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Local Advantage in a Global Era: Making Local Procurement Work for New York

Part One: Summary

Around the country municipalities have enacted local procurement preference laws, which give a competitive advantage to local firms bidding on public contracts. Much of this legislation has been informed by a broader "local first" movement. Those in this movement champion the many benefits of conducting business on a small local scale.

This paper will examine some of these local preferences and the philosophy behind them to guide the City of Buffalo and New York State in adopting locally beneficial policies and legislation. It will also describe the local first movement, which has emerged at least partly as a corrective alternative to neo-liberalism. Local and global economies vary in significant economic, environmental and social ways. This paper will highlight the potential impact of local preferences and examine some of their potential shortcomings. It will also examine potential legislative and legal barriers to local preferences and some of the legal precedents that support preferences.

Why Municipalities are Thinking Local First

There are many pressing problems that we face as a nation and indeed a world today that are making small-scale, local options look attractive. Economic prospects for the United States with failure of the sub-prime market, the declining value of the U.S. dollar and talk of an impending recession are creating a need for stronger and more diverse types of economic development. The scarcity of precious fossil fuel and rising oil prices are leading us to think more carefully about how far our goods travel. Global warming is now accepted as fact in the U.S. and recent studies suggest that it may be taking place at a more rapid pace than once estimated. Americans, who comprise three percent of the world's population and consume one-third of its resources, are now looking to "green" their lifestyle choices. Economic development policies that favor larger businesses have grown so successful over the past sixty years that the dream of owning an independent hardware store, pharmacy, grocery store, or bookstore is quickly fading and the economic stability that comes with community-based ownership is fading with it.[1]

Many of the issues above can be ameliorated by supporting an economy that allows for local independent businesses to thrive and reinforce more localized supply chains. Some issues that this paper will examine are food miles and local economic multipliers. For example, the average plate of food in America travels over 1,500 miles before reaching its destination. This is the equivalent to driving from Buffalo, New York to the southern tip of Florida every time we eat. If we simply sourced more of our food from local independent farms, just minutes away, we could save vast amounts of fossil fuel needed to transport goods, supply fresher healthier food to our neighborhoods and help sustain independent family farms. Second, many economic multiplier studies now show that when a person shops at a local independent business versus a nationally-owned corporation between 3 and 3.5 times more of their money spent is re-spent in that locality, thus helping to grow vibrant local economies and strengthen communities.

Local First Laws and Policies

Many advocates are working to educate the public and local businesses about how they can support local economies, but even the best of intentions will not ensure a municipality's support over the long-term. This is the role, indeed the responsibility, of government. Many state entities have begun adopting laws and policies that are making it easier for communities to support localized economies and help stabilize and potentially grow the local economic sector.

Local preferences, which are often enacted on the state level, generally affect the purchasing of goods and services. For example, the state of Hawaii allows a bidding preference of up to 10% on products that have 75% or more of their manufactured cost in Hawaii.[2] In other words, a local manufacturer's bid will be weighted to give it a 10% competitive advantage over a non-local bidder with the presumption that Hawaii, for example, will reap greater economic short and long-term rewards by accepting not the lowest bid but the bid that will have the most positive economic impact. In other examples, the state of California gives a 5% bidders preference to small over large bidders. Other states such as Indiana give a 15% preference to small *independent* businesses [emphasis added]. Indiana's focus on being independent ensures that larger companies such as national franchises (which may be considered "small") do not benefit over locally-owned independent businesses in the bidding process.[3]

Other states have opted not to give incentives to individual bids but to set certain state-wide minimums for local procurement. For example, Minnesota law mandates that at least 25% of total state procurement of goods and services (including printing and construction) be awarded to small businesses. Minnesota also grants preferences to certain kinds of businesses that are majority owned and operated by women, people with disabilities and specific minority groups. Additionally a certified economically disadvantaged small business may be awarded up to a 6% preference for commodities and services and a 4% preference on construction projects.[4]

What the City of Buffalo and New York State is Currently Doing

The City of Buffalo follows state mandates on bidding.[5] According to the City Charter Buffalo must accept the lowest price on a bid.[6] Such a charter provision generally precludes city councils from introducing bidding preferences that favor local over non-local bids.[7] One state "buy local" preference that the City must abide by stipulates that if there is a tie on a bid the contract will be awarded to a local vendor. Still, this means that local competitors who have less access to tax incentives and other write-offs must meet the price of larger businesses, which is often difficult.

New York is already taking strides to encourage procurement of locally-produced foods. For example, New York State-labeled wines (at least 75% volume grown in NYS) have "favored source" status for purposes of procurement and are exempt from competitive procurement statutes. New York also gives preferences in the letting of contracts for food products grown, produced or harvested in New York State on behalf of facilities and institutions of the state of New York who are authorized to purchase products locally.

What Buffalo and New York Can Do

One of the first things New York State can do is adopt more selective public contracting policies that give a 5 to 10 percent bidding advantage to local independent businesses. Second, to truly ensure local benefit, local first expert Michael Schuman suggests that the most effective bidding policies should account for multiplier effects in the bidding process. He recommends that parties who bid on public projects demonstrate the local economic multiplier of their work (the quantifiable economic ripple effects of their business in a locality). Contracts should then be awarded on the basis of the most effective multipliers.[8] Third, the State should also reach out to other municipalities to see which local preferences have proven to be the most beneficial and then adopt similar strategies.

On the city level, Buffalo should reconsider the "lowest possible bidder" language of the City Charter. The city can then begin considering how it can adopt local preferences. Aside from local legislation the city can publicly support and promote a "buy local" day and work to educate its citizenry about making more local and sustainable choices. It can easily do this by lending support to Buffalo First, a local chapter of the Business Alliance for Local Living Economies, which organizes a directory of local independent and sustainable businesses, has an annual Buy Buffalo Bash to educate the public about local sustainable options and a Buy Buffalo Week, in which locally-owned businesses offer incentives to the public to shop locally during periods of high retail activity.

Part Two: Contextualizing the Local First Initiatives

Local First History

The "local first," "economic decentralization," or "localism" movement emphasizes the importance of local economic investment and control and communities turning inward to serve more of their own economic, social and political needs. It has emerged in response to the massive rise of multi-national corporations, government devolution, and other neo-liberal manifestations that have ensued over the past three decades. In response, local first advocates urge people think about preserving local, community-scale ownership and action.

To do this, regions across the nation have formed local first business networks, which collaborate to encourage greater local spending and resourcing. These efforts have been so successful that many say the making of a national movement has begun. In addition to establishing networks, local first groups support policies that facilitate local procurement.

The local first movement is comprised of activists, academics, schools, organizations, local business networks, national organizations, and government entities. It is rooted in the green movement or those who believe that a greater environmental consciousness should guide the actions of individuals, institutions and businesses. This movement is grounded by the scholarly works of individuals such as E.F. Schumacher, Paul Hawken, and Jane Jacobs.[9] A second wave of academics, including Michael Shuman, Bo Burlingham and David Korten has built upon these earlier works in forming the current ethos of the movement.[10]

Two key organizations that focus on creating local first networks are the Business Alliance for Local Living Economies (BALLE) and the American Independent Business Alliance (AMIBA). Both organizations work to establish and guide city, regional and state-wide networks who are committed to enhancing the localities' economy, community and ecology. These membership-based networks are made up of locally-owned independent businesses[11], individuals, activists, and organizations whose membership fees either wholly or partially drive the organization.[12] The local first movement is also fueled by think tanks such as The New Rules Project, a clearing house for information on agriculture, energy, environment, equity, finance, governance, information, retail and taxation.[13] Local first initiatives have been so effective that they have gained the endorsement of state governments such as Washington and Vermont.

The Global Context of the Local First Movement

There are strong arguments both for and against global corporations. They are considered the real beneficiaries of traditional economies of scale: the notion that bigger businesses are more "efficient." Due to their ability to employ new economy tactics such as offshoring, outsourcing, and global supply chaining, multinational companies have the ability to seek out and employ the lowest cost means of production; they have the capital to invest in a diverse range of communities and to push for policies that are conducive to low cost and high profit—all things that are extremely efficient according to neoclassical economics.

Critics of this economic standard argue that there is a "decreasing economy of sale" inherent in this model. Traditionally, a decreasing economy of scale indicates that the increase in size of a business brings about a less than equal increase in output—that bigger is not necessarily better. Social and environmental justice advocates have built on this notion. Productivity may decline as a business grows, as may that business's attention to moral imperatives such as the health of workers, communities and the environment.

The most frequently cited example of corporate success in the new economy is Wal-Mart, the world's largest and wealthiest retailer. Wal-Mart and the Walton family who own it consistently top *Forbes Magazine's* profit and wealth indicators. In 2004 Wal-Mart boasted a staggering $10 billion profit; the Walton family has a greater net worth than Bill Gates and Warren Buffett combined.[14] Though it makes more money than any other retailer and though its owners have a combined fortune of over $90 billion, Wal-Mart has grown infamous for undermining ethical standards in the name of the bottom line. Practices include: using illegal immigrant labor, sweatshop labor, discriminating against female employees, not paying employees a living wage, encouraging employees to go on public assistance to make ends meet and putting mom and pop competitors out of business. This is not to mention Wal-Mart's tremendous plutocratic influence. As Joel Bakan notes, today corporations like Wal-Mart "govern society, perhaps more than governments themselves do."[15]

When we think about how a business relates to the community in which it is located, the distinction between a publicly-traded and small incorporated business is key.[16] While criticism of such businesses has grown in current years, some scholars suggest that social and ecological externalities of the corporation are not necessarily the result of a CEO's ill intent but of the moral and legal imperatives imposed on corporations. According to Milton Friedman, Nobel laureate and eminent world economist, because a corporation is the property of its shareholders, the primary function of a corporation is to make as much money as possible for its shareholders.[17] If maximizing profit is a moral imperative, is the corporate executive who places social and environmental priorities over profit engaging in an "immoral" act?[18]

Economists are not the only people who have delineated the boundaries of corporate conduct; our legal system has as well. The seminal 1916 case, Dodge v. Ford arose when Henry Ford attempted to lower the cost of cars by cutting shareholder's quarterly dividend payments on Ford stock and instead reinvesting the money in the company to ultimately bring down the consumer cost of buying his Model T. The plaintiff, John Dodge (a major shareholder) alleged that bringing down the ultimate cost of buying a car, was "semi-humanitarian" and was not authorized by the company's charter. Siding with the plaintiff, Judge Ostrander noted, "A business corporation is organized and carried on primarily for the profit of the stockholders."[19] Precedents such as this bring the potential impact of a corporation and privately held business into great relief.

Local Procurement Preferences: A Local First Policy

One of many policies that local first advocates champion (which this paper will examine at length) are local procurement preferences or incentives given to local firms granting them a competitive advantage over non-local competitors. Local first groups favor local preference legislation because they believe that local spending has many positive economic, ecological and social benefits (discussed below).

There are a number of different local preference laws. Some states use the location of a firm as a tiebreaker if all other aspects of the bid are equal (price, performance, etc.); according to the National Association of Purchasing Officials, thirty-nine states currently engage in this practice.[20] Other states award contracts to local bidders who ask for higher prices of between five and fifteen percent above the out of town competitor; approximately fifteen states have adopted such legislation.[21] Cities also have enacted legislation that gives preferences to local business and products in government purchasing. For example San Francisco permits lower bids from in-city firms up to five percent. It allows an additional five percent for local women and minority-owned businesses.[22] Still other localities have enacted a reciprocal law, which is applied if the non-local bidder's hometown has local preference laws. For example, if a San Francisco firm bids in an area that has reciprocal legislation on the books, the five percent incentive that works in the company's favor in San Francisco will be applied against it (inflating its bid by five percent) in the reciprocal locality.[23]

Why and How Local Preferences Work

Local first advocates cite a number of studies to argue that local preferences are beneficial to their respective economies. These studies often examine the multiplier effect, or how many times a dollar is recycled through a community before it leaves that community. The more times a dollar circulates within a defined geographic area and the faster it circulates without leaving that area, the more income, wealth and jobs it creates.[24]

It is in an area's interest to maximize the number of dollars that stay within a community and to minimize the number of dollars that exit it. As many multiplier studies suggest, money leaves a community faster when it is spent at non-local firms. For example, in 2004 the Andersonville Chamber of Commerce and other economic development organizations in Chicago issued a study illuminating the effects of spending money locally versus spending it at a chain store. According to the study, for every $100 in consumer spending at a local business $68 of the original $100 remained in the local economy; only $43 remained when the same $100 was spent at a chain store.[25] Another economic impact study in Midcoast, Maine in 2003 found similar results. The study tracked the revenue and expenditures of eight locally-owned businesses compared to big-box stores and concluded that local businesses spent 44.6 percent of their revenue within surrounding counties while big-box retailers only returned an estimated 14.1 percent of its revenue to the local economy, mostly as payroll. Most of Maine's spending at these big-box stores went out-of-state and back to corporate headquarters.[26] Still other studies, some in southern states, draw similar conclusions. For example, one study in Austin, Texas found that for every $100 in consumer spending at a national chain bookstore in Austin the local economic impact was $13; the same $100 spent a locally-owned bookstore left $45 in the local economy.[27]

Local Preferences and Economic Justice

As the multiplier studies above suggest, local spending is preferable for communities because it helps them retain wealth and resources. One of the primary arguments underlying local preferences is that it helps keep tax monies in an area: localities pay for contracted work with tax monies; if it is spent on local firms more local people will be employed, local businesses will bring in greater revenue and workers and businesses will recycle their money within the community and contribute to local taxes. This reasoning is similar to that employed in another economic justice initiative, the living wage movement. The fundamental assumption underlying living wage laws is that the people of an area should have some say over how their tax monies are spent. This is why living wage laws are applied to firms who contract with municipal governments. Similarly living wage proponents argue that although a living wage may cost a municipality more at the outset, that area will benefit because people become more selfsufficient, less dependent on public assistance, and recycle more of their money in the local economy.

Other studies have documented the impact that businesses have on the local tax base, which sustains the general welfare of a community. For example, one study of Barnstable, Massachusetts concluded that big-box stores, shopping centers and fast-food restaurants end up costing local taxpayers more than they produce in revenue. It found that big-box retail creates a net annual deficit of $468 per 1,000 square feet; fast-food restaurants generate a deficit of $5,168 per 1,000 square feet. Small businesses, however have a positive impact generating a return of $326 per 1,000 square feet annually.[28]

Supporting local independent business is not just about economics; it is far more holistic – integrating social, labor and other community-based values. There have been a number of studies conducted in localities across the US documenting the benefits of using local alternatives. For example, one study found that small businesses contribute more money per employee to local charities than medium and large firms. Smaller firms gave $789 per employee, medium sized firms $172 and large $334.[29]

Still there are other, less quantifiable benefits of staying loyal to local economies. Because local independent businesses are not accountable to shareholders they can pursue more of the moral imperatives that publicly traded corporations cannot, which relatively advances economic justice interests. Business accountability impacts small communities in many positive ways. First, a strong local economic community creates not just strong economic ties, but also social ties. Many big-box stores are located in vast suburban and rural areas, not tightly-woven, urban communities. Big-box stores such as Target, Best Buy and Home Depot have become all too familiar structural markers of suburbia. Often to get to these outlets a person leaves one's home, goes to the store concealed in one's car, shops in privately-owned malls and returns home.

Some studies suggest that the suburban experience has become more socially isolating as people do not enjoy the luxury of living in densely-populated, walkable urban areas where one has the opportunity to interact with more individuals in a more public-friendly atmosphere. Small independent business communities, in contrast, attract a great deal of foot traffic – both local residents and tourists – to an area, fostering a greater sense of community. Small unique businesses help add to the unique character of neighborhoods, in stark contrast with cookie-cutter strip malls. Local economies may also contribute to population growth. Author, Richard Florida has noted that these unique communities attract more young professional, and economically mobile people looking to relocate.[30]

When local living economies exist, when community ties are strengthened, this becomes a social safety net of sorts. For example, Don and Deloris Fisher, owners of The Gap own thousands of stores around the world; it is nearly impossible that they will be able to visit each store and develop a rapport with managers, workers, and community members. By contrast, locally independent storeowners are more likely to work in or live by the store they own. Therefore they are more likely to have a greater understanding of the community in which employees reside and also their needs. This is perhaps why locally owned businesses give more money to charitable causes.[31]

Part Three: Law and Policy

Barriers to Advancing Local Preference Policies

There are legal limitations to local preferences on local, city, state, federal and international levels. Some preferences many be prohibited by state law, also city councils cannot enact local preference ordinances if the city charter stipulates that contracts be awarded to the lowest bidder. Federal law may bar preferences if federal funds are involved. Finally some international trade agreements such as the World Trade Organization's (WTO) Agreement on Government Procurement (GPA) are strictly based on price and performance.

Others opposed to local preferences argue that it will cost a locality more money. For example one argument against a preference law in Memphis, Tennessee suggested that such policies end up costing cities more because it gives local bidders an incentive to overbid on contracts; as long as they meet the out of town competitor's prices they still win.[32] Others like the commissioner of Sarasota County, Florida contend that local preferences simply reinforce an area's "old boys network".[33] Others, such as the Omaha Federation of Labor, oppose a local preference law because they feel it would place a heavier burden on out-of-town bidders who want to do business with the town.[34] Some localities have corrected for these potential shortcomings and apply percent preferences only to determine the winner of a contract; the firm is then paid the original estimate, absent the preference.

Overcoming Barriers

Out of state companies have attempted to legally challenge local procurement preferences on the grounds that they conflict with Article 1 §8 of the Commerce Clause and also the Due Process Clause of the 14th Amendment, but such arguments have not succeeded in court.[35] One of the most frequently cited cases in this regard is Setzer and Sons v. South Carolina Procurement Review.[36] In the case a North Carolina company, Setzer & Sons challenged South Carolina's legislative program which stipulated that the state purchase in-state goods and if it could not, then goods made in the US. Setzer brought a claim after the firm's low bid was undercut by a higher-bidding South Carolina firm. Setzer claimed it violated the Commerce Clause and the Equal Protection Clause of the Fourteenth Amendment.

The "negative" Commerce Clause prohibits economic protectionism unless the discrimination is demonstrably justified by a valid factor unrelated to economic protectionism.[37] The court noted that the negative Commerce Clause does not reach every facet of state action and applies only when the state acts as a market regulator, not when the state is a market participant. South Carolina was a market participant and therefore the Commerce Clause did not apply.[38]

Setzer was examined under the rational basis standard of the Fourteenth Amendment. The rational basis test asks whether the statute is rationally related to a legitimate state interest. The court found a rational basis because the law ultimately sought to redirect tax dollars back into the community.[39] A study conducted by the state found that although initially going with Setzer would have saved the state $50,000, by choosing Setzer the state would have lost $2.1 million in tax revenues, employee pay and other local expenditures.

Conclusion

In a time where it seems like the market is getting larger, corporations bigger (and an individual's influence over them diminished) local first advocates offer us an alternative that helps to keep our local economy self-sustaining and to foster business/community accountability and economic justice on a small scale. One way advocates have done this is by enacting local preference laws that give advantages to local bidders on public contracts.

Local preferences have the capacity to recycle tax dollars through a community, thus helping it retain a great deal of its wealth and employ its people. Despite this, because this initiative is highly localized and still an unfamiliar concept, local preferences do face some criticism. Moreover, global policies such as the World Trade Organization's Agreement on Government Procurement have the potential to undermine local sovereignty. Still as cases such as Setzer show, courts have demonstrated support for local procurement laws. Though still in its infancy, the future of local procurement legislation remains bright.

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[1] Stacy Mitchell, Big Box Swindle: The True Cost of Mega-Retailers and the Fight for America's Independent Businesses (Boston: Beacon Press, 2006). Greg LeRoy, The Great American Jobs Scam: Corporate Tax Dodging and the Myth of Job Creation (San Francisco: Berrett-Koehler Publishers, Inc., 2005).
[2] New Rules Project http://www.eva.state.va.us/learn-about-eva/files/listing-states-preferences.pdf. Accessed Dec 2007.
[3] New Rules Project http://www.eva.state.va.us/learn-about-eva/files/listing-states-preferences.pdf. Accessed Dec 2007.
[4] New Rules Project http://www.eva.state.va.us/learn-about-eva/files/listing-states-preferences.pdf. Accessed Dec 2007.
[5] Information is based on preliminary interviews with Kathy Fitzpatrick, Director of Finance for the City of Buffalo; Donna Estrich, Director of Budget for the City of Buffalo; City Councilman Mike LoCurto; and New York State Assemblyman Sam Hoyt.
[6] Interview with Michael LoCurto, November 20, 2007.
[7] Interview with Kathy Fitzpatrick, Director of Finance for the City of Buffalo, November 22, 2007.
[8] Michael H. Shuman The Small-Mart Revolution: How Local Businesses are Beating the Global Competition (California: Berrett-Koehler Publishers, Inc. 2006) 187.
[9] E.F. Schumacher Small is Beautiful: Economics as if People Mattered (New York: Harper & Row 1973); Paul Hawken The Ecology of Commerce (New York: HarperCollins 1993); Jane Jacobs Death and Life of Great American Cities (New York: Random House 1961).
[10] Michael H. Shuman The Small-Mart Revolution: How Local Businesses are Beating the Global Competition (California: Berrett-Koehler Publishers, Inc. 2006); Bo Burlingham Small Giants: Companies that Choose to Be Great Instead of Big (New York: Penguin Group, 2005); and David C. Korten The Great Turning: From Empire to Earth Community (California: Berrett Koehler Publishers, Inc. 2006).
[11] Independent business alliances have established other criteria to help guide the growth of local networks. The BALLE network recommends that its local businesses meet the following five guidelines: (1) the business must be privately held and not publicly traded, (2) it must be registered and headquartered within the network's state, (3) at least fifty percent of its owners must live in the immediate area, (4) the firm must be able to make independent business decisions (for example, it can elect to change the look and feel of its location without having to contact national headquarters), and (5) it must pay all of its own expenses
[12] Networks also depend on foundational support.
[13] www.newrules.org
[14] John Miller, "What's Good for Wal-Mart…" Dollars and Sense: The Magazine of Economic Justice (January/February 2006).
[15] Joel Bakan The Corporation: The Pathological Pursuit of Profit and Power (New York: Free Press 2004) 25.

[16] Bakan, 3. Bakan defines a corporation as a "large Anglo-American publicly traded business corporation, as opposed to small incorporated businesses, or small and large not-for-profit or privately owned ones."
[17] Shareholders are often uprooted from communities, broadly dispersed and anonymous; Bakan, 14.
[18] Bakan, 34.
[19] Bakan, 36-7. Ostander further noted a corporation could not be run "for the merely incidental benefit of shareholders and for the primary purpose of benefiting others."
[20] New Rules Project, www.newrules.org.
[21] New Rules Project, www.newrules.org.
[22] New Rules Project, www.newrules.org.
[23] New Rules Project, http://www.newrules.org/drdave/1-localpref.html. Accessed Dec 2007.
[24] Shuman, 41.
[25] Civic Economics, Andersonville Study of Retail Economics, October 2004.
[26] Institute for Local Self-Reliance, The Economic Impact of Locally Owned Businesses v. Chains: A Case Study in Midcoast Maine, September 2003.
[27] Civic Economics, Austin IBA, Economic Impact Analysis: Local Merchants v. Chain Retailers, December 2002.
[28] Tischler & Associates, Fiscal Impact Analysis of Residential and Nonresidential Land Use Prototypes, July 2002.
[29] National Federation of Independent Business, Small Business Policy Guide, January 2003.
[30] Richard Florida, The Rise of the Creative Class and How It's Transforming Work, Leisure, Community and Everyday Life (New York: Basic Books 2002).
[31] National Federation of Independent Business, Small Business Policy Guide, January 2003.
[32] "Viewpoint: Local Preference Has Many Pitfalls" The Comercial Appeal (25 Aug 2005) B6.
[33] Steve Schroer "Commissioners Toss Out Local Preference Proposal" Sarasota Herald-Tribune (1 May 1999) B1.
[34] "Amendment Would Allow Local-Preference Option" The Omaha World-Herald (1 Nov 1994) 11.
[35] Setzer & Sons v. South Carolina Procurement Review Panel (Virginia).
[36] Smith Setzer & Sons v. South Carolina Procurement Review Panel, 20 F.3d 1311 (4th Cir. 1994).
[37] Setzer at 1318.
[38] A market regulator is one that exercises its taxing, regulatory or other police powers; a market participant is one that acts as a private actor or consumer in the market. Id.
[39] Setzer at 1324.