THE FEDERAL ROLE IN LAND USE POLICY: ARGUMENTS FOR AND AGAINST FEDERAL INVOLVEMENT

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Some people fear that any federal government activity in land use will be the harbinger of decay and demise of the market economy and private property, an irreversible step toward total government control of all private land — in short, the first step on the road to socialism. These arguments are not usually very convincing because the federal government has always had a major influence on land use, at least since adopting the Land Ordinance for the Northwest Territory in 1785. But there are valid policy issues concerning how the Feds will be involved.

The Federal Influence

The federal government already has a profound effect on who uses land, how it is used, and where various land uses take place. Most of the federal government influence occurs as indirect results of programs designed to attain other goals. (10) Farm commodity price support programs and federal crop insurance, for example, have had massive land use effects, allowing crop production to extend into areas of sparse rainfall in the western Great Plains.

Federal income tax regulations, particularly the mortgage interest deduction and capital depreciation rules, have spurred urban sprawl in virtually every large or medium-sized city in the nation. The federal interstate highway system has strongly influenced land use patterns and contributed to sprawl in urban areas and has provided a strong impetus to the growth of some rural towns and the decline of others. Federal grants for water and sewer programs in rural areas through the Farmers Home Administration have determined land use patterns in hundreds of rural communities. The wastewater planning and treatment requirements, and the grant program, of the Federal Water Pollution Control Act amendment have stopped land development in some communities by prohibiting overuse of treatment facilities, contrib-

uted to urban sprawl in some areas by requiring expansion in treatment facilities that far exceed current needs, limiting certain types of industrial expansion in certain areas of low water quality, and numerous other effects. Note that these are major land use effects, and have the potential for substantially altering land use patterns. Similar arguments could be made for the effects of the Clean Air Act. These prodigious land use effects of federal programs might be termed "unintended" or even "accidental" although in many cases the effects were anticipated and in fact were the basis for program support.

Some federal government influence on land use is direct and obvious. About one-third of the nation's land is in federal ownership. Management decisions on those lands can have enormous effects on the local economy and land use patterns in rural areas. A few federal programs are explicitly designed to influence land use, such as the Coastal Zone Management program which encourages state and local land use controls on the coasts. The effects of these direct attempts to influence land use however, seem insignificant compared to the unintended or indirect effects of other federal programs.

The point is this: the federal government already exerts a profound influence over land use in every city or rural area in this country. Unless we are prepared to dismantle many major federal programs, such as farm commodity programs, crop insurance, and mortgage interest deductions, we must be willing to accept the fact that the federal government will exert a strong influence on land use. The more relevant issues are in whose interest will federal influence be exerted and what additional deliberate role might the federal government play in influencing land use change?

Our task is to state the case for more and less federal involvement in land use. The next section will state the case in favor of more federal involvement in land use decisions. The following section will state the case in favor of less federal involvement and the final section will discuss some of the consequences of changing the federal role in land use.

The Case for MORE Federal Involvement in Land Use

Federal, state and local governments have powers to regulate private actions on behalf of health and general welfare of the population. Land use zoning is the familiar exercise of the regulatory power. Governments also have the power to tax. Any tax, whether property, income, sales, or excise, becomes an element of cost for the payer, thus influencing decisions that affect land. Governments also can spend for valid public purposes. All governments buy land outright, and may influence private use of land by offering selected financial bonuses to land users for "socially responsible" actions. Once government buys land, it has power to manage it "in the public interest." Finally, gov-

ernment enforces various laws that protect private transactors in a land market.

Choice among levels of government to exercise any of these powers involves judgments as to whose discretion should make a difference in the final choice. Certain powers have been specifically delegated to the federal government by the Constitution while others comprise the residual powers retained at the state level. (1, pp. 381-383) The higher the level of decision, from fee simple owners to federal government, the broader the range of preferences that may impinge on choice and the greater the chance of internalizing the unintended offsite effects of the decision made. On the other hand, it is likely that the more people and interests that have the right to influence a certain decision, the higher the cost of the process. It is fairly easy and inexpensive for a farmer to decide to ignore erosion on his riverside field. Once a downstream farmer complains to the country conservation district, though, costs of making choices start going up. Other preferences brought to bear at the state level may lead to laws against erosion to avoid perceived costs to other people. Federal programs and policies to reduce erosion speak to even broader interests, at considerably higher transaction costs and redistribution of the right to decide.

The policy question seems to be for which land use choices is the range of interests sufficiently broad to require an active role by the federal government, and which power or authority of government is appropriate to each case. One's judgement in this matter is partly conditioned by the cost of the decision process and particularly who will pay that cost. Each authority of government implies a different distribution of cost between landowner and taxpayer. There is also considerable history and tradition associated with the right of an individual to own and use land. The federal government has traditionally stayed away from most land use decisions. There is value associated with any tradition, though often the cost of a tradition can present compelling evidence for change.

The case for more federal involvement in land use policy can be simply stated: For many land use issues, the range of interests affected and the geographic distribution of benefits and costs is so broad that only the federal government can provide for an efficient and equitable resolution of the issue. The case can be made in several ways.

First, some goods and services have benefits that are so widespread that no private firm or state or local government could recapture its costs by charging users of the good or service. The classic example of this type of "public good" is national defense — when it is "produced" for one individual, all benefit, and no one can be excluded from the protection it affords.

Maintaining the productivity of the nation's agricultural land is very similar — actions to maintain productivity benefit all consumers and none can be excluded from the benefits. The economic strength of

the U.S. and its position in the world is in part a function of its dynamic, successful agriculture. There is a sort of "national well-being" element to U.S. agriculture, and the land on which it depends.

Second, federal involvement is necessary when problems spill over local and state boundaries or when the technically feasible solutions require coordinated action among states. Attacking water or air quality problems, and their basic land use causes, cannot be easily accomplished by state or local government. When the boundaries of the problem overlap the boundaries of state or local jurisdictions, the only feasible solutions involve federal action.

A related argument is that federal action is warranted if the benefits and costs of the problem and its solution(s) are not distributed proportionally among jurisdictions. If a certain land use creates benefits in state X but imposes costs on residents of state Y, there is no incentive for state X to consider the negative consequences of its actions, to weigh the total costs and benefits of the land use activity. Only the federal government can view the problem broadly enough to weigh all the relevant benefits and costs.

Fourth, federal involvement may be required if private markets ignore the long-run future interest of society. Markets implicitly calculate future benefits and costs, but these are always discounted — a dollar tomorrow is not the same as a dollar today. In some cases the private market may discount the future too much, in the collective judgment of society, and federal government action may be required.

Soil conservation is a good example. For about 50 years we have implicitly agreed, as a society, that individuals acting in private, free markets will allow too much soil to erode too quickly for the good of far-distant future generations. We, therefore, have federal programs to help reduce erosion. In principle nothing precludes state or local action to overcome the myopia of private markets, but the problems created are often not suitable for state or local action, as the soil conservation example illustrates.

Finally, federal action may be required not by theoretical arguments but because of practical politics. The state of Vermont, in its Act 250, provided technical assistance to local governments to help them negotiate more effectively with large, well-staffed and well-financed development companies. The federal government provides uniform standards for activities such as strip mining, the effect of which is to remove the opportunity for companies to play off one state against another to get relaxed mining rules. For some land use questions the federal government may be able to provide technical assistance or set some "rules of the game" that substantially benefit state and local governments.

The Case for Less Federal Involvement in Land Use

Federal government involvement in land use policy can be condemned from a constitutional, philosophical and practical perspective.

Constitutional Arguments. The federal Constitution does not identify direct control of privately-owned land as a federal prerogative. Therefore, this power resides in the states. Federal land use programs, such as those that characterize Britain, Sweden, and much of Western Europe are prohibited by the U.S. Constitution. To date, federal activities have carefully circumvented the constitutional issue by leaving direct regulation to state and local governments, but the federal government's indirect role in land use decisions has increased.

Philosophical Arguments. Political and economic theory can be used to argue against any public interference in land use decisions, whether from federal, state or local governments. Those who created the intellectual foundation for the republic — Jefferson, Adams, Monroe, Madison, and others — relied on political theory that held that a free democratic society could only exist in a system of widespread private property ownership. In this philosophic tradition, the right to freely use and exchange property was the ultimate guarantor of personal political liberty. If government were to control land use or ownership, individuals would depend on government for their economic survival. Political liberty would be severely threatened and eventually eroded.

Thus, private ownership and control of land was seen as a necessary precondition for political and economic liberty. Any suggestion of increased government control of land use must be questioned — the burden of proof must rest squarely on those proposing any decrease in the rights of individuals in property.

Economic theory can also be used to argue against any government involvement in land use activity. The price system allocates productive resources among competing uses. Land is allocated through market exchange in which buyers with higher-value uses in mind can outbid those who would use the land in a lower-valued use. The market takes the future into account because the price of land is determined by its profitability, not only in the current year but many years into the future. Individuals and corporations have strong economic incentives to accurately estimate the present and future earning capacity of the land. The land resources of society pass into ownership of those able to use it in the most productive manner possible.

Both political and economic theory can be used to argue that public ownership of land should be strictly limited. Government ownership can be viewed as a threat to political and economic liberty in the same way as government restriction of private property rights. With a few exceptions for common property resources and free-rider problems, economic theory can be used to argue against government ownership,

because resources will be in their highest-value use in the private sector.

Obviously certain "negative externalities", such as water pollution, are associated with land allocation in the private market. It can be argued that this problem is not inherent in the market but results from an unclear definition of property rights. For example, if a property right in clean water is defined, either through regulatory prohibition or marketable pollution certificates, the market system can provide both clean water and the most efficient possible use of the land resource.

Practical Arguments. Even if there were no constitutional constraints on federal action, nor philosophical objectives from political or economic theory, it could be argued that federal planners could not possibly make good land use decisions in any case. Land use planning implies the ability to calculate future benefits and costs from alternative land uses. There are no scientific techniques for accurate calculations. Although corporate executives may have no better ability than federal planners, those in the private sector have a much stronger incentive to spend the time and energy to make accurate projections. Their economic survival is at stake.

Even assuming that public and private planners have the same incentives, federal-level planners could not possibly amass and digest the large volume of detailed information necessary to make local, or even state land use decisions. Only local governments come even close to being able to generate and use such an information base.

Alternately, the federal government might set detailed standards for local government to follow. But what standards? Any attempt to anticipate the thousands of different local situations would produce an inflexible system which would not fit many situations anyway. The only other option is to set extremely general standards which, in effect, would allow all decisions to be made locally. The result would be no change in federal influence on land use, coupled with a bureaucratic rule-making and standard-checking system.

Some Case Studies

The federal government's role in land use policy is pervasive. Any serious attempt to reduce the federal government's influence over land use decisions will involve massive changes in current federal activities. Unless one is prepared to dismantle hundreds of federal programs, it is irresponsible to take a simplistic position against all federal involvement in land use. Alternately, unless one understands the nature of specific land use problems confronting society and the consequences of federal action, it is irresponsible to argue that the federal government must attempt to solve any land use problem that might arise. There can be no responsible position on the overall role of federal government in land use. But there can be supportable positions on the

appropriate federal power to be exercised for particular land uses. Two cases will be examined in this section.

Protecting the Quantity of Farmland. The federal government has only recently discovered this issue, though the states and localities have been debating and acting on it for 60 years. Nearly every state has a program of some type to encourage a pattern of land use change that protects our best farmlands. (5) Regulatory power in this area is traditionally delegated to local governments. (2) Several states have considered or enacted laws that encourage establishment of areas or districts of the best agricultural lands. Thus state-wide discretion and preferences have been interjected into local government decisions.

Although the federal government has not dealt for long with the farmland preservation issue, there have been a few recent actions. The Environmental protection Agency enacted an administrative policy in 1978 that requires consideration of impacts on farmland when giving grants for new sewer and water systems. (8) USDA enacted a similar policy shortly afterwards. It has been updated by the Reagan administration with even stronger statements about avoiding actions that threaten good farmlands when there are alternative ways to solve the problem in question. (12) Further, USDA administrative rules to implement environmental impact statement requirements of NEPA specifically include effects on prime farmland as an environmental impact.

The National Surface Mining Control and Reclamation Act of 1977 requires that productive farmland be restored after the mining is completed (there is a real question as to whether that is physically or economically feasible). The most positive federal action in this area came with Subtitle I of the 1981 Agriculture and Food Act. While considered by many food policy specialists to be basically an afterthought, the Farmland Protection Policy Act is the first real expression of national interest in farmland protection policy.

The case for greater federal involvement in protecting farmland can be simply stated. On a very practical level, recent federal actions for farmland preservation simply acknowledge the obvious — that federal regulatory, spending and taxing powers already have enormous impacts on available lands for farming. (10)

The question is not whether the federal government should affect farmland decisions, but whether it should acknowledge the impacts of existing programs and seek information needed to make rational decisions on the matter. It can be argued that this is relatively noncontroversial and is the minimum federal action consistent with responsible government.

On a more abstract level, it can be argued that protecting agricultural land is akin to guarding the national heritage of future generations. Individuals, or local or state governments have little incentive to preserve the nation's agricultural land base — the benefits would

accrue to consumers across the nation and particularly to future generations, but the costs would be immediate and borne locally.

Just as many states identified land uses of "more than local concern", so should the federal government exercise discretion at the national level, to focus on those farmlands of the nation of particular quality that may cross state boundaries and may represent a national interest more than state or local. Iowa's farmland is not Iowa's alone. It represents a significant national asset that should not be liquidated through negligence or inattention. The motive cannot be short-term farmland adequacy because it is clear that no short-term problem exists. A more valid purpose is to encourage, not force, a land use change pattern that recognizes relative productive quality of farmland to preserve the option of use for food production in the more distant future.

Finally, it can be argued that the federal government should protect farmlands that have particular national value as the production base of a regional agricultural economy or because of certain unique natural character. Examples of the latter are the fruit producing lands near oceans and major lakes which have a unique micro-climate crucial for fruit production. The loss of southern California's orange groves is truely a national concern. Some might argue that the value of such unique lands will be reflected in farmers' willingness to pay, or that state and local governments will take action to retain lands already in active production, but it is unwise to count on either possibility.

The federal government should assure that nonfarm development pressures are funneled elsewhere. No government can permanently force a land use pattern that makes little economic sense. Some lands must change use. But when there are locational choices, particularly when lands have features of unique importance to production, the benefit of the doubt should go to agriculture.

The case against federal involvement in agricultural land preservation can also be stated simply. First, it can be argued that there is no problem with land availability for domestic food production, now or in the next half-century and beyond. Also, the only pressure on the U.S. land base comes from agricultural exports, so even if a problem were to develop in the distant future, we could make it disappear by simply cutting our exports. Put simply, there is no need for federal action because there is no problem.

Although agricultural land conversion has obviously been viewed as a problem by almost every state and by hundreds of local governments, it can be argued that the federal government should not become involved because these matters are of strictly local, or state concern. The land use conflicts around a major city are not the responsibility of the federal government. True, the effects may be severe and may cause serious problems locally; but very few of these problems cross state boundaries. Therefore, it is argued, the federal government should not become involved.

Managing Federal Lands. Nearly one-third of the entire U.S. land area is in public ownership, totaling about 750 million acres, or the total size of the Common Market countries. The vast majority of that is federal land. Still, most of the productive land once held by the government has been transferred to private owners. The remaining lands are managed for their saleable commodities such as timber or minerals and common property resources such as fish or wildlife that are accessible but not appropriable.

The case against federal involvement is simple: the federal government should not hold lands that are economically productive. Overall efficiency is more likely if management decisions are in the hands of those with a clear stake in the result. There is no reason to assume public managers can produce timber more efficiently than private and the taxpayers will be saved the management cost.

Private individuals and companies should have the chance to purchase those lands where it is possible to economically grow and market timber. There will be no bids on land where timber production costs more than it returns to society. Neither should these lands be used for timber by the federal government, since national income will be reduced by any timber activity on these lands. Similar arguments could be applied to rangeland.

On the other hand, a case for federal ownership can be based on the fact that some land uses, such as wilderness, have common property or public good aspects. There are also certain nonuser benefits associated with the public lands — people gain even without going to the land to claim their benefits. (13) These benefits are true public goods in the sense that use by one does not diminish its availability for others. Wilderness experience may be a public good until too many people take advantage of open access and start encountering each other on the trail. Congestion costs turn the public good into a common property resource, where those who get there first get the benefit (4).

The appropriate role for the federal government in providing these services of public land differs by the type of service. Removing productive timber land leaves an enormous acreage of federal land with value primarily for its common property, public good and nonuser attributes. While there are many joint products available on the public lands, there is no need to manage all public lands for all the services they might offer. Why not intensively manage the good lands for timber or range, and the rest for the other services available from the wild and beautiful lands of the public domain?

Federal action in this area is based on the argument that the benefits are nationwide and any costs of nondevelopment should be distributed nationwide as well. The open-access federal lands provide invaluable public good and common property services that are more valuable than the flow of services available from some other management system, such as state or private ownership.

Conclusions

Federal government action in land use policy implies a policy boundary that includes the entire nation as the affected public. Discretion exercised by federal bureaucrats is likely to produce results different from those associated with state policies or private actions, thus people on the land may feel they are worse off than before. The decision to have federal action implies the judgment that the benefits to "all" are worth the inconvenience of a few.

We have always paid great homage to the institution of private property ownership, but public support for absolute rights of ownership may be less ubiquitous than has been assumed. A declining proportion of American citizens have access to land through private ownership. There is increasing support for restricting private actions that impose costs on others or deprive them of certain benefits. The American people expect to be protected from private actions that pollute the water or air. They expect actions that guard the productive capability of our agriculture by future consumers. And they are willing to impose a bit on private landowners to do these things.

In tracing the consequences of various federal policy alternatives the most important change to identify is the shift in WHO has influence in making the land use decision. The "rules of the game" in the political process will determine the course or channel through which a land use issue must pass on its way to resolution. These "rules" will determine the relative power of various groups to influence the outcome. If the ultimate decision is made in the private sector, "the rules of the game" will constrain individual choice and will define the set of possible outcomes within the market setting.

Land use is determined competitively in both the private and public spheres. In the private sector, land goes to those able and willing to put it to its highest-valued use. In the public sector, individuals and groups struggle to establish rules for decision-making that will favor their own interest in land use decisions. The rules for making decisions on land use, in both public and private sectors, will largely determine the land use outcome. The crux of the debate is not whether the market can allocate land resources "better" than the public sector, or whether the federal government is better able to correct for "imperfections" in private markets than state or local governments. Rather the debate is over whose interests should be served by public involvement (or disinvolvement) in land use decision-making. That is the issue that should be debated in the 1980s.

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