MANAGING THE NORTHERN FORESTS: LESSONS FROM THE WEST

James L. Huffman*

I. AS DIFFERENT AS THEY ARE DISTANT

The Northern Forest is as different as it is distant from the forests of the western United States. They are biologically different. Western forests are almost entirely coniferous, while the Northern Forest is more a mixture of deciduous and coniferous. They are different in climate. With the exception of the Pacific Northwest, western forests are arid while the Northern Forest benefits from much greater precipitation. They are different in ownership and management. The Northern Forest is almost entirely privately owned, while western forests are significantly public.

Climate and biology are factors over which we have little control. Ownership and management are things we can and do decide. But even human institutions like property and government are not to be changed willy nilly. We are constrained by our history and our circumstances in significant ways. No amount of determination and good intentions can make it possible to impose institutions which are not compatible with the social fabric of the affected communities. In this sense the Northern Forests and western forests are also different.

From an institutional perspective, the most significant difference between the Northern Forest and western forests is ownership.[1] Public ownership has been common to the West for a variety of reasons relating to the process of western development over the eighteenth and nineteenth centuries. Because virtually all western lands were at one time public,[2]

---

* Dean, Northwestern School of Law, Lewis & Clark College, ; B.S., Montana State University, 1967; M.A., Fletcher School of Law and Diplomacy, Tufts University, 1969; J.D., University of Chicago Law School, 1972.

1. "In a few western states the federal government now owns over 85[%] of all commercial forestlands, and in [10] states federal ownership exceeds 50[%]." FORESTLANDS, PUBLIC AND PRIVATE 1 (Robert T. Deacon & M. Bruce Johnson, eds., 1985) (footnote omitted).

2. The Northwest Territories were ceded to the United States by the original states at the time of the Constitution. What is now Tennessee was ceded by North Carolina in 1790. What is now Mississippi and Alabama was ceded by Georgia in 1802. The Louisiana Purchase was acquired from France in 1803. Florida, the southwest corner of what is now Louisiana and a bit of central Colorado were ceded by treaty with Spain in 1819. Texas was annexed in 1845. The Oregon Territory (Washington, Oregon, Idaho, and parts of

many have remained in federal ownership or have been transferred to state ownership.[3] The National Forests were created from lands reserved from the public domain,[4] and since their creation they have only grown in size.[5] Despite numerous public lands commissions and sagebrush rebellions,[6] there has never been any significant disposition of public forest lands by the federal government.[7]

Montana and Wyoming) was recognized as United States territory by treaty with Great Britain in 1846. Most of the Southwest including California was ceded by Mexico in 1848. Parts of what are now New Mexico, Colorado, Wyoming, Nebraska, and Oklahoma were purchased from Texas in 1850. The Gadsden Purchase (the southern extremities of Arizona and New Mexico) was acquired from Mexico in 1853. Alaska was purchased from Russia in 1867. Hawaii was annexed in 1898. *See* James L. Huffman, *Public Lands Management In An Age of Deregulation and Privatization*, 10 PUB. LAND L. REV. 29, 38-44 (1989) [hereinafter *Public Lands Management*].

3. The United States government owns approximately 725 million acres, the vast majority of this land located in 12 western states. They are Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. The Bureau of Land Management has exclusive jurisdiction over about 33 million acres in California and Oregon. BUREAU OF LAND MANAGEMENT, PUBLIC LAND STATISTICS 5 (1992).

4. The term "public domain" describes all of the federal lands which were not withdrawn from availability for private acquisition pursuant to the homestead acts and other forms of land grants. *See* GEORGE CAMERON COGGINS & ROBERT L. GLICKSMAN, PUBLIC NATURAL RESOURCES LAW § 1.02[1][a] (1990). Withdrawn, or reserved, lands include the National Forest Lands, National Park Lands, military reservations, Indian reservations, and other lands set aside for particular uses and federal retention. *See id.* at § 1.02[1][c],[d]; *see generally* PAUL W. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT (Arno Press Inc. 1979) (1968) (describing in great detail the history of the National Forests and other federal public lands).

5. In 1891, Congress passed the Forest Reserve Act allowing the designation of public lands as forest reserves. *See* Forest Reserve Act, ch. 561, 26 Stat. 1095 (1891) (repealed) ("An Act to repeal timber-culture laws, and for other purposes"). The last section in the bill allowed the President to set aside forest reservations. *Id.* § 24. The Forest Reserve Act of 1891 was subsequently repealed with respect to all states by the Act of Oct. 21, 1976, 90 Stat. 2792. Subsequent acts allowed activities in these reserves. The forest reserves were transferred from the Department of the Interior to the Bureau of Forestry in the Department of Agriculture in 1905 and the Forest Service was created. Since 1891 forest lands have generally been retained in public ownership. By the end of the Roosevelt Administration there were 159 national forests totaling over 150 million acres. Throughout the twentieth century, through various Acts and reservations, the number of acres under Forest Service control grew. *See* James L. Huffman, *A History of Forest Policy in the United States*, 8 ENVTL. L. 239, 269-70 (1978) [hereinafter *Forest Policy*].

6. *See* John D. Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics and Federal Lands*, 14 U.C. DAVIS L. REV. 317 (1980); Bruce Babbitt, *Federalism and the Environment: An Intergovernmental Perspective of the Sagebrush Rebellion*, 12 ENVTL. L. 847 (1982).

7. For a discussion of the growth of the conservation ethic and the resulting reluctance on the part of the government to dispose of public forest lands, see *Forest Policy, supra* note 5, at 275-78.

The implications of public ownership in the West have been significant. Unlike the forest economy of the Northern Forest which has been driven largely by market forces, the forest economy of the West has been influenced as much by politics as by markets.[8] The existence of enormous tracts of public timber lands has created an array of political incentives for both those in the timber business and those seeking to regulate and limit the activities of that business. Politics similar to those surrounding public lands forestry in the West have influenced the economy of the Northern Forest. However, the impacts in the West have been far more pervasive.

Local communities in the West have become entirely dependent upon public timber supplies for their economic survival. Indeed in the face of drastic reductions in public land timber harvesting over the last few years, many of these communities have been reduced to ghost towns while others have managed to find new ways for their people to make a living.[9] This history of public land dependent local economies has also contributed to political divisions between the rural and urban areas of the West. As the cities of the West have grown, they have come to dominate state politics leaving the rural communities with an often reluctant federal government as their only allies.[10] The pressures from a national environmental lobby have slowly, but surely, cut into the political clout of these resource dependent communities. The history of private timber harvesting on federal lands in the West has turned western forest

---

8. *See* James L. Huffman, *The Inevitability of Private Rights in Public Lands*, U. COLO. L. REV. 241, 268-269 (1994) [hereinafter *Private Rights*]. *See also* Michael C. Blumm, *Public Choice Theory and the Public Lands: Why "Multiple Use" Failed*, 18 HARV. ENVTL. L. REV. 405 (1994) ("[B]ecause of pressure from timber mills and timber-dependent communities, multiple use in the national forests has produced below-cost timber sales . . . ."). *Id.* at 407.

9. For a discussion of the way in which the Oregon community has responded positively to the changes in the management of the timber resource on a macro level, see Timothy Egan, *Oregon, Foiling Forecasters, Thrives as It Protects Owls*, N.Y. TIMES, Oct. 11, 1994, at A1. *Cf.* R. Gregory Nokes, *Wallowa Valley: Staring Down the Future*, OREGONIAN, Aug. 15, 1994, at A1 (noting that the economic transitions on the micro scale are often much more difficult).

10. *See* Blumm, *supra* note 8, at 421 (1994) (noting that commodity-based interest groups draw on the support of western senators and congressmen, who view rural communities as essential to their reelection, to pressure land managers to maintain the historical status quo) (citations omitted); *see also* Dirk Johnson, *West That is No More Turns Back on Land-Use Fees*, N.Y. TIMES, April 4, 1993, at § 1 p. 22 (noting the disproportionate political clout of the 30,000 public land ranchers in the West).

management into far more a matter of national politics than the management of the Northern Forest.

The constraints of history and of the existing social fabric are perhaps best evidenced by the dissatisfaction of reformers in both the West and the Northeast. Western public lands management has changed at a seemingly glacial pace, notwithstanding decades of pressures for both privatization on the one hand and greater public control on the other.[11] The western forests are not to be turned into private timber plantations, nor, I suspect, is the Northern Forest to be turned into a collection of publicly owned forest preserves. Certainly the recommendations of the Northern Forest Lands Council suggest that change in the Northern Forest will come in small and incremental steps.[12]

II. SETTING PRIORITIES FOR FOREST MANAGEMENT

There are two basic themes for setting priorities in resource uses, though they have innumerable variations. Private ownership, which is the dominant approach in the Northern Forest, is one, and public ownership, which is common in western forests, is the other. The variations, which exist in both the West and the Northeast, result from regulation of private ownership and the granting of private rights to use public forests. Regulations are generally imposed to correct for perceived market failures, while private rights of use are granted in response to political pressure. Western forests and the Northern Forest are affected by both economic and political markets, but the latter are far more significant in the West.

The history of public lands forest management in the West confirms the oft-stated principle that incentives matter. The fact that public ownership of vast western lands has created enormous incentives for the formation of political interest groups and has resulted in a gradual shift in focus from resource exploitation to environmental protection.[13] Consistent with the simple theories of public choice, this shift has resulted from the growing political

---

11. *Private Rights*, *supra* note 8, at 252-54.

12. *See generally* THE NORTHERN FOREST LANDS COUNCIL, FINDING COMMON GROUND: CONSERVING THE NORTHERN FOREST (1994) [hereinafter COMMON GROUND].

13. For a discussion of the increased influence and greater role of environmentalists, see *Forest Policy*, *supra* note 5, at 275-278. The increased influence of environmentalists was evidenced by the passage of the Wilderness Act of 1964. *See* 16 U.S.C. § 1131 (1988).

influence of environmental interests relative to commercial interests.[14]

Meanwhile, in the Northern Forest, markets have created incentives for commercial timber production which has historically been compatible with various other uses of the forests. However, land values and pressure to develop those lands have increased, largely due to a growing population with access to the Northern Forest.[15] The prospects for public regulation of private timber lands, if not public acquisition of those lands, have created incentives leading to political process, of which this conference is a part.

From the point of view of the individual consumer of forest resources, whether wood products or recreation or ecosystem protection, the choice among allocational institutions depends upon the individual's ability to achieve the allocational results he or she prefers. Many individuals will have abstract preferences about institutions, but history demonstrates that the strongest advocate of markets will urge politics when the result looks better from a personal point of view.[16] And visa versa. Although such flexibility about institutional alternatives may seem unprincipled, it merely reflects the reality that all resource use is ultimately private.[17]

III. TAXATION AND THE PROVISION OF PUBLIC SERVICES

The recommendations of the Northern Forest Lands Council focus heavily on the tax system as a partial solution to the perceived problem of forests threatened by development. This emphasis reflects a recognition of the importance of incentives to private owners of land. The Council's basic point is that the *ad valorem* property tax system has permitted state and local government to rapidly increase tax revenues as the value of property in its highest and best uses has increased.[18] The resulting economic incentive for the property owner is to shift

---

14. *Public Lands Management*, *supra* note 2, at 46-47.

15. STEPHEN C. HARPER ET AL., U.S. DEP'T OF AGRIC., NORTHERN FOREST LANDS STUDY OF NEW YORK AND NEW ENGLAND 8 (1990) [hereinafter NFLS].

16. *See Public Lands Management*, *supra* note 2.

17. "[U]ltimately, only private interests exist, whether the lands are owned privately or by the federal government." *Private Rights*, *supra* note 8, at 245.

18. COMMON GROUND, *supra* note 12, at 32-35.

from lower valued uses like forestry to higher valued uses like development. The Council recommends shifting to a current use system of valuation as a means of lowering the tax burdens on those landowners who wish to keep their lands as forests. Under this recommendation, property taxes would not be eliminated; rather, they would be assessed based on the property's value in its current use.

The consequences of a shift to current use assessment are likely to reduce the existing incentives to develop forest lands, but not without creating economic problems for local government and local communities. From the point of view of the community as a whole, higher valued uses of resources make a greater economic contribution to net social welfare than do lower valued uses.[19] Thus, by discouraging development of forest lands, the current use valuation system will reduce the net wealth of the community which will in turn impact upon revenue from other forms of taxation which are also ultimately dependent upon economic activity.

The more immediate impact of a shift from *ad valorem* to current use assessment will be on the net tax revenues of local and state government.[20] As the Council's report recognizes, these governments will have to find replacement revenues since the demand for government services is not likely to decline.[21] Indeed much of what the report recommends in the way of public use of the Northern Forest will contribute to an increase in public expenses.[22] The solution will be to offset lost revenues with both state and federal funds in the form of reimbursements, financial subsidies, technical assistance, and rural community assistance programs.

All of this is reminiscent of the experience of western communities threatened by the late nineteenth and early twentieth century withdrawals of lands from the public domain.

---

19. *See* RANDAL O'TOOLE, REFORMING THE FOREST SERVICE 189 (1988) (citing RICHARD L. STROUP & JOHN A. BADEN, NATURAL RESOURCES: BUREAUCRATIC MYTHS AND ENVIRONMENTAL MANAGEMENT 5-6 (1983) (concluding that people are better off when goods and services are put to their higher valued uses)). In contrast, welfare economics puts forth the view in natural resources management that allocative efficiency should be the primary criterion to decide who is entitled to use natural resources.

20. COMMON GROUND, *supra* note 12, at 33-35.

21. *Id.*

22. *See generally id.* (recommending more infrastructure for intensive recreation, funds for management, purchase of easements, and funding for technical assistance).

Lands withdrawn from the public domain for forest preserves, national parks, or Indian reservations were lands no longer available for private acquisition. This, it was feared, would retard economic development and in turn reduce the tax base of local government. Certainly today, local government in much of the rural West is heavily dependent upon in-lieu-of-tax payments from the federal treasury which offset the fact that often well over half of the property in a county is untaxable public lands.[23]

The anticipated costs to local communities of limits on development in the Northern Forest are parallelled by the costs which western communities have experienced from recent constraints on the commercial use of public resource lands.[24] As in the West, the solution for many of these rural communities, if they are to survive, rests in some form of subsidization. The ghost towns of the West are evidence of what can happen when a local economy dies, whether from the depletion of resources or a change in government policy. One question in both western forests and the Northern Forest is whether new ghost towns will be permitted to occupy the landscape.

IV. THE POSSIBILITIES OF PRIVATE STEWARDSHIP

The Northern Forest Lands Council, obviously keenly attuned to the realities of dominant private ownership in the region, places considerable emphasis on private stewardship as an approach to preserving the Northern Forest.[25] The report

---

23. As of 1991, the federal government owned an average of 50% of the land in the 12 western states. *See* BUREAU OF LAND MANAGEMENT, PUBLIC LAND STATISTICS 5 (1991). The percentages include 48% in Oregon, 64% in Utah, 68% in Alaska, and 28% in Montana, to name a few. *Id.*

24. For a more detailed description of the rapid socio-economic changes occurring in the small towns of Oregon, see *supra* note 9 and accompanying text.

25. A major element of the Council's mission is to "reinforce the traditional pattern of land ownership and uses" in the Northern Forest. [This] means working with private landowners and organizations. . . . [The Council] has proposed changes or new ways society can enhance [private landowners'] ability to continue ownership and proper management of their lands.

COMMON GROUND, *supra* note 12, at 23. *See generally id.* at 23-45 (describing various initiatives to promote good stewardship on private lands). Some writers have even argued that there is a duty of stewardship, requiring the owner to use and maintain the land in a manner that will not interfere with any significant natural resource value. *See, e.g.*, James P. Karp, *A Private Property Duty of Stewardship: Changing Our Land Ethic*, 23 ENVT'L. L. 735 (1993).

concludes with boiler-plate optimism about the importance of natural resource education for all citizens and decision-makers in the Northern Forest region.[26] However, the first section recognizes that private stewardship will not happen without appropriate incentives. Conservation easements, stewardship incentive programs, and green certification are all urged as means to encourage wise private management of forest lands.[27]

Conservation easements have been shown to effectively promote resource conservation on private lands, but it is also clear that few people create such easements without significant economic benefits in the form of reduced taxation and other forms of compensation.[28] If the consequence of creating a conservation easement is merely to limit taxes to the forest uses permitted on such an easement, it is not clear what incentive there will be if the Council's current use tax assessment recommendation is implemented. There will have to be additional incentives, except for those rare individuals whose wealth permits them to act on principle.

The recommended expansion of stewardship incentive programs is a recognition by the Council of the need for such additional incentives. These incentives will come in the form of compensation for foregone economic activity, and will thus be parallel to the in-lieu-of-tax payments to local government.[29] Both of these approaches, while politically expedient, are wealth transfers which require either increased economic activity or a reduction in welfare elsewhere. In other words, some part of the relevant political community must be prepared to subsidize economic inactivity in the Northern Forest.

---

26. Education, in various forms, is necessary to promote informed decision making. The Council proposes various educational tools, including "natural resource conservation [as] a major component of school curricula; creat[ing] the means for open and efficient technical assistance to landowners and others requiring it; and collect[ing] information necessary to assess the condition of the Northern Forest and the trends affecting its future." COMMON GROUND, *supra* note 12, at 83. *See generally id.* at 83-97 (describing the outreach and education aspects of the Council's recommendations).

27. *Id.* at 25-30.

28. The Forest Service may purchase conservation easements with funds provided by the Forest Legacy Program. Individual states' conservation easement programs enable the states to make their own purchases. The Council recommends that there be continued funding for these federal and state programs. *Id.* at 25-26.

29. Cost share funds and technical assistance to private nonindustrial landowners are offered through the Stewardship Incentive Program. The program was created by Congress in 1990. It enables landowners to manage their lands for a variety of natural resources. *Id.* at 27.

The counter argument to this conclusion, and presumably one which has influenced the Council, is that forest land stewardship has economic benefits not captured by the private market. The theory is that benefits from forest land preservation, in the form of recreational uses, long term sustainability, and biological diversity, will not be realized from market transactions and must therefore be acquired through some form of public compensation to the private owners of the forests. The theory of external benefits may be sound, but it is not clear that we have devised institutions with the capacity to correct for these "market failures."

It must not be forgotten that compensation for private land owners is designed to provide appropriate incentives for forest land stewardship. But it is not only the private landowners who respond to incentives. Users of the lands, political interest groups, and government officials are all influenced by incentives as well. A wise stewardship incentive program must account for the possibility of creating perverse incentives which might offset any gains made with private landowners.[30]

To the extent that members of the general public are to be the beneficiaries of private forest land stewardship, they must be made to pay for their usage or they will not have appropriate incentives to be good stewards themselves. The experience on the western public lands has demonstrated, often with severe consequences, that private users of the public lands will abuse those lands.[31] It is the commons' problem and it is as much a problem on private lands to which the public has free access as it is on public or common lands.[32]

---

30. *See* Terry L. Anderson & Donald R. Leal, *Free Market Versus Political Environmentalism*, 15 HARV. J.L. & PUB. POL'Y 297, 300 (1992) (discussing incentives that exist in the political process).

31. *See Private Rights*, *supra* note 8. While there was no shortage of legislation pertaining to ownership of and access to the public lands and its resources, early administrations often lacked the necessary resources to enforce the public land laws. For example, on June 3, 1878, Congress passed two laws, the Free Timber Act and the Timber and Stone Act, with the intention of policing certain abuses of the public domain. Specifically, the acts were an attempt to curtail trespassing and unauthorized timber removal on public lands. *Id.* at 247-251 (footnotes omitted). However, "the enforcement of these regulations was generally very lax. A force of from [15] to [55] special agents could not protect several hundred million acres of timber land." JOHN ISE, THE UNITED STATES FOREST POLICY 62-65 (1924) (footnote omitted); *see also* Todd Wilkinson, *Raiders of the Parks*, NAT'L PARKS, Sept.-Oct. 1991, at 30 (an account of the routine looting that occurs in the national parks).

32. Garrett Hardin, *The Tragedy of the Commons*, 162 SCIENCE 1243 (1968) ("Ruin is

One solution is to limit free access through the use of a fee system. This approach has been suggested for the Northern Forest, but the Council has underestimated the possibilities for user fees. Most of the recreational uses of forest lands can and should be paid for by the users. The enforcement problems are far less severe than is often thought, and the objection that some cannot afford to pay is easily countered with a simple needs tested system of free or subsidized access to the poor. Unless people are required to pay for what they use, they will not value it for what it is worth.

The widespread use of user fees by both public and private landowners in the Northern Forest should come with far greater ease than have user fees in the West. In the West, the long history of free access to public campgrounds and the like has made the shift to very modest fees a difficult one. Many users argue that they have already paid their taxes and should not have to pay again. It is their land, they say, and they should not have to pay to use it. On private lands the case for user fees is more easily sold, although there remains strong resistance in the West to fees for such uses of private land as hunting and fishing. It is never a simple matter to persuade people that they should have to pay for what they have previously received for free. However, if we are serious about protecting forest values on private lands, making users pay will serve both to influence the users' stewardship and to make it economically possible for private landowners to provide these "public" uses.

V. THE ROLE OF PUBLIC OWNERSHIP

Once we recognize the possibilities for user fees on private forest lands, we might rethink the relative roles of public and private ownership. The Council has recommended public acquisition and management of exceptional resources in the Northern Forest on the theory that these resources will not be

---

the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons. Freedom in a commons brings ruin to all."). If society is to obtain optimal results from utility maximizing decisions, the costs and benefits of those decisions must be internalized. *See also* GARRETT HARDIN & JOHN BADEN, MANAGING THE COMMONS (1977).

adequately protected in private ownership.[33] Western experience suggests that we should be cautious about assuming that public control will assure optimal protection of highly valued resources. The experience in the national parks of the West has not been good from an ecological point of view.[34] It is not clear that it would have been any better under private management, indeed it probably would have been similar to the extent that both public and private managers have incentives to serve the interests of those who pay their bills.[35] Private managers of Yellowstone and Rocky Mountain National Parks would have had the same incentives to supply visitors with big game rather than ecological diversity. However, there is good evidence that private managers would have done so in a far more efficient manner.[36]

On average, fifty percent of the lands in the western states are owned by the federal government.[37] Despite much complaining from both commercial users of those lands and environmental interests, few people would really want to have it any other way.[38] Most people like federal ownership of the land because they see the possibility for political control of those lands in the future, even when they dislike its current management. The history of public lands management reflects the shifting influence of various interest groups.[39] When an interest is in the driver's seat, it likes the system, when it is out of the driver's seat, its priority is to regain control.

Although many westerners objected to the early trend toward the retention of public lands,[40] subsequent "sagebrush rebellions" have been arguments about political control, not about public versus private control.[41] But the fact that westerners probably

---

33. COMMON GROUND, *supra* note 12, at 49.

34. *See* ALSTON CHASE, PLAYING GOD IN YELLOWSTONE: THE DESTRUCTION OF AMERICA'S FIRST NATIONAL PARK (1986); *see also* KARL HESS, JR., VISIONS UPON THE LAND: MAN AND NATURE ON THE WESTERN RANGE (1992) (focusing on grazing on the rangeland).

35. *Public Lands Management*, *supra* note 2, at 52.

36. Richard L. Stroup & Sandra L. Goodman, *Property Rights, Environmental Resources, and the Future*, 15 HARV. J.L. & PUB. POL'Y 427, 430 (1992) (arguing that when property rights are clearly established, the private sector's market-oriented decisions will tend to allocate resources to their highest valued uses).

37. Federal ownership ranges from 29% in Washington, to 68% in Alaska, to 82% in Nevada. BUREAU OF LAND MANAGEMENT, PUBLIC LAND STATISTICS 5 (1992).

38. Babbitt, *supra* note 6, at 851.

39. *See Private Rights*, *supra* note 8, at 273.

40. *Forest Policy*, *supra* note 5, at 244-68.

41. Leshy, *supra* note 6, at 319-329 (noting that the "equal footing" doctrine was a tool

prefer public control does not necessarily mean that it is a good thing. They prefer it the way our citizenry seems to prefer investing in the high stakes, low probability lotteries which have flooded the country. In the private market, most people have no chance of acquiring vast tracts of forest lands. In the political market, that possibility exists for everyone.

This is not to say that public acquisition of forest lands is never the right choice. In some cases it may be, but it must be done for the right reasons and with the recognition that public management is political management. Notwithstanding the oft repeated appeal to put politics aside in favor of the public interest, public decision-making is inherently and unavoidably a political process. One of the reasons we might prefer public ownership is precisely because we conclude that particular decisions should be made politically rather than privately.[42]

The usual arguments for public ownership, which have dominated discussions about western public lands management, are these:

1. Market failures lead to external costs in the form of pollution and other impacts on the broader population which can only be controlled through regulation or public ownership.

2. Some uses of forest lands, like ecosystem protection, aesthetic preservation, and non-intensive outdoor recreation are public goods which will not be provided privately because private owners cannot capture those benefits.

3. Future generations have an interest and right in the use and protection of the forests and private owners do not have incentives to consider the needs of future generations.

4. Wise forest management requires sophisticated technical and scientific skills not available to most private owners of forest land, particularly owners of small tracts. The vast

---

in the battle for less public land regulation). *See* Bernard Zaleha, Note, *The Rise and Fall of BLM's Cooperative Management Agreements: A Livestock Management Tool Succumbs to Judicial Scrutiny*, 17 ENVT'L. L. 125, 136-37 (1986).

42. *See Public Lands Management*, *supra* note 2, at 33-34, 49-53.

expertise of government can provide much better management.

There may be some truth to all of these arguments, but they should not be assumed to justify public ownership to the extent that it has been used in the West. Market failures do exist, but so do political or governmental failures. Like economists, political scientists have developed theories about how government works. Like the market economy, democratic government is justified with reference to certain basic human values. And like the market, government often does not perform as the theory says it will perform. Indeed, economic theories of market failure are far more sophisticated than political science theories of democratic failure. Recent studies of the tragic failures of various federal resource management agencies offer ample evidence of the problem of government failure.[43]

While Vice President Gore continues to redesign government, presumably in an effort to reduce the frequency and magnitude of government failures, we must be wary of assuming that public management is a good idea because of "identified" market failures. Presently, and for the foreseeable future, we must accept that our choice is to do the best we can. Until recently, we have often assumed that public management and regulation will inevitably get us closer to our objectives than will private markets. Ironically, we have made that assumption in significant part because of our much better understanding of markets than of politics.

It is not at all clear that government is more attuned to the interests of future generations than are private decision-makers. Both have relatively short term views. Yet private landowners have their children and grandchildren to think about, while government land managers think about their jobs (in the case of bureaucrats) or the next election (in the case of legislators).

Finally, the case of public management and regulation based upon the need for scientific and technical expertise is precisely the argument that led to the creation of the Forest Service, the National Park Service, and the many other progressive era agencies of the federal government. It is also the argument which led to the creation of the Environmental Protection Agency which

43. *See* CHASE, *supra* note 34; O'TOOLE, *supra* note 19, at 189.

is now the largest agency of the federal government. The progressivist belief in scientific management has not proven itself on the western public lands, nor should we expect it to prove itself on the Northern Forest. As previously stated, public management is political management, and science, no matter how good, must always take a back seat. In private decision-making, values will also control, but the values which control in business will look heavily to science depending upon the incentives presented by the business environment.

CONCLUSION

The Report of the Northern Forest Lands Council concludes on the theme of public education.[44] It is an important theme, but one which will serve the Northern Forest only if the decision-makers face incentives which make education important. Information is a consumer good. People cannot begin to consume all of the information available, and education competes with other demands on the time of people whose decisions will have an impact on the future of the Northern Forest.

The redesign of social institutions, like the redesign of private property systems and government, is difficult business. Thus there is often a tendency to look to education as a solution. Just ask people to do the right thing. But those who lament the decline of social responsibility in our society will recognize that incentives to do the wrong thing are powerful. In that sense our time is no different than any other in human history. Some societies have taken drastic measures to get people to do the "right" thing. In a free society, a society which adheres to the values of individual liberty as well as social responsibility, the institutional problems are much more complex.

Although the Council's Report is a document which seems to reflect political compromise as much as a recognition of the importance of incentives, it does seek a mix of public and private institutions most likely to serve the goal of protecting traditional ownership patterns and the Northern Forest itself. Education will be important in any event, but it is not the solution. Only with

---

44. Education programs should focus on the region's forest resources, natural processes, and resource management. The public needs to understand the relationship of people to natural resources; forest policy makers need information to make more environmentally sound decisions. *See* COMMON GROUND, *supra* note 12, at 85-92.

good institutions will good people be able to use their education to do the right thing.