

Creating Institutions of Care: The Case for Democratic Forest Trusts

Gus diZerega

Abstract—Strong institutional and systemic barriers prevent traditional political and economic institutions from effectively managing national forests in the United States. Despite consistent support for ecological values by the public, Congress does not protect them, and existing political institutions are not designed to respond effectively to citizens with these concerns. The major difficulty is that modern institutions do not effectively represent publics that are not geographically isolated.

On the other hand, tribes such as Wisconsin's Menominee in governing their commons have managed forests for very long periods. This is so even when they also engage in the market economy. This is because their institutions are responsive to deeper and more complex values than are contemporary impersonal modern ones. Even so, traditional forms of organization can teach us but cannot be copied. However, the National Trust of England, Wales, and Northern Ireland suggests a way similar values can be applied in a modern context. These insights are then applied to building a case for democratic national forest trusts to govern American national forests, including how they require independent organizing, financial independence, and can successfully attend to both local communities and the environmentally aware larger public.

Forests and Public Values

One general principle underlying civil institutions is that economic and political feedback enriches but does not dominate decisions made by people who genuinely care about the values at stake. The key criterion for inclusion is that decisions made within civil society can consider on a reasonably level playing field the full ethical range of acceptable human motivations. It is here that ethically deeper dimensions to human life can expand beyond the sphere of personal relationships to encompass the wider world.

Our 147 national forests represent public values for many, probably most, citizens. Within this context of support, the forests are sites of serious contention among citizens concerned with their well-being, but motivated by often conflicting priorities. These concerned citizens are immersed within a larger sea of citizens for whom these values are of relatively little importance.

Usually those elected to serve the more inclusive community owe little in their victory to their views on national

forests. Most elected representatives find forest well-being of little importance unless they have a personal commitment. The dispersed publics that do care for them have often been unable to protect these forests against assault by private interests or malfeasance by public agencies charged with protecting them, except through the courts. But policy by lawsuit is a poor way to administer anything.

The Mountain Maidu are a small Indian tribe presently involved in implementing a tribal approach to forest management on 2,100 acres (850 ha) of Plumas National Forest. The tribe is working at restoring the oak and pine woodlands that predominate in the lower elevations of that region of the Sierra Nevada. Loreena Gorbet, a tribal member, is coordinating the tribe's activities with the U.S. Forest Service.

In a recent account of their activities, Gorbet was quoted as saying her tribe views itself as deeply enmeshed within their natural landscape. "The plants and animals—they're our relatives. We talk to them to find out what they need." This is the language of relationship and ethical involvement. It is not the language of the U.S. Forest Service. In Gorbet's words, to do her job she has had to learn to speak "Forest Service" (Little 2005).

There is also a larger problem here. The Maidu are native to the place, the Forest Service to Washington, DC. Each is adapted to its own very different niche. This is why, as Little (2005) suggests, the stewardship partners also approach forest management with diametrically different concepts of time. The Maidu's initial proposal involved a 99-year demonstration—an eternity to an agency that gets its funding on a year-by-year basis. The Forest Service eventually agreed to a 10-year project.

When dealing with a forest ecosystem, 99 years is a far wiser framework for action than 10 years. The Maidu can think in those terms because they have been in this area for much longer than that, and they hope to stay well beyond that. The U.S. Forest Service is attuned instead to political and economic standards of relevant time.

The Menominee Tribe of Wisconsin has managed their forest for 146 years now, and it is more healthy and diverse than any other forest in the state, including national forests (Davis 2000). Their customs and values developed in the midst of long association with their land. The Maidu share such a perspective.

The Forest Service itself is about 100 years old, having been created largely through legislation passed between 1905 and 1911. It possesses a great deal of knowledge about the political ecosystem on which it depends. However, the Forest Service rotates its rangers on a regular basis, mostly to keep them loyal to the service rather than "going Native." As a consequence, while Rangers have a considerable knowledge about the Service and its traditions, they do not have nearly so much about the particular locality where they happen for the moment to be stationed (Kauffman 1967).

Gus diZerega, Visiting Assistant Professor, Department of Government, St. Lawrence University, Canton, NY, U.S.A.

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Like any large organization, the U.S. Forest Service's primary loyalty is to itself. Randal O'Toole emphasizes budgetary incentives as primary motivations behind Forest Service decisions; Nancy Langston, emphasizes agency autonomy (Langston 1995; O'Toole 1988). For our purposes, both observations apply.

The point is not that people with different loyalties cannot rise to leadership in the Forest Service. Some have. But they will do so while playing with a political deck loaded against them. The career and budgetary incentives facing the Service and its employees are dependent on political and economic processes long before they are dependent on scientific and ecological ones. Government agencies are focused on the budgetary year and subordinate other values to it. There is a deep disconnect between the political feedback most important to the Service and ecological feedback helping it attend better to the health of our forests.

In addition, Congress is institutionally incapable of providing long-term oversight for our national forests. Occasionally it can adopt reforms and make wise decisions, but once made, the public pressure encouraging these reforms dissipates. Those who would undermine the reforms' intentions for financial gain patiently remain, to subvert the legislation as the opportunity arises and the public's attention wanes.

A frequent problem with serving public values through traditional political institutions is that their power to tax and pass laws encourages efforts to capture legislative and administrative processes in order to serve private interests, or to subordinate public values to the interests of organizations established in the name of serving these same values. Sometimes such approaches cannot be avoided, and these problems are simply the inevitable costs of getting things done that need doing. But if public values can be adequately served by institutions lacking both the power to tax and the capacity to pass laws, they will be freed from major sources of corruption and distortion.

The Progressive Era ideal of dispassionate scientific administration of our national resources never really existed in practice. To even the most idealistic advocate of traditional political solutions, government is a poor protector of such values. Government agencies can successfully serve well-defined values with clear standards for success, such as landing a man on the moon or delivering social security checks, to pick what are otherwise very different examples. Performance plummets as the values they are to serve multiply and standards of attainment become vague (Wilson 1989). Multiple values and vague standards are characteristic of the complexities of our relationships with the natural world.

However, people have repeatedly devised institutions taking truly long run perspectives on our interactions with the natural world. Wisconsin's Menomonee tribe has successfully managed their forest as a working woodland since around 1860. The Menomonee forest contains a varied forest community, with many trees of old growth size and age. While only about twice the size of neighboring Nicolet National Forest, the tribe cuts twice the timber, with a saw timber cut thirty times greater. Yet their land still resembles the great forests that once characterized this region, and its outline of great old trees is visible from Landstadt satellite photos (Davis 2000). Central to the Menomonee's success is integrating market values with other values held by the tribe.

We can learn from them but cannot simply copy them. Still, what we can learn is very important. First, it is possible for people to develop institutions able to sustain long-term human interactions with their environment. Second, their institutions were self-governing, their decisions not normally subordinated to any other body whose members were less concerned with the health of their lands. Third, these people did not manage their land to maximize their financial income. While their lands served economic needs, and most people in any society would prefer more wealth to less, they also honored non-financial values in their decision-making. Fourth, they knew their lands personally and intimately, and acted accordingly. For us, the critical question is whether these enabling elements are robust enough to provide long-term protection and management even when people are mobile, individualistic, and despite good intentions, usually ignorant of the needs of any particular forest, let alone forest ecosystems in all their variety and complexity.

A Way Forward

Snyder has written that the public domain in North America constitutes a kind of national commons we "are all enfranchised to work on" (Hardin 1968; Snyder 1990). Unlike Hardin's misleading use of the term, the village commons of the Middle Ages and of many other places and times were managed by the community in order to preserve the land from exploiters (Ostrom 1990; Snyder 1990). But there is more to a commons than this. Snyder emphasized "the commons is both specific land and the traditional community institution that determines the carrying capacity for its subunits and defines the rights and obligations of those who use it, with penalties for lapses. . . it is traditional and local" (Snyder 1990, p. 30).

Public lands are not governed by communities that care about them. Most politicians are uninterested in their fate, at least compared to other values, and their votes are up for grabs. So the basic requirement for a successful commons does not exist at the level of national administration. The mediocre to poor results we have experienced should surprise no one. Consequently, Snyder advocates returning these public lands to regional control (Snyder 1990). But what defines the region? The small Sierra Nevada watershed where he lived for many years was well suited to his vision. But many areas are larger and less well defined.

Some political conservatives and advocates of western autonomy want to turn the public lands, including the national forests, over to the states. But these are genuinely public lands, of great concern to millions of Americans who do not necessarily live in the states where they are located, and whose taxes have long helped support these states and nearby communities. Simply living in a western state does not mean a person cares about these lands. More than one Westerner sees the land primarily through an accountant's eyes. No necessary connection exists between existing political boundaries and concerned publics.

State governments can be as open to other interests and little focused on their public lands as are the national governments. An early study comparing state to federal salmon protection observed "the greater vulnerability of the state conservation policies to pressure from groups whose interests

may be injured by regulatory action and whose influence counts more in state capitals than it does in the larger arena of national politics.” (Gregory and Barnes 1939, p. 39, quoted in Montgomery 2003, p. 143). This is as Founding Father James Madison would have expected; smaller polities are more vulnerable to influence by well-organized factions pursuing private interests at the expense of the community as a whole.

Another strategy increasingly mentioned for forest reform is increasing local control over national forest policy via “collaborative conservation” that focuses on local solutions by local stakeholders to local environmental problems. It has been identified by many Americans as a promising solution to establishing viable environmental policies (Brick and others 2001; Kemmis 2001). Kemmis, for example, emphasizes that due to the enormous amount of publicly owned land in most Western states, local citizens feel essentially colonized by a far away power over which they have no influence, and towards which they have considerable resentment. He writes when Westerners “balance their experience of joining with old enemies to solve hard problems together against the hidebound procedures of a national government and a national democracy that no longer seem to work, they feel they are the real democrat” (Kemmis 2001, p. 226). Ideas such as Kemmis’s are not simply theoretical. The Quincy Library group, consisting of people in extractive industries and environmentalists, devised by consensus a governing plan to cover three national forests, which won endorsement by 434 members of the House of Representatives.

There is much to recommend in collaborative models. However, with respect to national forests there is a basic weakness to purely local approaches to environmental management. Many, perhaps all, national forests have a genuinely national constituency. Local control would freeze out from policy discussions many citizens with a strong interest in their well-being, in favor of some who may care a great deal less.

The political power that ended the Forest Service’s rapid liquidation of all old growth forests came from aroused citizens at the national level, particularly in cities. Local communities were often deeply tied to business as usual, even when that business threatened their long-term viability. Once issues become more complex than what can be addressed by local knowledge, many small communities are all but powerless in confrontations with ruthless large corporations, as the citizens of Libby, Montana, have learned to their sorrow (Matthews 2000; Peacock 2003). Even with Quincy, the political strength possessed by local citizens proposing alternatives to logging came from being part of a national movement.

Yet local interests are disproportionately impacted by forest policies over which they exercise little to no control. Further, in many cases local knowledge and support will be vital components in developing effective policies able to be implemented successfully in a democratic system. Collaborative arguments focus on a key part of an effective solution to forest preservation, but define themselves too narrowly because they ignore the larger context of public values. They inappropriately apply a geographical conception of citizenship to an instance where it often does not fit. These interests deserve an important seat at the table, but they do not deserve all the seats.

The Democratic Forest Trust

Institutions are needed that are responsive to Americans who care about the environment, while circumventing interference by politicians who don’t. In the case of our national forests these institutions also need to be open to all Americans, for they are public lands. Gary Snyder’s focus on local inhabitants is politically impossible to implement in this case, and probably not altogether wise if it were, but his model of a commons remains perhaps the only viable alternative to the failures of corporate forestry or political management.

A democratic land trust suggests a practical solution to this challenge. The land trust concept offers an alternative institutional framework for managing forests that is also harmonious with the political realities of American democracy. Trusts are a time honored means by which a person or institution is charged with protecting and managing the property of another, “in trust.” They are widely used in many areas of private life, and are becoming increasingly important in private conservation efforts. Trusts have also been used by many Western states to manage their forests, primarily for the benefit of schools. However, these state trusts serve financial rather than broader public values. Their financial orientation makes them inadequate models for preserving our national forests (Souder and Fairfax 1995).

Land stewardship trusts remove land from the real estate market, enabling it to be managed — “stewarded” — on behalf of future generations (Banighan 1990, 1997). Land trusts are traditionally non-governmental, non-profit organizations created to preserve the ecological, historical, agricultural, or wilderness value of the land. Land stewardship trusts focus on preserving and fostering sustainable forestry and agricultural practices, wildlife habitat, and recreation. Because key property rights to the land are removed from the market “in perpetuity” or for an extended period, their economic value cannot be used as collateral for obtaining loans. Operating funds must come from other sources, such as fees, membership dues, and donations. A firewall is erected between the land and domination by market forces. The price system guides but cannot command. Similarly, the law enables but does not control.

In the United States, land trusts are increasingly relied upon to protect environmental values (Brewer 2003; Forbes 2001). However, the history of American land trusts is brief, usually under 25 years, and most American trusts are small. Most are also not internally democratic. These limitations give reasonable pause to anyone trying to adapt land trusts to the care and protection of our national forests.

The National Trust of England, Wales, and Northern Ireland is another matter, celebrating its centenary in 1995. The National Trust’s properties now extend to 612,000 acres (247,668 ha) (about 1,000 miles² or 2,590 km²) in the United Kingdom, including almost 600 miles (966 km) of coastline, about 18 percent of the total coastline of England, Wales, and Northern Ireland. After the Crown, the National Trust is the largest landowner in the United Kingdom. It has over 3 million members and is very popular. The National Trust’s ability to incorporate ecological as well as historical values and its consistent acquisition of new land, even in densely settled areas, is impressive evidence of the concept’s promise.

The National Trust has a substantial democratic component. Anyone can join and thereby obtain voting rights. As of 2005, The National Trust has a Council consisting of 52 members, 26 elected by its membership, another 26 appointed by outside bodies. Direct management of the National Trust is through an Executive Committee, under which are a number of decentralized Regional Committees. Far from lacking political debate, the National Trust is frequently the site of vigorous campaigns by members seeking changes in policies regarding hunting, recreational use, and similar issues (Dwyer and Hodge 1996).

Enabling legislation could be passed so that National Forest Trusts could be established with primary responsibility for governing our national forests; one trust for each forest. Membership in each Forest Trust would require only that members pay a fee covering their membership expenses in order to join. Judging from the dues of modern mass membership organizations, such expenses would not be high. However, the hurdle of having to pay to join a Trust would ensure that only people genuinely interested in the forest and its fate would usually take the time to join. Perhaps, as Hess (1993) suggested, work-trade arrangements could be made for people lacking the means to pay even these modest fees. Work would also likely commit the laborer far more strongly to the forest's well-being than simply writing a check.

Enabling legislation should make it possible for Forest Trusts to be formed only if there is substantial popular interest. Open procedures and membership, and a means for ensuring a diversity of member perspectives would be required, but little more. Like a natural ecology, human communities are too complex for one size fits all approaches. Organizational details would be up to the membership and its Governing Board. Apparently the very act of organizing a self-governing body helps to create the trust, skills, and infusion of local knowledge that enables an organization to survive (Blomquist 1992; Ostrom 1990; Tang 1992).

A Trust would be established once enough would-be members have created an organization meeting legal requirements. To prevent one group from grabbing control of a board from the beginning, once created and certified, membership opportunities should be widely publicized for a year, after which election of the first Forest Trust Governing Board would occur. The Board would take over policy management after sufficient time has passed for consultation with the Forest Service during the transition.

The number of citizens needed to create a Forest Trust should vary because national forests themselves vary in size, proximity to citizens, and public interest. Probably some formula reflecting both the number of annual visitors and the immediate population in the region would be best. Clearly different numbers should apply to Umatilla National Forest in eastern Washington and Oregon compared to Wenatchee National Forest near Seattle. In all cases, numbers should be high enough to require sustained organizing and trust building to succeed, but low enough that such efforts have a reasonable chance of success.

The potential for a large American membership is high. The National Trust has 3 million members for a much smaller national population. Even when distributed among approximately 150 national forests, each Forest Trust would probably have many tens of thousands of members, some far

more than that. Some members would be nearby residents, often involved in extractive or recreational industries using forest resources. Many more, locals and non-locals alike, would be people making personal recreational use of the forest, and some would likely simply be people concerned with its well-being.

I suggest limiting membership to one. While any small number would work, "one person—one trust" emphasizes the centrality of the democratic principle of one person one vote and guarantees that each person would join the trust about which he or she most cared. Allowing only one forest trust membership per person, combined with care, encourages members to acquire significant knowledge about the issues facing the forest. Members will probably be disproportionately local, or live nearby.

This institutional arrangement could go far to harmonize the interests of local communities and ecologically sensitive oversight of forest lands. For example, today the U.S. Forest Service opens logging opportunities to bid, a seemingly fair process. But the contracts are usually for large areas requiring many employees, used briefly in any area. In addition, bidding procedures are complicated, and the contracts offer irregular rather than sustained work in any given area. These circumstances penalize small local firms (Danks 2003).

A pilot project developed in California's Trinity County suggests the kind of alternative arrangements Democratic Forest Trusts could institute. In 1997, a group of loggers, environmentalists, local contractors, Forest Service employees, and concerned citizens met after the county's largest remaining employer, a sawmill in Hayfork, closed down. They sought to find a way to recover from the loss in jobs and the crisis the county was undergoing. Danks (2003, p. 253) wrote, "The group determined that a properly scaled, multiyear, multitask contract that addressed all the stewardship needs of a given tract could provide steady, long-season work that would improve both the biological health of the forest and the economic health of the community."

As a result of these discussions, the Forest Service developed a contract oriented to the needs of the local communities and the needs of the forest. Local businesses won the bid, only to have it withdrawn later for lack of funding. Two more contracts along similar lines are currently being put together (phone conversation with Lynn Jungwirth, Executive Director, Watershed Research and Training center, Hayfork, CA). A democratic trust with considerable local membership would prove more compatible to following through with such opportunities, to the benefit of both the forest and neighboring communities. The Menominee example of creating their own sawmill to handle cuts from their forest is an instructive example (Davis 2000).

Several possibilities for Board structure exist, and the one selected should be the choice of those joining the Trust. A board might be entirely democratically elected. Another might have a mix of elected and appointed members, such as from local university Departments of Forestry and Biology (Hess 1993). However, any less than fully elected Boards should be subject to periodic membership approval to guarantee their democratic character.

The Board would decide basic policy and select subcontracting agencies for their implementation. The U.S. Forest Service would probably subcontract its services to the Board. However, to ensure the Service's responsiveness, the Board

must be able to contract with other agencies such as state departments of forestry. The option to choose another agency would keep the Forest Service responsive to the Board's priorities. It would have to adapt to them as well as it currently adapts to Washington, DC's political environment. Existing environmental laws and other statutes would remain in force.

The trust would be responsible for raising enough money to meet its normal costs. User fees of many kinds would probably be major income sources but, unlike the U.S. Forest Service, policy decisions would be determined by citizen members, most with no personally significant financial stake in the trust's income. There are other potentially important resource sources. In many contemporary land trusts and even national forests, volunteers provide considerable assistance. Additionally, private and foundation donations and grants could fund specific projects or, most importantly, help create a forest endowment that would grow over time. Given people's love for forests, it seems probable that in time endowments could become an important source of long-term financial viability.

Unlike market-oriented models of reform or state forest trusts as they presently exist, national forests would be under no institutional incentive to maximize profits. My emphasis differs here from O'Toole's pioneering work. O'Toole wants to fund trusts from net revenues, creating a powerful incentive to respond to market values (O'Toole 1995). However, to serve public values, the trusts should be institutions of civil society, and therefore partially independent from both government and market, and able to use any mix of revenue, donations, and volunteer labor they can acquire.

Lack of access to tax monies eliminates any incentives to subsidize extractive industries or other private interests. It also prevents Congress from using financial threats to interfere with forest policies. The forests would become much freer from political intervention by parties unconcerned with their long-term well-being.

One major problem would be the cost of fire suppression. While Congress will probably be willing to supply funding for such measures because they constitute considerable pork for local districts throughout the west, in the long run such an arrangement is undesirable. One alternative is for forests to take out insurance policies (Williamson 2005). One advantage is that as the forest becomes less vulnerable to catastrophic wildfire, premiums will go down, providing an additional incentive for wise management, the opposite of current circumstances.

In addition, forest trusts will be able to learn, adapt, and resist institutional sclerosis. The trusts' internal and external polycentricity encourages openness and adaptability. Because there would be many trusts, each with responsibility for only one forest, membership would focus on the needs of particular forests. With local members, local knowledge would be as accessible as more general and abstract principles of forestry and ecosystem stewardship when determining policy options and value choices. The Internet easily allows every trust to have a website where a wide variety of information can be made accessible to members at a minimal cost, encouraging the exposure and correction of errors and dissemination of successes as they are discovered (Ostrom 1991; Polanyi 1951).

Finally, compared to the needs of the electoral cycle, rate of interest, politics of the budget, and even individual financial concerns, democratic forest trusts will have long time horizons. In the United States these more short-term factors constitute legitimate elements of our social and political environment. But if they are the dominant institutional influences on environmental decision making, we can be sure that many shortsighted decisions will be made, with bad consequences for the forests themselves.

Most Americans already support environmental values. The trusts' independent status would be buttressed by millions of motivated citizen members opposing legislative overruling of trust self-governance in favor of private interests. They will already be organized and have close ties with the rest of society, protecting forests from Congressional and corporate intervention in their affairs. Further, they will have many non-member connections, through sympathetic friends and family members.

People who use the forest will observe for themselves the impact of managerial decisions. Renewal of directors through public debate and elections, where contrasting visions compete for the allegiance of voters deeply concerned with the forest's fate, would inhibit the rise of self-serving elites and in-grown administrations. Moskowitz and O'Toole (1993) have written a suggestive discussion of how small communities and ranches can cope with today's changing rural environment (see also Best 2003; Brighton 2003). However, unlike Moskowitz and O'Toole, diZerega, (1998) suggests their proposal for a development trust should remain in the hands of the people with a personal more-than-financial interest in the region.

Attempts to extend a common detailed formula describing what worked in one situation often fail when applied to different physical and social circumstances in another. Apparently the act of organizing a self-governing body helps to create the social capital and infusion of local knowledge that enables such an organization to survive (Blomquist 1992; Ostrom 1992; Tang 1992). Blomquist's careful study of community based groundwater management in California is instructive. Blomquist emphasizes, "One of the most important conclusions of this study is that there is no formula for governing or managing groundwater basins in southern California or elsewhere." (p. 330-331) Different governing structures arose dealing with the problems facing different basins. When attempts were made by the state to import a framework that worked in one area to another, the results were unsuccessful.

Conclusions

Environmental thinkers as different as bioregionalists and free market economists have independently arrived at the insight that the commons model, where land is governed by a small number of people personally concerned with the land itself, is superior to both traditional private and traditional government management. The model creates an institution of care that does not fit into the sterile ideological boxes currently afflicting our society. It offers a practical framework buttressed by 100 years of experience in England, suggesting that given appropriate institutional contexts, modern westerners can practice a wise and sustainable approach

to the land. We, too, can plan on a 99-year scale, like the Mountain Maidu.

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