an exchange between government agents¹⁷ and the owner, and by selling his property right against a certain amount of money, the owner shows his preferences. He preferred the money to keeping the piece of land. But if the expropriated person did not want to sell it, he did not have to sell it. He then had to wait for expropriation procedure. Consequently, the agreed exchange provides the information that the *first* owner is not the *actual* owner anymore. Another question is raised, however: who is the new owner? The finding of the original owner will shed new light on a solution to this particular problem.

from users to recover a part or the totality of their investments. Consequently, according our theory, these firms lose their rights on the land and on the roads they manage.

¹⁷ Even in this second case, it would be incorrect to see the government agents as the true owners. Indeed, to come to this conclusion, it must be shown that the resources used to buy the right have legal origin. The financial means could have resulted from a previous legal exchange between the government agents and the seller. However, we know that to

The problem of entangled properties

The entangled-properties problem arises when ownership rights on several properties are divided among different parties? How can ownership then be established? Let us imagine that the original owner of a piece of land had been identified and that after the initial expropriation, an entrepreneur built a road on it. The property rights are then entangled. Who is (or are) the owner (or the owners)? The original owner can claim he had a legal property right on the land, and that it must be reverted to him. The entrepreneur can also show he is the real owner, because he invested in the building of this infrastructure. A third person could assert that the entrepreneur and the original owner are both owners of joint property. However, both of them could have specific and opposite uses in mind, so that nobody would be satisfied.

In this particularly difficult situation, two solutions are possible. The characteristic added good is either separable or inseparable. For instance, one owner has added new lights on the road for a better traffic. If he must give up the road because he is not the true owner, he is free to keep the lights because the added goods possess a separable characteristic. Let us say that in another situation, this owner has transformed the road. In this case, it is impossible for him to take the modifications with him. He faces the choice of leaving his property behind or destroying it. Justice obliges him to restore the property to the state it was in when he took it illegally, but the inseparable characteristic of the good, namely the road, makes it impossible for him (the illegitimate owner) to provide a fair restitution.

In the first case, the builder has only a right to his good, no more. If he desires it, he can take his property with him [Rothbard, 1998, p. 59]. So, in the case of separability, the owner can move and take his property with him. In the case where the good is inseparable, he is considered to lose his right on the property.

The right owned by the entrepreneur is not a direct right on the property of the good, but a derived or conditional right on the property of the good, whose value depends on the characteristic of separability. If

be able to pay, the government needs to extract money from the population by violent means [Rothbard, 1998]. The problem is to establish the first step of this illegal extraction.

the added good has an inseparable characteristic, the value of this right becomes zero. Because he cannot dissociate the two good and is responsible for their association, he cannot affirm his right on the property.

Our position is different from that of Roth [Roth, 1996, p. 153]. According our theory of property rights, the process of privatization does not imply restitution or compensation (to the illegitimate owner), which is also a view shared by Dorfman [Dorfman, 1981, p. 177]. On the contrary, the process of privatization implies restitution to the true owners. The exploiters, who benefited from the use of resources because of their own violence or of that of a government agency, have no right to claim on the land. The builder knew he built on land taken by force. He took an option on the future, knowing that he could loose his right or earn money during the period of use of the coercion [McChesnay, 1999]. In the same way, a dictator has no right to good to which he added inseparable characteristics. He took only an option, whose value depends on the power, the coercion he uses to stay in place [McChesnay, 1999], [Rothbard, 1998]¹⁸. So what are the consequences of applying these principles to the problem of the privatization of roads? According the stated results, the true owner(s) is (are) the original and unique owner(s). The builder has no right and cannot claim any restitution¹⁹.

The Hoppe solution: bargain with the thieves

Hoppe defends the idea of the possibility of a bargain between the parties. Consequently, the solution could take the form of a joint ownership between the landlord and the investor. However, we showed that in the case of a road there is no room for such a bargain. If the owner (who is the exploiter) desires to take his property with him, it means the destruction of a particular section of the network. It is the only way that the entrepreneur can use to recover his rights on the property.

¹⁸ The question of the compensation is an important one. The builder violated the rights of the true owner. Consequently, restitution is the first step. The second step is that of compensation. "The criminal" must pay for this violation. Compare this situation to the case of a robber who is caught. The builder benefited during many years from the complicity and the indulgence of a criminal state, so that the property right offender must not pay for these crimes.

¹⁹ Obviously, the value of the property will diminish. This is, however, the only means to recover a part of the capital. The entrepreneur must bear the risks of this particular situation. In the same manner, some investors take some high risks on financial markets and can lose a part of their capital. We can note the similarities of these two situations.

Hoppe, however, proposes a bargain between the true owner and the owner of the inseparable added good²⁰. He justifies such bargain from the point of view of economic theory. The goods are joint products and cannot be disentangled.

“Structures and land cannot be physically separated. In terms of economic theory, they are absolutely specific complementary production factors whose relative contribution to their joint value product cannot be disentangled. In these cases, there is no alternative but to bargain.” [Hoppe, 1991, p. 99]

This proposition does not seem to be correct. Indeed, the proposition of bargaining presupposes that the true owner attaches value to the infrastructure. Nevertheless, it is not certain at all that this will be the case. The original owner may prefer using the piece of land to produce tomatoes and carrots. He may want to build a house with a swimming pool. Nobody, but the rightful owner, can know with certainty what the future use of the land will be. To defend the bargaining solution consists only of presupposing the future use by the true owner. The only one person, however, who can answer this question is the true owner and not the *armchair* economist. Consequently, the added value could be zero or negative. On this basis, we cannot justify a bargain between the two individuals and we cannot impose a bargain between the victim and his thief. In the case where the true owner attaches a certain value to the joint production, the production benefits from a *positive* transformation. The illegitimate owner is in a weak position and cannot claim any right. The legitimacy of property rights is based on the principles of self-ownership, homesteading and exchange, and not on a bargaining after despoiling. A second argument can be put forward. The builder has only a right to the added physical good and not to the combination of the two goods. So he has only a right to the macadam, the painted signs, and different posted signs, which are on the road. He can conserve his goods by destroying the stretch of the road and taking with him the different parts of his property. But he cannot claim a right to the property of the other person at all.

²⁰ Remember that the owner of the added goods is the previous exploiter of the resource. This situation is particularly ironical. This person violated the rights of some persons for many years and now claims it will be unfair if he loses his

Privatizing roads: the dilemma of original owner and the unknown owner

The question how to "de-socialize" the road network seems to be complex one in the case of the impossibility of determining who the original owner is. Yet, we could assume that this problem must be less complex than it seems. Indeed, the cases where people can justify that they have some legal rights on the land would be the major part of the cases. The owner must show a written proof for his right on the property. The different documents, concerning the expropriation, can easily be found and used to grant the property rights to the "known" owners.

We must, however, also find a solution to the problem of the "unknown original owner". A very simple solution is possible. The criterion of homesteading defines it. The first user of the good becomes the new just and legal owner. The first person who modifies a stretch of road with his work becomes the legitimate owner. By installing road signs, painting road marks or maintaining the network, the person mixes labor with the good, and becomes the legitimate owner. Consequently, there are different owners for the all different parts of the network where an entrepreneur decided to maintain the road²¹.

A particular technical problem to identify one owner can arise some cases, namely where several people are able to justify their property rights. Indeed, the potential number of beneficiaries can be very numerous. How can we solve this problem?

The Hoppe solution or the syndicalist solution vs. the taxpayers solution

Different solutions are possible to the problem of numerous claims. Hoppe proposes a general solution, which does not distinguish between the situation of the numerous claims and that of the unknown owner. He proposes to give a property right to the different street workers [Hoppe, 1991]. Our solution is different:

rights. Before claiming this, the first problem is to restore the victim and to compensate him.

²¹ In this case, the status of the worker is indifferent to the solution. The new owner can be a worker, who is hired by the government or a private company. He becomes an entrepreneur, who takes some risks and searches for profits.

the property right must revert to the *taxpayers*. We will justify our proposition and explain why the solution proposed by Hoppe is not satisfactory.

Because it is technically impossible to define who the original owner is, Hoppe proposed a solution where the street owner will be the street worker. He justified his proposition by asserting that the people who are the first to mix their labor with the roads are the street workers²². They, therefore, become the just owners.

“Assets should become owned immediately by those who use them - the farmland by the farmers, the factories by the workers, *the streets by the street workers*, the school by the teachers, the bureau by the bureaucrats (in so far as they are not subject to criminal prosecution) and so on.” [Hoppe, 1991, p. 98]

This proposition seems to be correct and to respect the theory of appropriation by mixing labor with the good [Hoppe, 1989, p. 89]. According to the principles of homesteading, this proposition seems to respect the libertarian principles. There are, however some problems, for which you cannot consider this solution as the satisfactory one.

The first objection concerns the difference between the contributions of the workers. The work of a technician is different from that of an engineer. How would be possible to determine the appropriate share of each worker? What will be the criteria? It is impossible to clearly define the shares. Hoppe's proposition is too imprecise. The wage level cannot be the criterion. Indeed, labor markets do not work on the basis of a free market, but reflect political decision-making (minimum wages, union organizing, and subsidies...) and have no relationship with a market driven by the entrepreneurs and the workers. To follow this solution would consist in extending the errors of the previous illegitimate situation. It is, moreover, technically impossible to share the different assets.

²² This solution has some similarities with that of Pr Roberts. See [Rothbard, 1995, p.351] *"As Professor Paul Craig Roberts stated recently in a fascinating speech in Moscow to the USSR Academy of Sciences, there is only one way to convey government property into private hands. Ironically enough, by far the best path is to follow the old Marxist slogan: "All land to the peasants (including agricultural workers) and "all factories to the workers!"*

Who is the street worker or in our case the road worker? The people who built the infrastructure or the workers hired for maintenance, or both? Each individual adds to and mixes his labor with the material, and consequently becomes the owner of a part of the infrastructure. Moreover, it is not clear that the first user would be the road worker. The driver with his car wears down the road, and mixes his labor with the good. The distortion of road with the weight of trucks is another effect. From this perspective, drivers would be the first owners.

Second, as we analyzed the allocation of property rights among the potential owners of the road, the right is only valid for the surface of the road, and the different components of the road, but not for the land. Consequently, the construction process involves all the persons who took part in it. This solution obliges us to know all these people. Here we find the same difficulties or even more than for the identification of the deed of covenant. Therefore, this process is in a dead end.

Another objection is the fact that the solution does not respect the principles of appropriation. We specified the three possibilities to define them: (a) self-ownership; (b) homesteading and (c) the exchange [Rothbard, 1998, p. 41]

On this basis, it seems difficult to us to accept such a proposition. The road workers use their own work to build the different infrastructures and buildings, yet they are paid to do their work. Consequently, they sell their labor to another person, who becomes the new owner of this production. The true and legitimate owner is the person who pays for this work. By selling their work, the road workers sell their property rights on the result of their work. We deduce logically that [Ibid., p. 38]:

- (a) the road workers cannot be the owners on the basis that they mixed their labor with the infrastructure during the building. Indeed, they renounced to their legal rights by selling them.
- (b) *an owner exists* and must be identified.
- (c) the street workers cannot be the owners according to the criterion of homesteading, because we know the existence of some owners. Identifying them correctly and making possible the sharing of different assets constitute the difficulties.

The taxpayer solution:

A deeper investigation could conclude that the true owner is the person who pays the wages, and yet this consideration shifts the problem only to another floor. Indeed, the manager could be considered as the person who pays the wages of workers. However, paying the different wages is not a proof of being the owner of the firm and thereby of the different roads. The example of the private sector²³ can help us in analyzing more concrete terms the problem. Let's take the example of the General Motors Company. We can assert that the manager of the company is the owner of the different product, which have not already been sold on the market, and of the different assets. Obviously, we know that the owner(s) is (are) the shareholders. Indeed, every manager himself sold the fruit of his labor against a wage paid by someone who hired him. He is logically not the owner as well. We conclude that The owner(s) is (are) the person or the people who paid the wages of the different workers, namely the managers of the firms who build the roads.

Who are the shareholders of these firms? According to the libertarian principles of appropriation, we know that exchange constitutes one means to transfer property rights. The production and building of roads is normally brought about by private firms working on contract for the government. However, they also renounced to their property rights by selling their services. Consequently, the owners are the people who financed these roads, namely the taxpayers.

The taxpayers financed the roads and paid the different wages. We can see that the taxpayers are buyers and owners in spite of their own will. They can be considered as *forced* owners, they are nevertheless the true owners. In this way, privatization leads to the creation of the property rights for all the taxpayers. By asserting that taxpayers are the owners, we do not claim that all the taxpayers are the owners of the whole

²³ Obviously, the comparison is only on these points. Numerous characteristics distinguish private firms from government bureaus (incentives, sovereignty of consumers, prices, notion of cost...). But the two external forms can be similar. To assert that the coins are produced by the government and are round, and that similarly some coins with the same form are produced by private firms, does not imply that the private and public coins are identical in all their characteristics.

road network. Different properties are determined according to the criteria of tax intensity and fiscal areas [Dougher, 1997].

A first step is to define the different boundaries of the road network. We distinguish the roads according to the type and their political and geographical locations²⁴. In concrete terms, the road network could be defined in sections. For instance, in the French case, the communal, departmental, national roads, the turnpikes and the urban network, can be separated. The motorway A1 would have its particular shareholders, which could be different from those of the A4 motorway. This characteristic would be the same for the national roads. For the urban sections, the network constitutes a whole. Indeed, the fiscal basis is determined in this way. With these criteria, the different assets are identified and can be shared among the different original owners.

We must also determine who the potential owners are²⁵. The answer is people who can prove they have paid taxes. Only they can claim the right of ownership. The shares will be distributed according to the tax intensity during a specified period²⁶. The duration of the infrastructure could be another criterion. We can, therefore, determine the shares of each potential owner. However, there are many different taxes, which serve to finance many different projects. Therefore, it is impossible to know who paid for what. This problem, however, can easily be solved. Different contributions for maintenance spending and investment can be identified by the geographical origin of the taxpayer and their percentage²⁷. Each taxpayer can provide proof of past tax payments. In that way, the taxpayer can become a shareholder of different companies, whose assets are clearly identified.

²⁴ The definition of road sections seems to be arbitrary. It is, indeed, the case. Bureaucrats decided the fiscal basis on arbitrary criteria [Rothbard, 1978]. We think that the best strategy to return to the previous situation (the situation just before expropriation) is to use the same characteristics. This choice is arbitrary because the criteria of fiscal extortion are arbitrary. But we think this constitutes the only means to avoid involuntary transfers and unfair redistribution.

²⁵ They are potential owners in the sense that they must prove they have a voucher, and they can decide not to become shareholder of the company for different considerations.

²⁶ The specified period is defined as the period between the creation and the sharing of the assets. During this period, we must add the total investment and the maintenance expenditures.

²⁷ For instance in France, the X national road was financed for 35% by the state, 60 % by the region and 5 % by the department.

With these elements, we are able to define a specific road network with different road sections belonging to different shareholders. We can also proceed to the sharing of roads between the different owners. Some inhabitants would thus be shareholders of different roads in different proportions. For specific sections, it would be impossible to define the different contributions accurately. For instance, we can imagine a section that benefited from different subsidies coming from different levels of government institutions. In this way, we may discover that taxpayers have contributed twice to the same road via different channels of financing and that it is impossible to divide the different contributions. This situation might make it impossible to define shares concretely. This problem could be solved by the creation of a specific firm²⁸, which could hold different participation in different sections of roads. Taxpayers would be the shareholders of that firm.

Who will insure the road maintenance? It seems probable that the shareholders will hire the services of firms, whose specialization it is to build roads. In that way, the major problem is the determining of the owners, and not particularly, what the new legal owners will do with their property.

Another consideration is what to do if the road network is not profitable, or when debt is linked to the road. Some legal owners could refuse to assume their role of ownership. In that case, they renounce to their rights (in part or totally)²⁹. They have to accept that they are liable the reimbursement of the interest and capital. We can also imagine the case that for a specific road, nobody wants to become a shareholder. Say, for example, that the road costs a lot of money, is not profitable, or linked to big debts. The banker or the person who lends the money becomes the owner. If it is impossible for them to be reimbursed, they must bear the risks they took by lending money to the government. The potential shareholders are not responsible for errors committed by others. If the banker refuses to become owner of the road, he may do so³⁰. Consequently, either the good becomes useless and loses its characteristic as an economic good or it is

²⁸ Is there really a risk of developing bureaucracy? Will the costs of transition be too high? We think that when the process of sharing assets would been realized, the contract between the government and the private firm will end. The new shareholders will manage their assets, as they want to do it. In that way, the costs associated with government intervention will disappear. There will obviously be costs associated with the period of transition. The choice must be made between these costs and those of the regulated sector.

²⁹ In the case where a bank financed the creation of the infrastructure directly, it can also become a shareholder for an amount equal to the loan.

³⁰ We justify the right of refusing the share as a counterpart of the forced consumption.

a free good, whose ownership can be taken up by the first user. The criterion of homesteading is applied in this case.

One critic of this method asserts that this method of privatization would develop inefficiencies by generating big bureaucracies in order to manage the process of privatization. However, some people or firms (who signed a well-defined contract) could manage this transition period and determine the property rights for the members of the population. Some banks or auditing firms are able to do this work in a professional way. They have much experience in procedures of mergers, privatization of different firms, and in organizing “financial pools” to finance important projects. Bureaucracy is the inherent problem of all systems. The solution is to find the means of controlling bureaucracy and to determine its limits. The market order is a means of succeeding in doing that.

Finally, the management of the de-socialization process is not in itself very different from the other merging activities. After privatization, different assets could be evaluated by putting the company on the stock market. Indeed, these shares would be then tradeable like any other shares [Hoppe, 1991, p. 98 - 99].

Other propositions and practices for the privatization of the road network

Privatization and Auctions

A widely used process of privatization is the sale of the public firms by the auction process [Denis -Judicis and Petit, 1998]. We could easily imagine that such a method could be proposed as a solution to the privatization of the road network. Private firms could henceforth manage this resource as others firms do in other sectors³¹ [Dunn, 2000]. This process of privatization insures that some criteria of accountability will be used to manage the road and the possibility of voluntary exchange will allow the peaceful transfer to the most valued productive use for the society. However, this process does not take into account the criteria of justice we defined. It neglects the possibility of the existence of a true owner (who previously owned the

land). Moreover, this solution supposes the impossibility to identify the different contributors who paid for the construction of the infrastructure. Consequently, this procedure only considers the goal of efficiency, the cost of the transfer of the rights³². So this process of privatization can and must be considered as illegitimate.

Privatization as a Big Lottery

In his book "*Making Economic Sense*", Rothbard quoted Pr. Roberts' s proposition, which consists in organizing a big lottery. Roberts justifies this by saying that:

"Returning the State property to descendants of those expropriated in 1917 would be impracticable, since few of them exist or can be identified, and certainly the *industries* could be returned to no one, since they (in contrast to the land) were created by the Communist regime" [Rothbard, 1996, p. 351-352].

He proposes to share the different companies by giving stock certificates to the populations whatever their social origins. The goal is to put into the hands of the private sector these industries in order to find the most efficient and productive use of the resources.

This analysis presents many flaws. Indeed, Roberts supposes *a priori* the impracticability to identify the true owners. He must prove such a statement, but nothing is advanced.

His proposition to do the sharing by organizing a lottery is more problematic. Rothbard pointed out correctly the possible opposition of parts of the population³³ who is hunger for justice. More precisely, "a

³¹ The shares could also be distributed among the population. For instance, the land reform in Mexico was based on the distribution of the pieces of land to the farmers. In this case, the price is zero.

³² With specialized firms in the selling of the shares of firms, the cost is relatively not expensive.

³³ The problem is not to judge the process whether it is popular, but to see whether it is compatible with justice. The two characteristics are not identical. Indeed, redistribution policies currently benefit from a strong support of the major part of the population, although it is not conform to justice. Rothbard also mentions the disappointment of the people when they are among the losers. In this sense, he thinks in terms of the popularity of the privatization process. There is confusion between the feasibility of the process and its dimension of fairness.

lottery distribution would be so flagrantly unjust that the ensuing private property system might never recover from the initial blow" [Rothbard, 1996].

Rothbard also advances the possibility for the people to be disappointed if they are among the losers of the lottery. Indeed, the outcome of the lottery is crucial problem. The most important flaw concerns the organization of the lottery itself. The theory, we proposed, shows that the problem is to share the different shares *effectively* and not to define only a probability or a conditional right. The built roads needed the effective mobilization of resources in different ways: taxation, forced work ... Consequently, there are owners, who own some rights on these goods. It will certainly be impossible to find all the owners, but it will be possible to find some of them. The only consequences are that these owners will benefit from a greater share of the good or from shares of greater value or from both.

To be built, these infrastructures needed different contributions from different people. Some contributed more than others and in different manner. Consequently, to organize such a lottery supposes first the possibility to define a clear and a fair criterion to share the different tickets among the population. The criminals who benefited from exploitation for many years will certainly be excluded from the lottery. Other persons could benefit from more than one ticket. The number of tickets for every person should depend on their past contribution. It is possible to define the participation criterion, this only adds an additional step to the taxpayer solution without justification. Consequently, it will be less efficient to do that than to share the property titles in the manner we defined previously.

Secondly, the organization supposes the definition of the prize it is possible to win. Will it be only one lottery for all the goods, all the roads or will it be different lotteries for different goods? This topic is completely eluded by Roberts and yet it is a crucial point. In fact, there is no solution to such a dilemma, because it is not more nor less unfair to give a big prize to only one person than it is to offer a lot of smaller prizes to different people. Indeed, the problem is to restore the victims in their rights and not to define a mechanism, which suggests that you have only a conditional right. You are or you are not the true owner.

There is no middle way to proceed. A lottery term ignores *de facto* the dimension of justice. Consequently, this process of privatization is not legitimate.

Commercialization is not privatization

Another proposed solution is the sale of a part of some firms to the private sector. In this situation, the government keeps an important part of the shares in order to influence investment and to control the executives [Roth, 1996]. This case is radically different from privatization. The aim is to attract investors in order to solve the problem of the financial capacity of the government. The aim is also to inject some private methods to manage the firms. Mises, however, has pointed out for a long time that there is a crucial difference between public and private management [Carnis, 2000], [Mises, 1996 (1944)]. The solution for the government is not to implement some private recipes but to transfer these activities to the private sector. Consequently, this process cannot be assimilated to privatization. It is only an evolution of the method to produce a better exploitation of illegally owned resources³⁴.

The other solution is that of a concession [Fielding and Klein, 1993]. In this case, a private firm benefits from a privilege of exploitation. Here, there is no search for the true owner. There is also no transfer of property rights, but only the transfer of the right of the illegitimate exploitation of the resources. The government subcontracts the exploitation activity. So it insures a return for itself and leave the risk taking to political entrepreneurs. It follows that in this case the best management is not a characteristic of economic efficiency, but a symbol of a better political exploitation. According our theory, this process is not privatization, but the commercialization of political rights and a form of political exploitation.

³⁴ This case could be interpreted as a new association between thieves, with new persons.

Conclusion

Privatization process is the crucial problem. The aim is not to put the management of the resources into private hands in order to attain efficiency, but to restore the rights of the true owners. This process is a difficult search for justice.

We demonstrated that the roads must be given back to the original owners of the land. In the cases where it is not possible to find these persons, the sharing of the rights must be based on the previous fiscal contributions. This is the taxpayer solution.

We concluded that the privatization processes most widely used are not legitimate, because they obey only the efficiency criterion. They neglect the justice criterion. In this way, they are only an extension of an illegitimate exploitation of resources.

Consequently, the only way to proceed is to give back the rights to the victims of government interference. The essential difference between this latter and the traditional processes is that the former is based on justice and ethics and the others on the search for efficiency.

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