Holding the Forest: Redistributing rights in land to further both conservation and equity

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In the beginning, there was the forest which was unspeakably complex. And it came to pass that there were people and so the forest became known as land, and the people became landholders.

It came to pass that land became known as property and property became private and the landholders became known as landowners. The amount of private property that a landowner owned loan-free became known as equity. And property was a commodity that could be bought and sold.

This meant nothing to the bear.

Then it came to pass that problems grew in the forest. Owners cleared, paved, and edificed their property. They sold their trees, and the deer died, and the soil fled down the river.

This meant something to the bear.

The people saw this and they were concerned. They tried to pass laws to protect the bear but the sanctity of private property was held to be inviolate and that of the bear was not. So they tried to coax landowners to protect the fish and the deer and the river and the bear by offering money to do so. They even tried to turn property back into land and land back into forest in all its unspeakable complexity and buy back some parts of the complexity. But they are still concerned.

The forest, in all its complexity, is a natural asset, created by no person. Yet over time, in New England, people have appropriated the forest, calling it private property. This has led to several problems:

• The simplification of "forest" into "land" tends to ignore the role of the forest
• The conveyance of property with property rights has left the public scrambling to take and/or buy back some of the rights in order to protect the forest.
• The distribution of ownership of the land is now disproportionately in the hands of the wealthy.

The purpose of this paper is to suggest ways in which we could try to do this differently. We may not be able to have a 40-day flood and start over. We are now using public and private funds to buy rights in land in the Northern Forest. We could redirect some of these funds and efforts to move toward greater equality as well as forest protection. We could look for ways to hold land that would:

• Recognize the role of each acre of land in the forest as a whole
• Allow people to hold only certain specified rights and responsibilities rather than allowing them to own all rights except for those prohibited
• Substitute the concept of "holder" for "owner"
• Distribute holdership more equitably
• Distribute holdership among local citizens as a means to build community and the connection to the forest.

Land Ownership and the Forest

Although its boundaries can be blazed, flagged, fenced and guarded, the land is part of a larger forest system and the air, water, birds, snakes, bacteria, and tree seeds ignore the lines in order to function. Unlike native Americans, colonists felt they needed to own a defined patch of dirt which they could use to grow corn or build their house or keep their pig or cut their fence posts. So they bought, or were assigned, a piece of land. They didn't buy a role in the forest system that included the air and stream flow and birds and snakes and bacteria and tree seeds and climate; this role simply came with the turf.

Until the late 1800s we were distributing land to settlers; since then we have been trying to buy it — or some of the rights to use it — back. By the late 1800s, so much of the forest had been cut over that the cumulative result of the actions of lots of individual forest-land owners became clear and a movement to put pieces of land back into a forest gained momentum. According to Donald Worster, by the end of the 19th century there was an articulation of, and support for, "some idea of a public interest transcending the wants and desires of a strictly individualistic calculus." (Worster, 1993, p. 103).

There were two main ideas of what this transcendent public interest was: some feared that the widespread timber cutting would lead to a timber famine; others felt that timber cutting was reducing soil fertility, lowering populations of wildlife, muddying streams, increasing the incidence and severity of spring floods and fall wildfires. There were also two main approaches to protecting the transcendent public interests: affect the management of private property and turn private property into public property to be managed for the public good.

State and federal agencies acknowl-
Forested the public interest in private land, but it was unclear how this interest could be asserted. Henry A. Wallace, Secretary of Agriculture, wrote in 1938 “the social lesson of soil waste is that no man has the right to destroy soil even if he does own it in fee simple.” (U.S.D.A., 1938, p.v.) There was debate about regulation of timber cutting practices, but, in general, the rights of the private property owner, considered by many to be inalienable, rendered this approach difficult. Instead, when federal funding became available, most of the states deployed foresters to influence management practices on private land with free advice, cost sharing of management practices like reforestation or digging forest ponds, research and education.

The other approach was to avoid the private property rights issue and to buy the property back. In the late 1800s and early 1900s, major programs of public acquisition of forest land began at the national, state, and town levels. The public land was acquired to achieve both purposes of averting a timber famine and conservation of a broader range of resources. The Organic Act, for example, allowed acquisition of National Forest land to “furnish a continuous supply of timber for the use and necessities of citizens of the United States” (16 U.S.C. 475, Organic Administration Act of 1897). At the other extreme, the New York Constitution declared that land within the forest preserve “shall be forever kept as wild forest land.” (New York State Constitution, Article XIV).

Since the beginning of this century, the two-pronged approach of affecting private actions and buying back property has continued. We have added a few new twists. On the acquisition side we have recognized that when we allowed people to purchase property, we allowed them to purchase a “bundle of rights.” We have begun to buy some of the rights back. The most common variation of this is the purchase of development rights, ensuring that the landowner will not pave or build on the land. Purchase of development rights is often coupled with a conservation easement on the property that restricts management practices. Although there have been a few controversial attempts to regulate activities on private land, most of the land protection efforts essentially use public and philanthropic funds to buy back or rent back some of the rights that were given to the landowners.

Landownership and Equality

Partly in reaction to the European history of feudalism, primogeniture, and large estates, there was a great deal of attention given to widespread and equitable distribution of land in the early days of this country. Shocked by the extremes of wealth in France, Thomas Jefferson wrote to James Madison in 1785:

The earth is given as a common stock for man to labour and live on. If, for the encouragement of industry, we allow it to be appropriated, we must take care that other employment be furnished to those excluded from the appropriation. If we do not the fundamental right to labour the earth returns to the unemployed. It is too soon yet in our country to say that every man who cannot find employment but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landholders are the most precious part of
a state (Jefferson 1950 [1785], 682).

Although there were certainly disagreements, the public face of early land distribution was fairly equitable. In many towns in the Northeast, settlers were assigned lots that included a family-sized share of tillable land for farming, forest land for wood and fuel, and swamp land for cutting fence posts. The Homestead Act of 1862, that permitted a family to obtain 160 acres after living on it for five years, was a clear indication of the support for equality of ownership.

However, the equality was not long lasting. According to the 1938 Yearbook of Agriculture, “the objective of developing a nation of land-owning farmers was not being realized. Corporations and large-scale speculators continued to acquire large acreages” (U.S.D.A. 1938, 112). In the northern forest, the low-cost land distribution resulted in land being purchased for the value of its standing timber only, rather than to be used as a family farm or homestead. The land ended up in very large “industrial” holdings.

By the end of the 20th century, these large timber holdings were being sold. Because of the population pressures in the Northeast, it is likely that much of the land would be divided into smaller parcels, also known as forest fragmentation. In the 1980s, the Northern Forest Lands Study warned that “the demand by millions of people living within hours of the Northern Forest to possess a piece of the northern landscape is insatiable” (U.S.D.A. 1990, 80). Whether one is concerned about future supplies of timber, the health of local forest-based economies, wildlife habitat, outdoor recreation, clean water, or maintaining the region’s way of life, the prospect of dividing this land into small lots for development poses a serious threat. The response has been to use public and private funds to keep the large tracts together. In the well-publicized Champion purchase, some of the land became public, but a large amount of land was stripped of its development rights and resold to a private investor.

This solution may have achieved the objectives of keeping the land in one undeveloped piece, but it is not a particularly democratic solution. However, would allowing the land to be sold to those insatiable millions result in an equitable distribution? The chances are good that the land would be bought by people who are wealthier than average, as evidenced by the existing ownership patterns of non-industrial land in the region. In Vermont, for example, by the early 1980s about 85 percent of non-industrial private forestland owners had household incomes exceeding the state’s median. Moreover, there are indications that the differential between the incomes of forest landowners and of non-owners is widening. In a recent study of the ownership of forestland in the northern United States, Birch (1996, 5) found that, “in general, the ‘new’ individual private forest-land owner is younger, better educated, and earns more than the owner of a decade ago,” while at the same time, “there has been a substantial decrease in the percentage of owners in ‘blue collar’ occupations and in the proportion of acreage held by these owners.” If the Northern Forest land were allowed to be subdivided and sold on the open market, it is likely that a substantial portion of it would be bought for recreation or second homes and that an even higher percentage of the owners would be absentee and wealthy.

Conservation, Equality, and Community: An Alternative Approach

An alternative approach to protecting the forest would be to purchase large tracts of land, develop a management plan, and resell certain specified rights to use the land in keeping with the management plan to many local people. This would build on the Champion model, in which large tracts of land are purchased by conservation organizations that divide up the “bundle of rights” before reselling the land. There could be several modifications, however, to achieve both sound stewardship and equitable distribution:

• Instead of reselling the tract to wealthy investors who are able to buy a large parcel, the tract could be resold to an organization of individuals of moderate means. The tract would be subject to a single, overall management plan to ensure integrated management of large areas, but it could be owned by many.

• Instead of selling the “remaining” rights, “specified” rights could be sold. Jefferson’s “landholders” would replace our current concept of “landowners.” People would buy certain rights to use land; they would not own the forest itself. The landholders wouldn’t have all rights except for those that the government tries to take away; instead they would have only the rights they acquired.

• There could be two types of landholders. The smallholders, interested in managing their own land, cutting fuelwood, maintaining trails, and stewarding a defined corner of the earth that they can pass down to their families, would acquire a holdership that is specifically delineated on the ground.

• The second type would be the commonholder. In some parts of the parcel, the rights in the land might be sold as undivided interests. The buyers of the undivided rights would be interested in: receiving a return on their investment; holding well managed forest land that they do not have to work on; stabilizing the use and ownership of the land; or participating in the project because it is the right thing to do.

• Some holdership shares would be reserved for people who meet certain income requirements. These shares could be acquired through a combination of subsidy, deferred loans that
could be paid back through the revenue from the land, and/or sweat equity.

In contrast to the conservation movement that has favored taking land out of the hands of private individuals, Jefferson saw widespread landholder-ship as the foundation for conservation, democracy, and community. Recently, these beliefs have been articulated by farmer/philosopher/Jeffersonian Wendell Berry:

To say that the right of private property has often been used to protect individuals and even global corporations in their greed is not to say that it cannot secure individuals in an appropriate economic share in their country and in a consequent economic and political independence, just as Thomas Jefferson thought it could. That is the political justification of the right of private property. There is also, I believe, an ecological justification. If landed properties are democratically divided and properly scaled, and if family security in these properties can be preserved over a number of generations, then we will greatly increase the possibility of authentic cultural adaptation to local homelands. Not only will we make more apparent to successive generations the necessary identity between the health of human communities and the health of local ecosystems, but we will also give people the best motives for caretaking and we will call into service the necessary local intelligence and imagination (Berry 1995, 49-50).

In the Northern Forest, putting the forest into the hands of local residents has several potential benefits. Because local residents are likely to be more sensitive to the needs of their neighbors and more invested in the well-being of their communities, they could help to protect regional economies from the boom-and-bust cycles characteristic of absentee ownership. Local control also could foster a forest economy that is more diverse and profitable than the feed-the-mill economy. Invested residents might be more willing and able to protect the forestland by monitoring harvesting practices and recreational uses. And, the forest could produce income for residents and broaden their participation in the local economy and ecology.

But, most important, the proposal could move in the direction of equality — a declared goal of this country. While philosophers debate whether we should strive for equality of outcome, equality of opportunity, equality of welfare, or equality of income, the practice in the United States has moved toward measuring “sufficiency” in terms of annual income and providing money through government assistance programs to bridge the gap for those who are needy.

In an examination of the ideals of the Constitution, Mortimer J. Adler concludes:

Economic independence is the one thing the economic equivalents of income-producing property, in the form of welfare entitlements and benefits, cannot provide wage-earners. Only individuals having sufficient income-producing property are persons of independent means. The possession of such economic independence by citizens with suffrage is certainly desirable, if not necessary, for the untrammeled and unfettered exercise of their political liberty.

Accordingly, the best solution of the problem of how to secure the economic rights and establish the economic equality that are the indispensable underpinnings of political democracy is by some combination of the two means for doing so: by every individual or family having a dual income, partly from the wages or salaries of labor, accompanied by some welfare benefits, and partly from the revenues earned by income-producing property through the ownership of equities in capital. (Adler, 1987, 154-155)

The fact that we are so far from this ideal shouldn’t stop us from acting. In the Northern Forest, where there are still large tracts of land, we can proceed parcel by parcel and measure our progress toward both equality and protecting the forest in acres.

ENDNOTE

1Based on information from Widmann and Birch, 1988, p. 41 and data from the Vermont Department of Taxes.

References


