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REGULATION was first published in July 1977 “because the extension of regulation is piecemeal, the sources and targets diverse, the language complex and often opaque, and the volume overwhelming.” REGULATION is devoted to analyzing the implications of government regulatory policy and its effects on our public and private endeavors.

FOR THE RECORD

Response to Libecap’s Review

I was pleased to see that Gary Libecap reviewed my new book, *Living with Water Scarcity*, in *Regulation* (“The Problem of Water,” Fall 2014). But I was disappointed with what he wrote in the review.

I cannot quibble with the reviewer’s authority. Professor Libecap’s decades of experience are clearly on display in the review. Unfortunately, much of his extended commentary targets ideas I do not hold while missing my suggestions on how to put his life’s work into use.

Let’s start by acknowledging his contributions to understanding the role of property rights in water markets, the danger of interference from overweening regulators, and the uncertainty created by an over-generalized “duty” to nullify rights in the name of public trust. Those factors affect the operation of water markets, but Libecap seems to miss the way I integrate them into my proposals. For example, he wrote:

Auctioning would confiscate existing prior appropriation rights, not strengthen them.... [W]ater would be moved from existing owners into the political process.... [T]he discussion does not make clear whether such auctions would be recurring, or ... whether water could be traded subsequently.

On page 54 of my book, however, I address all of those concerns:

I designed a forced market that was not an oxymoron. An all-in-auction (AiA) puts all rights (or allocations) into a pool and allows eligible parties to bid for that water in a single-price auction. The key innovation is that the proceeds of the AiA are distributed among those whose rights are auctioned. The AiA moves water to those who value it most without violating the rights of owners because owners can “bid for their own

water” if they want to keep it.... AiAs should be matched to local conditions [i.e., in frequency or as complements to existing markets]. Rights owners decide who can bid.... Note that this market—like any other—can reallocate permanent rights or temporary flows.

But what about Libecap’s concern that the “public trust” will impede market efficiencies? He wrote:

Zetland allows the public nature of water to confound potential private solutions.... The community is never defined, and why politics fails in one case but not the other is not explained.... How will scientists weigh the value of competing uses or opportunity costs?

His conclusion is premature, as I address exactly those problems in my book:

Interacting economics and politics complicate water management. I have tried to simplify matters by grouping chapters into two parts. Part I covers economic topics in which one person’s action or water use does not *necessarily* affect others. A bottled water company need not affect agricultural irrigation; long showers do not prevent green lawns. Part II covers political topics in which people’s decisions or uses interact. A dam changes flood risks, environmental flows, and the cost of irrigation. The separation of personal topics in Part I from social topics in Part II clarifies whether we should rely primarily on economic or political tools....

The book’s ordering of parts and chapters does not imply that water should be managed in that order. Indeed, it is often necessary to resolve political issues before implementing economic policies. It is not possible, for example, to set the right price for drinking water without an engaged and knowledgeable regulator. Allocations to farmers should, for similar reasons, only occur after water is set aside for the environment. (pp. 4–5)

Worried about scientists who may ignore opportunity costs? In my book, I wrote:

Greater environmental flows will upset some people and please others. Some people will change their habits or business models. Others will gain (real or imagined) benefits from increased flows. Extraction limits can be administered with prices, regulations, or other techniques, but their level needs to be agreed upon through a political mechanism that reflects social priorities.

“Acceptable” levels should not be set by those with an interest in diverting water. They should be set by scientists who understand the connections between flows and healthy ecosystems. Scientists may be vulnerable to the bias of reserving too much water for nature. That means we should make changes if their recommendations lead to outcomes that over- or undershoot the community’s ecosystem targets. Those adjustments will add or subtract water available for

private uses, but a two-step allocation (reserve environmental flows before allocating remaining waters among human uses) is much easier to manage than balancing between “co-equal goals.” (p. 90)

Libecap’s alternative to science or social consensus on environmental flows is the market. In his review he writes: “Private water rights are routinely traded for augmenting stream flows by Oregon’s Freshwater Trust. ... [Such a mechanism demonstrates that] state environmental mandates are not necessary to protect aquatic and riparian habitats.” Although I agree that the market can provide a useful mechanism for augmenting streams (I also cite the Freshwater Trust), I disagree on the market’s potential to address ailing and collapsing ecosystems in North America (e.g., Athabasca, Lake Erie, the Colorado River, the Sacramento Delta, and many other water bodies), Europe, the Middle East, South Asia, China, Brazil, and so on. The first rule of water management is that politics trumps markets.

Finally, we need to consider the audience for my book: people who want to know more about how to manage scarce water to balance among different economic and social demands. Libecap’s review covers familiar ground for Cato’s government failure choir. I know those tunes, but I have also spent a lot of time with people opposing those arguments—people who hold sensible views in terms of logic and passion. I wrote my book for both groups in the hope of creating consensus on reasonable steps. Libecap missed an opportunity to evaluate this middle ground when he argued against a straw man I’ve never met.

I hope *Regulation*’s readers put Libecap’s perspective on my book aside until they form their own opinions. It will only take them a little time with the book (free for download at www.livingwithwaterscarity.com) to see how I am trying to liberate water management from dysfunctional perspectives and outdated institutions.

—David Zetland
Leiden University College
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