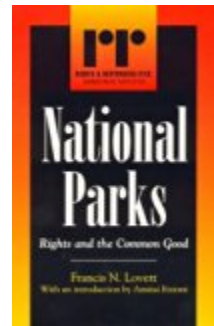


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Francis N. Lovett. *National Parks: Rights and the Common Good*. Lanham, Md.: Rowman & Littlefield Publishers, 1998. xvi + 137 pp. \$28.95 (paper), ISBN 978-0-8476-8978-1; \$85.00 (cloth), ISBN 978-0-8476-8977-4.

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Shared Values, Conflicting Interpretations

National parks in the United States are famously saddled with a “dual mandate”: to “conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”[1] Conflicts stemming from this paradoxical directive are at the heart of Francis Lovett’s book, *National Parks: Rights and the Common Good*. In this concise report he explores the question of how to balance individual and subgroup rights in the parks with the needs and values of the community at large, drawing from a communitarian perspective on solving social disputes.

It is important to understand that this book is not a discussion of “public goods” as traditionally defined in economics, i.e. non-rival, non-excludable resources. The communitarian position rather defines the common good as “something which is valued for its service to the community or society at large, rather than for its service to specific members or subgroups” (p. 3). This is set up in contrast to political libertarians, who conceptualize the common good, if at all, as merely an aggregation of individual preferences. Communitarians argue that this overlooks situations in which our commitments to common goods may override individual rights or interests, although they are careful to point out that the common good and individual rights do not inevitably clash. Thus it is less an economic concept than a political and, as Amitai Etzioni states in the Foreword, a moral one, a clarification

that is important to keep in mind as one reads the book.

Lovett outlines parks as classic common goods, deriving value not only from majority opinion, or the sum of individual interests in them, but from widely-held shared social values formed in an ongoing public dialogue through time. Individuals clearly gain specific benefits from using the parks, or even from just knowing that they exist, yet the value of parks goes farther than that; parks help build a sense of community and national identity, encourage development of environmental and historical awareness and understanding, and represent a positive federal presence in a time when much public animosity is aimed toward other government agencies. The responsibility of protecting and providing these larger, shared benefits for all, even future generations, lies with the government, and so it must also find ways to address conflicts that threaten to degrade the integrity and value of these common goods.

The book is organized into three sets of case studies, each focusing on a different type of conflict. Chapter Two analyzes incidents of individuals exercising their right to freedom of speech in various ways, such as demonstrations and t-shirt sales, and how these can compromise the common good values in parks. Chapter Three investigates conflicts between separate subgroups with differing interests in park use and management, including both internal disputes, such as snowmobilers and skiers in Yellowstone competing for use of the same trails, and ex-

ternal disputes, such as private ranchers arguing against wolf introductions in the same area. These cases do not only concern uses of parks, but also the cultural principles and values they express; at Little Bighorn Battlefield National Monument (formerly Custer Battlefield NM), the two competing subgroups assert dramatically different and opposed versions of cultural history. Finally, Chapter Four examines the precarious balance between temporally competing common goods; how should the parks resolve tensions between the interests of present-day users and those of future generations? Again these conflicts take the form of both internal and “partly external” debates, the former being tensions between present and future use within the park boundaries, represented by efforts to deal with overcrowding in Yosemite, and the latter as conflicts between present-day interests outside the park and future use inside, illustrated by management conflicts in the Everglades and at Minuteman National Historic Park.

For each set of cases, Lovett proposes guidelines for resolving the conflicts, intended for use by NPS administrators, legislators, the courts, or people engaged in debate over use and management of parks. He applies ideas such as the legal principles of the “reasonable person” (p. 38) and nonpenetration (p. 66), and a concept of “equivalent sustainability” (p. 100) to balance competing uses or to determine which should be prioritized to best protect the common good. In particular he stresses the importance of considering the “nature and effects of the interests in question”; in other words, do the uses or concerns asserted by one side interfere with or harm those of the other? For example, “if it is shown that snowmobiling severely damages Yellowstone, while skiing does not, this assessment would have to be taken into account” (p. 66). In many situations, the guidelines echo existing policies or practices for resolving such disputes; in these cases, Lovett’s guidelines could then be used as an additional justification for positions taken in either negotiation between parties or in legal cases.

Interestingly, he does not address the possibility of directly competing common goods, such as situations where management for natural resources within a park landscape may conflict with management of cultural or historic resources. How should we prioritize public goods amongst themselves, particularly if they each have potentially harmful effects on the other? As parks are increasingly being established for and managed to integrate both cultural and natural perspectives, this would seem to be a critical type of conflict to analyze, particularly for the benefit of park managers themselves.

All of these cases arise in the context of the existing legal system, which is known to be biased toward an individual approach to rights and protections. Parks and legal scholar Joseph Sax has pointed out that there is no overarching doctrine or principle of community entitlements in American law, nor even a definition.[2] This would suggest that ways to better incorporate the concept of the common good directly into judicial consideration are desperately needed. Yet Lovett states that “Communitarians generally discourage legal remedies to social problems” (p. 71). This leaves the relationship between policy and law a bit hazy; will these kinds of balancing, negotiating policy solutions be effective if they come up against the hammer of individual-based lawsuits? By avoiding the formal legal arena, Lovett may be limiting the effectiveness of his justifications, particularly in tackling the larger social conflicts in Chapters Three and Four (where he admits his guidelines are most tentative and “should be taken merely as suggestions for further thought” (p. 98).

A larger problem is that Lovett does not consider the question of how to identify common goods in the first place—who gets to pick, based on what criteria? The idea that there exist in our fractured, multicultural society shared social assets that everyone agrees upon seems to oversimplify the reality of the situation. In addition, Lovett takes an ahistorical view of common goods, not explicitly considering how they have developed and shifted over time. Many parks are currently facing conflicts between managing for scenic beauty, the traditional rationale for preserving parks, and managing for ecosystem functioning, which has in the last few decades become an increasingly compelling common good to many people. For example, some park managers wish to remove several of the old stone bridges in Yosemite to improve the natural flow of the Merced River, yet others feel that the aesthetic appeal of the bridges outweighs the possible ecological improvements. Despite recognizing that the common good is constantly being reshaped through time, Lovett does not address how to identify and prioritize them under conditions of shifting priorities. This again shows a lack of consideration for common goods that may conflict with each other, yet these are precisely the kinds of situations where greater justification/clarification is needed.

Similarly, Lovett seems to conceive of the NPS as a purely objective, unbiased agency with no stake in the outcome of these disputes. However, the agency comes with its own historical context, one that has left very distinct institutional attitudes toward what a national park

“ought” to be: unoccupied, monumental, uncontroversial. These attitudes may have little to do with the actual common good values of the parks, yet the agency itself may have a hard time seeing that. Lovett notes that in cases of “partly external” disputes, “the NPS will generally find itself defending future interests against present interests (instead of trying to balance present and future interests within park units, as in the previous examples)” (p. 85). This kind of inconsistency in interpreting the larger common good may become a particular problem when conflicts arise between individual or subgroup interests and these ancestral NPS biases.

This book would make an excellent text for introducing the concept of common goods, as it is very straightforward and concise, and considers a wide range of conflicts that may arise. However, it does not go in-depth into the more complex and contested questions

surrounding the formation and identification of common goods, which is needed in order to apply this important conception to broader social disputes. By taking this next step, Lovett could provide invaluable guidance to the management of national parks as they continue to evolve.

Notes

[1]. U.S. Code, Title 16, section 1.

[2]. Joseph Sax, “Do Communities Have Rights? The National Parks As A Laboratory of New Ideas,” *Univ. Pittsburgh Law Review* 45:499-511 (1984).

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