

**Legal Aspects of Privatisation:
A Comparative Study of European Implementations**

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Abbreviations

BiH: *Federation of Bosnia and Herzegovina*

BOO: *Build-Own-Operate*

BOT: *Build-Operate-Transfer*

BTO: *Build-Transfer-Operate*

EBRD: *International Monetary Fund European Bank for Reconstruction and Development*

EMU: *European Monetary Union*

EU: *European Union*

FID: *General Directorate of Foreign Investment (of Turkey)*

GAO: *United States General Accounting Office*

IMF: *International Monetary Fund*

NBER: *National Bureau of Economic Research (of the United States)*

OECD: *Organisation for Economic Co-operation and Development*

PSBR: *Public sector borrowing requirement*

SEA: *Single European Act*

SOE: *State Owned Enterprise*

USAID: *United States Agency for International Development*

USO: *Universal Service Obligations*

INTRODUCTION

I. General Remarks

Over the last decade there has been a widespread change of opinion about the role of state and private enterprises in promoting economic growth.¹ A strong consensus has emerged that the achievement of more dynamic economic growth requires a greater role for the private sector. Underlying this consensus is the belief that resources will be used more productively if they are transferred to the private sector. A key element of this new market orthodoxy has been the privatisation of state-owned enterprises (SOEs).²

The privatisation trend is widely thought to have started in the United Kingdom when the Conservative government came into the office after the elections of 1979. While the Thatcher government may not have been the first to launch a privatisation program, it is without question the most important historically. Since the launch of the United Kingdom privatisation program in the early 1980s, the privatisation wave has swept over the world, touching every continent, every political system, and every sector. Its emphasis has moved gradually from industrial, commercial, and financial sectors to the infrastructure sectors and then to municipal services; it has only recently started to reach education, health, and administrative activities like custom administration.³ Apparently, privatisation trend has reached many areas like public

¹ A great deal of interest has been directed towards the degree of influence that public authorities should be allowed to exercise on industry. The role and influence of the state has changed in this respect over the time. (Maria Bengtsson, Agneta Marell and Andrew Baldwin, "Business-Induced Barriers in Explaining the Effects of Deregulation-Two Swedish Case Studies", *Who Benefits from Privatisation?*, Edited by: Moazzem Hossain, Justin Malbon, Routledge Studies in the Modern World Economy, London and New York, 1998, p.157)

² Lawrence Bouton, Mariusz A. Sumlinski, " IFC Discussion Paper Number 31-Trends in Private Investment in Developing Countries, Statistics for 1970-95," December 1996, February 1997 (revised)

³ Pierre Guislain, *The Privatization Challenge: A Strategic, Legal, and Institutional Analysis of International Experience*, (*The Privatization Challenge*), The World Bank, Washington DC, 1997, p.287; Michael Moran and Tony Prosser, "Introduction: Politics, Privatisation and Constitutions", *Privatisation and Regulatory*

transportation, public schools, national parks, waterworks, fire departments, infrastructure (including airports, bridges, and turnpikes), social security pensions, medical-care, the post office, public hospitals, and social services.⁴

Privatisation represents a reversal of the process of nationalisation begun early in this century.⁵ And it is considered as one of the most effective means to both reduce state spending and to enforce market discipline in the provision of key services, thereby securing a more efficient allocation and use of resources.⁶

The trend of privatisation is now a worldwide phenomenon affecting both the traditional capitalist countries and the former socialist countries.⁷ It is hard to find a country without a privatisation program, Malaysia has sold its National Lottery⁸, Buenos Aires its zoo, the Czech Republic the guest house of the Communist Party;⁹ Indonesia have hired a foreign firm to undertake their customs inspection.¹⁰ In the US, in San Francisco, privatisation has been taking

Change in Europe, Edited by: Michael Moran and Tony Prosser, Open University Press, Buckingham & Philadelphia, 1994, p.9

⁴ See: p. 40-42 about the scale of privatisation

⁵ "The Evolution of Privatisation", Privatisation: Motives and Methods, US Energy Information Administration, URL: <http://www.eia.doe.gov>

⁶ Derek Braddon and Deborah Foster, "An Inter-disciplinary Approach to the Analysis of Privatization and Marketization" Privatization: Social Science Themes and Perspectives, Edited By: Derek Braddon and Deborah Foster, Centre for Social and Economic Research, Faculty of Economics and Social Science, University of West England, Ashgate Publishing Limited, England & USA, 1996, p.292

In one comment (former) president of Chile stated that: " We seek today to resolve the age-old dilemmas of the state and the market, the private and public sectors. Both seek to be more effective and to offer higher quality services in their respective spheres". (Eduardo Frei, "The Chilean Perspective", President of Chile, web page of Center for International Private Enterprise, URL: <http://www.cipe.org/>)

⁷ David Parker, "Nationalisation, Privatisation, and Agency Status within Government: Testing for the Importance of Ownership", (Nationalisation, Privatisation, and Agency), Privatisation and Regulation-A Review of the Issues, Edited by: Peter M. Jackson and Catherine Price, Longman Group Limited, 1994, p.149

⁸ For the privatisation of Sports Toto Malaysia see: Ahmed Galal, Leroy Jones, Pankaj Tandon, Ingo Vogelsang, *Welfare Consequences of Selling Public Enterprises-An Empirical Analysis*, The International Bank for Reconstruction and Development, The World Bank, Published for the World Bank, Oxford University Press, New York, 1994, p.371-392; Winnie Goh and Jomo Sundram, "Privatisation in Malaysia-A Social and Economic Paradox", Who Benefits from Privatisation?, Edited by: Moazzem Hossain, Justin Malbon, Routledge Studies in the Modern World Economy, London and New York, 1998, p.186

⁹ Sunita Kikeri, John Nellis, Mary Shirley, Outreach Nr. 3, Policy Views from the Country Economics Department, The World Bank, July 1992

¹⁰ Anne O. Krueger, "Comment on Wiliam A. Niskanen, Guidelines Delineating the Private and the Government Sector", Privatisation-Symposium in Honor of Herbert Giersch, Edited By: Horst Siebert, Institut fur Weltwirtschaft an der Universitat Kiel, J.C.B. Mohr (Paul Siebeck), Tübingen, 1992, p.227

place in the case of golf courses;¹¹ privatisation of nuclear power plants is being discussed in some countries like Argentina.¹² Today there are even discussions to privatise the privatisation.¹³

Although a considerable amount of privatisation has now taken place, we are still in the early post-privatisation period. In other words, despite the widespread adoption of privatisation measures in recent years, the body of knowledge on the impact of privatisation is, generally, limited.¹⁴ Therefore, in many cases, it is still too early to draw definitive lessons¹⁵; the process itself is going on.

It is also an extremely broad and diversified process embracing widely differing scenarios, concerning a huge range of enterprises operating in every sector of activity and of every possible size; moreover, it is implemented in countries with very different political, legal, economic and social systems, conditions, and objectives. This precludes a single approach applicable to all countries and all privatisation operations.¹⁶

As we will examine in the following pages¹⁷ the weight of academic research is now decidedly in favour of the proposition that privately-owned firms are more efficient and more profitable than otherwise-comparable state-owned firms. Furthermore, the empirical evidence

¹¹ Lisa Snell, "Getting Greens in the Black: Golf-course Privatization Trends and Practices", Policy Study No. 260, Reason Public Policy Institute, URL: <http://www.rppi.org/>

¹² "Privatization Update", web page of Center for International Private Enterprise, URL: <http://www.cipe.org/>

¹³ Roman Fryman and Andrzej Rapaczynski, "Evolution and Design in Eastern European Transition", Privatisation Process in Eastern Europe-Theoretical Foundations and Empirical Results, Edited by: Maria Baldassarri, Luigi Paganetto, Edmund S. Phelps, St. Martin's Press, 1993, p.91

¹⁴ Paul Cook, "Privatisation in the United Kingdom-Policy and Performance", Privatisation in the European Union-Theory and Policy Perspectives, Edited by: David Parker, Routledge, London and New York, 1988, p. 236

Particularly in some former socialist countries like Russia, only limited information has been available concerning the results of the privatisation process. (John S. Earle, "Privatization in Russia Offers Lessons for Others", web page of Center for International Private Enterprise, URL: <http://www.cipe.org/>)

¹⁵ "Is Privatization Succeeding in Central and Eastern Europe?", An Interview with Roman Frydman, by the Center for International Private Enterprise, Center for International Private Enterprise, web page of the World Bank, URL: <http://www.worldbank.org/>; Oleh Havrylyshyn, Donald McGettigan, "Privatization in Transition Countries: Lessons of the First Decade", IMF, Economic Issues No.18, Washington DC, August, 1999, p.4; Demetra Smith Nightingale, Nancy Pindus, "Privatization of Public Social Services: A Background Paper", October 15, 1997, Urban Institute, URL:<http://www.urban.org/>; Eytan Sheshinski and Luis Felipe López-Calva Privatisation and its Benefits: Theory and Practice, development Discussion Paper No: 698, Harvard Institute for International Development, Harvard University, April 1999, p.6, 29

¹⁶ Guislain, (The Privatization Challenge), p.146, 147

that exists suggests that non-privatising reform measures, such as price deregulation and market liberalisation, can improve the efficiency of state owned enterprises (SOEs), but it also seems likely that these reforms would be even more effective if coupled with privatisation.

II. Aims of the Study

The main aims of this dissertation are as follows:

(a) To present a comprehensive analysis of the concept of privatisation its origins and limits,

(b) To identify the legal and institutional framework for privatisation in different European countries from a comparative perspective,

(c) To define and analyse particularly legal issues which arise during the privatisation transactions: e.g. labour law, competition law etc.

(d) To evaluate which features of the successful legal and organisational framework of privatisation have been successful so as to provide guidelines for those individuals and organisations participating in the privatisation exercises.

¹⁷ See: p.62-78

III. Structure and Scope of the Thesis

A. Definition Issues

This study focuses upon the legal aspects of the privatisation. Since privatisation is a multi-faced concept¹⁸, its legal aspects can only be understood after a detailed analysis of the wider concept of privatisation.

In our study, privatisation is defined as the divestiture and transfer of state owned enterprises (SOEs) or their assets from government or its agencies to private bodies which results in a private party or parties controlling the company, this is the definition.

Following this definition, in order to call an activity privatisation both ownership and control must be transferred to the private body. In principle, therefore; build-own-operate (BOO) or build-operate-transfer (BOT), build-transfer-operate (BTO) contracts, and other such private management arrangements, fall outside the scope of this study. Since privatisation has been defined in terms of the transfer of enterprise ownership from the public to private sector. Privatisation could be defined strictly to include only cases of the transfer of 100 per cent or at least a majority share of a public enterprise, or its assets, to private shareholders.

However, this thesis will examine private management arrangements (non-divestiture measures of privatisation) while we are dealing with the performance of privatised firms when the issue comes to the reforms and different measures taken by some countries for state owned enterprises (SOEs). Also in the second chapter we will deal with the non-divestiture measures of privatisation.

We should point out at the outset that in most cases, it is difficult to draw clear border line between legal and economical aspects of privatisation.¹⁹

¹⁸ Paul Starr, "The Meaning of Privatisation", web page of University of Princeton, URL: <http://princeton.edu/#starr/meaning.html>

B. Structure of the Thesis

This dissertation is divided into four chapters and ends with a section of general conclusions.

Chapter 1: The Concept and its Origins

The first chapter presents a comprehensive analysis of the concept of privatisation and its origins. The analysis will include the definition, origin, scope, structure, reasons and goals of privatisation.

Differences in the privatisation pattern between former socialist countries and western economies will also be examined, as well some differences among former socialist countries as well. We will also look out the performance of the privatised firms.

Chapter 2: The Limits of Privatisation: How far Can Privatisation Go?

The limit of privatisation is a highly controversial issue. In the second chapter this thesis examines whether there are activities or enterprises which are quintessentially state activities and cannot under any circumstances be entrusted to private bodies. This examination will discuss the concept of *strategic* or *vital* sectors. In relation to this issue, we will deal with a basic question: What services or products should government produce?

It has even a feminist aspect, for this see: Susan H. Williams, "Globalization, Privatization, and a Feminist Public", web page of Indiana University, USA, URL: <http://www.law.indiana.edu/glsj/vol4/no1/wilpgp.html>

¹⁹ For the economical aspects of privatisation see: John Vickers and George Yarrow, *Privatization: An Economic Analysis, (An Economic Analysis)* The Mit Press, England, 1988; Ray Rees, "Economic Aspects of Privatization in Britain", *Privatization in Western Europe-Pressures, Problems and Paradoxes*, Edited By: Vincent Wright, Pinter Publishers, Great Britain, 1994, p.44-56; Fuat M. Andic, "The Case for Privatisation: Some Methodological Issues", *Privatisation and Deregulation in Global Perspective*, Edited By: Dennis J. Gayle, and Jonathan N. Goodrich, Pinter Publishers, USA, 1990, p.35-48. For the theoretical perspectives on privatisation see: Dieter Bös, *Privatization-A Theoretical Treatment*, Clarendon Press, Oxford, 1991; Dieter Bös, *Theoretical Perspectives on Privatisation: Some Outstanding Issues*, *Privatisation in the European Union, Theory and Policy Perspectives*, Edited By: David Parker, London and New York, 1998, p.49-69. For the industrial perspectives of privatisation see: Jacques de Brandt, "Privatisation in an Industrial Policy Perspective-The Case of France", *Privatisation in the European Union, Theory and Policy Perspectives*, London and New York, 1998, p.88-100

Chapter-3: Legal and Institutional Framework for Privatisation

The third chapter provides a comparative study of the legal institutional framework for the privatisations. In this chapter, we deal with four main issues:

(i) What is the structure of the privatisation legislation in the country in question? Is there a general privatisation law or a specific law? (ii) What institutions are put in charge of privatisation process? (iii) What are the legal procedures in privatisation transactions? (iv) Is there any ideal legal institutional framework for the privatisation process?

Chapter-4: Legal Issues Arising during the Privatisation Transactions

In the fourth chapter we deal with some legal issues arising in the course of the privatisation process. This analysis begins with a study of the competition law issues related to privatisation also covers labour law issues, international law issues, and foreign investment legislation issues. In each subtitle we will set out the issue and in our analysis, we will seek to provide the possible legal solutions to each issue.

General Conclusions

In this part of the thesis, we will draw together the conclusions which have emerged from the thesis as a whole.

This section not only provides a summary of the work; it also raises points which need to be emphasised at this stage even if they have not figured prominently in the individual chapters.

CHAPTER I

THE CONCEPT and its ORIGINS

In this chapter we deal with the concept of privatisation and its origins. The analyses will include the definition, origin, scope, structure, reasons and goals of privatisation.

The differences in the privatisation trend between former socialist countries and western economies will also be examined. We will also look out the performance of the privatised firms.

I. IDEA and MEANING of PRIVATISATION

A. The Concept of Privatisation

1. Idea

Privatisation is a new concept. However we believe that the origin of the idea of privatisation is old as the origin of the debate on private versus public ownership. Therefore it can be traced back to ancient Greece.

Thus, Plato thought private ownership and private property²⁰ were evil and favoured communal ownership. In the Republic Plato states that:

“...Once they [guardians] start acquiring their own lands, houses, and money, they will have become householders and farmers instead of guardians. From being the allies of the other citizens they will turn into hostile masters.²¹ ...I think, that if they are going to be true guardians

²⁰ Private property means that individuals' rights to the use of (and income from) the resource they own are exclusive and transferable to others at whatever prices are mutually agreeable. [Louis de Alessi, “Property Rights and Privatization”, Prospects for Privatization, Edited by: Steve H. Hanke, APS (Proceedings of The Academy of Political Science), Volume 36, Number 3, New York, 1987, p.26]

²¹ Plato, *The Republic*, Edited by: G. R. F Ferrari, Translated by: Tom Griffith, Cambridge University Press, Cambridge, UK, 2000, p.110. Also see: p.262

they should not have private houses, or land, or property of any kind, but that they should receive their livelihood from other citizens as payment for their guardianship, and all make use of these resources jointly²²...It will stop them introducing private pleasures and pains along private property...since they have no private property apart from their own bodies, everything else being jointly owned... ”²³

His student Aristotle, however, thought communal ownership was inefficient; that it allowed the lazy to take advantage of the industrious. According to Aristotle:

“...It is universal truth that men find difficulty in living together...especially when it comes to hold a property in common.²⁴...it is evidently better, therefore, that property should be subject to private ownership...and it is special business of the legislator to make the necessary arrangements to that end...²⁵ And yet by reason of goodness, and in respect of use we must take account not only of the disadvantages from which those who hold property in common will be saved, but also the benefits they will lose²⁶...No legislator could hope to build a state unless he distributed and divided its constituent parts into associations for common meals on the one hand, and on the other into clans and tribes; and it is therefore obvious that Plato’s suggested legislation does nothing more original that forbid the guardians to cultivate the soil... ”²⁷

From the ideological point of view, privatisation is considered to lead to smaller government, lower taxes, and less government intervention in public affairs.²⁸ In that context, we believe that among economic and social theories, liberal theory seems to be the closest system to

²² Plato, p.163. Also see: p.252

²³ Plato, p.164

²⁴ Aristotle, *Aristotle’s Politics and Athenian Constitution*, Edited and Translated by: John Warrington, J. M. Dent & Sons Ltd., London, 1959, p.34

²⁵ Aristotle, p.35

²⁶ Aristotle, p.36

²⁷ Aristotle, p.36, 37

²⁸ Carl E. Van Horn, “The Myths and Realities of Privatisation”, *Privatisation and Its Alternatives*, Edited By: William T. Gormley, The University of Wisconsin Press, Wisconsin, USA, 1991, p.261, 262. For this also see: Ira W. Lieberman, "Privatisation: The Theme of the 1990s-An Overview", *Columbia Journal of World Business*,

the idea of privatisation; classical liberalism is often represented as a purely privatising ideology.²⁹

Liberalism refers to the following concepts: (a) limited government, in order to protect human liberty and avoid totalitarian regimes; (b) the virtues of free-market economics, the preservation of economic liberty and initiative in conjunction with the right to private ownership; and, (c) a civil rather than a political society, in which the mediating institutions of the civil order are vibrant and provide the necessary constraints for the market and public morality.³⁰ Therefore in the classical liberal constitutional order³¹, the activities of government, no matter how the

Focus Issue: Privatisation, Spring 1993, Volume XXVIII, No.1, p.13, 14; Paul, Starr "The New Life of the Liberal State: Privatisation and the Restructuring of State-Society Relations", <http://www.princeton.edu/~starr/newstate.html>

²⁹ Paul Starr, "The Meaning of Privatization", web page of University of Princeton, URL: <http://www.princeton.edu/~starr/meaning.html>; Elizabeth Martinez and Arnoldo Garcia, "What is "Neo-Liberalism"?", web page of Corporate Watch, URL: <http://www.corpwatch.org/trac/corner/glob/neolib.html>

Also see: Steve M. Hanke, "Privatization versus Nationalization", *Prospects for Privatization*, Edited by: Steve H. Hanke, APS (Proceedings of The Academy of Political Science), Volume 36, Number 3, New York, 1987, p.2; James Mitchell, "Britain: Privatisation as Myth", *Privatisation and Deregulation in Canada and Britain- Proceedings of a Canada/United Kingdom Colloquium*, Gleneagles, Scotland, Edited by: Jeremy Richardson, The Institute for Research on Public Policy, Dartmouth Publishing Company Limited, England, Canada, 1990, p.19; Janice A. Beecher, *Twenty Myths About Privatisation*, Alliance for Redesigning Government, National Academy of Public Administration, URL: <http://www.alliance.napawash.org/>; Demetra Smith Nightingale, Nancy Pindus, "Privatization of Public Social Services: A Background Paper", October 15, 1997, Urban Institute, URL: <http://www.urban.org/>; Jozef M. van Brabant, "Industrial Policy in Eastern Europe-Governing the Transition", (*Industrial Policy in Eastern Europe*), *International Studies in Economics and Econometrics*, Volume 31, Kluwer Academic Publishers, Dordrecht, The Netherlands, 1993, p.142-170; Ann Bernstein, "The State and the Market in Developing Countries", web page of Center for International Private Enterprise, URL: <http://www.cipe.org/>; Richard L. Leshner, "Democracy's Promise: Building a Modern Economy", web page of Center for International Private Enterprise, URL: <http://www.cipe.org/>; Jeremy J. Richardson, "The Politics and Practice of Privatisation in Britain", *Privatization in Western Europe-Pressures, Problems and Paradoxes*, Edited By: Vincent Wright, Pinter Publishers, Great Britain, 1994, p.64, 65; "The Privatisation Revolution, Adapted from Remarks by Lawrence W. Reed", Mackinac Center for Public Policy for The Future of American Business, A Shavano Institute for National Leadership Seminar, Indianapolis, Indiana, May 21, 1997, URL: <http://www.privatisation.org>

³⁰ Gregory M. A. Gronbacher, "The Philosophy of Classical Liberalism", web page of Acton Institute, URL: <http://www.acton.org/cep/papers/classicallib.html>; Amy H. Sturgis, "The Rise, Decline, and Reemergence of Classical Liberalism", *The Locke Smith Institute*, 1994, web page of Belmont University, URL: <http://www.belmont.edu/lockesmith/essay.html>

³¹ Classical liberalism is a term used to describe a political philosophy commonly held in nineteenth-century England and France. Classical liberal political thought has its beginnings in John Locke. Classical liberalism can be divided into several schools or branches, but the common strain throughout revolves around a strident defence of liberty in all its dimensions—social, political, and economic. At the heart of liberalism is a passionate commitment to the pursuit of liberty. Liberty as a political theory translates into a wider social vision. Classical liberals advocate free markets, a vibrant array of non-governmental institutions (such as civic groups, schools, churches, the free press, etc.), and a minimum of tax-financed government services. Classical liberals firmly believe that government's first duty is to protect both persons and property from physical harm. They also emphasize the strict enforcement of contracts. Classical liberals, consider liberty to be the highest political value. Some examples of classical liberal thinkers include: John Locke, Frederic Bastiat, Adam Smith, David Hume, Francois de Voltaire, Adam Ferguson, Lord John Acton, Thomas Jefferson, John Stuart Mill, John Stuart Mill, Herbert Spencer, Henry David Thoreau, Frederic Bastiat, Alexis de Tocqueville and Friedrich Hayek [Gregory M. A. Gronbacher, "The

agents are selected, are functionally restricted to the parameters for social interaction. Governments, ideally, were to be constitutionally prohibited from direct action aimed at "carrying out" any of the several basic economic functions: (i) setting the scale of values, (ii) organizing production, and (iii) distributing the product. These functions were to be carried out beyond the conscious intent of any person or agency; they were performed through the operation of the decentralised actions of the many participants in the economic nexus, as coordinated by markets, and within a framework of "laws and institutions" that were appropriately maintained and enforced by government.³²

One of the principles of the liberal theory of the state is that the state is not superior to other institutions and power of the state ought to be fragmented and distributed amongst many centres.³³ According to this theory, government produces more regulation and services than it should. Individual, families, and private organisations should provide regulation and services according to the demands of the private market. Publicly held assets should be sold to the highest

Philosophy of Classical Liberalism”, web page of Acton Institute, URL: <http://www.acton.org/cep/papers/classicallib.html>; “Historical Roots of Libertarianism”, web page of Libertarian Organisation, URL: <http://www.libertarian.org/history.html>; Yusuf Prögler, “Economic Neo-Liberalism: The Target of Popular Protests against Global Capitalism”, web page of Muslimedia International, URL: <http://www.muslimedia.com/archives/features00/capitalism.htm>; Dean Russell, "Who is a Libertarian?", URL: <http://www.daft.com/~rab/liberty/history/whois-1955.html>; “A History of Libertarian”, URL: <http://www.daft.com/~rab/liberty/history/>; John Ahrens, “The Classical Liberal Tradition in Contemporary US Politics”, University of Hartford, September 1990, web page of John Ahrens, URL: http://ahrens.hanover.edu/ahrens/vita_mss/lib-con.html; “Introduction”, URL: <http://www.libertyguide.com/guide/guideintro.html>; Elizabeth Martinez and Arnoldo Garcia, “What is "Neo-Liberalism"”, web page of Corporate Watch, URL: <http://www.corpwatch.org/trac/corner/glob/neolib.html>; “Theoretical Roots of Libertarianism”, web page of Libertarian Organisation, URL: <http://www.sbe.csu Hayward.edu/~sbesc/fllect.html>; Amy H. Sturgis, “The Rise, Decline and Reemergence of Classical Liberalism”, web page of LockeSmith Institute, URL: <http://www.belmont.edu/lockesmith/>

³² James M. Buchanan, “Notes on the Liberal Constitution”, the Cato Journal, Vol.14, No1, web page of Cato Institute, URL: <http://www.cato.org/pubs/journal/cj14n1-1.html>

This framework-maintenance role, properly assigned to government in the classical liberal order, included the protection of property and the enforcement of voluntary contracts, the effective guarantee of entry and exit into industries, trades, and professions, the insured openness of markets, internal and external, and the prevention of fraud in exchange. This framework role for government also was considered to include the establishment of a monetary standard, and in such fashion as to insure predictability in the value of the designated monetary unit. (James M. Buchanan, “Notes on the Liberal Constitution”, the Cato Journal, Vol.14, No1, web page of Cato Institute, URL: <http://www.cato.org/pubs/journal/cj14n1-1.html>)

³³ L.J.M. Cooray, “The Australian Achievement: From Bondage To Freedom”, URL: <http://www.ourcivilisation.com/cooray/btof/chap162.htm>

bidder. Once state owned enterprises are privatised potentially profit-making enterprises would then be managed more effectively and the public would pay less for the services received.³⁴

Among liberal philosophers and economist Adam Smith developed the idea of privatising the King's assets in *The Wealth of Nations*.³⁵ Smith involved some paragraphs on the subject of privatisation. In the *Wealth of Nations* he first argued that argued that:

"In every great monarchy of Europe the sale of crown lands would produce a very large sum of money, which, if applied to the payment of public debts, would deliver from mortgage a much greater revenue than any which lands ever afforded to the crown...When the crown lands had become private property, they would, in the course of a few years, become well-improved and well-cultivated...the revenue which the crown derives from the duties and customs and excise, would necessarily increase with the revenue and consumption of the people..."³⁶

Smith went on that:

"Princes have frequently engaged in many other mercantile projects...They have scarcely ever succeeded. The profusion with which the affairs of princes are always managed renders it almost impossible that they should. The agents of a prince regard the wealth of their master as inexhaustible; all are careless at what expense they transport his goods from one place to another...No two characters seem more inconsistent than those of a trader and sovereign."³⁷

³⁴ E. Van Horn, p.13, 14

³⁵ Adam Smith, *An Inquiry into the Nature and Causes of the The Wealth of Nations*, John Lubbock's Hundred Books, Gorge Routledge and Sons Limited, London and New York, (no date), Book V, Chapter-II, Part-I, p. 650, Book V, Chapter-II, Part-I, p. 644, Book I, Chapter VI, p.38

³⁶ Smith, Book V, Chapter-II, Part-I, p. 650; web page of Adam Smith Institute, URL: <http://www.adamsmith.org.uk/>; Sheshinski and López-Calva, p.4

³⁷ Smith, Book V, Chapter-II, Part-I, p. 644

According to him:

*"...As soon as the land of any country has all become private property, the landlords, like all other men, love to reap where they never sowed, and demand a rent even for its natural produce..."*³⁸

Other liberal economist and philosophers have involved in privatisation ideas. A more recent example is Hayek. In the "Constitutions of Liberty" Hayek argues that it would be necessary that any special advantages, including subsidies, which government gives to its own enterprises in any field, should also be made available to competing private agencies. Although Hayek does not support the idea of excluding all state owned enterprises from the system, he thinks that they ought to be kept in narrow limits. Hayek, however, more importantly states that: *"...it may become a real danger to liberty if too large a section of economic activity comes to the subject to the direct control of the state."*³⁹

Another relatively recent example is Milton Friedman. He strongly promoted the idea of privatisation. He states that: *"...I tell the people in Eastern Europe when I see them that I can tell them what to do in three words: privatise, privatise, privatise..."*⁴⁰

Although liberal theory seems to be the closest system to the idea of privatisation; the connection between liberalism and privatisation should be made with caution and the following points need to be taken into account in evaluating this link:

(a) As we will examine in the following pages, privatisation and liberalisation are two different concepts. Liberalisation refers to the opening up of any industry to competitive

³⁸ Smith, Book I Chapter VI, p.38

³⁹ F.A. Hayek, *The Constitution of Liberty*, Routledge & Kegan Paul, London, 1960, p.224

Hayek provides a liberal approach to economic issues. He stresses that he is not conservative but liberal. (Hayek, *The Constitution of Liberty*, p.397-411)