

GREENBELT POLITICS IN ONTARIO

By Assistant Professor David Pond (dpond@utm.utoronto.ca)
Department of Political Science
University of Toronto at Mississauga, Ontario

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Introduction

This paper offers a preliminary assessment of the Liberal government's regional planning initiative for the Greater Golden Horseshoe (GGH), a newly defined metropolitan area covering over 30,00 square kilometres along the north shore of Lake Ontario and encompassing the heart of the Canadian economy, the Greater Toronto Area. The package includes a detailed growth management strategy, *Places to Grow*, and a comprehensive greenbelt stretching around the existing urban conurbation. The GGH is the fastest growing metropolitan area in Canada. Currently home to 7.5 million people, it is projected to reach 11.5 million by 2031, making it the third largest on the Canada-U.S. landmass, behind New York and Los Angeles. According to the province's projections, almost 40% of all the houses and apartment units that will exist in the region in 2031 will have been built since 2001 (Neptis 2006).

The Liberal program is designed to end "years of unplanned sprawl,"¹ in the words of Liberal Premier McGuinty, by redirecting new development towards the existing urban centres, financing more cost-efficient infrastructure, easing traffic congestion, promoting public transit, and preserving valuable farmland and green space on the urban fringe. This package speaks to an agenda pushed not only by environmentalists and many municipal politicians but also by some elements in the provincial business community, which by the time of the 2003 election were persuaded that the province needed to assume a more activist role in regional planning if Ontario was to remain an attractive investment location in the North American economy.

This is undoubtedly the most ambitious regional planning exercise in Ontario since the Davis era of the early 1970s, and indeed, Liberal policy-makers have compared their plan to the "golden age" of provincial intervention which produced Metropolitan Toronto, a successful experiment in regional government widely admired throughout North America (Government of Ontario May 2004, November 2005, White 2003). However, as the Liberals themselves acknowledge, this golden age if it did exist occurred over 25 years ago. It ended when the Conservative government led by Premier Davis withdrew from active involvement in planning the Toronto-area region and instead imposed two-tiered regional municipalities throughout southern Ontario, a strategic retreat criticized ever afterwards as an implicit surrender to the gathering forces of sprawl, which now decades later define the regional landscape (Bourne 1999, Frisken 2001). That the Liberal package was explicitly inspired by the famous Portland, Oregon growth management plan, and not based on a successful indigenous model, is one measure of the challenges facing the Liberal government as it proceeds to implement its program. While growth management or smart growth had been on the policy agenda during the latter years of the previous Conservative government's tenure, and sprawl as an issue featured prominently in the 2003 election campaign, it could not be asserted that this perspective had achieved the status of a full-blown policy paradigm within the provincial bureaucracy by the time the Liberals assumed office.

The sheer ambition and scope of the Liberal initiative poses important questions for the regionalist tradition in Canadian urban scholarship. A prominent theme in this literature

¹ Premier McGuinty, "Announcing the Greenbelt Protection Plan," 28 October 2004.

is that the historical success of the Toronto metropolitan region in comparison to metropolitan areas in the United States reflects the structural differences between the Canadian and American political systems. In particular, the concentration of governmental authority in the executive branch under the Westminster model and the relative lack of impediments to its exercise characteristic of U.S. state government, such as constitutionalized property rights and citizen-initiated referenda, enabled the provincial level of government to actively regulate patterns of development in and around Toronto (Garber and Imbroscio 1996, Sancton 2001).

The fact remains that in Ontario the Westminster model has not been fully employed to enforce compact urban design region-wide since the 1970s. While both the Liberal (1985-90) and NDP (1990-95) governments introduced policies in this direction, they fell far short of a comprehensive effort to stymie sprawl. The succeeding neo-liberal Conservative government (1995-2003) fully exploited the powers available to it not only to dismantle many of these initiatives but also, it can be argued, to facilitate the outward spread of sprawl to the fringes of the Toronto-area region. Thus, the current Liberal government offers an important case-study for testing the capacity of the Westminster model to successfully surmount the challenges inherent in the attempt to impose a regional plan in the North American land economy, characterized by decentralized private markets in land, local governments dependent on property taxes for revenue, and high rates of home ownership.

Comprehensive growth management plans contain two main complementary elements: controls on growth at the urban fringe, and policies to encourage higher densities in the existing built up areas. The Liberal government's package is complex and multi-faceted. Its primary tool for controlling growth at the fringe, the greenbelt, is the only element which has been fully implemented to date. Hence it is the focus of the ensuing analysis. The greenbelt is not only the most visible manifestation of the program, but its successful administration is crucial to the plan's central objective, restricting further low-density development in the region.

The next section of this paper lays out the main elements in the Liberal program. This is followed by a brief review of the challenges inherent in the enterprise of imposing a regional plan in a dynamic land economy where sprawl is already entrenched as a common pattern of development. The paper then outlines the land-use planning system in Ontario, before turning to a political analysis of why the provincial government selected a greenbelt as the preferred instrument for controlling growth at the fringe. Finally, the paper discusses both the strengths and limitations of the Westminster model as a medium for successful regulatory intervention in the market economy.

The Liberal Government's Plan Summarized

Greenbelt

The Greenbelt Plan protects about 760,000 hectares of environmentally sensitive and agricultural land in the Golden Horseshoe, an area, in the words of the minister responsible for the legislation, larger than Prince Edward Island and about half the size of

Vermont.² However, it is important to note that not all of this is newly protected land. About 360,000 hectares of this total are already contained within the existing Niagara Escarpment Plan and the Oak Ridges Moraine Conservation Plan. To this is now added another 400,000 hectares, designated as the Protected Countryside. The new Greenbelt will protect farms, woodlots, wetlands and other natural features, including some of the most sensitive agricultural land in the province, such as the Niagara Peninsula tender fruit and grape specialty crop area, and the Holland Marsh specialty crop area located in York Region and Simcoe County. Where not designated urban, the Protected Countryside is mainly prime agricultural land.

Most of the Greenbelt is privately owned. There is no government plan to engage in significant land acquisitions. Land-owners will not be compensated for the loss in equity caused by downzoning, nor can they appeal the inclusion of their property within the Greenbelt.

The Protected Countryside is broken down into a variety of sub-designations, including the Specialty Crop Area (covers 11%); Prime Agricultural Land (57%); Rural Land (17%); and Settlement Areas (15%). Under another, overlapping designation system, 53% of the Protected Countryside is defined as a Natural Heritage System.

Settlement Areas outside of the Protected Countryside cannot expand anywhere onto the Protected Countryside. Settlement Area expansions within the Protected Countryside can only even be proposed when the Greenbelt Plan is reviewed by the province in ten years.³ Any such municipal application will have to meet stringent regulatory standards. For instance, an existing area can only be expanded on the basis of the local water and sewer system, and not on any extension of a Great Lakes-based water and sewer system. In any case, there can be no expansion into the Natural Heritage System or the Specialty Crop Area. The total amount of land contained in the Greenbelt cannot be reduced. Therefore, if Greenbelt lands are added to settlement areas during the ten-year review, this must be accompanied by an insertion of new lands into the Greenbelt at some other location.

Some extensions of existing agricultural uses are permitted. However, lot severances (largely initiated by farmers themselves, and a prime cause of farmland destruction in southern Ontario) will be heavily regulated. At the same time, the aggregate extraction

² Ontario Legislative Assembly, Standing Committee on General Government, *Debates*, 31 January 2005, p. G-591 (Minister of Municipal Affairs and Housing John Gerretsen). The Greenbelt Plan is available for viewing on the Ministry's website, at www.mah.gov.on.ca. Soon after assuming office in October 2003, the Liberal government issued a ministerial order under *The Planning Act* imposing a moratorium on all zoning changes within the Greenbelt Plan Study Area. The Study Area was subsequently enshrined in legislation, *The Greenbelt Protection Act*, S.O. 2004, c. 9. The final version of the Plan was given legal force with the passage of *The Greenbelt Act*, S.O. 2005, c. 1. Both pieces of legislation were subject to extensive public hearings prior to their passage.

³ In other words, the owners of land in the Protected Countryside are now unable to sell their property for development (regardless of their original intentions when purchasing the land); municipalities are not permitted to rezone such land for this purpose (regardless of whether such rezonings had already been incorporated into their official plans or budgetary projections).

industry will continue to operate within the Greenbelt, and infrastructure and recreational facilities are permitted in both the Protected Countryside and Natural Heritage System.

It is important to note that the Greenbelt is *not* being drawn tightly around the existing settlement areas. Between existing urban areas and the inner edge of the Greenbelt there is an estimated 146,000 hectares of land already designated for urban expansion as well as unprotected countryside, including farmland (Neptis 2006). Allocating this land for future growth in the near future is a major part of the government's strategy to keep housing prices down as the market adjusts to the new controls, thereby placating the development industry whose lobbyists are fiercely critical of the Greenbelt, as well as the industry's municipal government allies.⁴

Nor does the Greenbelt protect all of the viable farmland and open space in the expanding metropolitan region. Large swathes of countryside west and north of the Greenbelt are not included, and are now subject to development pressure. The Neptis Foundation argues that the Greenbelt in fact covers only 30.4% by area of what it defines as the Toronto Metropolitan Region (Neptis 2006).

It can be seen from this brief outline that despite its formal designation Ontario's greenbelt is not designed to function in what might be described as the classic English tradition of a greenbelt, but instead will serve as an urban boundary line constraining continued growth within its boundaries. As urban development proceeds outward towards the boundaries (under the terms of the *Places to Grow* growth management plan), the boundaries themselves will be permitted to shift in measured fashion to accommodate new, but higher density settlements. (As noted above, land can be removed from the Greenbelt as long as the total amount of hectares covered does not decrease. Thus, as land is eventually severed on the inner boundary to accommodate growth, the Greenbelt's outer boundary will expand).

This regulatory design reflects the model on which it is based, the Portland Oregon growth management plan. This is what the Liberal party had promised to introduce during the 2003 election campaign (Ontario Liberal Party 2003).

Places to Grow

The *Places to Grow* planning document sets out a growth plan for the GGH's urban envelope, or Settlement Areas.⁵ Settlement Areas are divided into two components, the urbanized "built-up area," and the under-developed outer area, or "designated greenfield area." For the built-up areas, the PTG prescribes intensification and density targets to be gradually phased in by municipalities, with the objective of realizing more compact, transit-supportive land-use patterns. By 2015, a minimum of 40% of all residential development occurring annually must be contained within the built-up areas. The

⁴ Ontario Legislative Assembly, *Debates*, 15 November 2004, pp. 4081-82 (Minister of Municipal Affairs and Housing John Gerretsen).

⁵ The "Proposed Growth Plan for the Greater Golden Horseshoe" was released in November 2005, under the authority of *The Places to Grow Act*, S.O. 2005, c. 13. The Growth Plan is available on the Ministry of Public Infrastructure Renewal's website, www.pir.gov.on.ca.

municipalities themselves will decide precisely where this will occur. For the remaining 60%, municipalities will be permitted to expand into the designated greenfields areas, but at densities high enough to support transit.

The PTG plan sets out 25 Urban Growth Centres to which the above land-use controls will apply. As already noted, eventually new lands from the Greenbelt will be brought into the urban envelopes.

It is worthy of note that currently, only the City of Toronto meets PTG's residential density targets (Urban Strategies Inc. 2005).⁶

The Challenge of Regional Planning

As a major responsibility of the provincial state, land-use regulation is invariably a subject of government activism regardless of the party in power. Over the last 15 years in Ontario this policy field has become an important forum for partisan exchanges among the three parties, as each of the last three governments, the NDP (1990-95), the Conservatives (1995-2003), and now the Liberals (2003--) have expended considerable political capital subjecting the planning system to ambitious and controversial overhauls. The central commitment in the Conservatives' 1995 electoral platform, the *Common Sense Revolution*, was the dismantling of most of the NDP's interventionist policies, including its planning reforms designed to compel the municipalities to promote more compact development, promote public transit, and protect the environment. The Conservative government sanctioned the spread of sprawl and imposed few substantive goals on the system, though late in its second term it nominally embraced smart growth as a planning principle as the externalities of sprawl became a political issue in the suburbs around Toronto, the party's electoral base. As already noted, the Liberals embraced an ambitious growth management platform for the 2003 election, as one element in its electoral strategy for defeating the Conservatives.

The U-turns in policy suggest a lack of support in the electorate for a coherent policy, which, it can be argued, reflects ambivalence about the impressive pace of development in the province in recent decades. Recent growth rates in the region (for example, between 1981-2001, the GGH's population increased from 5.4 million to 7.8 million; between 1996-2001 alone, the population of five municipalities around Toronto grew by more than 20%), create both opportunities and anxiety about further change. In their well-known study of growth politics Logan and Molotch rely on a sharp distinction between the "use" and "exchange" or market value of property as an explanatory framework (Logan and Molotch 1988). According to this analysis, home-owners engage in collective action to protect the use value of their homes and by extension, of their communities, from the corporate forces of development preoccupied with exploiting the

⁶ However measured (by population, number of residences, households or jobs), existing densities vary widely throughout the GGH, including within the more developed "Inner Ring" containing the City of Toronto, the Regions of Peel, York, Durham and Halton, and the City of Hamilton. For example, population per square km. in Toronto is 3,939.4, while in Peel Region, the second largest Inner Ring municipality in terms of population, this ratio drops to 796.3 (2001 census figures).

exchange value of their holdings. In fact, in a market economy where land has easily realizable commercial value, home-owners and others (such as farmers) have a vested interest in both the use and exchange value of their real estate investments, which can fluctuate considerably under the forces of rapid urbanization. These include the influx of urban residents into rural towns, fundamentally transforming the local ambience yet boosting property values; extensions of the urban shadow into farming areas, fragmenting the landscape but providing rural land-owners with an opportunity for profitable land sales; social decay in older built up areas, depressing property values but thereby stimulating gentrification; and the potential development of the environmental amenities on the fringe which attracted home-owners to the suburbs in the first place. Not surprisingly, these conditions are not likely to foster a broad consensus in favour of a single-minded land-use policy.

The conditional status of political authority in the Westminster model also poses potential obstacles to the successful entrenchment of a new paradigm in the policy-making apparatus. While power is concentrated in the parliamentary executive, political parties in Ontario sit lightly on the surface of civil society. As is typical in many Westminster jurisdictions, party membership is not large (considered as a percentage of the population), party activity is minimal between election campaigns, and the leadership controls policy development. Under the first past the post electoral system, the victorious party in an Ontario election almost invariably forms a majority government with considerably less than 50% of the support of the voting electorate.⁷ The election campaign itself is not a medium designed to elicit unequivocal signals from the voters about the intensity of their preferences for the various (and often incompatible) policies promised by the party leaders. Thus, while the Westminster model in the Ontario setting provides the elected government of the day with all the tools needed for legislating its program, mobilizing public opinion to sustain its long-term implementation will remain as a challenge to successful governance.

Sprawl as a policy issue well illustrates this problem for government. Sprawl is a complex phenomenon with negative externalities emerging cumulatively over time, which will be experienced differently across the region depending on the local environment. It does not generate a focusing event or critical juncture (Birkland 1998, Krasner 1984) dramatically bringing the issue to the attention of policy-makers and thereby creating the conditions for the emergence of a region-wide constituency supportive of decisive reform. Certainly, all of the conventional indicators of sprawl worsened under the Conservative government, such that by the 2003 election, a loose policy network in support of a program against sprawl had emerged. However, that the negative externalities of sprawl had collectively reached the point where they threatened irrevocable damage to the Toronto region's economic competitiveness and quality of life, justifying central intervention in local land-use markets, was not a self-evident proposition.

⁷ And since turn-out typically hovers around 60-65%, a considerably smaller proportion of the eligible electorate.

From the point of view of the participants in the local land-use market, regional downzoning is inherently discriminatory. It prevents them from taking advantage of opportunities deemed to be legitimate up to the moment of intervention from which others similarly situated have already profited. Rewards now appear to be allocated purely as a result of political timing or physical location. Farmers counting on land sales and lot severances to finance their retirement like their colleagues before them are now denied this traditional safety net, but with no alternate source of financing made available. Home-owners on the fringe of the greenbelt who had the good fortune to buy before the 2003 election are not required to compensate land-owners inside the greenbelt for the boost in their property values induced by their proximity to this attractive new amenity. Businesspeople or land-owners who had assembled rural parcels in good faith, in anticipation of selling them for commercial development, receive no compensation for their lost investment.

For those who are persuaded that the greenbelt constitutes a blatant wealth transfer at their expense the policy goals the Liberal government has assembled in its defence are not likely to be persuasive, as their validity cannot be tested by any criteria other than those of the political arena.⁸ The significant rate at which productive farmland and other greenspace is disappearing in the Toronto region may well demonstrate that the market, as currently organized, does not adequately register the value of land, either as a source of food, an ecosystem, a cultural and recreational amenity, site for eco-tourism, or most important of all, as the natural boundary of a well-planned urban community. But it remains to be seen whether the cut and thrust of adversarial party politics can produce an alternate value system persuasive enough to sustain a regional planning exercise running counter to the entrenched logic of the local land economy.

Policy Design and the Greenbelt

In order to discern the politics governing the choice of this policy instrument, it is necessary to understand the provincial role in the planning system as it has evolved in Ontario in the post-World War Two decades, an era characterized by rapid population growth and the urbanization of the landscape south of the Canadian Shield. This is briefly outlined below.⁹

Land-use planning in Ontario must fulfill two purposes. First, it must provide the legal framework for the operation of the land market. Second, it must be sufficiently flexible to accommodate changing political goals, as determined by elected policy-makers responding to the perceived needs of the community. Policy design must ensure these objectives, which speak to different priorities, their proper scope throughout the planning system.

In a market economy the legal framework must embody rule of law values such as procedural fairness, openness, and predictability. Hence the *Planning Act* and related statutes prescribe the procedures municipal governments and special-purpose bodies are

⁸ The statutory objectives are listed in *The Greenbelt Act*, S.O. 2005, c. 1, s. 5.

⁹ This section draws on Bossons (1978), still the most perceptive analysis of the planning system's general contours.

required to follow when managing land-use development. For example, the consideration of development applications, zoning changes and official plan amendments must abide by formal timelines and advance notice requirements, permitting public consultation. Property-owners aggrieved by a regulatory decision have a right of appeal to an independent tribunal, the Ontario Municipal Board (OMB). Home-owners enjoy some protection against proposed land-use changes threatening to fundamentally alter the character of the neighbourhood in which they have invested their savings. If an area is zoned for a specific use developers have a legal right to proceed free of harassment by neighbouring property-owners or councillors currying favour with local voters.

In Ontario, the primary land-use regulator is the municipal level of government. This frees the province to fulfill the role of policy designer and custodian of the planning regime. From the municipal point of view, therefore, the statutory planning procedures laid down by the senior level of government have the status of quasi-constitutional decision rules. This depoliticizes the ongoing regulation of land markets, protecting rule of law values and shielding municipal decision-makers from lobbyists who would otherwise seek rule adjustments in light of their immediate interests.

The province sets the planning system's goals through its power to amend the terms and conditions under which land-use decisions are made locally. This can entail wholesale revisions to the statutory framework, including to the legislation governing appeals to the OMB, or to the mandates and financing of arm's length agencies the province may choose to establish in lieu of municipal regulation, such as the Niagara Escarpment Commission or Conservation Authorities. More routinely, provincial authority is exercised through Provincial Policy Statements to which all local decision-makers must pay heed, and the monitoring of municipal official plans and plan amendments.

The provincial cabinet and legislature are able to exercise the responsibilities of policy-makers precisely because they are insulated from the business of day-to-day regulation. Assigning the task of administering land-use to the same level of government with the power to amend the decision-rules under which administration is conducted would impede the formation of province-wide policy, as provincial politicians would become preoccupied with fending off powerful interests as well as constituents seeking to suborn policy-making for their own purposes.

As guardian of the planning regime the province retains the discretion to intervene in local problems when it sees fit, by means of regulation, ministerial powers, or if necessary statutory amendments. How this authority has traditionally been exercised lends itself to the rather cynical interpretation that it provides the governing party with the means of quelling local political disputes, often of its own making, before they fester and threaten the party's electoral fortunes. A recent case in point is the Oak Ridges Moraine controversy arising under the Conservative government led by Mike Harris. By the end of the 1990s the Moraine was subject to a number of low-density development applications which, taken together, would have significantly transformed this landform's natural features. In 2001, after a public campaign by an alliance of local community groups attracted opposition party support and widespread media attention, the province

moved to impose a Conservation Plan on the Moraine constraining further urbanization outside the existing settlement areas.¹⁰ The Conservatives proclaimed this as a sign of their commitment to smart growth principles. In fact, development of the Moraine on the scale being proposed was made possible in the first place as a result of the government's extensive revisions of the *Planning Act* in 1996, which weakened the environmental provisions introduced by the preceding NDP government, as well as facilitating developer-initiated appeals to the OMB. The government did not intervene until it became evident that the environmental campaign was winning the support of suburban home-owners in Conservative ridings on the Moraine who, fearing the loss of an attractive local amenity, engaged in classic homevoter behaviour (Fischel 2001) by joining the lobbying campaign.

However, if the province is the level in charge of the system's over-all direction, it must necessarily be equipped with the power to monitor municipal implementation of broad planning goals, in order to forestall policy drift. While this discretion enables the province to invest its political capital prudentially, its exercise will inevitably entail some element of electoral self-interest.¹¹ In this light, the Oak Ridges Moraine case is susceptible to an alternate interpretation, summarized as follows. The Conservatives were elected in 1995 and again in 1999 on a platform explicitly promising looser regulatory controls on suburban growth. With a majority in the Legislature, the government was entitled to amend the planning laws in this direction. However, when the resulting development activity on the Moraine provoked a vigorous public debate over the environmental impact of sprawl, demonstrating to the governing Conservatives that local public opinion had changed over this issue, the government moved to adjust policy accordingly. Consequently, when the long demanded Conservation Plan was finally enacted, it arrived on a wave of public support. This stamp of legitimacy is the Plan's best guarantee of long-term survival in the face of opposition from politically connected developers.

At the same time it cannot be denied that the existing division of labour between the provincial and municipal levels does favour some participants in the planning system over others. The perennial complaint of ENGOs, ratepayers' associations and community groups is that the legalism of local land-use regulation privileges those who can afford expensive legal and professional services, principally the development industry. The complexity of the decision-making process imposes formidable information and transaction cost-barriers to effective participation. Just as significantly, a localized development process organized around procedural norms discourages the emergence of a region-wide discourse focusing on the cumulative negative environmental impacts of business-as-usual urbanization (Nicol and Dobbin 2000). In a pattern well familiar to political scientists, interest group politics in this system revolves around forum-shopping, as actors lobby for key decisions to be made at the level of government

¹⁰ *The Oak Ridges Moraine Conservation Act*, S.O. 2001, c. 31.

¹¹ Classic examples of the provincial exercise of power in this manner are two decisions of the Davis government: the June 1971 announcement on the eve of a provincial election that the Spadina Expressway would not be completed; and the introduction of rent controls in the middle of the 1975 election campaign. See Hoy (1985).

whose organizational bias favours the resources they can deploy while disadvantaging their opponents (Schattschneider 1960). Thus, broadly speaking, anti-sprawl activists endorse greater centralization at the provincial level, where the costs of political engagement are lower and province-wide media outlets offer regional exposure. On the other hand, spokespersons for the development industry and their supporters on municipal councils, while not formally opposed to provincially driven re-structuring, will predictably support the retention of a rule-based system administered by municipal governments.

The Political Benefits of the Greenbelt

Despite the inclusion of farmland preservation as one of the statutory goals of *The Greenbelt Act*, the greenbelt is in fact a crude and inefficient instrument for this purpose. The inevitable result of its failure to cover all of the valuable farmland in southern Ontario is the leap-frogging phenomenon, as development jumps the greenbelt boundaries in search of cheap land still available for rezoning. By all accounts this has already begun.¹² Moreover, the blanket downzoning of agricultural land within the greenbelt's borders protects land indiscriminately regardless of its physical or economic value. Of course, once the decision is made *not* to include all viable farmland within the greenbelt, then the criteria employed to determine its boundaries will inevitably be the target of criticism. The government defended the boundaries on the grounds they reflected state-of-the-art land identification and mapping technologies; or followed existing municipal jurisdiction.¹³ This criteria was significantly narrower than that recommended by the government's own Greenbelt Task Force, which suggested in addition a broad range of socio-economic criteria (August 2004). Many of the witnesses appearing before the legislative committee studying the greenbelt legislation had little difficulty identifying valuable parcels of land just outside the greenbelt, adjacent to inferior parcels which were included.

However, the political logic animating the choice of a greenbelt should become evident when compared with two other prominent farmland protection policies recommended as an alternative by many of witnesses appearing before the committees studying both the interim and final versions of the greenbelt legislation, including by the farm lobby and other rural spokespersons. A brief discussion of these instruments can serve to illustrate why the greenbelt option was politically attractive to the Liberal government.

The first of these instruments is an arm's length regulatory agency responsible for monitoring the protection of agricultural land.¹⁴ Quebec and British Columbia have

¹² Most notably in Simcoe County on the border of York Region. See Birnbaum et al. (2004).

¹³ For this the government was criticized by the Ontario Professional Planners Institute, who pointed out that municipal boundaries bear no logical relationship to natural heritage features or significant landforms and therefore are arbitrary for the purposes of delineating land to be off-limits to development. Ontario Legislative Assembly, Standing Committee on General Government, *Debates*, 3 February 2005, p.G-792.

¹⁴ A tribunal was also recommended by the government's own Greenbelt Task Force, whose proposal was endorsed by some of the ENGOs supporting the greenbelt such as Ontario Nature

embraced this approach. Under legislation first adopted by the Parti Quebecois government in 1978, Quebec is divided into agricultural zones. Land-owners must apply to the provincially appointed Agricultural Land Protection Commission for permission to engage in activities potentially compromising the continuing viability of agriculture in the zones, such as lot severances and building. Significantly, it is possible to apply to the Commission for permission to take land out of a zone. This regulatory scheme owes its continuing success to strong public support for the principal of agricultural protection, including from the provincial farmers' union, the Union des producteurs agricoles (McCallum 2001).

Perhaps more relevant to the Ontario context is the B.C. legislation, which aroused rural opposition similar to that now brewing in Ontario (Bray 1980, Campbell 2006, Garrish 2002-03, Glenn 1985, and Jackson 1985). Legislation providing for Agricultural Land Reserves and a Commission was introduced by the NDP government in 1973 – the initial indication by a minister that the government was contemplating this policy initiative had provoked a run on agricultural land and a flood of rezoning applications, which the government was compelled to stymie with a temporary freeze on all rezonings, pending passage of the legislation. The boundaries of the Reserves were set by the Commission after extensive public hearings and consultations. An income support package was introduced at the same time as the legislation in order to placate farmers anxious about their economic future because of the loss of development rights. When this financial support was cut back in the early 1990s, the B.C. Federation of Agriculture and Fruit Growers Association reacted by demanding that the Land Reserves system be abolished.

Since the early 1970s the regulatory framework has been adjusted on a number of occasions depending on the party in power. In 1977 the Social Credit government allowed cabinet appeals from Land Commission decisions, an avenue promptly exploited by land-owners seeking relief from mandatory downzoning. The NDP government elected in 1991 ended appeals. This government also reversed a Social Credit regulation facilitating golf course developments within the Reserves over the Commission's objections. The current right-of-centre Liberal government has re-structured the Commission to provide for regional decision-making panels, which in the eyes of many critics makes the Commission more vulnerable to local lobbying; and directed the Commission to consider permitting developments on agricultural land when deemed to be compatible with community need.

The second policy instrument is U.S.-style Purchase of Development Rights (PDR) or Transfer of Development Rights (TDR) programs. In a PDR program, the farmer sells his or her development rights to a government agency or private land trust, and receives compensation in turn for the restrictions placed on the land. The compensation is the difference between the value of the land for agriculture and its value for development. The farmer retains title to the land and can sell or pass along the farm, but with an easement attached restricting future use of the land to farming and prohibiting development. PDRs are attractive because they allow farmers to cash in on the equity in

and the Ontario Greenbelt Alliance. However, it is not clear from the Task Force report what exact role it contemplated a tribunal playing.

their land, thereby creating a competitive alternative to selling it for development. Removing the development potential of the land reduces its future market value, making it more affordable for young farmers seeking to enter the business to buy the land. PDR programs operate at both the state and local levels in roughly two dozen American states, protecting about one million acres. The PDR programs are clustered in the northeast, and thus, it is often argued, have little national impact. On the other hand, urban pressure on good farmland is generally greater in the northeast, driving up land values, so logically the market for PDRs should be greater there (Hellerstein et al. 2002).

A TDR program is a form of density rights transfer, where a developer purchases the development rights offered for sale by landowners. A municipality defines “sending areas” of farmland designated for preservation, and issues development rights “tickets” to the landowners in the sending areas. The government then identifies “receiving” areas, requiring that developers who wish to build at increased densities in the receiving areas first purchase a certain amount of development rights from the land-owners in the sending areas. The sale of TDRs provides compensation to landowners in the sending areas, in exchange for accepting the imposition of development restrictions. The sale of TDRs helps to keep land prices attractive in agricultural areas. TDRs are a potentially useful tool employed as part of an overall growth management strategy, as they can shift development from agricultural areas to designated growth zones closer to municipal infrastructure. TDRs are not as widespread as PDRs in the American states, largely because they require clearly defined sending and receiving zones, as well as an active real estate market. Most TDR programs are clustered in four states, California and Florida (where they have been implemented as environmental protection programs), and in Maryland and Pennsylvania, where they are successfully employed in some counties to protect farmland (Fulton et al. 2004).

These instruments are already somewhat familiar in the Ontario setting. The Niagara Escarpment Commission, which adjudicates development applications on the Escarpment in light of a comprehensive land-use plan, might be considered as a precedent for a B.C.-style agricultural land commission. PDRs are a form of conservation easement, an established regulatory tool for protecting valuable landscapes in Ontario. TDRs would be a more exotic import though they roughly approximate the density bonusing provisions in the *Planning Act*.

However, apart from the fact that these programs only indirectly constrain sprawl as an incidental effect of preserving attractive farmland from development, their disadvantage from the Liberal government’s perspective is that they do not offer the greenbelt’s political benefits. Instead, they pose the unpalatable prospect of enmeshing the province in public engagements with the local interests disaffected from the Liberal growth management program.

A new regulatory agency vested with the powers of the B.C. Agricultural Land Commission, including the authority to determine the boundaries of the projected land reserve or greenbelt as well as the right to hear appeals for exclusions, would likely become another arena for lobbying by the farming organizations and their partners in

local growth coalitions who remain unreconciled to regional constraints on local land development. It is at this point that the parallel drawn with the Niagara Escarpment Commission made by the legislative committee witnesses proposing this option breaks down. The Commission has generally succeeded as a forum for depoliticized decisions about land-use on the Escarpment precisely because the most controversial class of such decisions was excluded from the Commission's jurisdiction at the outset. The first proposals for public protection of the Escarpment in the late 1960s met with widespread hostility from local land-owners, municipalities and developers, who launched a campaign to exclude as much productive open land as possible from the new Commission's jurisdiction. Consequently, the final version of the first Escarpment Plan covered an area 63% smaller than the original proposal. Excluded were the productive and largely irreplaceable agricultural and tender fruit lands below the Escarpment. Conflict over the future of this land was simply displaced into other venues, including municipal boundary extension hearings, interest group politics, OMB litigation and cabinet appeals (Jackson 1981, 1985, Glenn 1985). The long-term survival of the tender fruit lands in particular has continued to be the subject of political controversy. In truth, the Escarpment Commission owes its success to the limited scope of the Escarpment Plan it enforces. Land-owners subject to the Plan are willing to abide by Commission decisions because the Plan itself is not perceived to pose a mortal threat to their interests.

The obvious drawback to PDR and TDR programs is that they are voluntary and require direct funding. Moreover, they would require the province to actively collaborate with municipalities, which is the appropriate level for administering the contractual arrangements with individual farmers. It is unlikely that TDRs would be workable outside of the immediate suburban fringe where rural areas are adjacent to the urban real estate market.

However, the real danger of a full-blown PDR program from the Liberal government's point of view is that it would draw the province into a debate with the farming lobby over the value of farmland to the broader community. PDR programs require the government to develop ranking schemes for prioritizing the farmland which will attract this subsidy. These usually encompass economic and physical factors, but in some states they are extended to include the public goods the rural landscape currently provides without market compensation (Hellerstein et al. 2002). Any such program designed to correct the market's failure to internalize the positive externalities of farmland requires some evaluation of the intensity of popular demand for rural amenities. This poses fundamental questions about the status of the farmer in an urban society. In a public debate structured around such questions the provincial government would be under considerable pressure to disclose its exact priorities for the future of farming in Ontario, a risky enterprise at best.

From the above the advantages of the greenbelt to the Liberal government should be evident. The greenbelt is an important tool of political management. Compared to other policy instruments commonly employed to protect farmland in North America, the greenbelt enables the province to control the terms and conditions under which it will engage local participants in the governance of the urban-rural fringe. The greenbelt

permits the government to avoid disclosing the extent to which it is prepared to support farming as a viable economic activity, as distinct from preserving the open rural space necessary to support other policy objectives. During the public hearings on the greenbelt legislation witnesses for the farm lobby repeatedly asked the government to clarify how the various proclaimed goals of the greenbelt, including the preservation of open space as a cultural and recreational amenity and support for new rural-based economic activities such as eco-tourism and the recreation industry, would be co-ordinated with the continuing viability of farming on privately-owned land. The greenbelt allows the province to frame the conditions under which it formulate a response to this challenge.

The Westminster model imposes few institutional barriers to a popular discourse organized around a centrally-imposed greenbelt. The absence of constitutionally entrenched property rights not only relieves the government of any formal obligation to compensate farmers for a coercive policy which might well be vulnerable to attack in the United States as a regulatory taking¹⁵, but as well weakens attempts by rural leaders to counter with an alternate discourse based on the individual property rights of land-owners. Instead, compensation becomes just another item on the list of demands the farm lobby routinely raises with the cabinet and MPPs in the traditional setting of legislative committee meetings, formal sessions with ministers, departmental advisory committees, and the like.

Selling the Greenbelt as a Governance Regime on the Urban Fringe

The parade of hostile witnesses who appeared before the legislative committees studying the interim and final greenbelt legislation reads like an attendance list of the partners in the suburban growth coalitions responsible for the shape of the southern Ontario landscape. The list includes all of the federations of agriculture in the region as well as the farmers' provincial organization, the Ontario Federation of Agriculture; smaller and ad hoc farmers' groups; the Greater Toronto Home Builders Association, and other regional home builders associations; the Urban Development Institute, the development industry's lobbying arm; the Ontario Sewer and Watermain Construction Association; the Aggregate Producers' Association; and municipalities throughout the region whose local growth strategies were predicated on urban boundary extensions now thwarted by the greenbelt legislation.

For the ENGO community on the other hand, the greenbelt is a major policy victory. Crucial decisions about the future of precious open space and farmland have been removed from hundreds of municipal council chambers and committee rooms, and elevated to a forum pro-growth interests cannot expect to control. Debate now proceeds

¹⁵ Smart growth proponents argue that such policies, including mandatory downzoning, do not violate the Fifth Amendment's protection of property rights; see Dowling (1999-2000). However, the open-ended language of the Fifth Amendment as well as the complexities of the jurisprudence arising under it (not to mention similar provisions in most state constitutions) encourages litigation by the opponents of regulation – the prospect of which can independently influence governments contemplating such measures. For one study of smart growth programs in the southeastern states which found that developers do adopt regulatory takings litigation as a strategy for resistance see Williams (2004).

on where the greenbelt should be extended or how it can be improved and not on the principle of open space protection itself. Regional growth management not only ties the economic interests of the fringe to those of the urban centre, but changes the terms and conditions under which those interests are debated.

The province has an impressive array of tools at its disposal as it seeks to build loyal constituencies for the greenbelt around the region, the foundations of a new policy network. This is crucial if the Liberal vision is to prevail through succeeding electoral cycles. The province can establish or support a network of NGOs who can be counted on not only to further the policy goals of the greenbelt, but which through their own activities, will promote and educate local audiences about the value of open space protection. Hence the creation of a new independent Greenbelt Foundation with a start-up budget of \$25 million for financing land stewardship and acquisition projects and the promotion of agriculture; increased funding for local land trusts who negotiate conservation easements with private land-owners; and new grants for the Ontario Heritage Trust, an arm's length provincial agency, for securing natural heritage properties. As guardian of the planning system, the province can selectively intervene to remove valuable parcels of land from imminent development and the indifference of municipal governments, just as the Conservative government did in 2001 to protect the Oak Ridges Moraine. The greenbelt has already been expanded to rescue Boyd Park, an ecologically sensitive forest, from a highway extension planned by the City of Vaughan and York Region; to protect the 4,700 acres of the Duffins-Rouge Agricultural Preserve which the City of Pickering in Durham Region had exposed to development; and to include an additional 19,924 acres of the Rouge River watershed located in the fast growing Town of Richmond Hill. Predictably, the local community groups as well as ENGOs which had campaigned for years for the protection of these properties applauded each of these announcements. Finally, in its role as chief policy-maker the province can launch initiatives rooted in an environmental world-view subsuming the traditional defence of property rights and local autonomy. The Ontario Biodiversity Strategy is a new policy framework with, to date, little content (though the greenbelt is now cited as a principal element in the Strategy) but which clearly has considerable potential as a basis for provincial activism.

The impressive provincial advance on a wide front appears to confirm the regionalist perspective in Canadian urban studies, that the Westminster model provides the executive with the powers it needs to implement comprehensive growth management in a dynamic urban economy. From this perspective, which until recent decades was highly influential in the larger world of parliamentary scholarship, policy failure can legitimately be blamed on poor government performance (Rollings 2001). This has shaped Canadian scholars' assessment of regional planning policy in Ontario. Scholarly accounts of why the Davis government withdrew from actively planning the Toronto-area region in the 1970s embrace this premise. This literature offered a variety of explanations for the government's eventual decision to withdraw from an activist role, including the failure to entrench the program within the bureaucratic decision-making apparatus, backlash from an alienated electorate, municipal opposition, constraints imposed by market forces, resistance from land-owners, and overweening bureaucratic ambition (Bourne 1999,

Cullingsworth 1987, Frankena 1980, Hodge 2001, Pearson 1975, Richardson 1981, Robinson 2000). What these critiques share is the assumption that because the government formally had it within its power to proceed, its failure to do so amounted to a lack of political will to overcome the obstacles.

However, for contemporary scholars of the Westminster model it has become a truism that policy-making is complex and multi-faceted, subject to a variety of forces not all of which are within the formal purview of government. Private as well public actors have resources they can bring to bear on the formal decision-making process. In short, the emphasis has shifted from government to governance (Rollings 2001). For instance, in the current case, despite the provincial executive's considerable authority over the land-use regulatory process, it must rely on the development and home-building industries and farmers to deliver the socially desirable goods of housing, foodstuffs, and the environmental amenities associated with a functioning landscape. Though these market actors are the principal regulatory targets of the Liberal government's greenbelt, the benefits they supply give them some leverage over policy.

As noted above at the beginning of this paper, the Liberal growth management package was structured at the outset to entice developers to stay in the market. Further regulatory inducements aimed at the development and home-building industries are underway. Therefore the remainder of this analysis will focus on the farmers.

A commonly cited rationale for the greenbelt is to stem the loss of good farmland, a problem first attracting the attention of policy-makers as long ago as the 1970s. Though southern Ontario contains over 50% of Canada's Class One farmland, it is increasingly vulnerable to development pressure. Between 1971 and 2001, the province's urbanized land coverage grew by almost 80%; as of 2001, over 11% of the province's best agricultural land had been converted to urban use (Statistics Canada 2005). Between 1991 and 2001, the number of farms in Ontario declined from 68,633 to 59,728 (Ministry of Agriculture and Food 2002). The pressure for conversion is particularly intense in the Greater Toronto Area, which lost about 60,000 hectares to urbanization between 1976 and 1996, an area roughly equivalent in size to the City of Toronto. A forecasting study by the Neptis Foundation which is often cited by Liberal cabinet ministers, has projected that, in the absence of growth management planning, business-as-usual development trends would result in another 1,000 square kilometres of primarily high-quality agricultural land in the GTA being paved over by 2031, an area almost twice the size of the City of Toronto (Ministry of Public Infrastructure Renewal 2004).

Of course, these statistics do not directly speak to the profitability of agriculture. Agriculture remains one of Ontario's most important industries. Between 1998 and 2004, total farm cash receipts increased from \$7 billion to \$8.5 billion, while net income in the same period increased modestly from \$416.8 million to \$423.7 million (to be sure, these figures mask considerable fluctuations from year to year) (Ministry of Agriculture and Food 2005). Between 1996 and 2001 in the highly urbanized GTA, the number of farms decreased by 16%, and the area of farmland, by 7%; but gross farm receipts increased by 14.7%. The same pattern is evident outside of the GTA (Planscape 2003).

Nevertheless, the flight of farmers from the land, as measured by the significant decline in the number of farms and farm operators, reveals a community under considerable stress. Other than the outright sale of farmland the best indicator of the farm crisis is the level of lot severance activity, which the greenbelt now severely impedes. The most comprehensive study available studied severance activity between 1990 and 2000 in 34 counties across the province, an area considerably larger than the Greater Golden Horseshoe or the greenbelt's jurisdiction (Caldwell 2002, 2003). From this study we can extract the figures for the municipalities contained within the Greater Golden Horseshoe.¹⁶

In the decade between 1990 and 2000, 4,554 new lots were created in the municipalities included in the GGH (this constitutes 29% of all the new lots in the 34 counties which were the subject of the study). Of this total, 85% were for residential use (the rate for all 34 counties was slightly lower, at 80%). Farmers usually apply for a severance as a source of retirement income or to provide themselves with a retirement home (the average farmer in Ontario is in his or her early 50s), or to raise needed cash for investment in the farm. Lots severed for these purposes rarely stay connected to agricultural use in the long-run. Typically, farm retirement lots quickly become rural residential building lots. Thus, the cumulative impact of the vast majority of rural severances is to permanently remove the land from agriculture. Indeed, in rural Ontario severances are the primary vehicle for subdividing undeveloped lands (Caldwell 2002, 2003, Farmland Preservation Research Project 2004).

Rural non-farm severances also have a negative impact on the land which continues to be farmed. The influx of non-farm residents into rural areas creates complications for the farmers remaining, such as increased traffic on country roads, new residents' hostility to normal farming practices, and deteriorating farm services as equipment dealers and seed suppliers are forced to leave when their customer base declines. The result is to make continued farming unattractive, which in turn facilitates the flight of farmers from agriculture (Farmland Preservation Research Project 2004).

Farmers are the beneficiaries of a plethora of provincial and federal programs designed to preserve farming as an economically sustainable business. These include direct funding, regulatory protection from incompatible land uses, investments in rural infrastructure, insurance programs, marketing and price maintenance supports, and active representation of farmers' interests in international forums such as the World Trade Organization. Of course, whether these programs are adequate, effectively designed, and successfully administered is a question for debate. Yet traditional farmland protection programs have shied away from the root cause of farmland loss, which is the initial decision by the

¹⁶ As Caldwell's study relies on municipal jurisdiction for its unit of analysis, a breakdown exclusively for the greenbelt is not possible as it is not exactly contiguous with municipal boundaries. Moreover, the statistics cited above for severances in the GGH are slightly imprecise, because: severance statistics for Brant County were unavailable; the study omits any figures for the Regional Municipality of Niagara; and the study lumps Haldimand and Norfolk together, but the GGH does not include Norfolk. (Norfolk became a separate county in 2001).

farmer to sell the land or apply for a lot severance. The greenbelt directly targets how farmers exercise their property rights. For this it has been denounced by the Ontario Federation of Agriculture as “the most draconian piece of legislation farmers in this province have ever been faced with.”¹⁷ A farmland protection program imposed over the objections of the farm-owners is not likely to be tenable in the long-run.

In the world-view promoted by provincial farmers’ organizations, rooted in a discourse based on individualism and property rights, the greenbelt appears as yet another regulatory burden imposed on a beleaguered community, by a government which fails to understand farmers’ problems in a hostile global economy or appreciate the role farmers play in a predominantly urban society. The government’s refusal to grant compensation for appropriating land-owners’ development rights predictably provoked fierce opposition from farmers protesting the negative impact on their incomes and retirement prospects. As well it confirms the farmers’ self-image as a marginalized sector of Ontario society. Private rights in rural Ontario are to be restricted in support of a growth management program designed to improve the quality of life for urban communities. In the words of the Federation of Agriculture’s representative on the government’s Greenbelt Task Force, “farmers don’t feel responsible for urban sprawl, but others seem to believe we are.”¹⁸ The farm lobby’s position on the Liberal growth management plan can be summarized as follows. If the government expects farmers to stay on the land and continue to provide the amenities the plan contemplates, then it must provide farmers with the financial and regulatory resources they need to maintain sustainable business operations. But if farmers choose to sell their land, this is an indication of the failure of public policy, and not a manifestation of the inherent limitations of private property ownership.

It is not difficult to identify the contradictions in a philosophy which invokes individualism to bolster claims for government assistance and support. Yet the private property ethic remains as a powerful influence among rural land-owners in settler societies such as Canada, the United States and Australia, regardless of the extent to which it is formally embodied in the local legal system (Hall 1997, Reeve 2002). However, extensive legal support for property rights, as in the United States, is not necessarily a barrier to effective open space or farmland protection policies. One of the attractions of PDR programs in the American states is that they preclude challenges under the Takings Clause of the Fifth Amendment, as farmers voluntarily relinquish their development rights in exchange for compensation. In states where farmland protection is on the agenda, the constitutional framework is a background factor directly focusing the attention of policy-makers on the conditions under which farmers may be willing to voluntarily participate in farmland protection programs. In fact, in many cases when governments do enter negotiations with land-owners over the terms of a PDR program, a constitutional challenge by land-owners seeking to evade mandatory downzoning is not always a realistic possibility. Depending on the circumstances, the complexity of

¹⁷ Ontario Legislative Assembly, Standing Committee on General Government, *Debates*, 31 January 2005, p. G-615.

¹⁸ Ontario Legislative Assembly, Standing Committee on General Government, *Debates*, 2 February 2005, p. G-753.

constitutional doctrine under the Fifth Amendment is sufficiently opaque as to render predictions about precise legal outcomes uncertain. However, where the prospect of mandatory downzoning does provoke a debate over constitutional principle, this serves as a reliable proxy for the underlying problem, the lack of popular support for the proposed government intervention. The constitutional issue emerges only in the absence of firm popular support for proposed government restrictions on property rights (Siemon 1997).

In this light, it could be argued that one of the characteristic features of the Westminster model at the provincial level – the lack of a constitutional impediment to top-down regulation of private property – can in fact work as an obstacle to effective farmland protection. The provincial government may not be confronted with an institutional constraint effectively compelling it to negotiate with land-owners, as American state governments are. But at the same time, this freedom to manoeuvre removes an incentive encouraging the province to directly engage with the world-view of hostile property-owners. In Ontario, it can be argued, the result is a growth management program suffering from a lack of popular legitimacy among a constituency whose support is crucial to the program's long-term success.

Conclusion

The Liberal growth management plan offers a valuable opportunity for reflecting on the capacity of the Westminster model to build successful governance regimes. The Ontario debate on sprawl has focused on identifying the right policy mix for promoting coherent growth patterns in the Toronto metropolitan region. Advocates of the smart growth paradigm have not asked whether the Westminster model in its Ontario setting in fact provides the institutional resources needed for successful implementation. Insofar as urban scholars have addressed the institutional question, they have assumed that the parliamentary model is superior to the American alternative, which is typically perceived to be an impediment to effective metropolitan planning.

This paper has sought to demonstrate that on the contrary, hard questions about the practical limits to the effective power of the parliamentary executive cannot be avoided. It may be that the very features of the Westminster model enabling the provincial cabinet to impose what can reasonably be described as one of the most ambitious regional plans in North America, at the same time pose potential barriers to its prospects of real success. The paper has suggested that the choice of policy instruments available to the province in its capacity as chief policy-maker, under the terms and conditions of the Westminster model, may indeed prove to be inadequate for the task ahead, of reconstituting a workable regulatory framework around a new set of planning norms. This is a subject for further inquiry as the province proceeds to implement its growth management program.

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