

PRIVATIZATION AND ITS DISCONTENTS

In *Privatization and Its Discontents*, Matthew Titolo situates the contemporary debate over infrastructure in the long history of public–private governance in the United States. Titolo begins with Adam Smith’s arguments about public works and explores debates over internal improvements in the early republic, moving to the twentieth-century regulatory state and public-interest liberalism that created vast infrastructure programs. While Americans have always agreed that creation and oversight of “infrastructure” is a proper public function, Titolo demonstrates that public–private governance has been a highly contested practice throughout American history. Public goods are typically provided with both government and private actors involved, resulting in an ideological battle over the proper scope of the government sphere and its relationship to private interests. The course of that debate reveals that “public” and “private” have no inherent or natural content. These concepts are instead necessarily political and must be set through socially negotiated compromise.

Matthew Titolo is Professor of Law at the West Virginia University College of Law. Professor Titolo researches nineteenth-century American legal and political history and teaches American legal history as well as commercial law courses.

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Privatization and Its Discontents

INFRASTRUCTURE, LAW, AND
AMERICAN DEMOCRACY

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To my wife and daughter.

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Acknowledgments

This book is the culmination of several years of research and thinking about American political development, the public–private problem, and infrastructure. I first became interested in these issues when I started reading about privatization of public services in the United States, which a friend of mine once called “a niche issue.” This book is my effort to explain the historical importance of that niche issue as a central feature of American political economy. The problem of privatization seemed to me a missed opportunity to revisit American legal and policy history. It struck me as I researched the book that the voluminous literature on infrastructure across academic disciplines had not grappled with the intersection of law and politics in a way that captured central themes in American history: attitudes toward government and the fiscal order, the public/private divide in law, and public discourse around infrastructure. This book is my opportunity to make a point that others have made before me: While we commonly view the market and the state as separate entities, they are in reality entangled networks of governance. Infrastructure is a nice frame for these issues because it resonates with contemporary policy questions that everyone recognizes.

Writing a book like this is definitely not a solo project. Over the past several years, I have received support from my family, friends, and West Virginia University, all of whom have helped me bring this project to fruition. My wife, Tania de Miguel Magro, has encouraged my work on this book over the last couple of years in many ways, including reading drafts as well as by inspiring me to complete this manuscript as she finished her own. My seven-year-old daughter Ximena has kept me on track toward the harried end stage of the project by monitoring my daily writing progress, as well as giving me welcome respite from its burdens. Good friends and mentors over the years, including Steven Pfaff, Greg Jackson, Chris Sagers, and Vince Pecora, have influenced the outlook that gave the book whatever intellectual weight it has. Chris Sagers helped me formulate this project in its earliest stages, for which I am very grateful. Particular thanks also to Greg Jackson for reading

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