

Land Trusts and the Public Interest

The respective roles of public and private initiatives concerning the preservation of natural spaces

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Douglas Franklin is a hard act to follow, especially for an ex-film-maker, a latter-day sociologist and presently a dedicated activist attempting by hook or by crook to preserve one of the last undeveloped mountains within easy reach of Montréal, namely Mount Pinnacle. Nevertheless, my obvious lack of experience in the Land Trust movement as compared to Franklin's expertise may possibly be helpful - inasmuch as this inadequacy permits me to have an "outside" view of the Land Trust movement and its possible relations to public responsibility in matters of natural spaces conservation.

At issue is where precisely the Land Trust movement will fit into the grand scheme of things. At a time when government is deregulating airlines and privatizing the postal service, one may well ask whether the protection of our natural spaces will also be destined for a similar, gradual and long-term shift from public to private responsibility.

Nothing of the sort, of course, appears likely in the near future. In its 1992 survey of the "Endangered Spaces" program, the World Wildlife Fund rightfully draws attention to progress in government initiatives in preserving significant portions of Canada's remaining wilderness. If the goal is to ensure legitimate and long-term protection of our natural habitats, the WWF's report squarely places primary emphasis on the measures the various government jurisdictions, federal and provincial, must implement in order to protect some 12% of Canadian territory before the year 2000. By "protection", the WWF means that no mining, forestry or hydro-electric operations may be undertaken, and this by law and in perpetuity.

The recent "Action Strategy" of Québec's *Ministère du Loisir, de la Chasse et de la Pêche* (MLCP), following the lifting of a moratorium on the creation of new parks enacted in 1986, announces significant progress in this direction, particularly with respect to northern Québec but also, more modestly, in southern Québec. All the areas slated for protection, however, are Crown lands - no funds are to be spent during the next five years by the MLCP for outright acquisition of private lands. A recent report by the *Ministère de l'Environnement du Québec*, prepared by Pierre Boucher, shows that private stewardship accounts for only a tiny fraction of the land now benefitting from some form of permanent protection.

All United Nations reports on the environment, in their chapters on the protection of natural spaces, place primary emphasis on government initiatives, the point of view of these reports being that such permanent protection is squarely in the public interest, just as much as the establishment of a network of public roads or the maintenance of a police force to keep public order. Protection of our natural spaces is to be ensured, according to this view, by public trusteeship.

Where then is private stewardship to be situated and what should be its interface with government? Douglas Franklin's presentation assimilates land conservation under private stewardship to an activity eminently worthy of government financial assistance - through various fiscal measures - certainly just as worthy as the conservation of works of art in museums or the protection of historic buildings. His basic premise is that changes to our tax structure, awarding indirect subsidies to donors of land for the purpose of conservation, must be implemented if the Land Trust movement is to grow in significance and effectiveness. Government initiatives (in this case, enacting tax breaks) are therefore seen as the key to success in private land conservation.

Such arguments in favor of tax breaks have been used in other contexts, in such diverse areas as mining exploration or feature film production. The latter area is one with which I am familiar. Historically, three approaches have been taken by government to promote feature film making in Canada. The first has been to permit the National Film Board, a government agency, to produce such films itself, as a public service. Some such feature films were produced in the 70s and 80s by the NFB. The second has been to mandate a government agency, Telefilm Canada, giving it the responsibility of subsidizing private feature film projects of its choice, the policy being to "pick and choose" on the basis of artistic quality and commercial potential. The third has been to allow tax write-offs for investments in feature film production. Without going into details, I can assure you that the tax write-off scheme is the one that has been the least successful: some of the films produced over the years were so terrible that they were never even distributed commercially. Some producers even made their profit with the tax write-offs, not the box-office receipts. Without some form of "quality control", unregulated private initiative turned out to be very unreliable indeed.

Interface of private stewardship with government may therefore require an evaluation mechanism respecting the value of, or the public interest in, protecting various potential sites. Such a mechanism might turn out to be the Federal government's "Canadian Landmark" program. A recent report to the federal Environment Department recommends reviving this moribund idea, specifically mentioning the possibility of favorable fiscal measures being granted to those sites designated by the government under this program. Such designations would of course be over and above those designations made by officials for government acquisition under their parks programs. Since parks, both federal and provincial, are usually created on crown land, the "Canadian Landmark" program - or its possible provincial equivalents - could favor the acquisition of private lands for

conservation purposes under a private stewardship umbrella, through a system of tax write-offs.

There is however another interface with government which may potentially prove to be fatal to both public and private stewardship of our natural spaces. I refer to the mechanisms put in place by provincial governments to ensure Land Use Planning. In Québec, to take an example I know well, land use planning has been the prerogative of municipalities. Municipalities are the third order of government in Canada. They have legislative and tax-levying powers. The zoning and sub-division by-laws which they enact are real laws which delimit the rights of land owners over the use they may make of the land they own. It is well-known that owners do not have unfettered rights. A home-owner in a residential zone cannot convert his property into a grocery store nor build a third story to house his expanding family. Rights are circumscribed by municipal by-laws and such restrictions are an accepted consequence of having to live together.

There are in Québec some 1650 municipalities whose combined population is 6.5 million people. A quarter of these municipalities are in the huge Montréal administrative area, but they account for 57% of Quebecers, and a density of 126 inhabitants per square kilometer. By contrast, the Outaouais administrative region, north of Ottawa, has a density of 21 inhabitants, and that of the Eastern Townships, 29 inhabitants. In the Côte Nord, the figure is 3 inhabitants per square kilometer. All these statistics refer to organized municipalities, namely about one third of Québec's total land area. Frelighsburg, where I live, has 8 inhabitants per square kilometer, for a total population of a thousand people.

Having successfully argued before the Farm Land Protection Board that Mount Pinnacle should no longer be protected as agricultural land, the municipality of Frelighsburg will shortly attempt to enact its new urbanism by-laws, by which it will regulate land use on its territory. These by-laws will give land use rights to some property owners and reduce these rights for other property owners. Those who, by law, will acquire substantial rights to use their property for commercial purposes will see the value of their land enhanced, doubled or even tripled. Such "rezoning" (as it is called) in other municipalities has given rise to fortunes being made.

These decisions will be made by six Frelighsburg municipal councilors and a mayor, some of whom were elected by a majority of 60 votes. In a previous election, the majority was 10 votes. The council itself is divided over what to do, as is the population. At stake is an undeveloped mountain, a natural area which some citizens claim to be of historic and ecological interest, and which others maintain has such tourist potential that they back the idea of building more than 50 residences within less than 100 meters of its summit and eventually developing an alpine ski center with integrated golf course and 200 more high-class living units - all in all, a project of more than 50 \$ million over the years.

Should public or private stewardship eventually be in a position to acquire the privately-held lands around the mountain, the cost of such acquisition will reflect the acquired rights

which the municipality of Frelighsburg will - in its wisdom - have decided to grant. Should these costs be prohibitive, interest in this site will pass to other sites more likely to be within economic reach.

Thus, municipalities presently hold the key to the selection procedure which will result in which Québec sites are likely to be preserved in those areas where the land is itself held by private interests. I have contended in several representations to government that municipalities, especially in rural areas, presently hold inordinate power in these matters.

One last remark about private wealth and its potential for a significant contribution to private stewardship. Good candidates for natural spaces protection programs are, almost by definition, spaces where little human occupation or disturbance has occurred, namely rural lands. Such areas are not only sparsely settled but historically have shown themselves to be economically disadvantaged. The wealth is in the cities. Private stewardship thus seeks funds to preserve land where wealth is scarce.

The result of this spatial disproportion is that poor regions are called upon to donate to the cause far more than their fair share for the purpose of conserving what is essentially a national objective, namely preserving desirable land for future generations. Recently, the Mount Pinnacle Land Trust launched a local campaign to collect funds to purchase land on Mount Pinnacle. This campaign has been, in a sense, spectacularly successful. If the entire population of Québec had been as generous as those in the vicinity of Mount Pinnacle, it can be estimated that a nest egg of some 500 \$ million, or HALF A BILLION DOLLARS, would have been accumulated. But, on the other hand, what has been gathered so far by the Trust may only be about one twentieth of what may be required to buy out the promoter's property if the proposed municipal by-laws are enacted.

It is difficult not to conclude that successful private stewardship will depend, in the long term, on tapping the wealth of the entire country and not only that of the immediate area where the desirable sites are situated. Such a perspective, however, may require an evaluation mechanism to sort out which sites are "desirable", and which are not, if only to relieve wealthy donors in Canada's cities of the daunting task of having to do this discriminating task themselves. If such a mechanism does not exist, it is not necessarily the best sites which will be protected, but those whose cause will be defended by the best organized and most vocal citizens, some of which may have hidden agendas.

Should such a discriminating mechanism take place under the aegis of Government? Or a National Land Trust? Or linked to the tax-break scheme? Or take place under some form of partnership between public and private interest? I leave these questions for you to discuss. My aim has been to focus on a few issues which seemed of some import. I thank you for your time and patience.

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