

Heritage Conservation in the United States: Law as an Incentive for Private Initiative

The plans to create an ICOMOS committee on legal, administrative and financial issues are very well timed. As this gathering demonstrates, many countries of the world today are reconsidering the basis that national and municipal law provides for the protection of cultural heritage. Many countries' laws were written decades ago in a different historical and political environment. They were not designed to be effective when confronted with new challenges that include rapid urban growth, population explosion, postwar development, environmental pollution and mass tourism. Given all these pressures, and the political priorities that they create, it can be no surprise that governments are increasingly turning to the private sector for help in addressing social concerns and providing services that were traditionally considered the responsibility of government. Among these responsibilities is the protection and conservation of cultural heritage.

In the United States, the federal government's role in preserving significant landmarks and sites has always been very limited. Only a fraction of the buildings in the country that can be considered worthy of conservation fall under the direct jurisdiction of the government on a national level. Even listing a structure as a National Historic Landmark or National Historic Site – the government's highest level of designation – provides neither financial support for its preservation nor any guarantee that the structure will be protected from significant modification or even demolition.

Government funding for architectural conservation is also very limited. Congressional appropriations established as part of each year's budget support only the maintenance and restoration of sites owned by the national government. Limited funds are available from the National Endowment for the Arts, through its design arts program, for projects presented by non-profit organizations. The National Trust for Historic Preservation receives an annual subsidy, and the State Historic Preservation Offices receive support from the federal government to administer national government programs on a state level. But all these agencies have been subjected to deep budget cuts in recent years. All these agencies look to the private sector for funds to match and supplement their governmental support.

As a complement to the government's limited role in the preservation of monuments and sites, it provides a very strong system of incentives that encourages the private sector to take initiative where the public sector lacks the means or the jurisdiction to do so. In the two decades since the American bicentenary in 1976, as a direct result of the historical consciousness that it promoted, a sophisticated network of private local and national preservation organizations has developed in the United States. These organizations have not limited themselves to taking advantage of the traditional tax incentives available to non-profit organizations, which provide a direct tax deduction for contributors who give funds

to support their work. They have assumed leadership in the field of architectural conservation by developing ingenious strategies and mechanisms that, in turn, have spawned local and national legislation to support private investment in the historically significant built environment. A review of some of these mechanisms might reveal prototypes that could be replicated elsewhere.

Tax incentives

Direct tax deduction for philanthropic contributions

American law permits taxpayers to deduct donations to charitable organizations directly from their income, up to a ceiling of 50% of their total income. All money given to registered non-profit organizations is tax-exempt. This generous incentive has been responsible for the steady growth of the non-profit sector in America over the last fifty years. However, it must be noted that the government sees this liberal system of deductions as a direct alternative to government support of comparable programs. Effectively, the taxpayer is determining how his tax dollars will be spent by directing them to organizations of his choice. The government has in turn reduced its spending proportionately in areas such as health care, social service, culture and education, where private charities are most active.

Although Americans are permitted to give away as much as 50% of their incomes and deduct these contributions from taxes, few households are in a position to do so, and few Americans donate more than 1% of their income to charity each year. Overwhelmingly this support is directed to religious charities, humanitarian causes and education. Cultural organizations together receive only 6% of the funds contributed to charity each year. Since preservation organizations represent only a small percentage of the cultural organizations in the country, it must be recognized that direct charitable support generates only small revenues for conservation of cultural heritage. The most innovative programs have been financed in other ways.

Other preservation incentive programs in the United States

The overwhelming concern of the U.S. preservation community has been for the decline of neighborhoods in historically important inner cities and the character of small towns whose traditional social fabric has broken down in the face of urban development and suburbanization. Mechanisms to support the restoration of inner city fabric and "main street" streetscapes have taken the form of incentives for individual property owners to invest in their properties rather than letting them decline, such as the following:

Conservation Easements: Local preservation groups or interested individuals purchase a piece of threatened property and resell it with an "easement" – or binding legal provision – attached to its title. This easement requires present and future owners to respect certain conditions that guarantee

preservation. Rather than depressing the value of the property by making it harder to sell, preservation easements have tended to increase property value, since the property's intrinsic quality is recognized. Easements may include maintenance requirements that result in the property being better kept, therefore enhancing its surroundings rather than detracting from them. For example, the Conservation Society of San Antonio has developed the practice of purchasing facade easements from owners of commercial buildings in prominent locations in the city center. The sale of an easement gives the property owners enough funds to maintain the facade properly and improve its appearance within the framework of local zoning ordinances and restrictions that have been passed as a result of pressure from conservation groups. As a result, the value of the property is enhanced. Owners can obtain higher rents, which contribute to the well-being of the community. A chain reaction begins.

Revolving Funds: Local preservation groups buy residential historic properties in key urban locations, renovate them, and resell the properties, investing the profit in further projects. This system has been used by Historic Charleston to reclaim large parts of the city's center that were in decline; the result has been the explosion of tourism in the city, with visitors attracted to see the intrinsic charm of neighborhoods that were recently derelict.

As an alternative approach to revolving funds, local preservation groups or statewide organizations make low-interest loans available to property owners for the purposes of renovating historic buildings. Buildings are saved, eventually improving the character of the area and triggering further investments.

Commercial Property Tax Credits: Because of the wholesale loss of industrial and commercial building stock, the Federal government established special tax credits to make the cost of renovating existing buildings as viable as the cost of destroying such buildings and constructing cheap new, characterless structures. The investor could take a business tax credit for all the funding invested in the renovation of an existing building. This provision led to the investment of billions of dollars in derelict commercial building stock in American inner cities before it was nullified by an overhaul in the corporate tax structure. While the provisions still exist as law, they no longer provide a strong incentive for investment.

Entrepreneurial Programs: Some local preservation organizations have even entered into property transactions as entrepreneurs in order to reorganize the legal situation of an important edifice and to pass it on to new owners or titleholders with a strengthened form of protection. In New York City, the New York Landmarks Conservancy orchestrated the transfer of an important public building – the Federal Archives Building – which was owned by the Federal government but judged redundant. Title to the building was passed from the U.S. government to the City of New York, which simultaneously leased it to the Landmarks Conservancy. The Conservancy developed plans for its mixed-use renovation, and then sold its leasehold to a developer with an easement that required the developer to restore the building to the standards set forth in the plan. Proceeds from this sale – a tax-exempt \$5 million profit – were set aside by the Landmarks Conservancy as a permanent endowment to support a city-wide facade renovation program and a special fund

providing emergency grants to help stabilize endangered religious properties.

In each of the cases above, preservation groups, whether operating on a local, state or national level, have taken advantage of a range of tax benefits. The provision that individual and corporate donors may directly deduct gifts to charitable institutions has permitted non-profit preservation groups to raise capital, which they have used cannily to back investments that have yielded profits as well as social and economic benefits for the community. Purchase of materials used in construction projects is exempt in many states from sales tax, and buildings owned by non-profit organizations are exempted from property tax. Finally, any profit made in the sale of a historic property by a non-profit organization is exempt of income or capital gains tax. The non-profit organization as investor in historic sites has a distinct advantage over commercial or private investors – an advantage that the government recognizes and upholds.

(*Note:* Significant religious properties are perhaps the most vulnerable type of building in America, since the government provides no support and no ironclad legal protection for their preservation, and religious bodies often claim that the restoration and maintenance of such buildings constitutes a hardship that impedes the performance of their mission. Proof of owner's hardship, in many communities, constitutes justification for the owner of a historic property to sell or demolish it rather than restoring and maintaining it.)

Public-private partnership

When important public buildings need restoration and do not fit the mold of commercial or private investment, local groups have often forged relationships with government that result in a mutual public and private investment in the program. Public-private partnerships have been the framework of many of the major construction and restoration programs carried out in recent years.

Bond Issues: In face of a major renovation program that requires a large capital investment but can be expected to yield a return over time, many communities have issued bonds whose proceeds are earmarked for specific projects. Investors may purchase the bonds, guaranteed by the state, which mature at a fixed time. The initial investment is set aside for the construction and renovation project on a low-interest loan basis, and investors are paid, on maturity of the bonds, by repayment of the loans. The renovation and new construction at many municipal museums, and the development of the hugely successful South Street Seaport preservation district in New York, were financed in part by bond issues.

Public-Private Campaigns: Finally the public and the private sectors sometimes collaborate to launch a major campaign to raise funds for an important historic site. The campaign for the Statue of Liberty and Ellis Island raised \$400 million in public and private funds. Conducted by the Statue of Liberty and Ellis Island Foundation, a private group, on behalf of a governmental commission of the same name, the campaign drew funds from a variety of sources – charitable contributions, licensing of the campaign's official symbol to advertisers, sales of licensed products, and modest contributions (below the level normally reported on tax returns) by families and school children – as well as from a direct government appropriation of funds to one of the country's most prominent governmentally-owned monu-

ments. One of the most successful aspects of the campaign was a "naming wall" where for a gift of \$100 families could list the name of ancestors who entered the US through Ellis Island on a wall especially constructed for the purpose. This vehicle alone generated \$100 million for the overall project.

Government role

To affect any of the mechanisms described above, government supervision is required to guarantee that incentives, provided in the public interest, are not abused and that high quality work results. This is the role of government regulatory agencies – from the National Park Service, which has published standards for renovation projects qualifying for tax exemption, to state and local commissions that regulate and provide approvals for all projects at listed sites within their purview or within conservation districts. These regulatory bodies routinely convene citizen panels to review cases presented for approval; thus the cooperative relationship between the public and private sectors is reinforced and private citizens are schooled to understand and make critical decisions that affect the built world that surrounds them.

The foundation sector

A final, and very important, member of the public-private consortium is the foundation, whose assets have been set aside for charitable purposes. Foundations are subjected to intense regulation by the government as to the fulfillment of their purposes. They must distribute to charity a certain percentage of all the income earned by their endowment. In return they enjoy all the tax privileges of the non-profit sector – including exemption from income tax, capital gains tax, and many local real estate and sales taxes. Many American foundations have set up highly professional local, national, and even international grant programs to support the non-profit sector in their chosen field of endeavor. Following suit, national and local government agencies support modest grant programs that promote qualitative standards in the non-profit sector, and help the often small non-profit organizations in the field to do their work more effectively.

World Monuments Fund's perspective on international preservation

As a private American non-profit organization conducting hands-on conservation projects in an international arena, the World Monuments Fund (WMF) has pursued a strategy typical of the role of US non-profits – of using relatively modest income contributed from US donors to leverage significant support from local governmental and private funding sources abroad. But because legislative advocacy is not appropriate to an international group, WMF must identify and take advantage of incentives that exist in a local environment; thus its strategy varies from one country to another. Over its history WMF has found situations in many countries that allow it to make effective use of donors' support to leverage other funds. This successful "leveraging" convinces its core US contributors of the cost-effective philanthropic investment they can make by supporting a worldwide preservation agenda. A few examples follow:

The Venice Campaign: Following the catastrophic Italian floods of 1966, Unesco began a campaign to engage international governments and private-sector groups in the restoration of the city of Venice. Many national private groups were

formed, and WMF established a Venice Committee with chapters throughout the U.S., each of which adopted a specific monument for restoration. The chapters were individually responsible for fundraising, under the auspices of U.S. law. The international campaign was helped materially by a tax subsidy affected through the Special Law for Venice, which permitted projects orchestrated by Unesco to be exempted from value-added tax (VAT). All the private organizations working in Venice channel their project support through Unesco's tax-exempt bank account and therefore take advantage of a savings of as much as 18% on project costs. Unesco also provides a forum for private committees to meet, discuss common problems and monitor the progress of the campaign at large. The Special Law for Venice has resulted in a private international investment of much more than \$20 million. As a result, this powerful incentive remains in force more than 30 years after the flood occurred, in spite of occasional political efforts to eliminate it.

French Partnership Programs: While other countries may challenge the private sector through specific programs, the French government offers a blanket incentive to all owners of classified historic monuments and sites – whether public,



New York, Ellis Island

institutional, or private – by guaranteeing a state subsidy of up to 40% of the cost of any restoration project. With regional and local government agencies also willing to contribute funds to state projects, a non-profit organization can normally hope to leverage as much as 65-75% of overall project costs from the government.

While this system in principle suggests a very strong commitment of the government to historic preservation, in fact government budgets are not without limits. The challenge to the private sector is to establish priority for a specific project, which might otherwise be sidelined because of a practical lack of enough funds to go around. This can be done by supporting the planning and initiation phase of projects which can then receive state approval and support. WMF has initiated several projects – including the restoration of the facade of the church of St. Trophime in Arles, the conservation of the interior of the Dôme of the Invalides, the restoration of the Potager du Roi at Versailles, and stabilization of the Chateau of Commarque in Perigord, all of which have resulted in a major public investment in the project.

The English Lottery: The national lottery recently established in England has generated hundreds of millions of pounds for architectural conservation and for urban rehabilitation in England, and offers another extraordinary incentive for private organizations to develop partnerships with the government. While the lottery makes significant grants for projects, all require matching funds from other sources. And to apply successfully for lottery funds, an organization that owns a significant building must have either access to professional conservation expertise or the funds to hire outside experts. WMF has identified a role for itself in supporting worthy British institutions that lack this expertise in the preparation of project plans for submission of lottery grant proposals and helping their owners develop a strategic plan to raise matching funds once a lottery grant has been approved.

Central and Eastern Europe: A considerable challenge in the conservation field lies in Central and Eastern Europe, where the legal status of many monumental structures is clouded, laws governing the non-profit sector are not yet in place, and enormous deterioration has occurred to the architectural fabric throughout the entire region during the communist period, creating a state of emergency for some of the region's most prestigious sites. With government funds in short supply and the private sector still in the early stages of development, finding funds for projects requires ingenuity and determination. WMF has experienced some success by promoting the recognition of selected sites as works of worldwide significance. Support for planning for the conservation of the castles of Lednice and Valdice in Southern Moravia – former Liechtenstein family properties in the Czech Republic – has led to their inscription on the World Heritage List and the government's prioritization of the area as a prototype for the conservation of cultural landscapes. The Czech government has agreed to match private support for conservation projects in this area; and Czech corporations, as a result of this declaration of priority, are beginning to make funds available for small-scale projects. The site is returning to a healthy state, and has already begun to attract more than 100,000 Czech and international visitors a year.

In St. Petersburg, WMF identified the Alexander Palace – an imperial property built under Catherine the Great and used as a residence by the Russian Czars until the end of the Romanov dynasty – as a priority site for immediate intervention. WMF seed funds have been used to evaluate the magnitude of the conservation challenge and to help clear an impasse between the Museums at Tsarskoe Selo, under whose jurisdiction the palace falls, and the Admiralty of the Baltic, which has occupied the palace since World War II without contributing adequately to its maintenance or allowing public visits. Emergency stabilization of the palace roof is underway with funds from American Express through the WMF World Monuments Watch program, and the Admiralty of the Baltic has agreed to open access to one wing of the palace pending the relocation of their agency to a more appropriate location.

WMF affiliates

As WMF has begun to recruit funds abroad in response to its seed funding from American donors, it has become essential to establish legal operating entities in countries where WMF intends to seek contributions. In the last decade, WMF affil-

iate organizations have been established in several Western European countries and in Mexico. These affiliates take a form comparable to a US non-profit organization, and are established as a civil association in some countries, foundation or trust in others, and as a registered charity in the United Kingdom – following local laws. Managed by a small board whose function is to choose projects and recruit local support, the affiliates operate with professional and administrative oversight from WMF's New York based staff, served by small offices in the region. This network has greatly multiplied WMF's capacity to build private-sector leadership for the field of architectural conservation. The presence of the affiliates helps WMF to strengthen relationships with governments, more effectively evaluate conservation priorities in a given country, and, most importantly, attract local donors.

The World Monuments Watch and its seed funding programs

As its operations began expanding internationally, WMF recognized the need to prioritize and select projects for intervention that represented internationally significant sites in real need of help. On its 30th anniversary in 1995, in cooperation with American Express, WMF established the World Monuments Watch, an international listing of endangered sites. Sites chosen for the biennial *List of 100 Most Endangered Sites* are nominated by governments and organizations in the field. No formal designation status is required in order to nominate a site to the Endangered List, and applications are accepted from all quarters. The list of 100 sites is chosen biennially by an independent panel of experts.

An incentive for governments and conservation groups to cooperate in the identification of endangered sites through the World Monuments Watch is its funding component of \$1 million per year in emergency grant funds made available by American Express, with complementary funding from other donors. In the first year of its operation, the World Monuments Watch awarded \$1.85 million in grants, which in turn leveraged at least \$1 million in public sector support. Impressed by the broad global agenda represented by the Endangered List, other WMF donors have made commitments to the program, including WMF trustee Robert W. Wilson, who has committed \$1 million per year in grant funds provided that these funds are matched by non-US donors; the Samuel H. Kress Foundation, which has directed considerable funding to European sites on the list; the Ronald S. Lauder Foundation, which supports Jewish heritage sites; and the Ralph Ogden Foundation, which has made a commitment of \$100,000 per year in planning funds to advance worthwhile projects on WMF's international agenda.

As the program develops, there is much to be learned about opportunities for international public and private cooperation in the conservation of heritage; about the key problems facing the field, as demonstrated through sites on the list; and about mechanisms that can help to solve these problems. Information gathered through this program about the worldwide state of conservation of historic buildings and sites may indeed be useful in helping to shape the heritage protection laws that develop in the years to come, by directing legal protective measures and incentives to areas where the problems are most acute.

