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COMMENTARY

The Comedy of Maine's Commons: Private Ownership as Economic Development

by Michael Cianchette

Comedy. Tragedy. These are two of the categories of drama described by Aristotle in his *Poetics*. At its most basic, a tragedy was a story ending poorly for the main character. The opposite was comedy, which did not have the humorous connotations the word carries today. Rather, it simply meant the tale ended happily for the protagonist.

Like most words, they have grown, evolved, and been adapted over the years. One of the more famous uses of the word tragedy has come from economists, who coined the phrase the tragedy of the commons. It is one of those often-mentioned maxims in the policy-making arena. At its most simple, it suggests shared resources are quickly depleted because no one holds personal ownership of the resource and thus feels any personal responsibility to responsibly manage it. The analogy began with literal commons. An open (common) parcel of grazing land shared among numerous farmers creates an incentive for each farmer to graze his own animals at a greater rate than his peers. These individual motives, extrapolated out, lead to overgrazing, a tragedy for all concerned.

Numerous approaches have been suggested and designed to prevent such tragedies. But, in Maine, we have managed to avoid that fate in several arenas; the story of our commons is often comedic, not tragic. These happy endings have positive impacts for our economy. In particular, access to the outdoors and focused, heightened public improvements in urban areas have

helped create a tourism-based economy generating sales in excess of \$9 billion during 2018 (Maine Office of Tourism 2019).

One way we have supplanted tragedy with comedy is through supporting and respecting private ownership of property. Some of this is by necessity, as areas that might be publicly owned in other states—such as our expansive forests—are predominately private in Maine. Other times, it is through a recognition that the private sector supports responsible public investment and, done correctly, is willing to financially support it through increased tax revenue.

As Maine prepares for its next 200 years, policymakers should take heed of these examples. Government involvement can be supportive rather than adversarial. And when Mainers and Maine businesses are empowered to manage their own affairs, great things happen.

COMMON ACCESS TO FIELDS AND FORESTS

According to an article in the *Bangor Daily News*, snowmobiling was responsible for \$350 million of Maine's gross domestic product in 2010 (Bayly 2010), and more recent data show that hunting and fishing adds in excess of \$500 million (Reynolds 2019). It is axiomatic that those activities occur in the outdoors and therefore require land. Access to that land is where we differ from other states.¹

In most, if not all, other jurisdictions, a person requires permission before hunting or entering another's land. Maine inverts that paradigm; unless the landowner affirmatively posts their land, anyone may access it. This permissive land-use culture sets us apart from other states, and our economy has come to rely on it.

Ninety-five percent of the state is held in private ownership (NRCM n.d.); almost 90 percent is forested (Butler 2017). Whether hunting whitetail deer or riding miles of trails, access to privately owned land is essential to this recreational part of the state's economy. Through development of both policy and culture, that access is widely available to anyone seeking to responsibly recreate in Maine. The Maine Department of Inland Fisheries and Wildlife estimates more than 10 million acres of private land is voluntarily left open by private individuals and organizations. Most of these landowners are not directly engaged in the tourism industry; they keep the land for homesteads, farming, and forestry, among other reasons. So, why would they give access to the commons?

Culture is one reason. For centuries, access to land has been ingrained in the character of Maine. The idea of restricting access is not only foreign as a concept, but is also fraught with public peril. Landowners generally wish to use their land for economic purposes, whether selling products from the property or as part of real estate development. To the extent those activities require public

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involvement—through market forces or permitting processes—it is an unwise for landowners to reject the dominant culture and deny open access.

The other reason is policy driven. As long as the public is responsible and respectful, there is little downside to allowing access. Maine law generally absolves landowners from liability in the event someone is hurt on their property. Since recreational use is presumed to be permitted by law, the danger of prescriptive easements is almost nil. And, since the primary use of the property often qualifies under Maine's current use tax regime, there are financial benefits available for the property owner. Those benefits may be extinguished if the cultural expectation is upset; bills are routinely introduced in Augusta to reduce tax benefits for posted property.

Opposite the landowners in this regime are the users. This is where Maine's experience of the commons turns tragedy into comedy. Hunters, snowmobilers, and others are dependent upon the good graces of landowners. Access to private property is the common—it is a shared, nonexclusive resource that can be exhausted through selfish behavior. But instead of overgrazing, the tragedy is posting, which creates strong incentives for groups to organize and self-police to maintain access and prevent posting. It is no accident that two of Maine's largest and most powerful political groups by membership are the Sportsman's Alliance of Maine (SAM) and the Maine Snowmobile Association (MSA).

Both SAM and MSA, as well as other similarly interested organizations, spend considerable energy on building strong landowner relationships. They coordinate clean-up days on private property, countering those who illegally dump

trash and demonstrating landowners' open-access policies are not misplaced.

The healthy tension between private property owners and private recreational users keeps Maine's access to the outdoors taut. Whereas the traditional commons become depleted due to private interests supplanting the larger, common public objective, placing private actors on either side of the equation allows each to advance their own interest. Those interests can be complementary and thus help further develop a culture of access based on relationships and shared goals. Government policy has a role to play in facilitating these relationships, but it is not the primary driver. Permissive access to private property is a common good, and it has real impacts on the Maine economy. But those lessons are not limited to the great outdoors.

SHARING THE LOAD TO IMPROVE OUR DOWNTOWNS

Maine's cities are another large part of the tourism equation. Portland has seen some of the most acute changes over the past several decades. The Forest City generated nearly \$700 million in tourism spending during 2016 (Mainebiz 2017). Today, not a week seems to go by without some sort of honor or award being bestowed upon the state's largest city. That has not always been the case.

In the 1960s and 1970s, urban renewal took root in Portland as it did across the country. Numerous buildings in the older parts of the city, such as the historic Old Port, were slated for demolition. Similar efforts claimed other properties, most famously Union Station, which became a strip mall. The objectives of government planners were not malicious. The city had, in areas, become run

down and plagued with urban problems. New, ground-up development was thought to be the best way to bring prosperity to the larger community. In that way, they were trying to manage the commons for the greatest benefit.

But destroying old buildings led to a backlash from private property owners. They organized and pushed back against the renewal program. Federal tax policy changes increased investment in the area and allowed for redevelopment of older buildings for newer uses.

Ultimately, the Old Port began to turn the corner. Retailers, bars, and restaurants began to grow. However, a small urban pocket undergoing a renaissance creates challenges unique to the area. At its most basic, city services apply equally to all properties. Snow removal, sidewalk repair, police protection are all basic public services funded through general tax revenues. Yet these regular needs were heightened in a developing area that was attracting new tourists and businesses, which offered an opportunity for creative solutions, leveraging the inherent ownership of the private sector.²

The Maine Legislature then authorized improvement districts through state law. Municipalities were authorized to levy a special, additional property tax in a delineated area. Most people would normally assume that additional taxes are anathema to private property owners. However, the revenues from this tax were earmarked specifically to improve the area from which they were collected. For example, if the city's standard level of plowing service was once every two hours per street, the district might pay the additional cost for upping that standard to once per hour.

This system has several upsides. Another economic concept is the free

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rider, someone who contributes nothing, but reaps the benefit from others' efforts. The specialized tax eliminates free riders because it is imposed regardless of consent. Increasing public service to a given area increases property values, creating a positive feedback loop. And the governance structure of this particular improvement district supported private involvement.

In the normal push-pull of municipal politics, suburban homeowners may object to business areas receiving special treatment or increased services. Elected officials are more likely attuned to such concerns because residents, not businesses, vote. The creators of the improvement district policy recognized this problem.

The budget appropriating the revenues generated from this special tax is adopted by an elected board. However, the franchise (those eligible to vote for members) is tied to the amount of special tax paid. Property owners, therefore, have a substantial voice in the organization, reducing any antipathy for the additional tax levy. The common resource (extra tax revenue) is thus spent with the direct involvement of those who contribute it, focused on their common needs distinct from the overall city.

And the policy has worked. Over the past several decades, property values in Portland's downtown district have grown immensely. Business investment—offices, retailers, restaurants—has made Portland a destination in its own right. It leads to tourism spending, which generates employment and tax revenue, and helps put Maine on countless best-of lists, attracting visitors and even new citizens. In short, leveraging private engagement in a portion of Portland to help fix common problems has bolstered economic growth for the entirety of the state.

TRUSTING MAINERS IN YEARS AHEAD

The story of Maine's first two centuries has countless chapters. Some are tragic, some are comedic. But as we face challenges in the future, we can look to our past. When Mainers—individuals and organizations—are empowered to take charge of their own destiny, to have ownership over common resources, we can do great things. We can even turn tragedy to comedy and make our economy all the better for it. 🐟

NOTES

- 1 More information about access to private land in Maine can be found in Acheson (2006).
- 2 More information about the history of Portland can be found in Bauman (2012).

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