

Restructuring Local Government

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This web site is a project of Professor Mildred Warner in the [Department of City and Regional Planning](#) and the [Cornell Cooperative Extension](#) at [Cornell University](#).



[Recent News](#)

Warner contributes to the *New York Times*' "Room for Debate" section on privatization.



[Linking Economic Development and Child Care](#)

This research project aims to better identify the economic linkages of child care from a regional economy perspective.



[About Professor Warner](#)

Papers, course syllabi, and a short bio are available.

- [About Professor Warner](#)
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Innovative Economic Development Strategies

Traditionally local government economic development policy has focused on attracting new business through incentives and subsidies. However new economic development approaches emphasize investment in the social infrastructure necessary to support a vibrant, creative, entrepreneurial economy. Many states are looking at the importance of infrastructural supports such as child care on regional economic well being. At the city and neighborhood level governments are exploring new public private partnerships to increase investment in downtown business districts (Business Improvement Districts). Often initiated by non-profit associations or community development corporations, these innovative approaches have come to scale and now attract support from the majority of local governments.

Professor Warner's Research

Professor Warner's research explores the role of community collaborations and investments in social infrastructure in promoting local and regional economic development. Recent articles include the following in addition to a [Special Issue of *Community Development: The Journal of the Community Development Society*](#) on the Economic Importance of Child Care for Community Development.

Warner, M and Christine Weiss Daugherty 2004. "[Promoting the 'Civic' in Entrepreneurship: The Case of Rural Slovakia](#)," *Journal of the Community Development Society* Vol 35, No. 1.

Warner, M.E. and Zhilin Liu 2005. [Regional Economic Development and Local Services: The Case of Child Care](#), *International Journal of Economic Development*. 7(1).

Warner, M.E. and Zhilin Liu 2006. "[The Importance of Child Care in Economic Development: A Comparative Analysis of Regional Economic Linkage](#)," *Economic Development Quarterly* 20(1):97-103.

Warner, M.E., 1999. "Collaborative Planning Broadens the Local Economic Development Policy Debate." *Journal of Planning Education and Research*. 19:201-206. (Earlier version CRP Working Paper #169)

Child Care as Economic Development

The early childhood care and education field is at an exciting moment. Across the US, there is increasing recognition of the economic importance of child care. Early care and education is being recognized as an important economic sector in its own right, and as a critical piece of social infrastructure that supports children's development and facilitates parents' employment. The Linking Economic Development and Child Care Research Project aims to better identify the economic linkages of child care from a



regional economy perspective. We support states and localities interested in using an economic development framework to build coalitions with the economic development community, business interests and policy makers to help craft new approaches to child care finance.

▪ [Linking Economic Development and Child Care](#)

Innovative Economic Development Strategies

Survey results show community-based economic development strategies focused on low income neighborhoods are commonly supported by cities in partnership with non profit organizations.

- [Innovative Economic Development Strategies](#)

Business Improvement Districts

While effective in promoting economic development, BIDs also raise important issues about governance and control over public space.

- [Business Improvement Districts: Issues in Alternative Local Public Service Provision](#)

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Government Restructuring

This site profiles research by Professor Warner and colleagues on the nature of local government restructuring in the United States. The site also contains a review of the literature on government restructuring including annotated bibliographies and links to summaries of many of the articles and books cited.

- [Recent Articles on Privatization and Decentralization](#) by Mildred Warner

Professor Warner's Research

Professor Warner has written papers on decentralization, privatization, and free trade. Many of these papers are available online.

- [View related papers on decentralization](#)
- [View related papers on privatization](#)
- [View related papers on free trade](#)

Some of Professor Warner's work in this area is on [national and New York State trends in local government restructuring](#).

Regionalism

The modern metropolitan area typically contains multiple political jurisdictions. Public choice theorists argue political fragmentation will enhance choice and efficiency in local government service provision. However, the political fragmentation of the metropolitan area makes it difficult to address economic development, service provision or democratic voice at the regional level. Consolidationists argue that regional government is the solution. However, support for regionalism is weak. Alternatives such as inter-municipal cooperation or functional consolidation (specific to a service) have been much more popular. These solutions also raise problems of equity and democratic representation and the ability to address

Privatization

Privatization is a worldwide phenomenon. In recent years all levels of government, seeking to reduce costs, have begun turning to the private sector to provide some of the services that are ordinarily provided by government. The spread of the privatization movement is grounded in the fundamental belief that market competition in the private sector is a more efficient way to provide these services and allows for greater citizen choice. In practice, however, concerns about service quality, social equity, and employment conditions raise skepticism of privatization. In New York State, labor concerns are also a major issue. Although empirical studies do not provide clear evidence on the costs and benefits of privatization, public perception and pressure for improved government efficiency will keep privatization on the government agenda.

- [Research on privatization](#)

Reinventing Government

Sparked by privatization and business-model prescriptions for government, a debate has emerged as to the primary responsibilities of public managers. There are those who see public administration as akin to a business-providing a choice of services to citizens, at the lowest possible cost. Others believe that public management's

the need for broader multi-functional coordination.

- Professor Warner quoted in 3/9/09 *Wall Street Journal* article "[Localities Facing Merger Push](#)"
- [Research on regionalism](#)

Decentralization

Decentralization refers to the global trend of devolving the responsibilities of centralized governments to regional or local governments. The promise of decentralization is to enhance efficiency (through inter-governmental competition and fiscal discipline) and democratic voice (though enhanced local voice over service provision). Decentralization works best in settings where there are strong traditions of democracy, accountability and professionalism in subnational government. Decentralization may enhance productive efficiency but will undermine allocative efficiency by making redistribution more difficult, especially in areas with regional inequality.

- [Research on decentralization](#)

responsibilities extend beyond this, to the preservation of public values such as equity, accountability and citizen voice. From this debate stem questions about the nature of citizenship, and the proper relationship between a democratic government and its citizens.

- [Research on reinventing government](#)

Network Governance, Citizenship and Free Trade

As government shifts from direct provision to use of third parties for service delivery, new challenges with respect to management, accountability and citizenship are raised. It may actually be harder to exercise control or ensure accountability when government is part of an interdependent network. This is why many scholars use the term governance rather than government to describe current conditions. These network governance arrangements alter the nature of citizenship as well, creating a democratic deficit. This section concludes with an overview of the recent free trade agreements and their impact on democracy and governments' ability to use third parties for public service provision.

- [Research on network governance, citizenship and free trade](#)

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Special Projects

National and State Trends

Professor Warner's research on national and New York state trends in local government restructuring.

Contracting Back In

While privatization is the most popular form of alternative local government service delivery, longitudinal analysis shows these contracts are not stable over time.

Free Trade and State and Local Government

An overview of state and local government concerns about free trade. Case studies, resolutions and letters illustrate how state and local governments are asking for a balance between free trade objectives and local government authority.

Options for County Nursing Homes in New York State

This web page is the product of several months of collaborative research between County Nursing Facilities of New York, Inc. (CNFNY), the Civil Service Employees Association (CSEA), and the Department of City and Regional Planning at Cornell University. Our goal in carrying out this research was to develop a better understanding of the current status of New York's county homes.

Transfer of Development Rights

Local governments undertake transfer of development rights (TDR) programs to use the market to implement and pay for development density and location decisions. TDR programs allow landowners to sever development rights from properties in government-designated low-density areas, and sell them to purchasers who want to increase the density of development in areas that local governments have selected as higher density areas.

Business Improvement Districts

While effective in promoting economic development, BIDs also raise important issues about governance and control over public space.

Prison Privatization

The movement towards the privatization of corrections in the United States is a result of the convergence of two factors: the unprecedented growth of the US prison population since 1970 and the emergence out of the Reagan era of a political environment favorable to free-market solutions.

Corruption

Corruption has been identified as a major barrier to economic and social development in developing countries, and considerable research has been done into the causes of and the solutions to corruption in these countries.

Labor-Management Cooperation

As local governments nationwide struggle with demands for quality service delivery and fiscal constraints, they are employing a number of strategies. While these include privatization and intermunicipal cooperation, another technique that can lead to greater efficiency and cost savings is labor-management cooperation. Background articles and a special report examine some of the critical issues surrounding effective implementation of cooperative labor-management practices.

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Databases

Below are two interactive, searchable databases available directly from this site.

Contracting Back In

- [Case Studies of Contracting Back In](#)

New survey evidence shows that public officials are finding that privatization has its limits. While contracting out continues to be widely used by many local governments, the practice of "contracting back in" - where governments choose to resume in-house production following a period of privately produced service - is becoming increasingly common. These are cases of local governments bringing previously contracted work back in-house.

50 State Database

- [Child Care and Economic Development 50 State Database](#)

Many organizations provide data on early care and education. This database provides an overview of all current, national sources of comparative data on the early care and education sector including: child care economic data, demographic data, and early care and education program (policy) data.

Local Government Restructuring Survey in New York

- [Summary of survey results](#)
- [Database of local government restructuring cases in New York State](#)

These pages contain information about service delivery restructuring among towns and counties in New York State, based on a survey completed in 1996 and 1997. The summary of survey results presents the key findings of the survey, accompanied by graphic illustrations. You can also search the database created from the survey results to find out more about specific instances of restructuring in New York State towns and counties.

Summary of Child Care Economic Impact Studies

- [Summary of Child Care Economic Impact Studies](#)

The Summary of Child Care Economic Impact Studies is a qualitative database of state and local studies (completed and in-progress) about the economic impact of child care.

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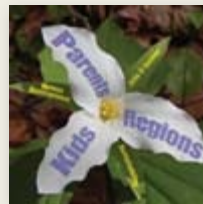
Fiscal stress, changing public expectations and shifting responsibilities for services due to devolution have prompted many local governments to consider restructuring service delivery. This web site is designed to provide local governments with information on restructuring trends and innovations in public sector service provision, public-private partnerships, privatization, inter-municipal cooperation and contracting back-in. Local government is concerned with promoting economic development and Professor Warner's research explores the role of collaboratives and investments in social infrastructure, such as child care, on economic development.

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[Recent News](#)

Results of a Spring 2008 national survey of planners released; Professor Warner speaks at conferences in Orlando and Singapore.



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Recent News

- Mildred Warner contributed [The Pendulum Swings Again](#) to the *New York Times*' "Room for Debate" section on privatization.
- Warner, M.E. 2011. "[Water Privatization Does Not Yield Cost Savings](#)," in *Reclaiming Public Water: Achievements, Struggles and Vision from Around the World*, Transnational Institute and Corporate Europe Observatory. Released at the World Water Forum in Cape Town, South Africa for World Water Day, March 22, 2011.
- Hefetz, Amir and M. Warner, 2004 ("[Privatization and Its Reverse: Explaining the Dynamics of the Government Contracting Process](#)," in *Journal of Public Administration, Research and Theory*, 14(2): 171-190) was [selected as one of 30 exemplary articles](#) in the first 20 years of the journal.
- Council of Global Unions - Quality Public Service Conference, Geneva, Switzerland Oct 12-14, 2010.
 - Warner, Mildred E. and Amir Hefetz 2010, "[Privatization and Reverse Privatization in US Local Government Service Delivery, 2002-2007](#)," Paper prepared for Public Service International Council of Global Unions Conference, Geneva, Switzerland, Oct. 2010
 - [Resources from conference](#)
- Big Ideas in Local Government Conference, Atlanta, GA October 2009
Alliance for Innovation
International City/County Management Association
 - Publications of special interest:
 - Warner, Mildred E. 2010. "[The Future of Local Government: 21st Century Challenges](#)," *Public Administration Review*, 70(S-II): 145-147.
 - Sclar, Elliott, 2009. [The Political-Economics of Infrastructure Finance: The New Sub Prime](#), Paper presented at Annual Meeting Association of Collegiate Schools of Planning, Center for Sustainable Urban Development, The Earth Institute Columbia University.
 - Warner, Mildred E. 2009. [Local Government Infrastructure - and the False Promise of Privatization](#). A Century Foundation Report. New York: Century Foundation.
 - Warner et al. 2009. [Planning for Family-Friendly Communities: Issues and Opportunities](#).
 - Warner, Mildred E. and Jennifer Gerbasi. 2004, "[Is There a Democratic Deficit in the Free Trade Agreements? What Local Governments Should Know](#)," *Public Management* 86:2 (16-21).
- Oslo, Norway Conference, November 2008,
Strategies to Deal with Privatization and to Achieve Quality Public Services,
Public Services International
 - [Professor Warner's PowerPoint](#)
- Singapore Conference September 2007,
Reasserting the Role of the Public in Public Service Provision National University of Singapore
Professor Warner's Paper: Warner, M.E. 2008. [Reversing Privatization: Rebalancing Government Reform, Policy and Society](#), 27(2): 163-174.

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Professor Mildred Warner



Professor
[Department of City and
Regional Planning
Cornell University](#)

B.A., Oberlin College, 1979
M.S., Cornell University, 1985
Ph.D., Cornell University, 1997

Mildred Warner is a Professor in the Department of City and Regional Planning at Cornell

University where her work focuses primarily on local government service delivery and new community development models for addressing human services. Her work shows potential for market based solutions in public service delivery but also raises cautions about the uneven incidence of markets in depressed inner city and rural areas. Dr. Warner's research explores the issues of privatization, devolution and economic development.

Dr. Warner is author of one edited volume and more than 70 refereed articles, book chapters, extension and consulting reports. She has received major research grants from the USDA National Research Initiative and Hatch program to look at the impacts of devolution and privatization on local government service delivery, and from the U.S. Dept. of Health and Human Services and the W.K. Kellogg Foundation to explore the regional economic impacts of child care. She consults widely on economic development policy, local government and child care issues at the local, state and national levels. She has worked closely with International City County Management Association, National League of Cities, National Association of Counties and public sector unions such as AFSCME and CSEA. She was a visiting scholar with the Economic Policy Institute in 2005. She has been a featured speaker at local government conferences in Australia, New Zealand and Spain, and child care conferences all over the United States.

About Professor Warner

- [C.V.](#)
- [Search or browse Warner publications](#)
- Download Warner photo in [high resolution black and white](#) or [low resolution color](#)
- [E-mail Professor Warner](#)

Courses Taught

These courses have been taught by Professor Warner recently:

- [CRP 5074: Economic Development Workshop: Planning for Family Friendly Cities](#)
- [CRP 7201: Research Design \(article summaries\)](#)
- [CRP 418/618: Government Policy Workshop: Financing Child Care](#)
- [CRP 412/612: Seminar: Devolution, Privatization, and the New Public Management](#)

Dr. Warner has a Ph.D. in Development Sociology, a Masters in Agricultural Economics from Cornell University and a BA in History from Oberlin College. Previously she served as a program officer with the Ford Foundation for three years and as Associate Director for nine years of Cornell's Community and Rural Development Institute where she brought policy makers, community development practitioners and academics together to explore new approaches to community development.



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About this Site

Governments are exploring ways to enhance service delivery and promote economic development. This web site is designed to provide local governments and economic developers with information on economic development strategies and a review of experience with local government restructuring, specifically privatization, regionalism and decentralization. Survey research and case studies from across the country are profiled, as well as summaries of relevant research by Professor Warner and others.

This site is developed and maintained by [Professor Mildred Warner](#) with support from students in the Graduate Program of the [Department of City and Regional Planning](#). The site is an integral part of Professor Warner's extension program as part of [Cornell Cooperative Extension](#). Research reported here is supported by an array of grants listed in [Professor Warner's C.V.](#) Any opinions, findings, conclusions, or recommendations expressed here are those of the author(s) and do not reflect the views of funders. A major update to the article summaries section was completed by Rachel Gage in Summer 2004. [Brian Lukoff](#) has served as webmaster since 2000.

Questions and comments on this site may be directed to: Mildred E. Warner, Associate Professor, Department of City and Regional Planning 215 W. Sibley Hall, Cornell University, Ithaca, NY 14853-6701. Phone 607-255-6816. Fax 607-255-1971. Email: mew15@cornell.edu.

Some documents on this site are available in Microsoft Word and PDF format. To view Microsoft Word documents, download the [Microsoft Word Viewer](#). To view PDF files, download [Adobe Acrobat Reader](#). Presentations are available in Microsoft PowerPoint format. To view Microsoft PowerPoint presentations, download [Microsoft PowerPoint Viewer](#).

Local Government Support for Community-Based Economic Development

Mildred Warner
 Department of City and Regional Planning
 Cornell University

Traditionally, local government economic development policy has focused on attracting new business through incentives and subsidies. However, this approach often does not benefit low-income residents or neighborhoods. In the 1970s and 1980s, as industrial developers pursued the strategy of industrial recruitment, poverty and civil rights activists turned their attention to designing new approaches to community economic development, approaches that could target the poor and still compete in the marketplace. Although initially supported by foundations and new institutions such as nonprofit community development corporations, these efforts to bring economic development into distressed neighborhoods now attract local government support as well.

In its 1999 Economic Development survey, ICMA added a question to see how many community-focused strategies were actually being used by local governments across the country. While case studies of successful community economic development programs abound, this survey sheds light on how common these programs have become and how they compare with the more traditional economic development programs that focus on industrial recruitment and business incentives.

SURVEY METHODOLOGY AND RESPONSE RATE

The survey was mailed in winter/spring of 1999 to the city manager/chief administrative officer of all municipalities with populations of 10,000 and over and to counties with the council-administrative and council-elected executive forms of government. Of the 2,882 municipalities and 426 counties surveyed, 912 municipalities and 130 counties responded for a response rate of 32% (Table 3/1). Respondents were fairly evenly divided across all population categories as well as among central, suburban,

and independent jurisdictions. Responses were greatest in the West and lowest in the Northeast. The majority of respondents had a council-manager form of government.

THREE WAVES OF LOCAL ECONOMIC DEVELOPMENT POLICY

Industrial recruitment efforts, characterized by direct subsidies and incentives to individual firms, represent the first wave of local economic development policy and the most common approach used today. The 1980s saw a second wave of local economic development, which recognized the importance of retaining existing firms and helping them expand. While these efforts still rely on providing incentives and subsidies to individual firms, they also address the broader needs of a wider range of local businesses. In the 1990s a third wave of economic development policy emerged; this wave, which focuses on the structure of the local economy, is concerned with how government, through public-private partnerships, can enhance local competitiveness in a global economy. Because poor neighborhoods may undermine the economic competitiveness of a metropolitan region, governmental support for economic development targeted to low-income areas has increased.

Incentives and Recruitment

Local government's traditional focus on business attraction and recruitment strategies for economic development gained great popularity during the 1970s, when growing regions in the South and West were able to attract footloose (geographically mobile) firms from the older, industrial states in the North and Midwest via subsidies, tax abatements, and infrastructure development. Today, business attraction backed by business incentives remains the most common form of local economic development.

Findings

Business attraction/incentives remain the most common form of local economic development, but they seldom benefit distressed areas. While such traditional economic development strategies as tax incentives/economic development zones and job training (supported by 66% and 63% of responding governments, respectively) can be targeted to low-income communities, most local governments also use alternative strategies, building partnerships with nonprofit community development corporations (53%) and supporting community development loan funds (55%) and welfare-to-work (49%) programs.

Although only one-third of the responding governments reported having a written business attraction plan (up from a quarter in 1994), the majority of governments apparently support business attraction programs without a written

Table 3/1 SURVEY RESPONSE

Classification	No. of cities/counties surveyed (A)	No. responding	
		No.	% of (A)
Total	3,308	1,042	32
Population group			
Over 1,000,000	31	9	29
500,000-1,000,000	56	13	23
250,000-499,999	105	35	33
100,000-249,999	281	111	40
50,000-99,999	508	185	36
25,000-49,999	681	231	34
10,000-24,999	1,646	458	28
Geographic division			
New England	332	76	23
Mid-Atlantic	531	86	16
East North-Central	666	190	29
West North-Central	248	114	46
South Atlantic	468	199	43
East South-Central	161	27	17
West South-Central	289	102	35
Mountain	155	65	42
Pacific Coast	458	183	40
Metro status			
Central	694	225	32
Suburban	1,897	595	31
Independent	717	222	31
Form of government			
Mayor-council	1,019	183	18
Council-manager	1,653	697	42
Commission	73	11	15
Town meeting	93	12	13
Representative			
town meeting	44	9	21
Council-administrator (manager)	196	79	40
Council-elected executive	230	51	22

*For a definition of terms, please see "Inside the Year Book," p. xi.

plan. More than 80% of local governments reported supporting at least one business attraction activity (Table 3/2). Some of these attraction activities involve general community promotion via advertising and Web sites, while others include more expensive activities, such as overseas trade missions. Business incentives, supported by 68% of all responding governments, range from regulatory flexibility to tax abatements and subsidies and tend to be even more costly.

Planning and evaluation of attraction and incentive programs have increased. Whereas only 60% of respondents reported that they require a performance agreement as a condition for providing business incentives, more than 77% said that they conduct a cost-benefit analysis prior to offering such incentives, up from 61% in 1994 (not shown).

But while the political salience of these recruitment strategies is well known, their actual effectiveness has been challenged. Recruited firms may not stay long in an area before moving to another, cheaper location. Moreover, research results, albeit contradictory, generally support the notion that businesses benefit more from governmental investment in infrastructure, workforce development, and quality of life than they do from tax breaks. Experienced industrial recruiters recognize the need to target incentives strategically in order to attract firms that would not come otherwise. Plans must be developed that can accomplish this while providing goals and objectives against which the effectiveness of business attraction policies can be evaluated.

Still, researchers and governments alike recognize the limited ability of government-supported programs to influence private investment decisions. Recruitment efforts have been shown to be most effective as "beggar thy neighbor" strategies, encouraging destructive competition within states or metropolitan regions.¹ Indeed, this survey shows that nearly 80% of local governments now recognize their primary competitors to be neighboring local governments (not shown); this percentage is up from 75% in 1994.² Increased emphasis on supporting the local economy and ensuring that economic benefits accrue to community residents rather than to footloose firms has led to increased interest in alternative economic development approaches.

Business Retention and Expansion

Local economic development and job growth are largely determined by the success of local firms. Recognition of this fact in the late 1980s encouraged states and localities to support small business development and business retention and expansion programs focused on enhancing the viability of firms already in the local economy. Small business programs support technical assistance, workforce development, technology transfer, and revolving loan funds (Figure 3/1). Business retention programs identify local business needs through surveys and business roundtables and then respond to those needs in a strategic and targeted manner (Figure 3/2).

While only about a quarter of all responding

governments (24% in 1994³ vs. 26% in 1999) reported having a written business retention plan (Table 3/2), most governments reported support for at least one activity in this area (Figure 3/2). Some of these activities, such as business achievement awards (24%), may be quite limited in their impact, whereas others, such as surveys (60%), revolving loan funds (36%), ombudsmen programs (22%), and export development assistance (11%), reflect greater local government investment.

The limited appeal of business and retention programs stems in part from the quiet nature of the work. Preventing a business from leaving and helping it expand does not garner the political headlines the way that attracting a new

firm does, but business retention and expansion programs may be more effective because the assisted firms have already shown a willingness to invest and remain locally.

Community Economic Development

Because local economic development often bypassed the poorest neighborhoods, local governments began to experiment with community-based forms of economic development during the 1970s and 1980s. New institutions, known as community development corporations (CDCs) and community development loan funds, emerged to help build and finance business deals. These entities were often nonprofits or only loosely partnered with local government.

Table 3/2 LOCAL ECONOMIC DEVELOPMENT POLICY ALTERNATIVES, 1999

Policy alternatives	No. reporting (A)	Yes	
		No.	% of (A)
Business incentives/attraction			
Government offers business incentives	1,022	699	68
Government supports at least one business incentive	1,042	706	68
Government has written business attraction plan ¹	1,005	322	32
Government supports at least one business attraction activity	1,042	858	82
Business retention			
Government has written business retention plan ¹	1,010	266	26
Government supports at least one business retention activity	1,042	855	82
Government has written small business plan ¹	1,022	173	17
Government supports at least one small business activity	1,042	625	60
Community development			
Government supports economic development zones/tax incentives	900	597	66
Government supports job training	774	489	63
Government supports community development loan fund	740	406	55
Government supports community development corporations	749	395	53
Government supports Welfare to Work	676	329	49
Government supports microenterprise program	594	158	27

¹These questions specified having a written plan. Many governments do not have written plans, but still support activities in this area.

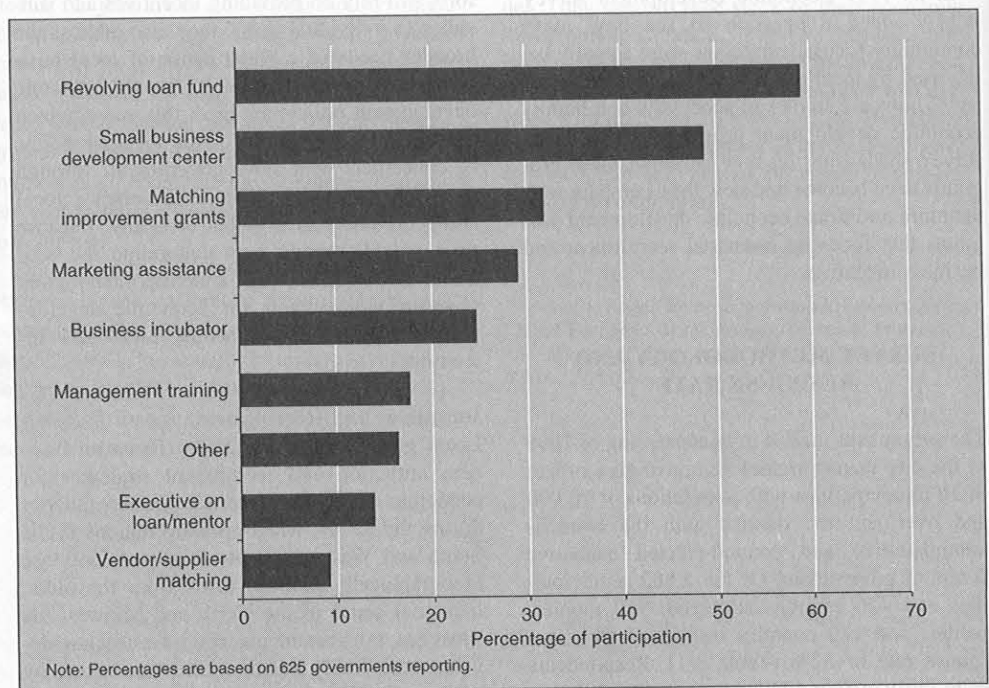


Figure 3/1 Types of small business support

Microenterprise programs reflect that for some low-income people, a small business is a possibility if technical assistance and financing can be made available; therefore, strategies were focused on increasing capital investment in low-income neighborhoods and on promoting job training and entrepreneurship among local residents.

COMMUNITY ECONOMIC DEVELOPMENT STRATEGIES

New strategies for local economic development involve planning both to identify key characteristics of the local economy and to design interventions that will enhance local competitiveness and support a cluster of local firms. Characterized by public-private partnerships, these initiatives rest on the role of government and private institutions in providing the information, technical support, and economic development infrastructure needed to support a range of local firms. Through job training and marketing as well as financial support, such initiatives emphasize economic development for low-income communities.

Specifically, these community economic development strategies include economic development zones/tax incentives, job training, community development loans, community de-

velopment corporations, microenterprise programs, and welfare-to-work programs. In 1999, ICMA added a question to the Local Economic Development Survey to determine how common these various strategies have become.

Economic Development Zones/ Tax Incentives

The most common approach to promoting economic development in low-income neighborhoods is the economic development zone. These zones are geographically defined on the basis of poverty, unemployment, or some other measure of economic distress. By defining these zones geographically, local governments can help target their business incentives to neighborhoods that would not otherwise be attractive to investors; and by offering tax breaks and subsidies to firms willing to locate there, local governments can make these areas more attractive for investment.

Although their effectiveness is debated, these economic development zones have proven popular because they use a familiar set of tools (tax abatements, tax credits, special financing, etc.) to accomplish their purpose. Many states support these zones, and local governments clamor for such designations. Federal interest in such zones has also expanded with the creation of the Empowerment Zone/Enterprise Community Initiative of the U.S. Departments of Agriculture

(USDA) and Housing and Urban Development (HUD).

Given this popularity, as well as the fact that they are essentially a traditional strategy applied to a new audience, it is not surprising to find that 66% of all responding governments reported support for economic development zones or tax incentives (Table 3/3). This corresponds favorably with the percentage of respondents that support business incentives (68%) (Table 3/2). Support for these zones is highest in central and independent jurisdictions (83% and 77%, respectively), where concentrations of poverty are higher, and it is lowest in the suburbs (56%) (Table 3/3). In general, however, the level of support for economic development zones declines by population size, with the lowest response (60%) coming from jurisdictions of under 25,000. Economic development zones are most heavily reported by municipalities in the West South-Central (88%) and West North-Central (82%) divisions.

These programs are overwhelmingly provided by government agencies (as reported by 84% of respondents) regardless of region, population size, or metro status. Public-private partnerships are next most common at 22% (Table 3/4).

Job Training

Because the quality of the labor force is critical to local economic development, job training has long been part of the economic development agenda. Firm-specific job training is sometimes offered as an incentive under the more traditional business attraction and incentive strategies. In the 1999 ICMA survey, 111 governments (16%) reported support for employee training as a business incentive (not shown). More general programs for job training, which focus on the needs of workers and on a broader range of community businesses, have also been in place for quite some time. From the Comprehensive Employment Training Act programs of the 1970s to the Job Training Partnership Act of the 1980s and the Private Industry Council and Workforce Investment Act of the 1990s, government support for job training has been encouraged.

Over time more emphasis has been given to targeting job training to the needs of industry, and such efforts have been strengthened by involving private industry councils in their oversight. Job training programs range from "Work First," which focuses on basic job readiness skills, to programs that teach actual job skills. Community colleges, often supported in part by local government, have become especially active in creating job training programs—often of a more sophisticated nature—to meet the needs of both industry and workers.

But with welfare reform in 1996 and the Workforce Investment Act (WIA) of 1998, local governments must increase their own emphasis on preparing citizens for work. The WIA requires governments to focus on identifying private contractors who can facilitate job training and job matching of low-income residents.

Just under two-thirds of governments (63%)

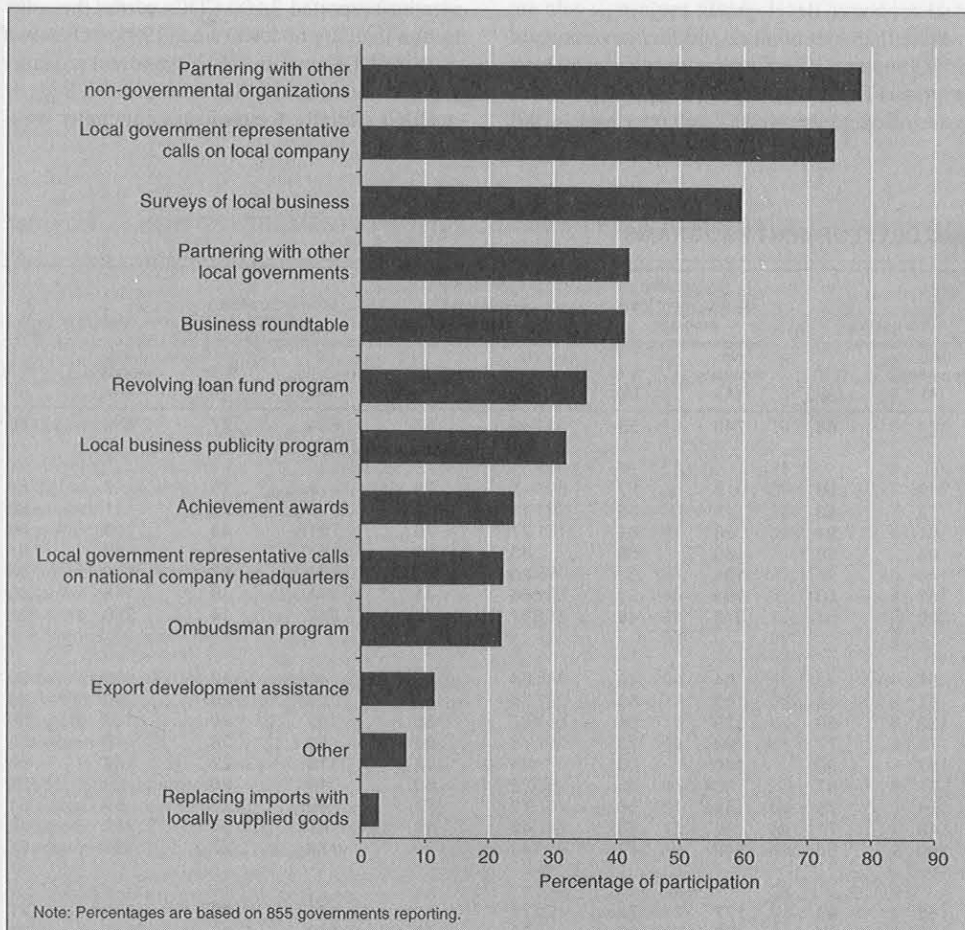


Figure 3/2 Types of business retention support

reported support for job training (Table 3/3). Support is more likely to come from larger jurisdictions, but even municipalities of under 50,000 reported support for job training more than half the time. Central and independent jurisdictions are more likely to support such programs than suburban ones (87% and 77%, respectively, vs. 47%). As with economic development zones, support is highest in the West South-Central (78%) and West North-Central (77%) states.

Despite increased emphasis in the WIA on contracting to for-profit firms, few local governments (5%) use for-profit contractors (Table 3/4). Rather, job training is provided by government agencies about two-thirds of the time while public-private partnerships and nonprofits are important in about a third of all cases. There are no major differences by metro status or region.

Community Development Loan Program

Capital is critical for economic development, especially in distressed areas where conventional lending is limited. Many local governments operate their own community development loan funds, using them to recycle Community Development Block Grant monies or other federal and state subsidies. Such funds can be critical in providing seed financing for Main Street revitalization programs, microenterprise programs, or other local small business development. One of the earliest community development loan programs was established by the Economic Development Administration in 1975. Today there are thousands of such programs. They receive support from private foundations; private banks (as part of meeting Com-

munity Reinvestment Act obligations); and state and federal government programs, such as the Small Business Administration, USDA, and HUD. These funds, most of which are set up as revolving loan programs to ensure program sustainability, are an important source of credit for small businesses unable to obtain credit from commercial lenders.⁴

Loan fund programs can be sponsored directly by local government or by other civic organizations or financial institutions. They usually receive their capital from government or foundation grants and use it to create a revolving loan fund for affordable housing, small business development, or the construction of community facilities. Loan funds do not have to be directly affiliated with banks or credit unions but will often work closely with private bank partners in marketing loan products, reviewing creditworthiness, and structuring deals.

In the 1990s, increased federal attention was given to creating more independent community development financial institutions (CDFIs), and federal support for technical assistance and capital has been made available through the CDFI Fund. Industry estimates are that more than 500 independent CDFIs now operate in the United States.⁵ These CDFIs include banks and credit unions, which provide low-income customers with basic financial services (e.g., checking and savings accounts) as well as with mortgage and small business loans. Some have developed venture capital funds to take equity positions in local economic development projects.

More than half of all responding governments (55%) support a community development loan program (Table 3/3). Again, support is highest in jurisdictions of 50,000 and over and in the

West North-Central and East North-Central states (73% and 61%, respectively). Central and independent jurisdictions (73% each) are both nearly twice as likely to support community development loan funds as are suburbs (39%).

Community loan funds are primarily provided by government agencies (66%), regardless of population size, division (except for the Mountain division, which is low), or metro status (not shown). Local funds are provided by nonprofits and public-private partnerships for 27% and 23% of responding governments, respectively (Table 3/4). Nonprofits are more common among central and independent jurisdictions (35% and 29%, respectively), and public-private partnerships are more common among suburbs (26%).

Community Development Corporations

CDCs first emerged in the late 1960s after the War on Poverty as the economic development counterpart to civil rights, and their efforts were targeted to low-income communities. From a few notable experiments primarily supported by foundations (such as Ford Foundation) in the 1970s, CDCs have grown into a movement. By 1980 there were 200 CDCs in the country, and this number increased tenfold throughout the decade despite a generally unfavorable political climate toward community development at the national level. In its 1999 census of CDCs, the National Congress for Community Economic Development (NCCED) (the CDC trade organization) reported 3,600 CDCs across the country (an increase of 1,400 since 1995).⁶ Over half of these CDCs are in urban areas and a quarter serve rural areas.

CDCs initially focused on community orga-

Table 3/3 SUPPORT FOR COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

Classification	Economic development zones/ tax incentives		Job training		Community development loan program		Community development corporation		Microenterprise program		Welfare to work	
	No. reporting (A)	% of (A)	No. reporting (A)	% of (A)	No. reporting (A)	% of (A)	No. reporting (A)	% of (A)	No. reporting (A)	% of (A)	No. reporting (A)	% of (A)
Total	900	66	774	63	740	55	749	53	594	27	676	49
Population group												
Over 1,000,000	9	89	9	100	9	67	7	71	8	75	7	86
500,000-1,000,000	12	75	12	92	11	55	11	64	7	71	11	82
250,000-499,999	29	79	31	94	28	61	27	70	21	48	29	86
100,000-249,999	98	74	95	88	80	68	83	65	64	47	80	81
50,000-99,999	158	72	140	75	131	66	125	60	101	47	121	68
25,000-49,999	202	68	167	53	163	51	165	41	141	18	148	35
10,000-24,999	392	60	320	51	318	48	331	51	252	14	280	32
Geographic division												
New England	67	54	54	43	54	48	54	48	46	17	50	36
Mid-Atlantic	76	53	61	38	66	56	64	47	54	26	60	35
East North-Central	170	72	133	59	129	61	136	56	100	26	108	38
West North-Central	93	82	75	77	80	73	75	64	53	26	59	51
South Atlantic	168	68	157	69	140	50	145	52	112	29	144	63
East South-Central	22	50	21	67	20	55	22	50	19	26	20	50
West South-Central	89	88	74	78	59	56	70	77	40	25	49	51
Mountain	58	74	49	71	44	50	43	49	41	34	42	48
Pacific Coast	157	48	150	60	148	47	140	39	129	27	144	51
Metro status												
Central	195	83	186	87	177	73	177	71	141	56	159	77
Suburban	512	56	420	47	400	39	420	40	340	12	375	32
Independent	193	77	168	77	163	73	152	66	113	34	142	61

nizing and enhancing the political representation of low-income community interests in local economic development policy. They provided an effective voice at the local government level for low-income neighborhoods to ensure that the destructive impacts of earlier urban renewal programs were not repeated and that investment in those neighborhoods occurred instead.

CDCs then proved effective in linking government subsidies to private sector investment to help revitalize depressed inner-city and rural neighborhoods, and as they tightened their focus on housing production (more than 90% focus on housing development),⁷ their advocacy role declined. Today, while they occasionally find themselves in antagonistic positions relative to government regarding economic development policy, their growing expertise in affordable housing and commercial development for low-income neighborhoods has brought them increasing recognition from private banks, local governments, and foundations as critical partners in the economic development process. The NCCED reports that since their emergence, CDCs have been responsible for creating over 550,000 units of affordable housing and 247,000 private sector jobs.⁸ Yet some analysts argue that CDCs should return to their earlier advocacy and community organizing role, noting that poor communities need community organizing for social and political development as well as for economic investment.⁹

CDCs are based on the notion that they can fill gaps left by the market—"corrective capitalism," as the Ford Foundation called it in an early report on its CDC initiative.¹⁰ While industrial development authorities may be seen as deal makers in traditional economic develop-

ment arenas, CDCs perform this function with a specific focus on the needs of low-income communities, recognizing the need for managerial and entrepreneurial talent to help negotiate deals and promote development in neighborhoods considered unattractive to private investors. However, the persistence of poverty in inner cities and rural areas has underscored the need to address a broader set of social concerns. CDCs are being encouraged to broaden their strategies to address a more comprehensive range of programs or to join with other community-based associations to meet a broader range of community needs. Job training, day care, and microenterprise development are just a few of the programs that CDCs are expanding or forming partnerships to help address.

More than half of all governments (53%) and two-thirds or more of municipalities and counties of 100,000 and over in population reported support for CDCs (Table 3/3). In contrast, only about 40% of suburbs and communities in the 25,000-49,999 range support CDCs. Support is highest among localities in the West South-Central (77%) and West North-Central (64%) states. On the other hand, fewer than half of the municipalities from the Mountain, New England, Mid-Atlantic, and Pacific Coast divisions report support for CDCs.

Support for CDCs is primarily through non-profits (52%), but public-private partnerships (37%) and government agency support (30%) are also significant (Table 3/4). Central jurisdictions are more likely than suburbs or independent jurisdictions to support CDCs through non-profits (63%), whereas suburbs are the most likely to rely on direct government agency sup-

port (37%) and independent places are the most likely to rely on public-private partnerships (47%).

Microenterprise Programs

Microenterprise programs reflect the notion that for some low-income people, access to technical training and small amounts of capital can help them start small businesses. Two-thirds of businesses in the United States start with less than \$10,000 in capital, usually from family sources. However, for minorities, women, and low-income entrepreneurs, access to even this much family capital is limited. These entrepreneurs often are considered too risky for regular banks. Small businesses and self-employment can help address the mismatch between workers in many inner cities and depressed rural areas on the one hand and job opportunities in distant suburbs on the other. Small businesses support local services and provide a sense of community, building social capital as well as economic and physical infrastructure. For immigrant groups, self-employment has provided an important way to enter the local economy.¹¹

Attention to microenterprise as an economic development strategy got its start in developing countries—most notably through the efforts of the Grameen Bank in Bangladesh—and the model of microcredit has been replicated widely throughout the world, including in low-income inner cities and rural areas in the United States. Microenterprises in the developing world can be quite small; the American Enterprise Organization (the trade association of U.S. microenterprise groups) defines a microenterprise as a business that has five or fewer employees and that requires less than \$25,000 in start-up cap-

Table 3/4 HOW GOVERNMENTS PROVIDE COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

Program	No. reporting (A)	Nonprofit		For profit		Government agency		Public-private partnership	
		No.	% of (A)	No.	% of (A)	No.	% of (A)	No.	% of (A)
Economic development zone/tax incentives	547	50	9	22	4	458	84	119	22
Central	153	18	12	3	2	134	88	31	20
Suburb	258	19	7	16	6	212	82	59	23
Independent	136	13	10	3	2	112	82	29	21
Job training	486	151	31	24	5	326	67	163	34
Central	163	60	37	11	7	110	68	62	38
Suburb	192	50	26	7	4	128	67	63	33
Independent	131	41	31	6	5	88	67	38	29
Community development loan program	390	104	27	25	6	259	66	91	23
Central	127	45	35	9	7	88	69	27	21
Suburb	148	26	18	12	8	95	64	38	26
Independent	115	33	29	4	4	76	66	26	23
Community development corporation	386	200	52	20	5	114	30	142	37
Central	123	77	63	8	7	30	24	37	30
Suburb	163	75	46	8	5	60	37	58	36
Independent	100	48	48	4	4	24	24	47	47
Microenterprise program	162	85	53	8	5	57	35	52	32
Central	81	51	63	2	3	23	28	26	32
Suburb	42	15	36	4	10	18	43	17	41
Independent	39	19	49	2	5	16	41	9	23
Welfare to work	333	93	28	12	4	243	73	98	29
Central	125	41	33	6	5	94	75	34	27
Suburb	121	32	27	3	3	83	69	41	34
Independent	87	20	23	3	4	66	76	23	26

ital and lacks access to the traditional commercial banking sector.¹²

Microenterprise programs recognize that fledgling entrepreneurs need more than credit. Training and technical assistance (e.g., how to develop a business plan, how to assess entrepreneurial readiness) are key components of these programs, as are efforts to enhance access to markets through joint marketing, participation in trade shows, and incubators. Emphasis is also given to asset development, both financial (understanding banking and savings principles, insurance and tax law) and social (networks, support groups, understanding of local economic and political structures).

The Aspen Institute tracks the number of microenterprise programs through a survey of self-employment loan programs. Its 1997 survey found 328 programs that had helped more than 36,000 businesses and provided up to \$126 million in credit.¹³ While microenterprise programs traditionally relied on foundations and nonprofits for support, government interest has been increasing, especially with the new emphasis on work in welfare reform. Recognition of the potential of microenterprise has now captured national attention. The Small Business Administration's microloan program, launched in 1992, has provided nearly 8,000 loans worth roughly \$80 million.¹⁴

One criticism of microenterprise programs is that the businesses are too small to yield a living wage and too unstable to provide an effective escape from poverty. Most small businesses fail in the first five years, and for microenterprises, the failure rates may be even higher. Some argue that the loans are too small to help the businesses achieve the scale they need to succeed. Asset requirements, while small, may still exceed those of the poor—especially those who cannot afford to take large risks. However, the need to promote asset ownership among residents in low-income communities is now widely recognized, and local governments can craft economic programs to support such an effort. Asset ownership helps residents develop a stronger stake in their communities, which promotes economic and political development.

The ICMA survey shows that microenterprise programs are the least common of the community economic development strategies used by local government, supported by only 27% of responding governments (Table 3/3). Microenterprise programs are most common in larger places. More than 70% of jurisdictions of 500,000 and above support such programs, but fewer than half of the mid-sized governments (50,000–499,999) and less than a fifth of the small governments (10,000–49,999) reported support. Central jurisdictions (56%) are most likely to support microenterprise programs, but by barely more than half, and only about one-third of independent jurisdictions (34%) do. Suburbs (12%) are least likely to provide support.

Not surprisingly, microenterprise programs are primarily provided by nonprofits (53%) (Table 3/4). Direct government agency support is reported by 35% of responding governments

and public-private partnerships are reported by 32%. Nonprofits are more common in both central (63%) and independent (49%) jurisdictions, while government agencies and public-private partnerships are more common in suburbs (43% and 41%, respectively).

Welfare-to-Work Programs

With the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, otherwise known as welfare reform, local governments are under pressure to place at least half of their welfare recipients into jobs within five years. This pressure has caused social service departments to give increasing emphasis to job training, job readiness, day care, transportation, and other support programs that will enable welfare recipients to transition to work. While welfare rolls have declined dramatically since 1996, governments in depressed economic areas are concerned that there may not be sufficient jobs available to accommodate all welfare leavers. Job shortages are not found everywhere. But while suburbs suffer from labor shortages in low-skill occupations, which may provide ports of entry to the labor force for welfare leavers, welfare recipients are concentrated in central cities and rural areas, where job growth may be lower. Due to changes in welfare reform, local government now bears increasing responsibility to articulate economic development and welfare programs, and to focus economic development efforts on the poor.

Fewer than half of the governments (49%) report support for welfare to work. More than two-thirds of jurisdictions of 50,000 and above report support for such programs compared with only one-third of those under 50,000 (Table 3/3). Support is highest in the South Atlantic division (63%), where poverty is higher. Suburbs are half as likely to support such programs as independent or central jurisdictions (32% vs. 61% and 77%, respectively). Welfare-to-work programs are overwhelmingly provided by government agencies (73%), although use of public-private partnerships and nonprofits occurs more than a quarter of the time (29% and 28%, respectively) (Table 3/4).

IMPORTANCE OF PARTNERSHIPS WITH LOCAL GOVERNMENT

These community economic development programs reflect an important set of partnerships between government and the nonprofit sector. CDCs and microenterprise programs are provided through nonprofits more than 50% of the time, and more than one-quarter of governments use nonprofits to provide job training, welfare-to-work programs, and community development loan funds (Table 3/4). In contrast to the growth coalitions of government and for-profit businesses, which fuel traditional economic development policy, nonprofits (often based in low-income communities themselves) help articulate neighborhood needs and identify economic development potential invisible to more mainstream economic development professionals.

Community development in low-income areas requires a broader, more comprehensive approach, which nonprofits are especially well positioned to provide. Nonprofits combine social support, training, community organizing, and economic development expertise. Relying on government and philanthropic support, these collaborative public-private partnerships increase the scale and impact of what neither local governments nor nonprofits can provide alone. A key difference between nonprofit community economic development organizations and for-profit firms is that nonprofits have a broader community mission and more staying power in low-income neighborhoods.

A challenge for the community economic development movement is how to increase involvement of the for-profit sector. While private sector participation in traditional economic development programs is high (in part because specific benefits accrue to individual firms), many for-profit institutions avoid investing in the development of low-income neighborhoods unless large subsidies or tax breaks are provided. They perceive the profit potential of investment in low-income communities to be limited. However, this perception is often not valid, and community economic development programs, supported by nonprofits and governments, have demonstrated how profitable economic development can be fostered in these communities.

Policies that require for-profit institutions to invest in low-income communities, such as the Community Reinvestment Act (CRA) for banks, have helped banks see new markets among the poor. While banks often complain about CRA requirements, CRA has created a major impetus for banks to participate in community loan funds, CDCs, and microenterprise programs. Private sector participation has dramatically increased the scale and scope of these programs. While only 6% of governments report using for-profit partners for loan funds, this rate of private participation is higher than it is in the other community economic development areas, where it averages below 5% (Table 3/4). For traditional economic development programs by contrast, private business participation averages 55% (not shown). For-profit firms should see investment in community economic development programs, which promote neighborhood revitalization and workforce development, as beneficial to their economic health over the long term. Government policy could make an important difference in encouraging more private sector participation in community economic development efforts.

CONCLUSION

Local governments have a challenging role to play in promoting the economic development of their communities. Economic development requires serious planning and careful evaluation. While traditional economic development strategies, such as business attraction and incentives, continue to be widely used, increased emphasis

is being given to supporting existing local businesses and helping them expand. As local governments realize the important links between social welfare and economic development, more are providing support to community economic development approaches focused on bringing economic development to low-income residents and neighborhoods. The 1999 ICMA survey shows that the majority of responding governments support community economic development programs.

The nonprofit sector has proven to be an important partner in these efforts because of its strong ties to local communities and its ability to address social, political, and economic issues in a comprehensive manner. Local governments have a critical role to play in helping community economic development efforts come to scale by providing support to nonprofit com-

munity and neighborhood-based initiatives. In the future, they could play a stronger role in brokering support from higher levels of government and encouraging more direct investment by the business sector in community economic development programs.

¹Timothy J. Bartik, *Who Benefits from State and Local Economic Development Policies?* (Kalamazoo, Mich.: W.E. Upjohn Institute for Employment Research, 1991).

²Adam J. Prager, Philip Benowitz, and Robert Schein, "Local Economic Development: Trends and Prospects," in *The Municipal Year Book 1995* (Washington, D.C.: International City/County Management Association, 1995), 25. However, figures reported in the current article do not agree with those previously published because they have been adjusted to reflect the elimination of communities under 10,000 from the database.

³*Ibid.*, 31.

⁴National Association of Development Organizations, Washington, D.C. Available at <http://nado.org>.

⁵National Community Capital Association, Philadelphia, Pa. Available at <http://www.communitycapital.org>.

⁶National Congress for Community Economic Development, Washington, D.C. Available at <http://www.nccd.org/faqs.html#cdc>.

⁷Avis Vidal, "Can Community Development Re-Invent Itself?" *Journal of the American Planning Association* 63, no. 4 (1997): 430.

⁸*Ibid.*

⁹Pierre Clavel, Jessica Pitt, and Jordan Yin, "The Community Option in Urban Policy," *Urban Affairs Review* 32, no. 4 (1997): 435-458.

¹⁰Neil R. Peirce and Carol Steinbach, *Corrective Capitalism* (New York: Ford Foundation, 1987).

¹¹Margaret Johnson, "Developing a Typology of Nonprofit Microenterprise Programs in the United States," *Journal of Developmental Entrepreneurship* 3, no. 2 (1998): 165-184.

¹²*Ibid.*; see also Association for Enterprise Opportunity, Arlington, Va. Available at <http://www.microenterprise-works.org>.

¹³Johnson, "Developing a Typology."

¹⁴Association for Enterprise Opportunity Web site.

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Business Improvement Districts: Issues in Alternative Local Public Service Provision

by Mildred Warner, James Quazi, Brooks More, Ezra Cattan, Scott Bellen and Kerim Odekon
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Introduction

Throughout the country and in cities such as New York, San Francisco, Cleveland and Philadelphia, Business Improvement Districts (BIDs) have been able to maintain cleaner and safer streets, decrease storefront vacancy rates, and address social welfare issues. BIDs levy assessments on real property for specific improvements beyond which local governments can reasonably provide. They have been effective in reversing decline and promoting commercial development in urban areas.

In general, BIDs are formed following a proposal by a group of property owners in a geographically defined area to fund supplemental governmental services (e.g. cleaning and maintenance), non-governmental services (e.g. landscaping, marketing and promotion), and capital investments (e.g. sidewalk widening). The municipality in which a BID is located collects the BID's supplemental property tax assessments through its general taxation powers and distributes them to the BID. A board of directors composed of property owners, merchants, residents and public sector representatives is then given authority by the government to undertake projects and programs within the district.

While the ability of BIDs to achieve their goals is rarely questioned, concerns have been raised over whether the success of BIDs has come at a cost. This website profiles the issues raised by both proponents and critics in a number of areas and provides case studies focussed on material from New York State to illustrate these points.

Economic Development

IDs are quasi-public entities established to provide services and promote economic development within a designated district. City government officials, business and property owners, and economic development experts have realized the provision or expansion of existing infrastructure is only a part of what attracts and

retains businesses. The creation of locally-based organizational structures that are responsive to district interests and satisfy community needs are essential to promote downtown areas as viable sites for ongoing reinvestment.

Proponents

A. BIDs have the ability to revitalize deteriorating urban areas.

In response to the challenges of decentralization and fiscal federalism, local governments have employed a wide range of alternatives including transferring the production of many traditional public goods and services to the private sector (privatization). BIDs represent an innovative approach to service delivery in that local collective action, outside of the government, results in the provision and payment for supplemental goods/services demanded by those within a district. Given the limited funding municipal governments have to initiate programs for urban regeneration, BIDs present another option to reverse urban decline.

Currently, there are over 1,200 BIDs in operation in the United States and Canada with the phenomenon quickly spreading abroad. The Alliance for Downtown New York, Inc., manages the Downtown-Lower Manhattan BIDs and reports on the economic development initiatives of the city and various BIDs. These include incentives such as affordable pre-wired space to high tech startups, energy incentives and real estate tax abatements. (Search 'economic development' in the Downtown Alliance homepage.)

[<http://www.downtownny.com/>]

See: [Grand Central Partnership, Times Square BID](#)

B. Under the proper environmental conditions and organizational structures, BIDs are useful tools in attracting new business and investment.

Though not all BIDs are equally successful, findings from the Center for Urban Research and Policy at Columbia University indicate that implementing a BID with an organizational form that matches the goals of the stakeholders is a key element in BID effectiveness. In New York State there are three organizational forms that BIDs take: corporate BIDs that contain large amounts of office and retail space and operate in wealthier parts of the city; main street BIDs that operate in areas of the city that have lost commercial and retail business to the suburbs; and community BIDs that cover small neighborhoods and offer limited services.

[<http://sipa.columbia.edu/CURP/resources/metro/v01n0402.html>]

Critics

C. BID programs for economic development do not address urban blight - they displace undesirable groups and business activities to neighboring districts.

While BIDs have the ability to promote economic development within the district of operation through enhanced service provision and capital investment projects, these results may be accomplished by displacing urban ills outside of the district's boundary. BID activities may result in pockets of poverty within a city and lead to further deterioration of the areas immediately outside of the BID.

See: [Grand Central Partnership](#)

Targeting Public Investment

Once a BID is formed, mandatory assessments fund capital investments and additional services to fill the gap between the level of services provided by the city and those demanded by business and property owners in the district. Though investment targets the interests of business and property owners of the district, the additional services provided benefit the broader consuming public as well. These inequalities in local public service provision that BIDs effect may be justified by their contribution to greater community well being.

Proponents

A. The additional services provided are justified because BIDs pay directly for these services.

The declining capability of municipal governments to provide public services to business districts has resulted in the decline of older downtown areas and the flight of retail and commercial business to the suburbs and industrial parks. BIDs are established as a response to this trend, levying assessments for specific improvements and additional services beyond which local governments can reasonably provide. BIDs therefore utilize collective action to raise the funds to fulfill the unmet demand for public services, ensuring that locally raised taxes are spent locally and that downtown areas remain competitive places to locate business.

See: [State of California Proposition 218](#)

B. BIDs may be effective in reducing the unequal distribution of public services.

Proponents of BIDs argue that inequality in local public service provision is acceptable to a degree because business districts require more services to accommodate the influx of consumers and workers. The clean, safe public spaces that BIDs have been successful in creating benefit city residents as well as business and property owners within the district and have positive spillover effects outside of the district. By engaging in these activities, BIDs reduce the inequality of public service provision between the city and suburbs, making downtown areas more competitive. BIDs also have the ability to increase a municipality's tax base, allowing local governments to improve public services to property owners and tenants citywide.

See: [Baltimore Downtown Partnership](#), [Pitkin Avenue BID](#)

Critics

C. BIDs may exacerbate the uneven distribution of public services.

BIDs are created because municipal services are perceived to be inadequate. As a result, BIDs by definition provide a higher level of public services than their surroundings, encouraging a model of public service provision where services are provided based on an area's ability to pay. The creation of BIDs may then create cycles of inequality in which areas with better services attract more business and profits while under served areas continue to deteriorate. The improved service provision within a district may also decrease support by business and property owners for city-wide provision of services.

See: [Grand Central Partnership](#), [Baltimore Downtown Partnership](#)

D. The ability of BIDs to borrow may crowd out investment in other areas of a city.

The assessment fees paid by property owners within a district are collected by the government and transferred to the BID's board of directors to fund additional services and capital investments. If a BID decides to fund additional services in excess of its total receipts from assessments, money borrowed counts against the city's limit and may constrain investment in other areas of the city.

See: [Grand Central Partnership](#)

Management of Public Space

The process of creating a BID involves defining the geographic area in which the BID will operate. While BIDs have the authority to initiate programs for specific improvements, the public spaces within BID districts remain under the jurisdiction of the municipality. Though BIDs have the potential to increase public voice by helping downtown areas remain competitive with suburban shopping malls, conflicts between civil liberties (e.g. free speech and demonstration) and the commercial interests of the BID management board may lead to concerns over the privatization of public space.

Proponents

A. BIDs may increase democratic voice by enhancing the vitality and sustainability of public space.

BIDs were initially created to help downtown businesses compete with suburban shopping centers and strip malls. In most states, suburban shopping malls are considered private property and, as such, reserve the right to stop activities of groups using the malls' common areas for political activities such as pamphleting, protesting, and signature gathering. By contrast, the public spaces within BIDs remain under the jurisdiction of the municipality and must maintain the democratic ideals of free speech and demonstration.

See: [Ithaca Downtown Partnership](#)

Critics

B. BIDs privatize public space by excluding those that detract from the commercial goals of the BID members.

BIDs may limit citizen voice by privatizing public space within a district. Public streets, parks and plazas serve the dual role of attracting shoppers and providing a 'living room' in which the daily activities of the city's public life are carried out. The 'clean and safe' programs that BIDs initiate to attract consumers can limit citizen voice and dislocate less desirable citizens through the privatization of public space. In some instances, allegations have been made that these programs involve the removal of the homeless and unauthorized vendors.

See: [Grand Central Partnership](#)

Democratic Accountability

Though successful in achieving their economic goals, concerns have been voiced about the public accountability of BIDs. Dissent focuses on concerns over the nature of BID governance, which varies from state to state, district to district and within the same city. BIDs pose a problem of limited accountability to the groups their actions affect: district residents, municipal governments, consumers, the non-consuming public and the BID's own business and property owner constituents.

Proponents

A. A BID's approval process can be structured to ensure accountability.

To establish a BID, property owners within a proposed district are required to develop a District Management Plan and give notice to all residents and business and property owners of their intent. The District Management Plan must be approved by the City Council based on recommendations provided by an advisory committee. Assessment fees are then determined through the advisory board that supervises the BID's operations and submits yearly service plans.

The BID structure may also include weighted voting systems where the costs of district projects are assessed against land in accordance with the benefits accruing to each particular property. The State of California and other Western states have also mandated 'sunset requirements' that require BIDs to have their charters reviewed and re-approved every 3-10 years. The approval process is normally via a vote of property owners and a five year time period is preferable as it enables BIDs time to produce results and introduces incentives for accountability.

See: [State of New York Enabling Legislation for BIDs](#), [State of California Proposition 218](#)

B. Monitoring policies can be formed to ensure accountability.

Though municipal governments are involved in the creation of BIDs, participation often decreases dramatically once the district is established. Some BIDs have yielded to concerns over democratic accountability and have installed residents, business owners and other non-property-holding stakeholders (e.g. local officials) to the BID's board. Annual reports, outside audits, and conflict of interest rules also aid in making the actions of BIDs more transparent.

See: [Ithaca Downtown Partnership](#)

Critics

C. A BID's influence within a district may co-opt local government authority.

In establishing a BID, New York State law requires approval of the borough president, city planning commission, city council and state comptroller. Once a BID is formed, however, no review of BID activities is required nor is approval needed to initiate any specific programs or improvements. Further, since property owners are guaranteed the majority, municipal governments may be unable to exert control over BID activities.

See: [Grand Central Partnership](#)

D. BIDs are sometimes realized due to lack of informed opposition rather than majority approval.

The burden of responsibility for preventing the formation of a BID falls on the objectors rather than its supporters. In order to prevent the formation of a BID, 51 percent of property owners must file an objection with the city clerk. Dissent is further constrained by limiting judicial review to thirty days. Furthermore, once a BID has been established, non-consenting property owners are mandated to pay assessments.

See: [Madison Avenue BID](#)

E. A BID's voting structure may violate the constitutional principle of one-person, one-vote by favoring property owners over residents.

BIDs employ a plurality system of voting that creates a system where property owners are represented and tenants are not. These systems work against organizing around new themes, contingencies, and the needs of non-property-owners that live, work or operate businesses within the district. Because BIDs constitute districts that are 'specialized in purpose, narrow in scope and limited in effect,' BIDs have generally been exempt from the one person, one vote doctrine of the Equal Protection Clause. However, because property owners control BIDs, supplemental services reflect the needs and choices of business and property owners. Where the needs of residents and property owners differ, the needs of residents may not be met.

See: [Kessler v. Grand Central](#), [NOHO BID](#)

Best Practices

Though BIDs can and have revitalized downtown areas, issues of concern have been raised over the loss of accountability and oversight in the pursuit of economic development. The following presents a list of recommendations of how to limit the negative affects of BIDs without constraining their ability to promote economic development. Best practices in governance, equity and economic development aim to further successful public-private partnerships between BIDs and their respective municipalities.

B. BID dissolution and the implementation of sunset clauses.

Once a BID has been formed, it has the potential to exist forever. Due to legislation preventing BIDs with outstanding debt from being dissolved, a BID management board may secure continuation by issuing bonded debt or incurring further debt through ongoing activities. Furthermore, once a BID has been established there is generally little or no monitoring of the level of satisfaction property owners have with the BID.

Sunset clauses have been implemented in many states and require that BID charters be renewed after a period of 3-10 years. Term limits ensure a degree of accountability to the BID property owner constituents - if activities sponsored by the board do not reflect the needs of the stakeholders, the BID can be dissolved.

C. Restructuring the complaint resolution process.

The lack of a formal complaint resolution process allows BIDs to resolve disputes informally without official

documentation or the compilation of a complaint log. Consequently, it is impossible to assess the number of complaints that have been made or the nature/severity of these complaints. Implications of the lack of a formal complaint resolution process can best be seen in the allegations made against the Grand Central Partnership (GCP).

Requiring a formal complaint resolution process and the compilation of official complaints has the potential to serve as an early warning system for larger institutional problems. In the case of the GCP several complaints were made but recorded prior to both lawsuits. A formal log of all complaints, including the date and time of occurrence, should be presented to both board members and municipal government officials to correct any managerial deficiencies.

See: [Grand Central Partnership](#)

D. Installing performance measurement standards.

Due to the lack of formal performance indicators for BID activities, informal, visual methods are often utilized to assess BID performance. This is most problematic in the case of monitoring economic development that BID activity is designed to stimulate. The lack of adequate assessment of how much improvement occurs in a district makes it difficult to understand how well a BID is fulfilling its mandate.

See: [Pitkin Avenue BID](#), [Times Square BID](#)

Case Studies

Baltimore Downtown Partnership. Baltimore, MD.

The Baltimore Downtown Partnership (BDP) works throughout six downtown neighborhoods and represents 500 businesses. The BDP is engaged in activities that promote living, working, and recreating in downtown Baltimore. To accomplish these goals, the BDP undertakes programs in the areas of sanitation, security, parking, housing, beautification, marketing, and general economic development.

Downtown Baltimore was widely known for its high crime rate. To change negative perceptions developed among area employees, consumers and visitors, the BDP hired 'Safety Guides' to discourage crime by curtailing the presence of the homeless. The Downtown Partnership has been working with the Baltimore Gas and Electricity Company and the city to install surveillance cameras along the commercial streets of the BID. While this public-private partnership has been touted as a successful tool in fighting crime, it also raises concern over the delegation of police power to less accountable, private entities such as BIDs.

[www.godowntownbaltimore.com]

Grand Central Partnership. New York, NY.

Centered on Grand Central Station, a New York City landmark and daily point of entry for thousands of commuters and visitors, the Grand Central district is home to the nation's largest and wealthiest BID. The Grand Central Partnership (GCP) was established in 1988 and covers 76 million square feet of commercial space within a 68-block area of mid-town Manhattan. It's irregular boundaries reach north to south from East 35th Street to East 54th, and east to west from 2nd Avenue to 5th.

The Homeless

Established by district property owners in 1988, the Grand Central Partnership (GCP) was primarily a response to the physical and economic deterioration of an area recognized as one of the city's largest homeless encampments. To address the homeless condition, the GCP commenced a 'clean and safe' program aimed at moving the homeless off the streets and into shelters.

To achieve this goal, formerly homeless men were hired to persuade the homeless to take advantage of a GCP social service program held at a local church, which included shelter, meals, and job placement services. The GCP estimates that 150 homeless individuals were placed in full-time jobs. They also claim a 50%

reduction in crime.

The GCP clean and safe program came under scrutiny when a small scandal erupted over allegations that 'goon squads' were using force to remove homeless individuals that would not willingly leave (1995). Whether or not violent tactics were used, the GCP was exposed for exercising poor judgment in the use of untrained formerly homeless men as social service workers. Further scandals emerged over the \$1.15 hourly rate paid to social service workers, which was justified as having been established as an outreach program.

The Department of Housing and Urban Development (HUD) and the City's Department of Homeless Services both conducted investigations into these allegations. Ultimately, HUD rescinded its \$547,000 grant, and Chase Manhattan Bank cancelled its \$450,000 contract with the GCP. Soon afterwards the city comptroller issued a critical audit of the Grand Central BID and in the summer of 1998, citing 'persistent noncompliance with municipal directives' the city of New York declined to renew the Grand Central District Management Agency's (GCDMA) contract to manage the BID.

The finance committee's own review found that two independent incidents (1990, 1992) had been reported in which Grand Central Partnership Social Services Corporation (GCSSC) workers were alleged to have used excessive force in removing homeless individuals. Both cases resulted in \$5 million lawsuits against the GCSSC and in neither case were the allegations formally detailed, documented or reported to the board of directors. Furthermore, the GCSSC was unable to prevent further incidents/allegations because the documentation process was inadequate to provide a reasonable level of accountability for staff members. The failure to implement an adequate complaint resolution process limits understanding of how many complaints have been made against the BID or the nature of those complaints.

Kessler Vs Grand Central

The Grand Central District management Agency (GCDMA) was taken to court by district residents over complaints alleging that the structure and activity of the Grand Central Partnership (GCP) denied equal voting power and representation on the GCDMA board. District courts ruled in favor of the GCDMA on the grounds that the GCDMA is a special, limited purpose entity that disproportionately affects one class of the BID's constituents, property owners. On appeal, the plaintiffs argued that the management of the BID exercised general governmental power sufficient to require that the board's elections comply with the one person, one vote requirement. The court ruled that the mere designation of an elected body to perform a large number of functions does not trigger the one-person, one-vote requirement.

Finance

The ability of the Grand Central Partnership (GCP) to borrow money was counted against the city's ability to borrow. In addition to real property assessments, the Grand Central District Management Agency (GCDMA) raised funds through the issuance of bonds totaling \$32 million. These bonds counted against the city's constitutional debt limit, effectively limiting the amount of money the city could raise in future bond issues and possibly crowding out investment in other areas. Since then, the city of New York, under Mayor Giuliani, discontinued the ability of BIDs to issue bonds in order to protect its own ability to borrow and minimize the risk of legal repercussions should the BID default on its financial obligations.

[<http://tenant.net/Oversight/bid97/bid97.html#grandcentral>]

[www.grandcentralpartnership.org]

Ithaca Downtown Partnership. Ithaca, NY.

The Ithaca Downtown Partnership (IDP) was formed in 1994 as a 'main street' BID to reverse the declining course of the city's downtown shopping district. The IDP has been primarily engaged in business attraction and marketing activities though it has become increasingly involved in environmental programs (streetscape beautification and events programming). As a result, there is little trash on the mall, the planters are full of flowers and free concerts are offered in the summer. Since the IDP's inception, downtown vacancy rates have declined and property values have started to rise.

A first attempt at establishing the BID garnered a 56 percent approval among property owners. Originally, the area under consideration extended from 'The Commons,' a public outdoor pedestrian mall, to Route 13, an arterial highway serving the City's primary center for economic activity. The city acknowledged the conflicting interests within such a broad district and did not establish the BID. Instead, the City scaled back the district, leaving The Commons as its focus, to gain 75 percent approval.

The IDP board is notable for its more public-private structure, comprised of ten property owners, four commercial tenants, one residential tenant, and four public sector representatives (one Alderperson, the Mayor, the Director of Economic Development, and one member of the County Board of Representatives). In addition, the BID does not have jurisdiction over the policies that govern The Commons. Rather, the city has established a twelve-member Commons Advisory Board, on which the IDP director has an appointed position. The Commons Advisory Board is responsible for allocating permits for activities in the public space and as a result, the Commons maintains more of its public goods nature. For example, a political demonstration during, but unrelated to, Cornell University's Parents' Weekend in the fall of 2001 resulted in complaints to the IDP by its merchant members. Merchants alleged that the protesters would scare away customers during one of the busiest shopping weekends of the year. Despite the concern voiced by merchants, the Commons Advisory Board gave the protesters a permit illustrating the fact that the IDP does not have direct control over the public space in which it operates.

The multifaceted nature of The Commons has at times created tensions between property owners/merchants and the public. The Commons is a favorite place for teenagers who are viewed as loiterers that detract from the district. The IDP has worked with district businesses and the city to utilize passive techniques to discourage loitering.

[www.downtownithaca.com]

Madison Avenue Business Improvement District. New York, NY.

The Madison Avenue BID in New York City is an example of a BID that was realized due to lack of informed opposition rather than majority approval. A one-week intensive survey conducted on the district's 765 property owners excluded 497 owners for their residential status. In that one-week period, the survey garnered a response from 50 of 268 commercial property owners, and of the 50 only 12 were actually registered commercial property owners. The balance of property owners, not reached by the survey, first became aware of the BID and its operations when they received their first assessment bill from the Department of Finance. A major blunder for the BID came in 1997, when Mayor Giuliani found it necessary to advise the Madison Avenue BID's security department to rescind the distribution of a flier advising the BID's businesses to close and secure valuable merchandise on the day of the Puerto-Rican Day Parade.

[<http://tenant.net/Oversight/bid97/bid97.html#madison>]

NOHO Business Improvement District. New York, NY.

The NOHO BID, New York City's 38th BID, was formed in 1995 to offer marketing support and community assistance, including sanitation and security services to the area within which it operates. The NOHO New York BID has been criticized for being mainly comprised of residential property owners and tenants, and not-for-profit groups as opposed to commercial property owners and tenants. At the BID's inception, 80 percent of the BID's budget was being raised from property owners while 20 percent was coming from the NYC Capital Funds. In essence, commercial property owners in New York City's NOHO BID were subsidizing 80 percent of the BID's budget despite their limited involvement and participation within the BID and its board of directors.

[<http://tenant.net/Oversight/bid97/bid97.html#noho>]

Pitkin Avenue Business Improvement District. Brooklyn, NY.

The Pitkin Avenue BID includes 200 retail businesses and encompasses 14 blocks in the Brownsville neighborhood of Brooklyn. At its inception, The Pitkin Avenue BID faced a high crime rate that deterred shoppers from coming into the area. After instituting a Security Network Program through collaboration with the New York Police Department (NYPD), incidents have declined significantly.

The Pitkin Avenue BID is cited even by critics of BIDs for its innovative security provision that has tracked crime across the district to ensure that policies work to reduce crime rates rather than displace them to neighboring locations. Monthly statistics were compiled to record criminal activity on a block by block basis and the times at which these incidents occurred. All radio calls and personnel visits made to local merchants were also accounted for. Additionally, the BID monitored the number of NYPD officers patrolling the area, providing an accurate assessment of the level of service received from the city.

The fact that the Pitkin Avenue BID was able to achieve such a level of sophistication in the area of security and program monitoring with a relatively limited budget (\$113, 903 annually, 1995) indicates that other BIDs could do more to quantify performance. The implementation of performance standards allows BIDs such as Pitkin Avenue to assess how well services are being provided and indicate when changes in service provision must be made.

[<http://www.nymtc.org/downloadablepgs/tep/nyc/nyc33.pdf>]

Times Square Business Improvement District. New York, NY.

The Times Square BID was established in 1992 to transform the neighborhood around 42nd Street from a neighborhood associated with squalor, pornography and vice to a clean, safe and friendly area. The Times Square district, stretching from 40th to 53rd Streets and between Sixth and Ninth Avenues, contains over 1500 businesses, 27 hotels and 268 restaurants. With an operating budget of \$5.9 million (unchanged since 1998) much of the BID's activities have been directed towards attracting jobs and investment to the district, carrying out market analysis and structuring public/private partnerships for redevelopment projects.

The Times Square BID involves itself in issues of economic development, public safety, sanitation, events programming and the maintenance of the Times Square Visitors Center. To assess the contribution the BID has made to the economic development of the district, the Times Square BID tracks fluctuations in commercial and retail rents and leasing availability. The Times Square Annual Report (October, 2000) estimates the total retail potential in the Times Square district to be \$1.646 billion, an 88% increase from the 1992 valuation (\$877.5 million) at the time of the BID's inception. The dramatic increase in retail potential within the district can be attributed to both the increase in total retail space (approximately 10% of new leasing in Manhattan between July 1, 1999 and June 30 2000 occurred in Times Square) and the appreciation of property values. Availability rates have decreased 67.6% between 1991 and 1999 (65.7% in all of midtown Manhattan during the same period) and average asking rents have also increase steadily. In addition to monitoring rents and leasing availability, the Times Square BID also monitors the number of new jobs created in the district. Total employment in the Times Square area (zip codes 10019 and 10036) has increased from 229,107 to 261,114 in 1999 (13.9%) and 27% from 1991.

The Times Square BID also engages itself in several other activities that contribute to the revitalization of the district. Outdoor advertising campaigns serve as engines for economic development within the district adding \$76 million to taxable property values alone. Rents for the most visible signs run from \$400,000 to \$3 million per year (a total of \$125 million per year), the signs themselves advertise the district and are testimony to the traffic that comes through the area. Signage in Times Square has increased threefold in the last three years.

Declining crime rates have also contributed to increased use of the district by shoppers and tourists (An assessment of the impact of BID activities on the tourism industry in can be found on the Times Square homepage under annual reports, 2000). Police officers operating from two precincts in the Times Square area are supplemented by 45 BID public safety officers (patrolling from 9:30am till midnight) and two BID vehicles. Together the NYPD and BID security personnel have worked to reduce crime in the area 60.6% since 1993.

[www.timessquarebid.org]

State Enabling Legislation

State of New York Legislation Enabling the Formation of Business Improvement Districts. [NYS Consolidated Law Article 19A]

In 1980, the New York State Legislature passed enabling legislation allowing cities to independently establish Business Improvement Districts. According to this legislation, the establishment of a BID must follow an approval process detailed below.

The approval process begins when a sponsoring organization (e.g. Local Development Corporation (LDC), chamber of commerce, area property owners) decides to form a BID. The sponsoring organization must then engage in extensive local outreach, typically lasting over a year, and intended to make all property owners, commercial tenants and local government officials within a proposed district aware of the intent to form and provide opportunity to participate in the planning process. Activities in this stage of the approval process include the formation of an outreach plan listing planned activities and a timeline for their accomplishment. Additionally, sponsoring organizations must demonstrate that all tenants and property owners have been given opportunity to discuss the budget, assessment and services of the proposed BID, provide documentation (in the form of signature gathering, creation of a database of properties and property owners/merchants within the district) of outreach activities, and present signed letters of support from property owners.

As part of the outreach process, a district plan is created detailing the boundaries, services to be provided, budget, assessment formula (taking into account square footage, frontage, or assessed valuation), funding sources and management information. The following, under §980-a NYS Consolidated Law (Article 19A), must be included in a district plan:

S 980-a. Contents of the district plan. The district plan shall contain the following:

(a) a map of the district;

(b) the written report or reports of the legislative body containing:

- a description of the boundaries of the district proposed for establishment or extension in a manner sufficient to identify the lands included
- a description of the present and proposed uses of these lands;
- the improvements proposed and the maximum cost thereof;
- the total annual amount proposed to be expended for improvements, maintenance and operation;
- the proposed source or sources of financing;
- the proposed time for implementation and completion of the district plan;
- any proposed rules and regulations to be applicable to the district;
- a list of the properties to be benefited, and a statement of the method or methods by which the expenses of a district will be imposed upon benefited real property, in proportion to the benefit received by such property, to defray the cost thereof, including operation and maintenance. Notwithstanding any inconsistent provision of section nine hundred eighty-f of this article, the plan may provide that all or any class or category of real property which is exempt by law from real property taxation and which would not benefit from the establishment or extension of the district may nevertheless be included within the boundaries of the district but such property shall not be subject to any district charge;
- a statement identifying the district management association for the district; and
- any other item or matter required to be incorporated therein by the legislative body.

After the district plan has been submitted to the legislative body of the municipality, has been made available to in the municipal clerk's office for public inspection and is printed in the official paper or newspaper of that municipality, owners of real property within the district opposed to the plan have 30 days to file objections at the municipal clerk's office. If either the owners of 51% of the assessed valuation of all benefited real property or at least 51% of the owners of real property within the district file objections, the district will not be established.

If there is not sufficient objection and the legislative body finds that notice of all required hearings was published and mailed as required by law, that all property owners assessed will benefit from the establishment of the district and that all real property benefited is included within the proposed limits, it is determined that the establishment of the district is in the public interest. Upon review by the state comptroller and adoption of local law approving the establishment of the district the BID is formed.

For the complete documentation of New York State enabling legislation for BIDs under Article 19A of New York State Consolidated Law including tax and debt limitations, details of the district management association and amendments to the district plan, see:

[<http://www.centralbid.com/Article19A.htm>]

State of California, Proposition 218, a.k.a. "The Taxpayer's Right to Vote Act."

The Constitution of the State of California requires that assessment of additional taxes be based upon the proportionate special benefit received by any one parcel. Therefore, associations that desire to form a BID must consider the degree to which a property owner will benefit from the extra services provided when allocating the tax rates. Communities in California have often complied with this law by creating zones that reflect the level of service directly received by each parcel.

Cal Const, Art XIII D § 4 (2001), § 4. Procedures and requirements for assessments.

(a) ".Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel."

(e) ".the agency shall consider all protests against the proposed assessment.the ballots shall be weighted according to the proportional financial obligation of the affected property."

Proposition 218, passed by voter initiative in 1996, limits the ability of local governments to raise taxes, assessments or fees to fund government services. In general, it mandates property taxes to require a two-thirds vote of the electorate if the fee is imposed for property related services. Also, the fee may not exceed the amount necessary to conduct a regulatory program or to provide the service for which the fee is imposed.

[http://www.phi.org/talc/Prop218_fact.htm]

In the City of Long Beach, California, the Downtown Long Beach Associates (DLBA) have created an assessment based on additional services received. The parcels within the district were divided into five zones according to the level of service provision. Each property owner then pays an amount determined by the value assigned to that zone multiplied by the store frontage and the lot square footage. This type of assessment allows for a more equitable method of payment in direct relation to services rendered.

[<http://www.silcom.com/~taxabo/prop218.htm>]

[www.mainstreetgrp.com/bidcasestudy.html]

Bibliography

Anonymous. 1998. "Homeless Workers: BIDs Failed to Pay Minimum Wage," CityLaw, Center for New York City Law.

Examines the case involving 40 employees of the Grand Central Partnership who sued because they were paid sub-minimum wages. US District Court Judge Sonia Sotomayor ruled in their favor citing the Federal Labor Standards Act (FLSA).

Briffault, Richard, 1999. "A Government for Our Time? Business Improvement Districts and Urban Governance." Columbia Law Review 99.

Discusses the implications of New York City Mayor's decision to bar the BID issuance of bonded debt. Also discussed is the one person, one vote principle and its potential to address issues of democratic accountability.

Davies, Mark S., 1997. "Business Improvement Districts," *Washington University Journal of Urban and Contemporary Law* 52.

Addresses the possibilities for preserving public interests in an era marked with an increasing reliance on the local public sector.

Friedelbaum, Stanley H. 1999. "Private Property, Public Property, Shopping Centers and Expressive Freedom in the States," *Albany Law Review*. Albany: SUNY Albany.

Discusses the implications of the movement of primary shopping areas from downtown to suburban shopping malls given the fact that malls are widely considered private property.

Gillette, Clayton P., 1996. "Public Service: Opting Out of Public Provision," *Denver University Law Review* 73.

Describes the general case for 'opting out' and then moves to examine cases of specific goods/services that provide the potential to opt out at little or no cost.

Garodnick, Daniel R., 2000. "What's the BID Deal? Can the Grand Central Business Improvement District Serve a Special Limited Purpose?" *University of Pennsylvania Law Review*, 148.

Discusses the formation and operation of BIDs, with particular focus on the one person, one vote principle and in the context of the Grand Central Partnership (GCP) case study.

Kennedy, David J., 1996/1997. "Restraining the Power of Business Improvement Districts: The Case of the Grand Central Partnership," *Yale Law & Policy Review* 15.

Using the Grand Central Partnership as a case study, Kennedy examines the non-profit nature of BIDs concluding that their primary purpose is to increase profit for their stakeholders.

Rybczynski, Witold. 1995. *City Life*. New York: Touchstone. Chapter 9.

Rybczynski discusses how urban spaces have been shaped by the lifestyles of the Western world. In chapter 9, Rybczynski discusses the many uses of public space and offers an argument for the shopping mall and its regulations.

Toy, Vivian S. "Further Restraint Is Sought For Improvement Districts" *New York Times* November 12, 1997.

Addresses the initiative by the New York City Council to restrain the growing influence of business improvement districts in New York City. Also details the package of proposals from the Council that would make the BID approval process more difficult and monitoring/oversight more rigorous.

Traub, James. 1996. "Can Associations of Businesses Be True Community Builders?" *The Responsive Community*, 6(2): 29.

Discusses the case for community building in a time that an increasing amount of authority over the public domain is being delegated to private business entities.

Web References

American Federation of State and County Municipal Employees (AFSCME)

Website gives an overview of the purpose of creating BIDs, their function and potential problems. Concern is focussed on the potential of BIDs to displace AFSCME employees or undercut wages. Also

addressed is the potential of BID workers to organize/unionize.

www.afscme.org/wrkplace/cbr398_1.htm

Baltimore Downtown Partnership

Official website of the Baltimore Downtown Partnership includes but is not limited to an assessment of the economy of the district, programs that the partnership is involved with, an annual report and upcoming events listing.

<http://www.godowntownbaltimore.com/news/Summer2001final.pdf>

"Cities within Cities - Business Improvement Districts and the Emergence of the Micropolis." New York City Council Staff Report to the Finance Committee, November 8, 1995.

Report takes stock of the extent to which BIDs have proliferated in New York City since the introduction of Special Assessment Districts in the late 1970s. Gives an outline of the complaints that have been made against various BIDs and offers recommendations for how to mitigate future problems.

<http://www.tenant.net/Oversight/BID/bidtitle.html>

Democratic Leadership Council ,Economic Development Committee Fact Sheet

Discusses the impact BIDs have had in New York City. Provides links to various websites on BID governance structure and to the websites of NYC BIDs.

www.dl21c.org/bidfact.htm

Jackson, Mississippi BID

Information on the BID in Jackson, Mississippi includes the BID sunset clause (5 years), goals of the district (economic goals include housing improvement, construction projects; other activities include events programming, street beautification etc.), and a vision statement from the chairman.

www.capitalcenterinc.com/history.html

"BIDs Harass Street Artists?" Robert Lederman, President of A.R.T.I.S.T. (Artists' Response To Illegal State Tactics)

Lederman provides background information on the debate over the extent to which BIDs privatize public space. Also included is an account of the federal lawsuit filed by A.R.T.I.S.T. accusing Mayor Giuliani of violating their right to freedom of expression (1994).

<http://hellskitchen.net/issues/bids/artist.html>

Grand Central Partnership (GCP) website.

Offers history of the GCP, a map of the district and a listing of events. Also provides listing of board members and contact information.

<http://www.grandcentralpartnership.org/>

Department of City and Regional Planning , Univesity of North Carolina BID website.

Addresses the history, function and future of BIDs. Also provides a number of links to BIDs and organizations involved in BID oversight by state.

www.unc.edu/depts/dcrpweb/courses/261/actman/bidweb1.html

Mark Davies 1997. "Business Improvement Districts," *Journal of Urban and Contemporary Law* 57: 119-223

Discusses the theoretical issues of concern centered around inequalities in local public services. Davies' goals are to assess proposed BID reform and guide the creation of new districts.

<http://law.wustl.edu/Journal/52/223.pdf>

Moshe Adler

Response to the President of the Downtown Alliance (NYC) concerning the governance structure of BIDs and the wage BID employees are paid.

www.columbia.edu/~ma820/

Pitkin Avenue BID, Brownsville, Brooklyn, New York

Proposal for specific improvements (e.g. sidewalk lengthening, special pavement and increased lighting) due to environmental changes in the area and an assessment of the benefits to be derived from the improvements.

<http://www.nymtc.org/downloadablepgs/tep/nyc/nyc33.pdf>

"To Bid or Not to Bid? Economic Development in New York City" Edward T. Rogowsky and Jill Simone Gross, City University of New York.

Addresses the three types of BIDs (community, main street and corporate) and the situational influences that give rise to each type. Also discussed are the potential problems that arise when utilizing BIDs for economic development.

<http://sipa.columbia.edu/CURP/resources/metro/v01n0402.html>

U.S. 2nd Circuit Court of Appeals "Kessler vs. Grand Central," Dissenting Judge.

Review of the Kessler vs. Grand Central case focussing on the one person, one vote principle and the quasi-public nature of BIDs.

<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=2nd&navby=docket&no=977503dis>

This review of Business Improvement Districts was prepared as part of Professor Warner's course, 'Privatization and Devolution: Challenges for Urban Public Management' in Fall 2001. Students working on this project included James Quazi, Brooks More, Ezra Cattan, Scott Bellen and Kerim Odekon.

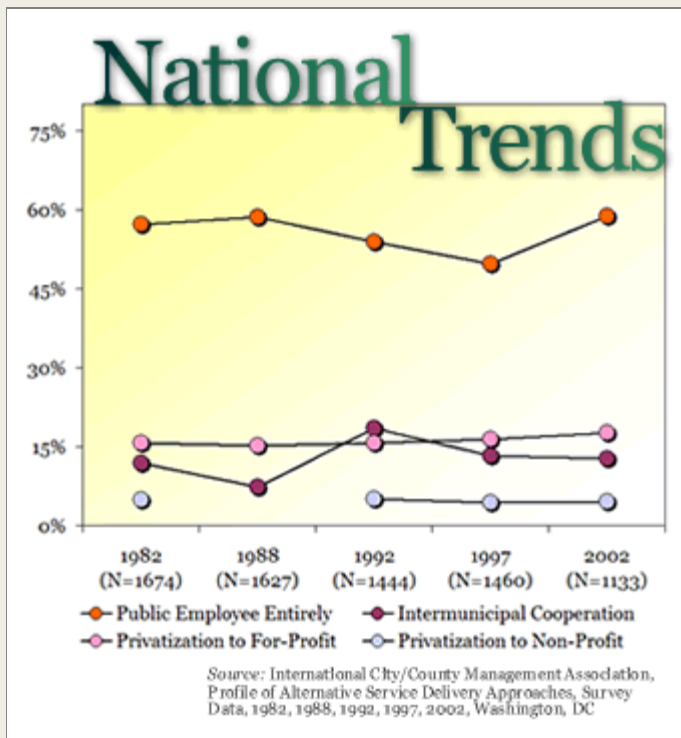
Restructuring Local Government

[Economic Development](#)
[Government Restructuring](#)
[Special Projects](#)
[Databases](#)

Privatization Trends

This page covers Professor Warner's research on national and New York state trends in local government restructuring.

National



Warner, M.E. and Amir Hefetz 2004. "[Pragmatism over Politics: Alternative Service Delivery in Local Government, 1992-2002](#)," pp 8-16 in *The Municipal Year Book 2004*. Washington, DC: International City County Management Association.

Warner, M.E. with Mike Ballard and Amir Hefetz, 2003. "[Contracting Back In - When Privatization fails](#)," chapter 4, pp. 30-36 in *The Municipal Year Book 2003*. Washington, DC: International City County Management Association.

Warner, M.E. 2001. "[Local Government Support for Community-Based Economic Development](#)," pp 21-

New York State

A survey completed in 1996 and 1997 yielded results about service delivery restructuring among towns and counties in New York State. The summary of survey results presents the key findings of the survey, accompanied by graphic illustrations. You can also search the database created from the survey results to find out more about specific instances of restructuring in New York State towns and counties.

- [Summary of survey results](#)
- [Database of local government restructuring cases in New York State](#)

See also Warner, M.E. and Robert Hebdon. 2001 "[Local Government Restructuring: Privatization and Its Alternatives](#)," *Journal of Policy Analysis and Management* 20(2):315-336. (Earlier version CRP Working Paper #179).

27 chapter in *The Municipal Year Book* 2001.
Washington, DC: International City County
Management Association.

See also [Privatization and the Market Structuring
Role of Local Government](#), by Mildred Warner and
Amir Hefetz, presented at the Economic Policy
Institute's Conference on Privatization: Issues,
Trends and Alternatives, January 2001.

Restructuring Local Government

[Economic Development](#)[Government Restructuring](#)[Special Projects](#)[Databases](#)

Privatization

Privatization is a worldwide phenomenon. In recent years all levels of government, seeking to reduce costs, have begun turning to the private sector to provide some of the services that are ordinarily provided by government. The spread of the privatization movement is grounded in the fundamental belief that market competition in the private sector is a more efficient way to provide these services and allows for greater citizen choice. In practice, however, concerns about service quality, social equity, and employment conditions raise skepticism of privatization. In New York State, labor concerns are also a major issue. Although empirical studies do not provide clear evidence on the costs and benefits of privatization, public perception and pressure for improved government efficiency will keep privatization on the government agenda. A review of recent literature on the theoretical and practical debates on privatization follows. A [set of links to Professor Warner's research on national and New York State trends](#) is also available on this site.

- [Overview](#)
- [Theory--Competition](#)

The theory of privatization is fundamentally based on the notion of competition and the efficiency and choice that it engenders.
- [Theory--Competition Critiques](#)

Competition is rarely found in markets for public goods because of the fundamental structure of such markets.
- [Theory--Coasian Bargaining and Transaction Costs](#)

Coasian bargaining creates the potential for market solutions to the provision of public goods. However it raises the issue of transactions costs which may be hard to manage.
- [Theory--Political Economic Critiques](#)

Privatization is not only about economics; it is also about politics. Political interest groups play a major role. Privatization also represents an overarching political agenda to alter the relationship between government and citizen.
- [Empirical Studies - Trends](#)
- [Empirical Studies - Reviews of Other Studies](#)
- [Empirical Studies--The Contracting Process](#)

Issues surrounding contracting out include the cost of information and monitoring and the need to create a level playing field for competitive bidding between public workers and the private sector. The contracting process is dynamic (contracting out and back in) and requires governments to play a market structuring role.
- [Empirical Studies--Regional Differences](#)
- [New York State](#)
- [Labor Concerns](#)
- [Legal Concerns](#)
- [International Experience](#)
- [Special Projects](#)

Most privatization research is based on case studies. The following books by E. S. Savas and Elliot Sclar lay out key theoretical and empirical arguments for and against privatization. Proponents argue that private firms are more efficient than government because of economies of scale, higher labor productivity, and fewer legal constraints. He faults government service provision for its monopoly status and inability to be responsive to citizens' needs, resulting in inefficient, one-size-fits-all services. Critics argue that the nature of government services makes many of them inappropriate for privatization. They also point out that contracting may entail hidden costs, because of lack of information, the need for monitoring, and "low-ball" bidding. They note that in some places creating the competition necessary for effective contracting is impossible, and suggest that in practice privatization is more complicated than it seems.

Savas, E. S. 1987. *Privatization: The Key to Better Government*. Chatham, NJ: Chatham House. Savas, an advocate of privatization, describes the theory and practice of privatization and alternative service delivery arrangements, illustrating the appropriate use of various privatization techniques.

Sclar, Elliot, 2000. *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press. Elliot Sclar lays out and critiques the standard market-based arguments for privatization, using local government case studies. He concludes that advocates of privatization should proceed with caution.

Theory--Competition *The theory of privatization is fundamentally based on the notion of competition and the efficiency and choice that it engenders.*

Tiebout, Charles 1956. "A Pure Theory of Local Expenditures," *Journal of Political Economy* 64:416-424. In this classic article based on public choice theory, Charles Tiebout puts forth a model for determining the optimum expenditure level for public goods. He treats residents as consumers, who "shop around" for the communities that best fit their preferences. The competition among communities forces them to provide public goods at the most efficient level.

Boyne, George A. 1996. "Competition and Local Government: A Public Choice Perspective." *Urban Studies* 33 (4-5): 703-721. Competition and Local Governance

Bennett, Robert. 1990. "Decentralization, Intergovernmental Relations and Markets: Towards a Post-Welfare Agenda?" Pp. 1-26 in *Decentralization, Local Government and Markets: Towards a Post-Welfare Agenda*, ed. Robert Bennett. Oxford: Clarendon Press. This article puts privatization in a theoretical context. Both decentralization and privatization reflect decentralizing trends from state to market and state to local levels of government.

Theory--Competition Critiques *Competition is rarely found in markets for public goods because of the fundamental structure of such markets.*

David Lowery, 1998. "Consumer Sovereignty and Quasi-Market Failure" *Journal of Public Administration Research and Theory*, pp.137-172. The intention of quasi-markets is to promote consumer sovereignty and efficient provision of goods and services. Lowery contends that quasi-markets often fail to meet these objectives due to 1) failure of market formation (lack of competition), 2) failure by preference error on the part of consumers and 3) failure by preference substitution (the difference between individual and collective wants). Direct government provision of goods and services, with its hierarchy and bureaucratic controls, may be needed precisely because it is less responsive to market influences.

Sclar, Elliot, 2000. "What's Competition Got to Do with It? Market Structures and Public Contracting," Chapter 4 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press. In this chapter, Sclar challenges the argument that privatization creates competition, and therefore efficiency, in the public sector. Due to the nature of public goods, which may be less profitable and more complicated to deliver, most public contracting has no competition (monopoly) or minimal competition among very few firms (oligopoly).

Kodras, Janet. 1997. "Restructuring the State: Devolution, Privatization, and the Geographic Redistribution of Power and Capacity in Governance." Pp. 79-96 in *State Devolution in America: Implications for a Diverse Society*. Ed. Lynn Staeheli, Janet Kodras, and Colin Flint. Urban Affairs Annual Reviews 48. Thousand Oaks, CA: Sage. Kodras outlines some of the major arguments for and against three methods of changing how government services are provided: privatization, devolution to lower levels of government, and simply abandoning service provision to the nonprofit sector.

Warner, M.E., 2003. "Competition, Cooperation and Local Governance," chapter 19 pp 252-262 in *Challenges for Rural America in the Twenty First Century*, edited by David Brown and Louis Swanson, University Park, PA: Penn State University Press.

Theory--Coasian Bargaining and Transaction Costs *Coasian bargaining creates the potential for market solutions to the provision of public goods. However it raises the issue of transactions costs which may be hard to manage.*

Webster, Christopher J., (1998). "Public Choice, Pigouvian and Coasian Planning Theory," *Urban Studies* 35(1):53-75 This article contrasts Pigouvian (welfare) and Coasian economics in the context of planning theory, and gives examples from land-use planning. Webster suggests that Coasian bargaining may provide solutions to the problem of public goods provision.

Staley, Samuel and Lynn Scarlett. 1997. "Market Oriented Planning: Principles and Tools." Los Angeles: Reason Public Policy Institute. <http://www.rppi.org/ps236.html>

The Reason Public Policy Institute promotes market solutions over government regulation. This article provides an example of Coasian bargaining with respect to land use planning. Staley and Scarlet propose changes to current planning processes, to streamline the development process and reduce transaction costs. They argue that in order to accommodate evolving societal land use needs, governments should use market based bargaining procedures that involve only direct stakeholders.

Williamson, Oliver 1999. "Public and Private Bureaucracies: A Transaction Cost Economics Perspective," *Journal of Law, Economics and Organization* 15(1):306-342. Williamson examines public bureaucracy through the lens of transaction cost economics, pointing out that public bureaucracy, like other modes of governance, is well suited to some transactions and poorly suited to others. Williamson claims that there is an efficient place for public bureaucracy, but that each type of governance (markets, hybrids, firms, regulation), has its own place.

Zerbe, Richard O. and Howard E. McCurdy. 1999. "The Failure of Market Failure," *Journal of Policy Analysis and Management* 18(4):558-578. Zerbe and McCurdy argue that the case for eliminating market failure through the internalization of externalities is flawed, and that governments should intervene in the marketplace only when they have the ability to lower transaction costs

Sclar, Elliot 2000. "All in the System: Organizational Theories and Public Contracting," Chapter 5 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press. Chapter 5: All in the System – Organizational Theories and Public Contracting Sclar points out that public contracting is difficult and the transaction costs are often quite high.

Theory--Political Economic Critiques *Privatization is not only about economics; it is also about politics. Political interest groups play a major role. Privatization also represents an overarching political agenda to alter the relationship between government and citizen.*

Feigenbaum, Harvey and Jeffrey Henig. 1994. "The Political Underpinnings of Privatization: A Typology". *World Politics* 46 (Jan. 1994): 185-208. The authors discuss the different political lenses through which privatization is viewed. They emphasize pragmatic privatization as a means of cost-cutting, tactical privatization as a way of rewarding allies, and systemic privatization to change institutional structures and societal ideologies. They article primarily focuses on systemic privatization.

Henig, Jeffrey 1989-90. "[Privatization in the United States: Theory and Practice.](#)" *Political Science Quarterly*. 104(4):649-670. Henig traces the development of the theory and the practice of privatization in the United States until 1989-90. He argues that privatization is a new name for an old practice of government contracting. He points to the political nature of the privatization agenda and questions its long term viability.

Frug, Gerald E. "[Alternative Conceptions of City Services,](#)" in *City Making: Building Communities without Building Walls*. Princeton: Princeton University Press, 1999. Frug criticizes Tiebout's model as leading to cities which resemble self-segregated voluntary associations of consumers who want privatized services, which these consumers view as "objects of consumption" for those who can afford to pay. He also reviews several attempts to modify the Tiebout model.

Starr, Paul. 1987. "[The Limits of Privatization.](#)" Washington, D.C.: Economic Policy Institute. This article provides a theoretical critique of privatization and its potential effects on justice, security, and citizenship. Starr also disputes two main arguments of privatization advocates: that with privatization 1) choice will increase and 2) costs will be reduced.

Folbre, Nancy 2001. "[Measuring Success,](#)" in *The Invisible Heart*. New York: The New Press. Pp 53-82. Folbre discusses the adverse effects privatization and competitive pressures on the quality of services in care sectors. Standard economic measures used to make privatization decisions fail to accurately assess the real costs and benefits of care.

Kabeer, Nalia. "['Rational Fools' or 'Cultural Dopes'? Stories of structure and agency in the social sciences.](#)". Chapter 2 pp16 – 48 in *The Power to Choose; Bangladeshi Women and Labor Market Decisions in London & Dhaka*, New York: Verso, 2000. Kabeer discusses two contradictory positions in social science theory that attempt to explain social and economic change. Neo-classical economics focuses on the individual while structural approaches propose that larger social structures explain human behavior. Kabeer offers a compromise between the two as a better model, using Bangladeshi women in the labor force as an example.

Empirical Studies - Trends

Warner, M.E. and Amir Hefetz 2004. "[Pragmatism over Politics: Alternative Service Delivery in Local Government, 1992-2002,](#)" chapter in *The Municipal Year Book 2004*. Washington, DC: International City County Management Association. ICMA has been tracking local governments' use of alternative service delivery approaches since 1982, finding that privatization trends have actually change little over the years. What has risen most dramatically over the 1992-2002 time period is the use of mixed public/private provision.

Warner, M.E. and Amir Hefetz, 2001. "[Privatization and the Market Role of Government,](#)" Briefing Paper, Economic Policy Institute, Washington, DC. Available at epinet.org. This article uses national data published by the International City/County Management Association (ICMA) for the period 1982 to 1997 to show that service delivery by public employees remains the dominant form of service provision over the wide range of restructuring alternatives and that privatization has not increased dramatically. It evaluates two theories as to why privatization has not increased: government failure and quasi-market failure.

Greene, Jeffrey D. 1996. "[How Much Privatization: A Research Note Examining the Use of Privatization by Cities in 1982 and 1992.](#)" *Policy Studies Journal* 24 (Winter): 632-640. Green reviews survey results of the International City/County Management Association for 596 cities, between 1982 and 1992, that gauged how much municipalities had privatized and their reasons for privatization. The study used two indicators of privatization, privatization levels, and privatization diversity.

Empirical Studies - Reviews of Other Studies

Boyne, George A. (1998). "[Bureaucratic Theory Meets Reality: Public Choice and Service Contracting in U.S. Local Government.](#)" *Public Administration Review*. 58(6): 474-483. Statistical methods used in studies cited by public choice theorists lack critical control variables and a reliable measure of competition, and therefore

lead to invalid conclusions. Boyne aims to reevaluate the empirical evidence on the effects of service contracting by United States local governments.

Boyne, George A (1998). "[The Determinants of Variations in Local Service Contracting: Garbage in Garbage Out?](#)" *Urban Affairs Review*, Vol. 34, No. 1, pg. 150-163. Boyne offers an overview of various empirical studies that focus on the determinants of why certain local governments opt to contract out. Boyne aims to answer two questions: 1) To what extent do empirical studies provide an explanation of variations in service contracting? 2) Does the evidence improve our understanding of why different local governments adopt different policies?

Empirical Studies--The Contracting Process *Issues surrounding contracting out include the cost of information and monitoring and the need to create a level playing field for competitive bidding between public workers and the private sector. The contracting process is dynamic (contracting out and back in) and requires governments to play a market structuring role.*

Hefetz, Amir and M. Warner, 2004. "[Privatization and Its Reverse: Explaining the Dynamics of the Government Contracting Process](#)" *Journal of Public Administration, Research and Theory*, 14(2):171-190. Available at <http://jpart.oupjournals.org/cgi/content/abstract/14/2/171?ijkey=156SEfUPE3BE2&keytype=ref> This article shows that the level of contracting back in previously privatized services is significant among local governments in the US. A statistical model assessing the reasons for such behavior is presented.

Warner, M.E. with Mike Ballard and Amir Hefetz 2003. "[Contracting Back In – When Privatization Fails,](#)" chapter 4 pp 30-36 in *The Municipal Year Book 2003*. Washington, DC: International City County Management Association. Between 1992 and 1997, the most common forms of alternative service delivery (privatization to for-profits and non-profits and inter-municipal cooperation) increased only slightly. The stability in these trends belies a more dynamic process of contracting out and back in which reflects the key market structuring role played by local governments.

Warner, M.E. and A. Hefetz. 2002 "[Applying Market Solutions to Public Services: An Assessment of Efficiency, Equity and Voice,](#)" *Urban Affairs Review*, 38(1):70-89. The authors assess the efficacy of market solutions for metropolitan public service provision by comparing privatization with inter-municipal cooperation and evaluating each on efficiency, equity and democracy grounds. They find both alternatives promote efficiency, but equity and voice are more associated with inter-municipal cooperation than privatization.

Ballard, Michael J. and M.E. Warner 2000. "[Taking the High Road: Local Government Restructuring and the Quest for Quality.](#)" Pp 6/1 - 6/53 in *Power Tools for Fighting Privatization*, American Federation of State, County and Municipal Employees: Washington DC. Available at <http://government.cce.cornell.edu/doc/reports/highroad/> Using detailed case studies, this report outlines two alternative strategies for improving local government service delivery—the "high road" which uses new management innovations to increase internal productivity, and the "low road" which focuses on downsizing and contracting out.

Sclar, Elliott. 1997. "[The Privatization of Public Service: Lessons from Case Studies.](#)" Washington, D.C: Economic Policy Institute. This article presents several case studies that show public sector employees can provide a more efficient alternative to privatization: the Albany Department of Public Works, highways in Massachusetts, and Indianapolis Fleet Services.

Lehmann, Scott. *Privatizing Public Lands*. 1995. New York: Oxford University Press. Lehman takes the special case of public lands and shows the limits of market allocation mechanisms.

Miranda, Rowan and Allan Lerner. (1995). "[Bureaucracy, Organizational Redundancy and the Privatization of Public Services.](#)" *Public Administration Review* 55(2): 193-200. Privatization alone may not lead to better quality or cost reduction in public service delivery. Miranda and Lerner note the relatively high level of mixed (public and private) production for the same service and seek to explain how such redundancy could still be efficient. They argue redundancy can enhance competition, provide a benchmark for costs, and ensure failsafe

security in the event of contract failure.

Sclar, Elliot D., K. H. Schaeffer, and Robert Brandwein. 1989. "[The Emperor's New Clothes: Transit Privatization and Public Policy](#)." Washington, D.C.: Economic Policy Institute. This article uses the example of the Urban Mass Transportation Administration, which has mandated state and local transit authorities to privatize their operations, to illustrate that private sector delivery of public goods and services is not nearly as advantageous as its proponents claim.

Moulder, Evelina. 1994. "[Privatization: involving citizens and local government employees](#)." *Baseline Data Report* 26 (1): 1-7. This article summarizes the results of a survey conducted by the International City/County Management Association (ICMA) in 1992 on local area alternative service delivery, focusing on the involvement of workers and citizens in decisions to contract for government services.

Pack, Janet Rothenberg. 1989. "[Privatization and Cost Reduction](#)." *Policy Sciences* 22: 1-25. Pack evaluates the success and sustainability of service cost reduction from the perspective of the economic model of cost minimization through competitive bidding.

The Reason Foundation (<http://www.reason.org/privatizationctr.html>), established in 1978, provides excellent materials on privatization, through their Privatization Center. Advocating public policies based upon individual liberty and responsibility and a free-market approach, the Center undertakes to practical policy research. Their annual year book, *Privatization*, describes recent developments in privatization, including the following articles.

The Reason Foundation. 1996. "The Politics of Privatization." *Privatization 1996*. Based on excerpts of several mayors' remarks, this article argues competition is the key to smaller government. The latter part presents the job-loss impact of privatization.

The Reason Foundation. 1997. "Creating the Right Institutions for Competitive Government." *Privatization 1997*. This article describes how to create a level playing field between in-house public units and outside private providers, called "competitive neutrality," when setting up a public-private competition program.

Empirical Studies--Regional Differences

Warner, M.E. and A. Hefetz. 2003. "[Rural-Urban Differences in Privatization: Limits to the Competitive State](#)," *Environment and Planning C: Government and Policy* 21(5): 703-718. Despite two decades of experience with privatization, US local government use of contracting in public service delivery remains relatively flat. Market approaches to public goods provision emphasize the competitive state, and attribute limited degree of privatization to bureaucratic resistance. Rural development theory emphasizes the uneven impact of market solutions in rural communities. Using national data on US local government service delivery from 1992 and 1997, we analyze differences in local government service-delivery patterns by metropolitan status. Discriminant analysis suggested that structural features of markets are more important than the managerial capacity of government leaders in explaining lower rates of privatization among rural governments. These structural constraints limit the applicability of competitive approaches to local government service delivery. Our results suggest that cooperation, as an alternative to privatization at the local level and as a source of redistributive aid at the state level, may provide a more equitable alternative for disadvantaged rural communities.

Warner, M.E. and A. Hefetz. 2002. "[The Uneven Distribution of Market Solutions for Public Goods](#)," *Journal of Urban Affairs*, 24(4): 445-459. Using national data on local government service delivery from 1992 and 1997, this article assesses the distribution of privatization and inter-municipal cooperation across localities in the metropolitan region and finds them most common among suburbs.

New York State

Warner, M.E. and Robert Hebdon. 2001 "[Local Government Restructuring: Privatization and Its Alternatives](#)," *Journal of Policy Analysis and Management* 20(2):315-336. Rather than treating public and private provision

of public goods and services as a strict dichotomy, a 1997 survey of chief elected township and county officials in New York shows local governments use both private and public sector mechanisms to structure the market, create competition and attain economies of scale. In addition to privatization and inter-municipal cooperation, two alternative forms of service delivery not previously researched, reverse privatization and governmental entrepreneurship, are analyzed.

Warner, M.E. 2000. "[Structuring the Market for Service Delivery: A New Role for Local Government.](#)" pp 85-104 in [Local Government Innovation: Issues and Trends in Privatization and Managed Competition](#), Robin Johnson and Norman Walzer eds. Westport, CT: Quorum Books. Case study analysis of reverse privatization among New York State towns and counties shows how governments engage the market to ensure competition, control and attention to community values. The nature and relative importance of three alternatives to privatization – inter-municipal cooperation, reverse privatization and governmental entrepreneurship are described.

Warner, M.E. and R. Hebdon "[Local Government Restructuring in New York State: Summary of Survey Results](#)" Restructuring in New York State primarily involves public sector innovation rather than privatization. Intermunicipal cooperation was the predominant form of restructuring, while privatization was the second most common form of restructuring. Significant levels of reverse privatization and governmental entrepreneurship were also found. Incidence of restructuring was highest among counties, and in the following service areas: public works, public safety, and general governmental support functions.

Search the database of case studies on local government restructuring in New York State:
<http://government.cce.cornell.edu/db/lgr/search.asp>

Hebdon, Robert, and Hazel Dayton Gunn. 1995. "[The Costs and Benefits of Privatization at the Local Level in New York State.](#)" Community Development Report. Ithaca, NY: Community and Rural Development Institute, Cornell University (http://www.cardi.cornell.edu/local_government/community_governance/000244.php)
Hebdon and Gunn provide a brief overview of the privatization debate, at the level of local service delivery.

Savas, E. S., ed. 1992. [Privatization for New York: Competing for a Better Future.](#) The Lauder Report; A report of the NYS Senate Advisory Commission on Privatization. New York. This volume provides a review of experiences with privatization in New York State and recommendations for expanding its use, from a proponent's perspective. It also introduces the experiences of other states and cities, and the special experiences gained in Britain.

Labor Concerns

Another major issue is the impact of privatization on job security and employment. Proponents claim that public sector workers are not harmed by privatization. Displaced workers can be hired by contractors or transferred to other government positions. Organized labor, however, is very concerned about layoffs, erosion of wages and benefits, and decreased levels of union membership with privatization. Empirical studies show that privatization has not had a major impact on wages and working conditions (Pendleton 1997), but it can have significant effects on labor relations (Hebdon 1995). Opponents present case studies that show public sector employees can provide more efficient alternatives to privatization (Sclar 1997). The expertise and experience of many government employees may make them better at providing government services, and management techniques like total quality management are making the public sector more efficient.

Chandler, Timothy, and Peter Feuille. 1994. "[Cities , Unions, and the Privatization of Sanitation Services.](#)" [Journal of Labor Research](#) 15 (1): 53-71. This article analyzes the relationship between unionization and government decisions to contract out sanitation services using a conceptual framework that emphasizes political considerations.

Chandler, Timothy, and Peter Feuille. 1991. "[Municipal Unions and Privatization.](#)" [Public Administration Review](#) 51 (1): 15-22. The authors examine the impacts of unionization on local governments' decision to contract out sanitation services, based on a survey of 1,541 municipalities between 1973 and 1988.

Hebdon, Robert. 1995. "[Contracting Out in New York State: The Story the Lauder Report Chose Not to Tell.](#)" *Labor Studies Journal* (Spring): 3-29. The author sees privatization as a disruptive, harmful way of cost saving. Examining the history of collective bargaining in New York State, he emphasizes the negative impact of privatization on unions and workers.

Pendleton, Andrew. 1997. "[What Impact Has Privatization Had on Pay and Employment: A Review of the UK Experience.](#)" *Industrial Relations* 52 (3): 554-579. The article analyzes the theoretical and actual impact of privatization on labor conditions in the United Kingdom. The article concludes privatization does not have a consistent and strong effect on pay and employment.

Donovan, Ronald, and Marsha J. Orr. 1982. "[Subcontracting in the Public Sector: The New York State Experience.](#)" Ithaca, NY: Cornell University. The authors examine subcontracting out transportation services in school districts in New York State. They propose a list of standards to judge when subcontracting should be subject to negotiation and arbitration.

Legal Concerns

Legal concerns beyond labor issues are also important considerations in privatization. Legal debate starts from the argument that the public and private sectors are essentially different and their separate functions can be logically designated. The following articles raise concerns about constitutional protections of citizens and emphasize the legal characteristics of public entities. Opponents worry that privatization may threaten citizens' constitutional rights.

Moe, Ronald C. 1987. "[Exploring the Limits of Privatization.](#)" *Public Administration Review* 47 (Nov/Dec): 453-460. This article argues the most important distinction between private and public entities lies in the concept of sovereignty that inheres in the public sector, giving it rights and immunities that the private sector does not, or at least ought not, possess.

Sullivan, Harold J. 1987. "[Privatization of Public Services: A Growing Threat to Constitutional Rights.](#)" *Public Administration Review* 47 (Nov/Dec): 461-467. This article reviews the judicial decisions concerning the scope and applicability of national constitutional protections on privatization. It also examines and identifies a number of arrangements between government and private service providers that immunize both the government and private entities from constitutional restraints.

Starr, Paul. 1987. "[The Limits of Privatization.](#)" Washington, D.C.: Economic Policy Institute. This article provides a theoretical critique of privatization and its potential effects on justice, security, and citizenship. Starr also disputes two main arguments of privatization advocates: that with privatization 1) choice will increase and 2) costs will be reduced.

Gerbas, Jennifer and M.E. Warner, June 2003. "[The Impact of International Trade on State and Local Government Authority,](#)" *Dept. of City and Regional Planning Working Papers #204*. Ithaca, NY: Cornell University. Available at <http://government.cce.cornell.edu/?/doc/reports/freetrade/#book1> / Free trade has been pursued to expand markets and create jobs. However, the new trade agreements (NAFTA, WTO, FTAA, GATS) reach beyond traditional customs and tariff regulations and impacts all government activity that may affect foreign trade. There is some concern in the governance community that these changes may lead to federal preemption of traditional powers reserved to states and localities.

Warner, Mildred and Jennifer Gerbas. "[Rescaling and Reforming the State under NAFTA: Implications for Subnational Authority.](#)" *International Journal of Urban and Regional Research* December 2004 Vol 28(4): 853-73. This paper describes the new governance features of the North American Free Trade Agreement (NAFTA) and illustrates how they work out at the national, subnational and local scales using cases from the United States and Mexico. The authors show how NAFTA's governance structure is undermining subnational and local government authority in legislative and judicial arenas.

Jennifer Gerbas, Jennifer and Mildred Warner. 2004, "[Is There a Democratic Deficit in the Free Trade](#)

Agreements? What Local Governments Should Know," *Public Management* 86:2 (16-21).

International Experience

Kohl, Benjamin, 2004. "Privatization and Regulation: A cautionary tale from Bolivia," submitted to *International Journal of Urban and Regional Research*, forthcoming 28(4) 2004. Kohl uses the Bolivian experience with privatization to illustrate the limitations of privatization in developing countries.

Shughart, William F. II 1999. "Interest Group Theory of Government in Developing Economy Perspective," in *Institutions and Collective Choice in Developing Countries* ed by Mwangi Kimenyi and John Mbuku. Brookfield, VT: Ashgate Publishing Co. pp 169-198. This paper outlines the interest group or the 'capture' theory of government: the same behavioral assumptions of maximization of self-interest that explain decision-making of the market can be used to explain the behavior of public policy makers.

Graham, Carol. 1998. Private Markets for Public Goods: Raising the Stakes in Economic Reform. Washington DC: Brooking Institute Press. In this book, Graham examines the use of markets to increase the efficiency of the public sector. She uses case studies of Chile, Peru, Bolivia, Czech Republic and Zambia to assert that private market incentives such as competition and choice strengthen participation and improve performance.

Schick, Alan (1998). "Why Most Developing Countries Should Not Try New Zealand's Reforms." World Bank Research Observer 13(1):123-131. New Zealand's government agencies are run by independent public managers who contract out most services and are monitored for accountability. Schick's article looks at New Zealand's system, both the benefits and cost, and finds reason that this system would not work for developing countries with large informal economies.

Clifford Wirth, "Transportation Policy in Mexico City: The Politics and Impacts of Privatization" *Urban Affairs Review*, Vol. 33, No. 2, November 1997, pp. 155-181. In this article, Wirth challenges the idea that privatization occurs only when public sector responsibilities are shifted to private providers. He advocates a cost-benefit analysis that includes social and environmental externality costs and claims that local government officials should be accountable for both the decisions they choose to take and the one they refuse to make.

Canadian Council for Public/Private Partnerships, 1996. *National Opinion Research*. Toronto. The Canadian Council for Public/Private Partnerships surveyed over 200 governments across Canada to assess: 1) current partnership activities, 2) planned partnership activities, 3) perspectives on partnerships and, 4) support for implementing partnerships.

Special Projects

Gratto, Andre, Bryan Preston, and Thor Snilsberg. Mitigating Corruption in New Public Management. Ithaca NY: Cornell University Department of City and Regional Planning. This article provides an environmental framework for reducing potential for corruption.

McFarland, Stephen, Chris McGowan and Tom O'Toole (2002). "Prisons, Privatization and Public Values." Ithaca NY: Cornell University Department of City and Regional Planning.

Warner, Mildred, James Quazi, Brooks More, Ezra Cattan, Scott Bellen and Kerim Odekon (2002) Business Improvement Districts: Issues in Alternative Local Public Service Provision. Ithaca NY, Cornell University Department of City and Regional Planning.

Transfer of Development Rights Programs: Using the Market for Compensation and Preservation (2002).

Jason Hanly-Forde, George Homsy, Katherine Lieberknecht, Remington Stone. This article reviews the challenges to Coasian bargaining solutions for planning.

Recent Articles on Privatization and Decentralization

by
Mildred E. Warner

PDFs for some of these can be found on my website. Otherwise, contact me at mew15@cornell.edu for copies.

<http://restructuringlocalgovernment.org/warner>

Special Edited Volumes

Bel, Germà and M. E. Warner 2008. "Challenging Issues in Local Privatization," *Environment and Planning C: Government and Policy*, 26(1): 104-109, editorial overview to special issue.

Local government privatization has not delivered as expected on cost savings. Using empirical studies from North America and Europe, we show that local governments are pragmatic managers who must manage costs, markets and political interests simultaneously. Using a theoretical framework of actors, interests and incentives, we explain the lack of cost savings and demonstrate the importance of alternative management approaches. We argue analyses of local government contracting must address the dynamics of market management and do so in a comprehensive framework that includes both public and private actors and interests.

Bel, Germà, Robert Hebdon, and M. E. Warner, 2007. "Local Government Reform: Privatization and Its Alternatives," *Local Government Studies*, 33(4): 507-515, editorial overview to special issue.

Privatization is only one of several alternatives for local government reform. Problems with lack of cost savings and the challenges of contract management have led local government reformers to explore other alternatives including municipal corporations, relational contracting and dynamic market management. Empirical analysis shows concerns with fiscal stress, efficiency, and managing political and citizen interests drive the reform process more than ideology. We argue a more comprehensive framework is needed that gives attention to a wider array of alternatives for institutional reform.

Articles

Warner, M.E. 2011. "Water Privatization Does Not Yield Cost Savings," in *Reclaiming Public Water: Achievements, Struggles and Vision from Around the World*, Transnational Institute and Corporate Europe Observatory. Released at the World Water Forum in Cape Town, South Africa for World Water Day, March 22, 2011.

This article describes a meta analysis of all published large scale studies of water privatization from around the world which shows privatization does not yield cost savings. It then shows how these results should have been predicted by a more careful reading of economic theory. The article then presents privatization

experience of US local governments in water where public managers demonstrate a latent understanding of the theoretical limitations of privatization in services that lack competition, are hard to monitor and are natural monopolies.

Hefetz, Amir and Mildred E. Warner 2011, "Contracting or Public Delivery? The importance of service, market and management characteristics," *Journal of Public Administration Research and Theory*, forthcoming. DOI 10.1093/jopart/MUR006

Analysis of local government contracting decisions typically focuses on transactions costs related to service characteristics, especially asset specificity and difficulty of contract management. This analysis expands the focus to include market characteristics (competition), citizen characteristics (public interest in the service delivery process), and place characteristics (metro status and public management). A 2007 survey of U.S. city managers' rankings of 67 services by transactions costs, competition and citizen interest is combined with a 2007 national survey of city managers' sourcing decisions (direct public, inter-government cooperation, for profit and non-profit contracting). Multinomial logit models of service delivery sourcing choice find metro status and competition are key explanatory variables. Inter-governmental cooperation represents an important public market alternative when contract management is difficult and competition is low. For profit contracting is less common when citizen interest is high and competition is low. Governments with professional managers appear more effective in addressing citizen interests, political and labor opposition and market management challenges.

Warner, M.E. 2011. "Club Goods and Local Government: Questions for Planners," *Journal of the American Planning Association*, forthcoming.

Private approaches to urban service provision are becoming more popular. This paper explores examples of club goods - Common Interest Developments for housing, Business Improvement Districts for commercial areas, and Economic Development Zones for commercial and industrial areas - and assesses their implications for local government. While these club approaches can shift the burden of infrastructure finance to direct groups of users, they also fragment urban service delivery and justify unevenness in service quality across the city. Emphasis is given to how clubs internalize benefits to members of the club, but shed externalities onto the broader local government system. A critical governance concern is the impact on the long term ability of local government to coordinate across disparate elements and interests in the community.

Warner, Mildred E. and Amir Hefetz 2010, "Privatization and Reverse Privatization in US Local Government Service Delivery, 2002-2007," Paper prepared for Public Service International Council of Global Unions Conference, Geneva, Switzerland, Oct. 2010
<http://www.qpsconference.org/content/resources>

Contracting out for urban infrastructure delivery has been an important reform pursued by cities in the last decades of the 20th century. However, using national surveys of US municipalities conducted by the International City County Management Association, this paper shows that rates of new contracting are balanced with reverse contracting – bringing previously privatized services back in house. Reversals reflect problems with service quality and lack of cost savings in contracted services. Recognition of the asset specific nature of infrastructure services, the need for monitoring and the importance of political opposition help explain these reversals.

Warner, Mildred E. and Raymond Gradus. 2010. “The Consequences of Implementing a Child Care Voucher: Evidence from Australia, the Netherlands and USA.” *Social Policy and Administration* (forthcoming).

In the Netherlands, the USA and Australia public funding has promoted parental choice by introducing a voucher for child care, where parents are free to choose the provider. The policy experiments in these three countries and the outcomes provide useful information about the consequences of introducing a voucher in the child care market. We show the voucher system can be effective in increasing demand, but there can be uneven supply responses. The structure of the voucher income scheme and quality controls affect the nature of the supply response. We argue that voucher schemes must take into account the complex nature of the child care market and the substitutability among free public care, private market care and unpaid household care. To secure quality and access, government must also play a coordinating role that vouchers alone can not supply.

Warner, Mildred E. 2010. “The Future of Local Government: 21st Century Challenges,” *Public Administration Review*, 70(6).

Local governments in the 21st century face challenges regarding service delivery, finance, the workforce and citizen engagement. While privatization was a major innovation in the last decades of the 20th century, lack of costs savings and the loss of public values in market provision are prompting reversals in privatization, increases in regulation and new approaches to government enterprise. The 21st century must focus on rebuilding the capacity of local governments to finance critical infrastructure, attract and retain a skilled labor force and engage citizen in designing innovative solutions to address public problems. Innovations in public service delivery will move beyond public private partnerships to models which more affectively balance accountability, equity and efficiency concerns.

Bel, Germà , Xavier Fageda and Mildred E. Warner 2010. “Is Private Production of Public Services Cheaper than Public Production? A meta-regression analysis of solid waste and water services,” *Journal of Policy Analysis and Management*, 29(3): 553-577.

Privatization of local government services is assumed to deliver cost savings but empirical evidence for this from around the world is mixed. We conduct a meta-

regression analysis of all econometric studies examining privatization for water distribution and solid waste collection services and find no systematic support for lower costs with private production. Differences in study results are explained by differences in time-period of the analyses, service characteristics, and policy environment. We do not find a genuine empirical effect of cost savings resulting from private production. The results suggest that to ensure cost savings, more attention be given to the cost characteristics of the service, the transaction costs involved, and the policy environment stimulating competition, rather than to the debate over public versus private delivery of these services.

Warner, M.E. and Amir Hefetz. 2010. "Service Characteristics and Contracting: The Importance of Citizen Interest and Competition," pp 19-27 in *The Municipal Year Book 2010*. Washington, DC: International City County Management Association.

Theory suggests that the decision to provide a service in house or via contracting will be determined primarily by service characteristics, e.g. specific physical infrastructure or technical expertise, and difficulty in contract specification and monitoring. However a 2007 national survey of US local government managers shows that citizen interest and the level of competition in the local market may be more important. Across 66 measured services, the average level of competition is less than two alternative providers. For rural areas there is only one alternative provider on average. Thus contracting out often results in substituting a private monopoly for a public monopoly. This helps explain why direct public delivery remains the primary service delivery mode.

Warner, Mildred E. 2009. "Regulatory Takings and Free Trade Agreements: Implications for Planners," *Urban Lawyer*, 41(3): 427-443.

International trade agreements bring a new dimension to the ongoing debate between public regulation and private property rights. Since NAFTA US free trade agreements have promulgated an expanded view of private property rights, elevating foreign investors to the level of nation states, challenging government regulations as unfair barriers to trade, requiring governmental compensation for partial (regulatory) takings, and substituting private tribunals for the public courts. Articulated at the global and national scales, these new definitions have profound implications for planners at the state and local levels. The implications for planning deserve more serious consideration.

Bel, Germà and Mildred Warner 2009 "Managing Competition in City Services: The Case of Barcelona," *Journal of Urban Affairs*, 31(5): 521-535.

"Clean and safe" strategies are part of urban regeneration in the entrepreneurial city. These strategies are often characterized by privatization and public-private partnerships which enhance investment and create a city space more amenable to tourists and consumers. While such approaches promote increased investment, and differentiate services by district, they raise challenges of competition, cost escalation and public participation. Barcelona's solid waste

management strategy is presented to show the importance of a strong public coordination role when using competition to promote technological innovation and improved quality in city service delivery.

Warner, Mildred E. 2009. Local Government Infrastructure and the False Promise of Privatization. A Century Foundation Report. New York: Century Foundation.

<http://www.tcf.org/Publications/mediapolitics/warner.pdf>

Public infrastructure is largely managed in America by state and local governments, which also provide most of the financing. In fact, local government has more fiscal responsibility in the U.S. than do local governments in any other nation in the developed world. One popular answer to more effective use of funds has been to bring market and business principles to such services, and in particular to privatize them. But Warner, based on her own comprehensive empirical studies, says the experiment in privatization at the state and local level has not been satisfactory. State and local governments thus need substantially more federal financial support. She provides guidelines as to how and when privatization can be valuable and when it will fail.

Warner, M.E. and Amir Hefetz 2009. Cooperative Competition: Alternative Service Delivery, 2002-2007. in *The Municipal Year Book 2009*. Washington, DC: International City County Management Association.

ICMA has been tracking local government use of alternative service delivery mechanisms since 1982. In prior surveys, for profit contracting was typically one or two percentage points higher than intergovernmental contracting, but in the 2007 survey this is no longer the case. Learning from their experience with for profit and mixed contracting, local governments are now using intergovernmental contracting as the preferred contracting alternative. The 2007 survey shows direct public delivery and mixed public-private delivery have fallen back to their 1997 levels and for profit privatization and non profit contracting are flat. What has grown is inter-governmental contracting. However, lack of sufficient private competition remains a problem, and monitoring service quality and citizen satisfaction is getting less attention than in 2002. Failure to adequately monitor contracts typically leads to reductions in future contracting.

Warner, Mildred E. 2009. Civic Government or Market-Based Governance? The Limits of Privatization for Rural Local Governments," *Agriculture and Human Values*. 26(1):133-143.

Thomas Lyson argued that civic markets were possible and could have positive impacts on rural development. Increasingly local governments are being forced into market-based governance regimes of privatization, decentralization and free trade. This article explores the impacts of these trends on rural local governments in the U.S. These market trends can erode civic foundations, but recent data show local governments are balancing markets with civic concerns and giving increased attention to citizen interests in the service delivery process.

Bel, Germa and M.E. Warner 2008, "Does privatization of solid waste and water services reduce costs? A review of empirical studies," *Resources, Conservation & Recycling*, 52:1337-1348.

Cost reduction was the key benefit claimed by privatization. We conduct a review of all published econometric studies of water and waste production since 1970. Little support is found for a link between privatization and cost savings. Cost savings are not found in water delivery and are not systematic in waste. Reviewed studies build from public choice, property rights, transactions costs and industrial organization theories. We conclude public choice theory is too focused on competition, which is typically not present in quasi markets. Property rights theory gives attention to ownership and service quality, but absent competition, ownership makes little difference on costs borne by municipalities. Transactions costs argues privatization is best when contracts are complete – a rare situation in public service markets. We find the industrial organization approach most useful in explaining results because it directly addresses incentives, sector structure and regulatory framework. Overall, the empirical results show the importance of market structure, industrial organization of the service sector, and government management, oversight and regulation. Because there is no systematic optimal choice between public and private delivery, managers should approach the issue in a pragmatic way.

Warner, M.E. 2008. "Reversing Privatization, Rebalancing Government Reform: Markets, Deliberation and Planning," *Policy and Society*, 27(2): 163-174.

The last decades of the 20th century witnessed a profound experiment to increase the role of markets in local government service delivery. However, that experiment has failed to deliver adequately on efficiency, equity or voice criteria. This has led to reversals. But this reverse privatization process is not a return to the direct public monopoly delivery model of old. Instead it heralds the emergence of a new balanced position which combines use of markets, deliberation and planning to reach decisions which may be both efficient and more socially optimal.

Warner, Mildred E. and Germa Bel 2008. "Competition or Monopoly? Comparing US and Spanish Privatization," *Public Administration: An International Quarterly*, 86(3): 723-736.

Differences in national traditions of public intervention, institutional arrangements, and public service markets make local public services an area of great diversity. Our objective in this paper is to undertake a comparative study of how local governments arrange for delivery of water and waste services in the U.S. and Spain. We find that levels of privatization are higher in Spain than in the U.S. We review organizational reform in the two contexts and compare service delivery data using national surveys from each country. We conclude that lower and less stable privatization in the U.S. stems in part from adherence to public choice emphasis on the benefits of market competition over public monopoly.

By contrast, the Spanish municipalities reflect more of an industrial organization approach, and create hybrid public/private firms which benefit from both market engagement and economies of scale available under monopoly production.

Hipp, Magdalena and Mildred Warner 2008. "Market Forces for the Unemployed? Training Vouchers in Germany and the U.S." *Social Policy and Administration*, 42 (1): 77-101.

Vouchers are meant to increase competition and consumer choice in public service markets. Using the example of training vouchers for the unemployed in the U.S. and Germany, we show, however, that deficits, both on the demand and the supply side of the market, create problems with preference alignment and market formation. Information asymmetries undermine choice by the unemployed and reduce government control over the training system. Ironically, restrictions meant to compensate for these information deficits further inhibit competitive market formation. Evaluation data on training vouchers from both countries show that voucher systems do not increase choice, but weaken the partnerships public employment agencies previously had with training providers, and may lead to a shortage of high quality and specialized training as well as creaming in the selection of training participants. Theoretical justification for vouchers is based on the notion of choice and consumer sovereignty. Using this framework to analyze the changed relationship between government, private training providers, and jobseekers we challenge the efficacy of vouchers as a delivery mechanism in complex public service markets such as job training.

Warner, Mildred E. and Amir Hefetz 2008. "Managing Markets for Public Service: The Role of Mixed Public/Private Delivery of City Services," *Public Administration Review*, 68(1):150-161.

The privatization experience of U.S. municipalities shows declining use of complete contracts and a dramatic rise in mixed public/private delivery (joint contracting) of city services. Our analysis shows city managers have recognized the need to move beyond a simple dichotomy between market delivery and public planning to an approach that balances concerns with efficiency, market management and citizen satisfaction. New public management stresses the importance of competition and efficiency, transaction costs economics emphasizes the challenges of contract management, and new public service gives primary concern to citizen engagement; but city managers see the need to balance all three. We use probit and generalized estimation models to analyze International City County Management Association (ICMA) data for 1992, 1997 and 2002, and show the evolution of a middle position where city managers integrate markets with public delivery and give greater attention to citizen satisfaction in the service delivery process.

Gerbas, Jennifer and M.E. Warner 2007. "Privatization, Public Goods and the Ironic Challenge of Free Trade Agreements," *Administration and Society*, 39(2):127-149.

Use of quasi-markets for provision of public goods requires clear property rights, a predictable adjudication process and low transaction costs. These may be undermined by new restrictions on government action found in the new generation of free trade agreements. These trade agreements privilege foreign over domestic investors, replace public courts with private arbitration, supplant traditional standards for legislation by requirements to be "least trade restrictive," and forward a new definition of "takings" that requires governmental compensation for lost potential profits from regulatory action. These features undermine the governance structure necessary to reduce transaction costs of delivering complex public services.

Hefetz, Amir and Mildred E. Warner. 2007. "Beyond the Market vs. Planning Dichotomy: Understanding Privatisation and its Reverse in US Cities," *Local Government Studies*, 33(4): 555-572.

City service delivery requires planners and city managers to move beyond the public-private dichotomy and explore the benefits of interaction between markets and planning. Using International City County Management survey data on U.S. local governments from 1992, 1997 and 2002, we find a shift where reverse contracting (reinternalisation) now exceeds the level of new contracting out (privatisation). We model how a theoretical shift from New Public Management to New Public Service in public administration mirrors a behavioral shift among city managers. Results confirm the need to balance economic concerns with political engagement of citizens and lend empirical support to a theory of Social Choice that links Communicative Planning with market management.

Warner, Mildred E. 2006. "Inter-municipal Cooperation in the U.S.: A Regional Governance Solution?" *Urban Public Economics Review/Revista de Economía Pública Urbana*, 7: 132-151.

U.S. local governments are characterized by political fragmentation. This creates problems of coordination and efficiency at both the metropolitan and rural scales. While political consolidation is rare, voluntary cooperation between municipalities is quite common. This paper explores whether a system of voluntary cooperation can achieve efficiency and equity objectives without losing local voice and identity. Using data from the International City/County Management Association survey of more than 1200 municipalities over the 1992-2002 decade, probit models of inter-governmental contracting are constructed. Findings show the efficiency benefits of cooperation have eroded over time due in part to the lack of adequate public monitoring. Results on equity are indeterminate. While citizen voice was in support of cooperation at the beginning of the decade, this is no longer true at the end of the decade.

Results suggest the need for a more democratic form of inter-municipal cooperation to ensure accountability, responsiveness and efficiency.

Bellettini, Orazio J., Paul Carrillo, Wladymir Brborich, Mildred Warner, Laura Timme, Elizabeth Coombs. August 2006. "Stay Public or Go Private: A Comparative Analysis of Water Services Between Quito and Guayaquil," Grupo FARO – Fundación para el Avance de las Reformas y las Oportunidades, for Inter-American Development Bank.

Many Latin American countries face similar water problems: deteriorating systems and networks, lack of access to water and sewage for many of the populations' poorest and governments without the resources or expertise to invest in change. Unfortunately, there is little consensus on how to improve. Many countries, including Ecuador, have embarked on various forms of privatization to increase investment in infrastructure and improve service provision and water quality. In light of contradictory evidence on effects of privatization, we look at water providers in two cities in Ecuador, Guayaquil which privatized and Quito which implemented reforms but maintained public delivery. In this study, we measure several indicators of water coverage, quality, and prices in both cities, both before and after privatization of water services in Guayaquil. We then compare changes in these indicators (before and after privatization) between the two cities to establish an association between differences and the privatization of water services. Our data allow us to control for income and, thus, evaluate how these indicators have changed, particularly, among the poor.

Warner, Mildred. E. 2006. "Market-Based Governance and the Challenge for Rural Governments: U.S. Trends" *Social Policy and Administration: An International Journal of Policy and Research* 40(6):612-631.

Privatization and decentralization represent market-based approaches to government. Designed to increase efficiency and responsiveness of government, these approaches also limit the potential for redistribution. A key question is how will rural governments compete in such a market based system? Will they be favored, as their reliance on market provision for public goods is higher due to the smaller number of services provided by government? Or will they be less able to compete due to the costs of sparsity which may make them less attractive to market suppliers? Data from the United States covering the period 1992-2002, show that rural areas are not favored by either of these trends – privatization or decentralization. Managerial weakness does not explain the shortfall. Rural areas are not as attractive to market suppliers and thus are disadvantaged under market based service delivery approaches. Although national policy continues to advance a privatization agenda, policymakers should be concerned about the uneven impacts of such market based approaches.

Warner, M.E. and James E. Pratt, 2005. "Spatial Diversity in Local Government Revenue Effort Under Decentralization: A Neural Network Approach," *Environment and Planning C: Government and Policy*, 23(5):657-677.

Decentralization reflects a global trend to increase the responsiveness of state and local governments to economic forces, but it raises the challenge of how to secure redistributive goals. Theoretically, as the equalizing impact of federal aid declines under devolution, we expect sub-national state level government policy to become more important and geographic diversity in local governments' efforts to raise revenue to increase. This paper explores the impact of state fiscal centralization and inter-governmental aid on local revenue effort using Census of Governments data for county areas from 1987 for the Mid-Atlantic and East North Central region of the United States with particular attention to rural counties. The 1987 period is chosen because it is the first year that state policy trends diverge from federal decentralization trends and both state aid and state centralization *increased* while federal aid to localities continued to decline. Using a neural network approach, we explore the spatially differentiated impact of state policy and find complementary responses in effort among some localities and substitution responses among others. Classification tree analysis of this diversity shows that decentralization and the competitive government it promotes are likely to exacerbate inequality among local governments under decentralization.

Warner, M.E. and Jennifer Gerbasi. 2004. "Rescaling and Reforming the State under NAFTA: Implications for Subnational Authority," *International Journal of Urban and Regional Research*. 28(4):853-73.

The new free trade agreements are rescaling governance in ways that have critical implications for subnational governments. The nation state is not simply being hollowed out, rather a new governance nexus is forming – of nation states, multinational corporations and international agreements - which explicitly excludes subnational and local government voice. This paper describes the new governance features of the North American Free Trade Agreement (NAFTA) and illustrates how they work out at the national, subnational and local scales using cases from the United States and Mexico. NAFTA provides the template for other free trade agreements including the Free Trade Area of the Americas (FTAA) and a growing number of bilateral agreements. We show how NAFTA's governance structure is undermining subnational and local government authority in legislative and judicial arenas. Designed to advance privatization of public services, these agreements undermine the very ability of local governments to use markets for public goods by defining traditional state and local governance mechanisms as 'non-tariff barriers to trade.' Contradictions between private profit and public interest appear at the subnational level but their resolution is engaged at the global level between private investors and the nation state. Recognition of this rescaling requires attention to the reforming state and its implications for subnational authority and democratic representation and voice.

Hefetz, Amir and M. Warner, 2004. "Privatization and Its Reverse: Explaining the Dynamics of the Government Contracting Process" *Journal of Public Administration, Research and Theory*, 14(2):171-190.

Empirical evidence shows local government contracting is a dynamic process that includes movements from public delivery to markets, and from market contracts back to in-house delivery. This "reverse contracting" reflects the complexity of public service provision in a world where market alternatives are used along with public delivery. We develop a methodology to link responses to national surveys and create a longitudinal data set that captures the dynamics of the contracting process. We present a framework that incorporates principal agent problems, government management, monitoring and citizen concerns, and market structure. Our statistical analysis finds government management, monitoring and principal agent problems to be most important in explaining both new contracting out and contracting back-in. Professional managers recognize the importance of monitoring and the need for public engagement in the service delivery process. The results support the new public service that argues public managers do more than steer a market process, they balance technical and political concerns to secure public value.

Warner, M.E. and Amir Hefetz 2004. "Pragmatism over Politics: Alternative Service Delivery in Local Government, 1992-2002," chapter in *The Municipal Year Book 2004*. Washington, DC: International City County Management Association.

In response to increased interest in privatization, ICMA has been tracking local governments' use of alternative service delivery approaches since 1982. What is interesting about the trends is how little they have changed over these years. Almost all governments responding to the ICMA surveys use at least one form of alternative service delivery. However, despite strong political support for privatization and a reduction in opposition, direct public delivery is still the most common form of service delivery. For profit privatization and inter-governmental contracting are the most common alternatives and their usage has ranged from 15-20 percent of services over the period with a slight drop from 1997 to 2002. Use of non-profit contracting has been stable at less than half the rate of for profit privatization. What has risen most dramatically over the 1992-2002 time period is the use of mixed public/private provision. These data suggest local governments are mature and experienced in their use of alternative service delivery. The 2002 survey results show lack of competitive markets and problems with contractor performance as explanations for the relative flatness of the trends.

Jennifer Gerbasi, and Mildred Warner. 2004, "Is There a Democratic Deficit in the Free Trade Agreements? What Local Governments Should Know," *Public Management* 86:2 (16-21). Available at <http://government.cce.cornell.edu/doc/pdf/PublicManagement.pdf>

In the past, trade treaties have focused on customs regulations and tariffs that are in the purview of the federal government. The new trade agreements, however, reach into nearly every aspect of government. Free trade goals focus on removing perceived barriers to the flow of money, services, and goods. Specifically, the new generation of free trade agreements presents these challenges to state and local governmental authority: 1) Superior rights are granted to foreign investors, 2) Private international tribunals replace public courts, 3) Many public services may be subject to free trade provisions, 4) Free trade goals conflict with government charters, 5) Free trade agreements cause a democratic deficit.

Warner, M.E., 2003. "Competition, Cooperation and Local Governance," chapter 19 pp 252-262 in *Challenges for Rural America in the Twenty First Century*, edited by David Brown and Louis Swanson, University Park, PA: Penn State University Press.

Privatization, decentralization and civic participation are common themes characterizing the changing structure and organization of local governments. Privatization and decentralization are based on the positive power of competition to ensure governmental efficiency and responsiveness to citizen voice. These trends represent important innovations but they also bring new challenges. Successful decentralization requires administrative and financial capacity and effective citizen participation, but many rural governments lack an adequate revenue base or sufficient professional management capacity. Rural residents have relied more on private markets than government for many services; however, rural areas have also suffered from under development due in part to uneven markets. As we move into the 21st century, government innovation based on competition may give way to innovations based on cooperation. Cooperation between levels of government and with private sector and civil society actors may offer greater potential for efficiency and equity than competitive markets. However, cooperation will also bring challenges. The governance of cooperative networks will require new mechanisms for accountability and voice. Ensuring equity and participation in these new governance structures will be especially important for rural communities.

Warner, M.E. and A. Hefetz. 2003. "Rural-Urban Differences in Privatization: Limits to the Competitive State," *Environment and Planning C: Government and Policy* 21(5): 703-718.

Despite two decades of experience with privatization, U.S. local government use of contracting in public service delivery remains relatively flat. Market approaches to public goods provision emphasize the competitive state, and attribute limited privatization to bureaucratic resistance. Rural development theory emphasizes the

uneven impact of market solutions in rural communities. Using national data on U.S. local government service delivery from 1992 and 1997, we analyze differences in local government service delivery patterns by metropolitan status. Discriminant analysis shows that structural features of markets are more important than managerial capacity of government leaders in explaining lower rates of privatization among rural governments. These structural constraints limit the applicability of competitive approaches to local government service delivery. Our results suggest cooperation, as an alternative to privatization at the local level and as a source of redistributive aid at the state level, may provide a more equitable alternative for disadvantaged rural communities.

Warner, M.E. with Mike Ballard and Amir Hefetz 2003. "Contracting Back In – When Privatization Fails," chapter 4 pp 30-36 in *The Municipal Year Book 2003*. Washington, DC: International City County Management Association.

Between 1992 and 1997, the most common forms of alternative service delivery (privatization to for profits and non profits and inter-municipal cooperation) increased only slightly. Service delivery by public employees remained dominant. The stability in these trends belies a more dynamic process of contracting out and back in which reflects the key market structuring role played by local governments. During this period, 96% of responding governments newly contracted out at least one service and 88% brought at least one contracted-out service back in house. The reasons for contracting back in include lack of a competitive market of alternative suppliers, difficulties with contract specification, and the high costs of monitoring.

Warner, M.E. and A. Hefetz. 2002. "The Uneven Distribution of Market Solutions for Public Goods," *Journal of Urban Affairs*, 24(4): 445-459.

Using national data on local government service delivery from 1992 and 1997, this article assesses the distribution of privatization and inter-municipal cooperation across localities in the metropolitan region and finds them most common among suburbs. Coasian economics argues market solutions may offer an alternative to regional government in the fragmented metropolitan area. However, our discriminant analysis shows the use of market solutions is highest in suburban communities that also exhibit high income and low poverty. Thus, market solutions appear to reflect the inequality among municipalities in the metropolitan region. Some system of regional market governance is still needed to internalize the costs arising from regional inequality in public service delivery.

Warner, M.E. and A. Hefetz. 2002 "Applying Market Solutions to Public Services: An Assessment of Efficiency, Equity and Voice," *Urban Affairs Review*, 38(1):70-89.

Political fragmentation in metropolitan regions makes equitable and efficient delivery of public services difficult. Regionalism, although promoted as more equitable and rational, has found limited political support. Public choice theory argues, against regionalism, that political fragmentation can promote competition

and efficiency by creating markets for public services. We assess the efficacy of market solutions for metropolitan public service provision by comparing privatization with inter-municipal cooperation and evaluating each on efficiency, equity and democracy grounds. Using probit regression analysis of a national survey of local government service delivery from 1992 and 1997, we find both alternatives promote efficiency, but equity and voice are more associated with inter-municipal cooperation than privatization.

Ballard, Michael J. and M.E. Warner 2000. "Taking the High Road: Local Government Restructuring and the Quest for Quality." Pp 6/1 - 6/53 in *Power Tools for Fighting Privatization*, American Federation of State, County and Municipal Employees: Washington DC. Available at <http://www.cce.cornell.edu/restructuring/>

All local governments face challenges to improve service delivery. This report outlines two alternative strategies—the "high road" which uses new management innovations to increase internal productivity, and the "low road" which focuses on downsizing and contracting out. This study provides a longitudinal look at contracting and presents detailed case studies of municipalities, which have brought back in house previously privatized services. These case studies provide empirical evidence on the problems associated with contracting and the potential for internal restructuring as an alternative.

Warner, M.E. 2001. "State Policy Under Devolution: Redistribution and Centralization," *National Tax Journal* Vol LIV(3):541-556.

Political theory argues redistributive spending is best made at higher levels of government, but under devolution, state policy becomes the most significant arena for redistributive activity. Using Census of Government data for 1992, this paper compares Federal and State aid to county areas and considers the role of state centralization of fiscal responsibility on local revenue raising efforts. Both the magnitude and redistributive nature of state aid are greater than federal aid. However, because state centralization has a large impact on reducing local fiscal stress, differences in state policy choices create a very uneven landscape of local tax effort.

Warner, M.E. and Robert Hebdon. 2001 "Local Government Restructuring: Privatization and Its Alternatives," *Journal of Policy Analysis and Management* 20(2):315-336

Local government restructuring should no longer be viewed as a simple dichotomy between private and public provision. A 1997 survey of chief elected township and county officials in New York shows local governments use both private and public sector mechanisms to structure the market, create competition and attain economies of scale. In addition to privatization and inter-municipal cooperation, two alternative forms of service delivery not previously researched, reverse privatization and governmental entrepreneurship, are analyzed. Logistic regression on the 201 responding governments differentiates the decision to restructure from the level and complexity of restructuring. Results confirm that

local governments are guided primarily by pragmatic concerns with information, monitoring and service quality. Political factors are not significant in the restructuring process and unionization is only significant in cases of simple restructuring (privatization or cooperation used alone). Fiscal stress is not a primary motivator, but debt limits do encourage more complex forms of restructuring. Restructuring service delivery requires capacity to take risks and is more common among experienced local officials in larger, higher income communities. Restructuring should be viewed as a complex, pragmatic process where governments combine public and private provision with an active role as service provider and market player.

Warner, M.E. and Amir Hefetz, 2001. "Privatization and the Market Role of Government," Briefing Paper, Economic Policy Institute, Washington, DC. Available at epinet.org.

Using longitudinal data from 1982 to 1997, we show that the local decision to provide public services is complex and dynamic. Local governments use a range of service restructuring alternatives including privatization, mixed public/private provision and cooperation between governments. Service delivery is a dynamic process reflecting changing citizen demand for services and new privatization. The data also show significant instability in contracts, including contracting in - the reverting back to public provision of previously privatized services. This "reverse privatization" may reflect problems with the contracting process itself, limited efficiency gains, erosion in service quality or concern over the loss of broader community values associated with public service delivery. Privatization does not imply a retreat of government but rather a more active engagement with the market. Whether as regulator, contractor or direct service provider, local governments manage markets to create competition and ensure service quality and stability. This pragmatic market structuring role is critical to ensure that both efficiency and the broader public benefits of service delivery are achieved.

Warner, M.E. 2000. "Structuring the Market for Service Delivery: A New Role for Local Government." pp 85-104 in *Local Government Innovation: Issues and Trends in Privatization and Managed Competition*, Robin Johnson and Norman Walzer eds. Westport, CT: Quorum Books.

Case study analysis of reverse privatization among New York State towns and counties shows how governments engage the market to ensure competition, control and attention to community values. The nature and relative importance of three alternatives to privatization – inter-municipal cooperation, reverse privatization and governmental entrepreneurship are described.

For more information contact:
Mildred E. Warner

Professor, Dept. of City and Regional Planning, 215 W. Sibley Hall Cornell University
Ithaca, NY 14853-6701
607-255-6816, 607-255-1971 (fax), mew15@cornell.edu,
Local Government Restructuring Web Site
<http://restructuringlocalgovernment.org/warner/index.html>

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Regionalism

The modern metropolitan area typically contains multiple political jurisdictions. Public choice theorists argue political fragmentation will enhance choice and efficiency in local government service provision. However, the political fragmentation of the metropolitan area makes it difficult to address economic development, service provision or democratic voice at the regional level. Consolidationists argue that regional government is the solution. However, support for regionalism is weak. Alternatives such as inter-municipal cooperation or functional consolidation (specific to a service) have been much more popular. These solutions also raise problems of equity and democratic representation and the ability to address the need for broader multi-functional coordination.

This page outlines the theoretical issues underlying political fragmentation and regionalism. It also highlights some policy solutions and alternatives to regionalism such as inter-municipal cooperation and discusses some of the legal and accountability concerns raised by these approaches.

- [Theory: The Benefits of Political Fragmentation](#)
- [Regionalism and its Challenges](#)
an overview of the regionalism debate.
- [Regional Policy Innovations](#)
- [Alternatives to Regionalism: Intermunicipal Cooperation and Functional Consolidation](#)
Intermunicipal Cooperation and Functional Consolidation are some alternatives to the political fragmentation associated with regionalism.
- [Accountability Issues](#)
concerns about how intergovernmental arrangements can ensure accountability and equity.
- [Legal Concerns](#)
the legal process and considerations behind decisions to implement intermunicipal cooperation.
- [Experiences in New York State](#)
examinations of the potential benefits of regional cooperation and its applicability in New York State.

Theory: The Benefits of Political Fragmentation

Tiebout, Charles 1956. "[A Pure Theory of Local Expenditures](#)," *Journal of Political Economy* 64:416-424. In this classic public choice theory article Charles Tiebout puts forth a model for determining the optimum expenditure level for public goods. He argues there is a market of local governments where mobile 'consumer citizens' "shop around" for the communities that best fit their preferences. The competition among communities forces them to provide public goods at the most efficient level.

Boyne, George A. 1996. "[Competition and Local Government: A Public Choice Perspective](#)." *Urban Studies* 33 (4-5): 703-721. Boyne discusses the different types of competition in local government, and the structure and implications of each one.

Regionalism and its Challenges *an overview of the regionalism debate.*

Briffault, Richard 2000. "[Localism and Regionalism.](#)" *Buffalo Law Review* 48(1):1-30. Widespread resistance to regionalism is not due to disagreement with the notion of the region as a socio-economic and ecological entity, but rather to political reasons, especially the power of localism to ensure democratic voice.

Frug, Gerald. 2000. "[Against Centralization,](#)" *Buffalo Law Review*. Vol. 48, No. 1, pp. 31-38 Frug argues against the widespread assertion that centralization and government consolidation is the only solution to solving metropolitan problems. He believes that decentralization can work as long as there is a constant dialogue across jurisdictions regarding the urban problems that affect everyone in a metropolitan area.

Lowery, David 2000. "[A Transactions Costs Model of Metropolitan Governance: Allocation versus Redistribution in Urban America,](#)" *Journal of Public Administration Research and Theory* 10(1)(January):49-78. Lowery offers a critique of the public choice approach to local governance and a synthesis of the case for metropolitan consolidation. First, the nature of individual decision making implicit within the case for consolidation is examined. Second, its propositions on boundaries are discussed. And third, consolidationist assumptions about institutions and individual choice are evaluated in light of the public choice case for jurisdictional fragmentation.

Bollens, Scott 1997. "[Concentrated Poverty and Metropolitan Equity Strategies.](#)" *Stanford Law and Policy Review* 8(2):11-23. Although regionalism is a way to combat urban inequality, Bollens criticizes current models of regionalism, citing the difference between "things regionalism" and "people regionalism." Things regionalism is based on systems (transportation, water, etc) and may exacerbate inequality, while people regionalism is focused on community development in place. Bollens offers ten Metropolitan Equity Strategies aimed at alleviating inner city poverty and metropolitan segregation by way of people regionalism.

MacLeod, G., 2001. "[New Regionalism Reconsidered: Globalization and the Remaking of Political Economic Space.](#)" *International Journal of Urban and Regional Research* 25.4 (December): 804-829(26). This article gives an assessment of "New Regionalist" research. The goal is to analyze why some regions have grown so effectively and why one scheme for growth may not work for every region. The author delineates his ideas for the future of regionalism, as related to globalization.

Brenner, Neil (1999). "[Globalisation as Reterritorialisation: The Re-scaling of Urban Governance in the European Union,](#)" *Urban Studies* 369(3):431-451. Globalization results in reterritorialization: to adapt to global competition, states are reorganizing themselves to give their major urban areas new capacity. It is the implications of this reterritorialization, stemming from the contemporary capitalist expansion, that Brenner argues we must properly conceptualize and study as part of the emerging literature on globalization.

Jessop, Bob 1997. "[The Entrepreneurial City: Re-imagining localities, redesigning economic governance or restructuring capital,](#)" pp 28-41 in *Transforming Cities: Contested Governance and New Spatial Divisions* ed. by Nick Jewson and Susanne MacGregor. Routledge: London. Jessop contextualizes the idea of the entrepreneurial city. He claims that the forces of globalization, including the decreasing sovereignty of the national state, make it necessary for cities to adopt new methods of production and governance in order to become the drivers of the global economy.

Regional Policy Innovations

Orfield, Myron.1997. "[Metropolitics: Coalitions for Regional Reforms,](#)" *Brookings Review*. 15(1):6-9.<http://www.brookings.edu/press/review/winter97/morfield.htm> Orfield discusses the processes of sprawl and socio-economic polarization, and then offers regionally-implemented methods for attacking the resulting concentration of poverty.

Also available: Orfield Myron, 1997. [Metropolitics](#). Washington, D.C.: Brookings Institution. This popular book discusses how using maps, the Minneapolis-St. Paul region was able to see the need for metropolitan government.

Rusk, David. 1993. *Cities without Suburbs*. Washington D.C.: Woodrow Wilson Center Press. David Rusk, former Albuquerque mayor and New Mexico state legislator points out that elastic cities, that capture their

suburbs, have lower social problems and better fiscal status. He presents three options for the creation of metro governments: empowering urban counties, consolidating cities and counties, and combining counties into regional governments.

Rusk, David, 1999. [Journeying Through Urban America](#). Brookings Institution Press, Washington D.C. Chapter 1: [Inside Game, Outside Game](#) Through the use of US Census Data, David Rusk classifies cities as "elastic" or "inelastic." Elastic cities are able to absorb population growth within the central municipality, therefore achieving diversity and economic development, while inelastic cities lose population growth to the suburbs, causing the loss of their white middle class and decline of their tax base. Rusk compares the "inside game" of fighting decline within a city to the most-important "outside game" of employing regional strategies such as city-county consolidation.

THE RUSK REPORT, Thu., Nov. 20, 1997, Twin Cities Tax Base Sharing. David Rusk describes the tax base sharing plan, in place since 1971, among the municipalities of the Minneapolis-Saint Paul metropolitan region.

Alternatives to Regionalism: Intermunicipal Cooperation and Functional Consolidation *Intermunicipal Cooperation and Functional Consolidation are some alternatives to the political fragmentation associated with regionalism.*

Intermunicipal cooperation may be defined as an arrangement between two or more governments for accomplishing common goals, providing a service, or solving a mutual problem. It is one of the most useful strategies for achieving efficient and effective service delivery. Nationally, it is a more popular form of service restructuring than privatization. This page highlights the relevant literature on several aspects of intermunicipal cooperation, with links to more in-depth summaries.

Functional consolidation involves cooperation across jurisdictions for a common service. Transportation authorities or water and sewer districts are common examples. The challenge of functional consolidation however is the inability to address issues that cross functional boundaries.

Foster, Kathryn 1996. "[Specialization in Government: The Uneven Use of Special Districts in Metropolitan Areas.](#)" *Urban Affairs Review* 31(3): 283-313. Foster assesses four alternative theoretical perspectives on the uneven use of special districts in local government service delivery. The number of special districts has increased remarkably in the past several decades, and this article is an attempt at explaining the motivations behind district use.

Warner, M.E. and A. Hefetz. 2002. "[The Uneven Distribution of Market Solutions for Public Goods,](#)" *Journal of Urban Affairs*, 24(4): 445-459. Using national data on local government service delivery from 1992 and 1997, this article assesses the distribution of privatization and inter-municipal cooperation across localities in the metropolitan region and finds them most common among suburbs that also exhibit high income and low poverty. Thus, market solutions appear to reflect the inequality among municipalities in the metropolitan region.

Warner, M.E. and A. Hefetz. 2002 "[Applying Market Solutions to Public Services: An Assessment of Efficiency, Equity and Voice,](#)" *Urban Affairs Review*, 38(1):70-89. This article assesses the efficacy of market solutions for metropolitan public service provision by comparing privatization with inter-municipal cooperation and evaluating each on efficiency, equity and democracy grounds.

Parks, Roger, and Ronald Oakerson. 1993. "[Comparative Metropolitan Organization: Service Production and Governance Structures in St. Louis, MO, and Allegheny County, PA.](#)" *Publius* 23: 19-39. In this article, the authors identify and measure key structural characteristics of "fragmented" metro areas, employing a comparative study of two metropolitan city-counties: St. Louis City and County, MO, and Allegheny County (Pittsburgh), PA. They introduce a conceptual tool for measurement of production structure (horizontal versus vertical nature of service, and integration versus differentiation of governments).

Cigler, Beverly A. 1994. "[Pre-Conditions for Multicommunity Collaboration.](#)" Pp. 39-58 in [Toward an Understanding of Multicommunity Collaboration](#). AGES Staff Report 9403. Washington, DC: USDA, ERS. Cigler argues that intergovernmental collaboration can build the capacity of rural local governments, which often lack the necessary resources and expertise to adequately provide government services and conduct policy decision-making activities. However, "truly collaborative ventures" are system changing, and thus potentially threatening to existing government entities. She describes the conditions are necessary to get positive results from collaboration.

Oakerson, Ronald. 1987. "[Local Public Economies: Provision, Production and Governance.](#)" [Intergovernmental Perspective](#) 13:3/4, pp. 20-25. The author distinguishes provision from production. "Provision" refers to collective choices that determine goals, standards, and arrangement for service, whereas "production" means the more technical process of transforming inputs into outputs. Oakerson demonstrates the options linking provision with production: self-production, coordinated production, joint production, intergovernmental contracting, private contracting, franchising, and vouchering. Among these options, intergovernmental contracting and private contracting are the most widely practiced in the United States.

Jansen, Annica. 1994. "[Multi-Community Collaboration and Linkages: A Framework for Analysis.](#)" pp. 59-76 in [Toward an Understanding of Multicommunity Collaboration](#). AGES Staff Report 9403. Washington, DC: USDA, ERS. Jansen defines four types of intergovernmental relationships by means of local capacity (having the institutions necessary to deal with information) and centrality (having organizational linkages with the political and economical center of decision making). The author argues that when both centrality and local capacity are higher or both are absent, the relationship is stable. When there is a disparity between levels of centrality and local capacity, however, a region will seek to equalize the force.

Lyons, W.E. and D. Lowery. 1989. "Governmental Fragmentation Versus Consolidation: Five Public Choice Myths about How to Create Informed, Involved and Happy Citizens," [Public Administration Review](#) 49(6):533-43.

Advisory Commission on Intergovernmental Relations (ACIR). 1974. "[Local Government Reorganizational Issues.](#)" [The Challenge of Local Government Reorganization](#). Washington, DC: U.S. Government Printing Office. Theorists have developed various models for government service assignment, which include criteria such as polycentricity/decentralization, federation/consolidation. These models all have supporters who claim their various merits based on the criteria of efficiency, equity, public satisfaction with service, and so on. Empirical findings show that no model appears to be completely effective or without deficiencies.

Accountability Issues *concerns about how intergovernmental arrangements can ensure accountability and equity.*

Perlman, Ellen. 1993. "[Secretive Governing: Authorities proliferate; So Does Possible Misconduct.](#)" [City and State](#). March 1, pp. 9-11. This article notes that the number of special intergovernmental districts increased by 12% between 1987 and 1992. The author cites several reasons why legislative bodies choose to create special districts: 1) they are a way of skirting state constitutional limits on taxation, spending, and borrowing. 2) they enable state and local governments to appear to be cutting their budgets while continuing to ensure service provision 3) they are a tools for intergovernmental collaboration cutting across political boundaries to meet regional needs. However, due to the lack of direct public accountability, there is a high possibility of abuse such as nepotism, overpricing, and mismanagement.

Advisory Commission on Intergovernmental Relations (ACIR). 1974. "[Alternative Government Structures.](#)" [Government Functions and Processes: Local and Areawide](#). Washington, DC: U.S. Government Printing Office. After evaluating many types of intergovernmental cooperation in terms of authority, efficiency, equity, and accountability, this article suggests that comprehensive reforms to existing local governments--federation, city-county consolidation, and urban county--provide an effective strategy in the area of accountability, equity and authority. Patchwork strategies--intergovernmental service agreements, functional transfers, and multipurpose areawide districts--are less effective in the area of equity and accountability.

Legal Concerns *the legal process and considerations behind decisions to implement intermunicipal cooperation.*

Carpinello, George F., and Patricia E. Salkin. 1990. "[Legal Processes for Facilitating Consolidation and Cooperation Among Local Government: Models from Other States.](#)" Albany, NY: Nelson A. Rockefeller Institute of Government. This article introduces the legal structure and processing to facilitate cooperation, consolidation among local government entities in U.S. and a few foreign countries. The authors suggest that in order to enforce the changes more efficiently and effectively, some special preparations must be required such as giving voters a periodic opportunity to express their desire to study options.

Coon, James A. n.d. "[Intergovernmental Cooperation.](#)" Local Government Technical Series. Albany, NY: Department of State. This article discusses possible reasons for considering formal intergovernmental cooperation and presents practical and legal considerations. The author points out that the desirability of cooperative efforts among governments depends on economies of scale, convenience of performing the task, distribution of natural resources, surplus physical facilities, and the need for duplication of services. In addition, the author addresses legal information needed for two types of formal cooperative agreements: service agreements and joint agreements.

Briffault, Richard. "The Law of Local Government Restructuring and Cooperation in New York." In New York State, local governments have the power to cooperatively provide any facility or service they provide individually. However, actual annexation or consolidation of units of government is more difficult. The New York State legislature is limited by the Home Rule Amendment, which prevents the state legislature from make laws for annexation without the consent of voters of the affected local governments. This article discusses under what conditions the New York State legislature is limited by the Home Rule Amendment.

Experiences in New York State *examinations of the potential benefits of regional cooperation and its applicability in New York State.*

Warner, M.E. and Robert Hebdon. 2001 "[Local Government Restructuring: Privatization and Its Alternatives,](#)" *Journal of Policy Analysis and Management* 20(2):315-336. This article explores the complexity of government restructuring, pointing out that restructuring should not be viewed as a simple dichotomy between public and private service provision.

Benjamin, Gerald and Richard Nathan. 2001. *Regionalism and Realism: A Study of Governments in the New York Metropolitan Area.* Washington, DC: Brookings Inst. Press.

New York State Office of the State Comptroller. 1994. "[Local Government Cooperative Service Provision.](#)" Albany, NY. (<http://www.osc.state.ny.us/localgov/muni/publicat.htm>) In this study of intermunicipal cooperation, the Office of the New York State Comptroller has provided a wealth of information, ranging from guiding legal principles to general agreement guidelines, that could facilitate a practical solution for governments seeking to improve the delivery of their services. This paper provides several pieces of advice on how best to determine whether a particular activity is suitable for intermunicipal cooperation. For example, a cost negotiation and comparison is suggested to determine whether intermunicipal cooperation could improve an activity's efficiency and effectiveness.

Liebschutz, Sarah F. 1990. "[The New York Experience with Cooperation, Coordinating Structures, and Consolidation: Selected Case Studies.](#)" This article presents six case studies of intergovernmental cooperation in New York State. The examples of successful intergovernmental cooperation have the common element of emphasizing a participatory process and cooperative problem solving rather than immediately solving a concrete problem.

Benjamin, Gerald. 1990. "[The Evolution of New York State's Local Government System.](#)" Albany, NY: Nelson A. Rockefeller Institute of Government. This paper explains the evolutionary development of four types of local governments in New York State: counties, towns, cities and villages. The author points out that these four types of local governments have converged in their structure and powers since the Civil War, thereby

increasing their similarities than their differences.

Short, John. 1990. *The Contract Cookbook for Purchase of Government Service*, 2nd ed. Council of State Governments and the National Association of State Purchasing Officials.

The author argues that contracting and purchasing is most successful when it is administered by a purchasing manager housed in a central purchasing office within a jurisdiction, as opposed to charging department heads and managers with the responsibility on an ad hoc basis. Short believes that the role of the purchasing manager is central to the success of contracting services, so there is a crucial need for purchasing managers to examine established process of purchasing and contracting and to see where there is opportunity for improvement and innovation.

The Council of State Governments, State and Local Government Purchasing, Chapter 14, "Cooperative Purchasing: Local, State and Federal Government."

This chapter covers the essential policies and necessary practices to form successful cooperative purchasing agreements among local and state governments. Cooperative purchasing is defined as arrangements by which two or more entities buy under the same contract or agreement. This article provides information and advice on the process of cooperative purchasing.

State Commission on the Capital Region. May 1996. "[Growing Together Within the Capital Region](#)," Draft Report. Albany, N.Y.: Nelson A. Rockefeller Institute of Government. This report outlines ways local governments can work together to solve common problems by sharing information and identifying areas where cooperation would be beneficial. The authors view intermunicipal cooperation as the key to improving efficiency.

Desfosses, Helen. 1994. "[Regionalization-Who Needs It?](#)" *Regional Report* 1, no. 1. Key Bank Center for Regional Studies (March). In the Capital Region people are discovering they need regional solutions to problems that spill over political boundaries. Regionalization refers to the growing interest among local governments and nongovernmental organizations to join force to tackle problems that defy solution within established political boundaries. This article introduces some successful examples of regionalism.

Broome County Partnership Council, Final Report. 1991. Binghamton, NY. This report details the recommendations of a task force charged with exploring opportunities for municipalities, county government, and school districts to share and consolidate their efforts to provide desired levels of service to the public in more efficient, cost effective, and quality conscious ways. It includes a number of fairly radical suggestions for consolidation of local governments.

Nathan, Richard P. "[Keynote Address: Reinventing Regionalism](#)." Regional Plan Association, April 26, 1994. Nathan gives several reasons why governmental consolidations have been part of our history and may help solving some of government's current problems.

Restructuring Local Government

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Reinventing Government

Sparked by privatization and business-model prescriptions for government, a debate has emerged as to the primary responsibilities of public managers. There are those who see public administration as akin to a business—providing a choice of services to citizens, at the lowest possible cost. Others believe that public management's responsibilities extend beyond this, to the preservation of public values such as equity, accountability and citizen voice. From this debate stem questions about the nature of citizenship, and the proper relationship between a democratic government and its citizens.

■ [The New Public Management](#)

is a concept articulated by David Osborne and Ted Gaebler in their 1992 book [Reinventing Government](#). It applies the business customer service model to government. Citizens are seen as customers and the administrative role is streamlined by converting policy alternatives into market choices. This approach focuses on results and promotes competition inside and outside government. We highlight the debate and recent empirical research.

■ [The New Public Service](#)

is a reaction to the New Public Management. It focuses on the mission of government, and how to determine the collective public interest. The authors believe that there are considerations that should come before cost and efficiency, and that citizen participation should be a major factor in decisions. They see the role of the administrator as very complex: synthesizing the needs of citizens, interest groups, elected representatives, etc.

■ [Social Capital and Citizen Empowerment](#)

Social Capital theories recognize the importance of norms and networks in determining social, political and economic relations. There can be a positive synergy between citizen participation and governmental effectiveness. This is why planners place so much attention on citizen participation.

The New Public Management *is a concept articulated by David Osborne and Ted Gaebler in their 1992 book [Reinventing Government](#). It applies the business customer service model to government. Citizens are seen as customers and the administrative role is streamlined by converting policy alternatives into market choices. This approach focuses on results and promotes competition inside and outside government. We highlight the debate and recent empirical research.*

Osborne, David, and Ted Gaebler. 1992. [Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector](#). Reading, MA: Addison-Wesley. The authors describe how ten new operating principles, many adapted from the private sector, can revamp the way government functions, providing numerous examples.

Osborne, David, and Peter Plastrik. 1997. [Banishing Bureaucracy: The Five Strategies for Reinventing Government](#). Reading, MA: Addison-Wesley. This followup to *Reinventing Government* details the practical application of principles designed to make government more effective, entrepreneurial, responsive, creative, and accountable.

Tendler, Judith (1997). [Good Governance in the Tropics](#). Maryland: Johns Hopkins University Press. Tendler's research is unique in that it centers on the good government practices and the role of central government in ensuring effective decentralization. Cases are drawn from Cearà, Brazil.

Feldman, Barry, M. 1999. "[Reinventing Local Government: Beyond Rhetoric to Action.](#)" *The Municipal Yearbook*. Washington, DC, ICMA. Town manager Barry Feldman initiated a study to find out how much the rhetoric of Reinventing Government has gone from academic debate to actual implementation.

Ballard, Michael J. and M.E. Warner 2000. "[Taking the High Road: Local Government Restructuring and the Quest for Quality.](#)" Pp 6/1 - 6/53 in *Power Tools for Fighting Privatization*, American Federation of State, County and Municipal Employees: Washington DC. Available at <http://government.cce.cornell.edu/doc/reports/highroad/> Using detailed case studies, this report outlines two alternative strategies for improving local government service delivery—the "high road" which uses new management innovations to increase internal productivity, and the "low road" which focuses on downsizing and contracting out.

Schick, Alan (1998). "[Why Most Developing Countries Should Not Try New Zealand's Reforms.](#)" World Bank Research Observer 13(1):123-131. Schick outlines why developing countries need to first establish a formal public sector, a strong rule-based government, and an internal market as a foundation in order to successfully apply New Zealand's public management model.

Labor Management Cooperation: An alternative to external restructuring is process improvement within government itself. For more information on labor-management cooperation generally, click [here](#). For specific examples among local governments in New York State click [here](#). For a detailed case of labor management cooperation among nursing homes, in New York State click [here](#).

The New Public Service is a reaction to the New Public Management. It focuses on the mission of government, and how to determine the collective public interest. The authors believe that there are considerations that should come before cost and efficiency, and that citizen participation should be a major factor in decisions. They see the role of the administrator as very complex: synthesizing the needs of citizens, interest groups, elected representatives, etc.

Denhardt, Janet and Robert Denhardt. [The New Public Service: Serving, not Steering](#). M.E. Sharpe, Armonk 2003. In Janet and Robert Denhardt's 2003 book *The New Public Service*, the authors offer a synthesis of the ideas that are opposed to the New Public Management presented by Osborne and Gaebler. Their model for governance builds upon and expands the traditional role of the public administrator, which they call the Old Public Administration, and contrasts with the New Public Management.

Denhardt, Robert B. and Janet Vinzant Denhardt (2000). "[The New Public Service: Serving Rather than Steering.](#)" *Public Administration Review* 60(6):549-559. The authors examine the theoretical basis of the reinvention movement, such as 1) its use of the market model, 2) its emphasis on customers, and 3) its glorification of entrepreneurial management, in the light of "democratic governance," which especially emphasizes "citizenship."

Blanchard, Lloyd A., Charles C. Hinman, and Wilson Wong, 1997. "[Market-Based Reforms in Government: Toward a Social Subcontract?](#)" *Administration and Society* 30(56) 483-512. The authors employ the concept of the Social Contract to examine changes in government/market relations within the US context, historically. The article starts by defining the fundamental reciprocal relationship between governments and citizens and examines how this relationship is being changed due to government restructuring.

Moore, M. H. (1995). *Creating Public Value: Strategic Management in Government*. Cambridge, MS: Harvard University Press. Moore sees the role of the public administrator as grounded in a clear sense of ethics and public mission—what he calls "Public Value." Moore believes that citizens receive adequate opportunity to have their voices heard from the electoral process. Therefore, it is up to the administrators, using their professional ethics and sense of mission, to make substantive judgments as to what is valuable and effective.

Social Capital and Citizen Empowerment *Social Capital theories recognize the importance of norms and networks in determining social, political and economic relations. There can be a positive synergy between*

citizen participation and governmental effectiveness. This is why planners place so much attention on citizen participation.

Robert Putnam has popularized the concept of social capital in America. While Putnam focuses primarily on inter-personal relationships, Skocpol emphasized the role of government in encouraging the development of social capital. Their debate is chronicled in the articles below.

Robert D. Putnam, "The Prosperous Community: Social Capital and Public Life" *The American Prospect* no. 13 (Spring, 1993) (<http://epn.org/prospect/13/13putn.html>).

Robert D. Putnam, "The Strange Disappearance of Civic America," *The American Prospect* no. 24 (Winter 1996). <http://epn.org/prospect/24/24putn.html>

Theda Skocpol, "Unravelling From Above," *The American Prospect* no. 25 (March-April 1996): 20-25 (http://epn.org/prospect/25/25_cnt2.html).

Robert Putnam, "Robert Putnam Responds," *The American Prospect* no. 25 (March-April 1996): 26-28 (http://epn.org/prospect/25/25_cnt.html#putn).

Warner, M.E. 1999. "Social Capital Construction and the Role of the Local State." *Rural Sociology*. 64(3):373-393. This paper looks at the role the state can play in building social capital. Three key factors: autonomy, linkage and returns on investment for both intermediaries and participating residents, are shown to affect social capital construction.

Feldman, Martha & Anne Khademian (2001). "Principles for Public Management Practice from Dichotomies to Interdependence." *Governance and International Journal of Policy and Administration* 14(3):339-361. The authors emphasize the role of society, the primacy of process that invites public participation and monitoring, and the need for administrators to be open to change.

Frug, Gerald E. "Alternative Conceptions of City Services," in *City Making: Building Communities without Building Walls*. Princeton: Princeton University Press, 1999. Frug presents his concerns over the Tiebout model of public choice and other scholars' attempts to amend it. He responds to these individualistic and consumer-oriented city models with one of his own, the fortuitous association model.

Crocker, Jarle, William Potapchuck and William Schechter 1998. *Systems Reform and Local Government: Improving Outcomes for Children, Families and Neighborhoods*. Washington DC: Center for Community Problem Solving. The authors of this booklet believe that reforming local governments can result in positive change in the lives of children and families. They offer ideas local governments can adopt to spur citizen involvement in communities and neighborhoods.

Abers, Rebecca, 1998. "From Clientelism to Cooperation: Local Government, Participatory Policy and Civic Organizing in Porto Alegre, Brazil," *Politics and Society* 26(4): 511-537. The authors describe the Grants for Blocks program, which began in 1993 in Savannah, GA, as an example of a local government initiative to increase citizen involvement in the community. The program gives small grants to citizens for neighborhood improvement projects of their own design.

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Decentralization

Decentralization refers to the global trend of devolving the responsibilities of centralized governments to regional or local governments. The promise of decentralization is to enhance efficiency (through inter-governmental competition and fiscal discipline) and democratic voice (though enhanced local voice over service provision). Fiscal federalism – the assignment of tax and expenditure authority to the lowest level of government possible - creates the discipline and market features necessary to ensure productive efficiency. Decentralization works best in settings where there are strong traditions of democracy, accountability and professionalism in subnational government. It does not provide a short cut to governmental capacity in situations where these preconditions are absent. Decentralization may enhance productive efficiency but will undermine allocative efficiency by making redistribution more difficult, especially in areas with regional inequality. Thus decentralization should be used with caution in situations where there are concerns with inequality, corruption and weak managerial capacity or weak democratic traditions. The articles profiled below discuss the potential and challenges of decentralization both in the US and in developing countries.

- [Decentralization: A Global Trend](#)
- [Theories of Decentralization: the Competitive State in a Global World](#)
- [Devolution and Welfare Reform in the US](#)

Decentralization: A Global Trend

Litvack, Jennie, Junaid Ahmad and Richard Bird 1998. "[Rethinking Decentralization in Developing Countries](#)," Washington, DC: The World Bank. <http://www.worldbank.org/html/fpd/urban/cds/mf/rethinking.html>.

Litvack et al discuss the considerations for implementing decentralization in developing countries. Many of the assumptions made in the literature on decentralization don't hold for developing countries, such as the presence of exit opportunities, and voice. Possible approaches to this complex problem are discussed.

Tendler, Judith (1997). [Good Governance in the Tropics](#). Maryland: Johns Hopkins University Press. Tendler's research is unique in that it centers on the good government practices and the role of central government in ensuring effective decentralization cases are drawn from Cearà, Brazil.

Prud'homme, Remy (1995). "[The Dangers of Decentralization](#)," *World Bank Research Observer* 10(2):201.

This critique of fiscal federalism theory concludes that a loss of national redistribution of wealth due to decentralization will cause greater localization of wealth, greater disparity between rich and poor regions, and the loss of capacity of the national government to influence the market to soften times of crisis.

Bennett, Robert. 1990. "[Decentralization, Intergovernmental Relations and Markets: Towards a Post-Welfare Agenda?](#)" Pp. 1-26 in [Decentralization, Local Government and Markets: Towards a Post-Welfare Agenda](#), ed. Robert Bennett. Oxford: Clarendon Press. Bennett describes the worldwide movement from "welfarist" policy to "post-welfare" policy. During the post-World War II era, a system of entitlements was developed in many Western nations and the state became a major provider of education, health services, land-use planning, and housing. In recent years, however, there has been a shift in thinking, and in the U.S., the idea of "new

federalism" has gained great currency.

Kodras, Janet. 1997. "[Restructuring the State: Devolution, Privatization, and the Geographic Redistribution of Power and Capacity in Governance.](#)" Pp. 79-96 in *State Devolution in America: Implications for a Diverse Society*. Ed. Lynn Staeheli, Janet Kodras, and Colin Flint. Urban Affairs Annual Reviews 48. Thousand Oaks, CA: Sage. Kodras outlines some of the major arguments for and against three methods of changing how government services are provided: privatization, devolution to lower levels of government, and simply abandoning service provision to the nonprofit sector.

Stohr, Walter (2001). "[Introduction](#)" in *New Regional Development Paradigms: Decentralization, Governance and the New Planning for Local-Level Development*. Eds. Stohr, Walter and Josef Edralin and Devyani Mani. Published in cooperation with the United Nations and the United Nations Centre for Regional Development: "Contributions in Economic History Series," Number 225. Westport, CT: Greenwood Press. Stohr discusses the relationship between globalization and decentralization, and examines decentralization as a tool for achieving equity.

Theories of Decentralization: the Competitive State in a Global World

Tiebout, Charles 1956. "[A Pure Theory of Local Expenditures,](#)" *Journal of Political Economy* 64:416-424. In this classic article based on public choice theory, Charles Tiebout puts forth a model for determining the optimum expenditure level for public goods. He treats residents as consumers, who "shop around" for the communities that best fit their preferences. The competition among communities forces them to provide public goods at the most efficient level.

Boyne, George A. 1996. "[Competition and Local Government: A Public Choice Perspective.](#)" *Urban Studies* 33 (4-5): 703-721. Boyne discusses the different types of competition in local government, and the structure and implications of each one.

Peterson, Paul. 1995. *The Price of Federalism*. Washington, Brookings Institute. In this book, Peterson examines New Federalism in the context of modern economic reality. He asserts that because of the mobility of labor and capital, states are in greater competition with each other than ever before, causing them to focus more on economic development and less on social welfare. Therefore, welfare should remain the responsibility of the federal government, even as other basic governmental programs are devolved.

Peterson, Paul. 1981. [City Limits](#). University of Chicago Press.

Cerny, Philip G. 1999. "[Globalization and the Erosion of Democracy.](#)" *European Journal of Political Research*, 26:2. In this article Philip Cerny analyzes democracy, specifically its form and function in today's globalized world. He asserts that liberal democracy is being eroded through increased globalization and internationalism, and therefore factors such as public accountability, responsiveness, policy capacity, and legitimacy are all in decline. The result is the emergence of ad hoc public and private governance structures that undermine the democratic state from above and below, leading to a "durable disorder" of overlapping and competing institutions.

Donahue, John D. 1997. "[Tiebout? or Not Tiebout? The Market Metaphor and America's Devolution Debate.](#)" *Journal of Economic Perspectives* 11(4) 73-82. Donahue outlines the discontinuities between the Tiebout model of interjurisdictional competition and the reality of American cities in the age of devolution.

Donahue, John D. 1997. [Disunited States](#). New York: Basic Books. Donahue argues that decentralization is not, in fact, the solution to America's governance problems. There is little evidence that the public sector will be more efficient at the state level than it is the federal level. Instead, America should focus on the challenges of mitigating cynicism in government on the public's part and narrowing the gap between the benefits expected from government and citizen willingness to endure taxation.

Brenner, Neil (1999). "[Globalisation as Reterritorialisation: The Re-scaling of Urban Governance in the](#)

European Union," *Urban Studies* 369(3):431-451. Globalization results in reterritorialization: to adapt to global competition, states are reorganizing themselves to give their major urban areas new capacity. It is the implications of this reterritorialization, stemming from the contemporary capitalist expansion, that Brenner argues we must properly conceptualize and study as part of the emerging literature on globalization.

Jessop, Bob 1997. "The Entrepreneurial City: Re-imagining localities, redesigning economic governance or restructuring capital," pp 28-41 in *Transforming Cities: Contested Governance and New Spatial Divisions* ed. by Nick Jewson and Susanne MacGregor. Routledge: London. Jessop contextualizes the idea of the entrepreneurial city. He claims that the forces of globalization, including the decreasing sovereignty of the national state, make it necessary for cities to adopt new methods of production and governance in order to become the drivers of the global economy.

Warner, M.E. and A. Hefetz. 2003. "Rural-Urban Differences in Privatization: Limits to the Competitive State," *Environment and Planning C: Government and Policy* 21(5): 703-718. Despite two decades of experience with privatization, U.S. local government use of contracting in public service delivery remains relatively flat, and rural governments privatize less than others. Using national data on U.S. local government service delivery from 1992 and 1997, the authors analyze differences in local government service delivery patterns by metropolitan status.

Warner, Mildred and Jennifer Gerbasi. "Rescaling and Reforming the State under NAFTA: Implications for Subnational Authority." *International Journal of Urban and Regional Research* December 2004 Vol 28(4): 853-73. This paper describes the new governance features of the North American Free Trade Agreement (NAFTA) and illustrates how they work out at the national, subnational and local scales using cases from the United States and Mexico. The authors show how NAFTA's governance structure is undermining subnational and local government authority in legislative and judicial arenas.

Warner, M.E., 2003. "Competition, Cooperation and Local Governance," chapter 19 pp 252-262 in *Challenges for Rural America in the Twenty First Century*, edited by David Brown and Louis Swanson, University Park, PA: Penn State University Press. Successful decentralization requires administrative and financial capacity and effective citizen participation, but many rural governments lack an adequate revenue base or sufficient professional management capacity. Rural residents have relied more on private markets than government for many services; however, rural areas have also suffered from under development due in part to uneven markets. This chapter explores the emergence of cooperative networks as an alternative to decentralization, focusing on the preservation of equity and voice.

Devolution and Welfare Reform in the US

Katz, Michael 2001. The Price of Citizenship: Redefining the American Welfare State. New York: Metropolitan Books. Michael Katz delineates the current state of social policy in the United States, focusing on the political and economic trends that limit welfare and its ability to alleviate poverty and inequality. He discusses inaccurate views Americans hold of welfare, the ascension of conservative political theory, the devolution to the states, the increased use of private markets to provide social goods, and the impact of these trends on citizenship.

Peterson, Paul 1995. "Who Should Do What? Divided Responsibility in the Federal System," *The Brookings Review* 13(2): 6-11. Peterson discusses the roles of local, state and federal government in the provision of two types of public policies, developmental and redistributive. He points to recent history to argue that state and local governments should fund the development necessary to sustain economic growth, but that federal government should provide redistribution necessary to compensate those that do not benefit from the growth.

Powers, Elizabeth. 1999. "Block Granting Welfare: Fiscal Impact on the States," Occasional Paper 23. Washington DC: The Urban Institute. <http://www.urban.org/url.cfm?ID=309040> Powers discusses the effects of a change from matching funds to block grants on states' welfare programs. It is possible that a "race to the bottom" will be triggered by states trying to cut costs, resulting in stricter eligibility requirements and reduced benefits.

Weir, Margaret. 1997. "The Uncertain Future of Welfare Reform in the Cities." *The Brookings Review* Winter 1997 Vol. 15 No. 1 Pages 30-33. <http://www.brookings.edu/press/review/winter97/weir.htm> Margaret Weir examines the effect that the Welfare Reform Act of 1996 will have on cities, as the responsibility for social welfare is shifted from the national level to the state level, and in turn, to cities and urban counties.

Conlan, Timothy 1998. [From New Federalism to Devolution: Twenty Five Years of Intergovernmental Reform.](#) Washington, DC: Brookings Inst. Press. Chapter 14: "[Intergovernmental Reform and the Future of Federalism.](#)" Conlon examines the development of conservative theories of devolution through the tenures of Nixon, Reagan and Gingrich. The move toward decentralization can be viewed as the decline of the nation state as a result of the interplay of political and economic factors. The decline of the nation state and the increasing demands of citizens from local governments has led to the creation of sub-national entities that are required to take on more responsibility for provision of goods and services than before, and hence demand greater local autonomy and policy devolution.

Gold, Steven D. 1996. "[Issues Raised by the New Federalism.](#)" *National Tax Journal* 49(2) 273-87. <http://ntj.tax.org> This article explains the possible effects of devolution on public finance in the United States at the federal, state and local levels. Gold focuses on the three major aspects of New Federalism that affect state and local governments: 1) They would receive less federal aid. 2) Some of the most important aid programs would be changed from matching to non-matching grants. 3) States would have more flexibility in operating programs.

Warner, M.E. 2001. "State Policy Under Devolution: Redistribution and Centralization," *National Tax Journal* Vol LIV(3):541-556. Political theory argues redistributive spending is best made at higher levels of government, but under devolution, state policy becomes the most significant arena for redistributive activity. Using Census of Government data for 1992, this paper compares Federal and State aid to county areas and considers the role of state centralization of fiscal responsibility on local revenue raising efforts. Both the magnitude and redistributive nature of state aid are greater than federal aid. However, because state centralization has a large impact on reducing local fiscal stress, differences in state policy choices create a very uneven landscape of local tax effort.

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Network Governance, Citizenship and Free Trade

As government shifts from direct provision to use of third parties for service delivery, new challenges with respect to management, accountability and citizenship are raised. It may actually be harder to exercise control or ensure accountability when government is part of an interdependent network. This is why many scholars use the term governance rather than government to describe current conditions. These network governance arrangements alter the nature of citizenship as well, creating a democratic deficit. This section concludes with an overview of the recent free trade agreements and their impact on democracy and governments' ability to use third parties for public service provision.

- [1\) Network Governance and the Democratic Deficit](#)
- [2\) Citizenship and Governance](#)
- [3\) Free Trade and State and Local Authority](#)

1) Network Governance and the Democratic Deficit

Network management is the key theme in government today, as compared to the hierarchy command and control approach of the past. This creates special challenges for management and democracy which are outlined below.

Salamon, Lester M. (2002). *The Tools of Governance: A Guide to the New Governance*. "The New Governance and the Tools of Public Action: An Introduction." Oxford: Oxford University Press. Salamon details the transition from earlier government activities that focused on command and control direct delivery of goods and services to a new strategy that uses contracts, grants, loans, regulations, etc. to encourage a network of third parties to satisfy those demands. This leads to new challenges such as managing decentralized providers/decision-makers and blurred accountability from the diffusion of authority.

Rhodes, R.A.W., (1996). "The New Governance: Governing without Government," *Political Studies* XLIV:652-667. Rhodes grapples with the significance and definitions of "governance" in a networked system.

Blanchard, Lloyd A., Charles C. Hinman, and Wilson Wong, 1997. "Market-Based Reforms in Government: Toward a Social Subcontract?" *Administration and Society* 30(56) 483-512. The authors employ the concept of the Social Contract to examine changes in government/market relations within the US context, historically. The article starts by defining the fundamental reciprocal relationship between governments and citizens and examines how this relationship is being changed due to government restructuring.

Gutman, Dan 2000. "Public Purpose and Private Service: The Twentieth Century Culture of Contacting Out and the Evolving Law of Diffused Sovereignty," *Administrative Law Review* 52: 859- 926.

2) Citizenship and Governance

This section traces the evolution of citizenship theory from T.H. Marshall's concept of social citizenship, to newer concepts based on a recognition of globalization and the

importance of culture and place.

Turner, Bryan S. 1990. "[Outline of the Theory of Citizenship](#)," *Sociology* 24(2) (May): 189-217. Turner critiques the unitary character of T.H. Marshall's conceptual framework of citizenship. Citizenship, Turner proffers, is structured by two contradictory processes. Regionalization and localization define citizenship as linked to the development and cultural needs of each particular region. Simultaneously, globalization promotes stronger ties to global institutions and requires the transfer of political responsibilities and economic processes to the supra-national level.

Marshall, T.H. (1950). "[Citizenship and Social Class](#)" in *Citizenship Debates: A Reader* ed. by Gershon Shafir, Minneapolis: University of Minnesota Press, 1998. Marshall suggests that citizenship is the basis for legalized social inequality and looks into England's history to see how citizenship evolved over time from civil (individual) rights, to political rights, to social rights. Marshall reveals the inherent conflict between social citizenship and capitalist market relations.

Holston, James and Arjun Appadurai (1999). "[Introduction](#)" in *Cities and Citizenship* ed. by James Holston. Holston and Appadurai define citizenship as a concept including cultural, civil and socio-economic rights. They suggest that there is a transition from citizenship as a national unifier to a city-scaled local definition of personal rights including the right of difference.

Katz, Michael (2001). "[Work, Democracy, and Citizenship](#)," epilogue of *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books. In the Epilogue to his book, Katz discusses the tension between ideas of citizenship and the welfare state. He cautions against America's use of work as a criterion for full citizenship, and outlines the limits of the market as a structuring mechanism for democratic governments.

3) Free Trade and State and Local Authority

The new generation of free trade agreements is designed to promote market penetration in public service delivery. However attention to creating freer markets has come at the expense of basic governance protocols potential trumping the courts system, legislation and citizen voice.

Warner, Mildred and Jennifer Gerbasi. "[Rescaling and Reforming the State under NAFTA: Implications for Subnational Authority](#)," *International Journal of Urban and Regional Research* December 2004 Vol 28(4): 853-73. The new free trade agreements are rescaling governance in ways that have critical implications for subnational governments. The authors show how NAFTA's governance structure is undermining subnational and local government authority in legislative and judicial arenas.

Gerbasi, Jennifer and M.E. Warner, June 2003. "[The Impact of International Trade on State and Local Government Authority](#)," Dept. of City and Regional Planning Working Papers #204. Ithaca, NY: Cornell University. Available at <http://government.cce.cornell.edu/?/doc/reports/freetrade/#book1> /

Jennifer Gerbasi, Jennifer and Mildred Warner. 2004, "[Is There a Democratic Deficit in the Free Trade Agreements? What Local Governments Should Know](#)," *Public Management* 86:2 (16-21).

Gerbasi, Jennifer and Mildred Warner, 2002. [Why Should Local and State Governments Pay Attention to the New International Treaties?](#)

This article is a popular review of the implications of NAFTA for state and local government sovereignty.

Greider, William 2001. "The Right and US Trade Law: Invalidating the 20th Century," *The Nation*, October 15, 2001.

<http://www.thenation.com/doc.mhtml?i=20011015&s=greider> This article investigates Chapter 11 of NAFTA, which allows conflicts to be settled out of the court system and out of public view, by 3-member offshore arbitration panels.

Mooney, Chris 2001. "Localizing Globalization," *The American Prospect* 12(12) (July 2-16, 2001). <http://prospect.org/print/V12/12/mooney-c.html>.

Longworth, Richard C. 2001 "Government without Democracy." *The American Prospect* 12(12) (July 2-16, 2001). <http://prospect.org/print/V12/12/longworth-r.html>.



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Contracting Back In

While privatization is the most popular form of alternative local government service delivery, longitudinal analysis shows these contracts are not stable over time. Using ICMA data we can track the dynamics of local government contracting. We find contracting back in (or reverse privatization) is growing in importance. For more discussion of this phenomenon see, Hefetz and Warner 2004 *Privatization and its Reverse*. For a more descriptive account with case studies, see Warner and Hefetz 2001 [Privatization and the Market Structuring Role of Local Government](#).

Why are contracts unstable?

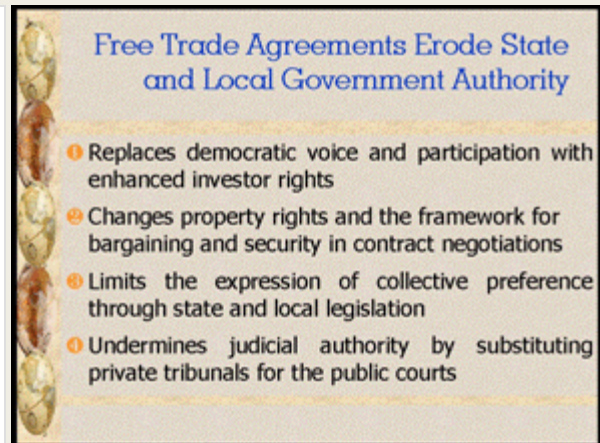
Also see Ballard and Warner 2000 [Taking the High Road: Local Government Restructuring and the Quest for Quality](#) (a [PDF version](#) is also available) for an analysis of case studies which show why governments bring the work back in. You may also [download our database of case studies](#) of contracting back in.

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Free Trade and State and Local Government

State and local governments are interested in promoting economic development for their communities. Free trade has been pursued to expand markets and create jobs. However, the new trade agreements (NAFTA, WTO, FTAA, GATS) reach beyond traditional customs and tariff regulations and impacts all government activity that may affect foreign trade. There is some concern in the governance community that these changes may lead to federal preemption of traditional powers reserved to states and localities.



This site provides an overview of these state and local government concerns. Case studies, resolutions and letters illustrate how state and local governments are asking for a balance between free trade objectives and local government authority.

- [Cases](#)
- [Resolutions](#)
- [Legislative Briefings](#)
- [Conference Presentations](#)
- [Contacts and Links](#)
- [Publications about Free Trade by Mildred Warner](#)

The Impact of International Trade on State and Local Government Authority - An Overview

- [Overview of State and Local Challenges of Free Trade Agreements](#)
- [New Rights Bring Investors on Par with Nations](#)
- [Implications for State and Local Governance](#)
 - [State Sovereignty Challenged](#)
 - [Legislative Process](#)
 - [Courts Lose Jurisdiction](#)
 - [Democratic Deficit in Negotiation Structure](#)
 - [Enhanced Property Rights Conflict with Common Planning Practices](#)
 - [Reaction of State and Local Governments](#)

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The Impact of International Trade on State and Local Government Authority

Jennifer Gerbasi and Mildred Warner

Since the 1990's, the United States has vigorously pursued and become a party to international trade agreements such as the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA). Traditional trade treaties are intended to open new commercial opportunities and technology sharing avenues which promote economic development by leveling the playing field .



The new trade agreements have the potential to open unprecedented service and goods markets bringing economic growth to U.S. investors. However, this new generation of trade agreements reaches beyond the traditional agreements that limit excessive tariffs, import limitations, or customs practices and may change substantively domestic governance at all levels. Benefits to state and local government will depend in large part on the interpretation of the agreement regarding state and local government authority.

The WTO, NAFTA, the General Agreement on Trade in Services (GATS) and the upcoming Free Trade Area of the Americas (FTAA) have been formulated to limit government participation in a number of ways in the name of free market competition. Government measures such as subsidies, taxes, health and environmental regulations, administrative rules, and government provision of goods and services are viewed as potentially interfering with the free market disciplines of competition based on price and quality.

New Generation Trade Agreements

Name	Signatories	Highlighted Impacts on Government
North American Free Trade Agreement(NAFTA) 1994	United States Canada Mexico	<ul style="list-style-type: none"> ■ Individual foreign investors can sue nations ■ Dispute resolution in secret tribunals ■ Removes state court jurisdiction over cases ■ Property redefined for foreign investors
The World Trade Organization (WTO) 1995	144 countries	<ul style="list-style-type: none"> ■ Trade-legal test for all government action ■ Binding obligations ■ Financial penalties for government actions
The General Agreement on Trade in Services (GATS) 1995	The 144 WTO Countries	<ul style="list-style-type: none"> ■ Liberalizes services listed in the agreement ■ Government provision exception limited to those services not offered privately ■ Water delivery and treatment, schools, and prisons may be open to competition
The Free Trade Area of the Americas (FTAA) In draft form Expected 2003	34 North, Central and South American countries and the Caribbean but not Cuba.	<ul style="list-style-type: none"> ■ Liberalizes all service sectors not specifically excluded ■ Draft includes NAFTA investor rights chapter ■ May extend foreign investor protection from performance requirements to domestic investors

State and local laws may be affected because the trade agreements extend to all levels of government including administrative agencies or businesses contracted to implement programs legitimized by government

authority. The United States is a federalist government in which the federal government shares powers with the states. Federal law preempts state law where they conflict. [i] Trade agreements become federal law when congress ratifies them and, therefore, trump state and local law. There is a shift in power from the state to the federal government whenever the federal government agrees to international obligations that bind the states. States are duty bound to govern for the benefit of the people of that state, which is a discriminatory standard by its nature. The federal government, through the commerce clause of the U.S. Constitution prohibits the states from inhibiting interstate commerce in pursuit of local advantage. Federal district courts hear disputes between foreign parties and the states. The federal courts interpret state law in this process and are used to avoid state bias, not to supplant federal law. Under NAFTA, foreign investors can bring these claims to binding international arbitration panels. This avoids both the state and federal domestic court systems, and any obligation to use U.S. laws. This process lacks the predictability of the U.S. court system and the framework in which local and state governments function.

Proponents of free trade consider the loss of sovereignty, and growth of international influence to be a step in the right direction for international cooperation. By extending U.S. investor protections to other countries the agreements help safeguard investments abroad. Some state and local government associations believe that the benefits can be attained without limiting the dynamic, flexible and community-based leadership role of local and state government actors.

Other analysts believe that the trade agreements shift powers away from the state toward the federal government, international arbitration panels, and individual foreign investors. NAFTA Article 105 and the NAFTA implementation language specifically assert that the federal government must take measures to ensure that sub-national government agents, quasi-governmental organizations or authorized contractors comply with the agreement obligations. Thus the agreements increase pressure on state and local governments to defer to international standards rather than community standards or custom.

New Rights Bring Investors on Par with Nations

An "investor" is any person, company or lender with a financial venture that sells goods or services in a participating country where the investor is considered foreign [ii]. These investors have a right to bring nations into international arbitration to defend government measures that affect their investments (property) negatively. These agreements expand foreign investor rights by granting:

- property rights greater than domestic citizens and
- access to an international court that can award damages for government actions that impact investor profits.

The expanded view of "property" is defined to include future profits, market share, and market access. Partial losses of profit or use of land may require government compensation. This is a greater right than U.S. citizens have under the takings clause. Partial regulatory takings are considered non-compensable, reasonable losses for the privilege of citizenship in the domestic context [iii].

Foreign investors have also been granted the right to comment on draft legislation that might affect investments. If displeased with the final legislation, foreign investors can circumvent the legislation and challenge the law by asking a secretive international arbitration tribunal to declare the law invalid under

Under NAFTA claims are

- decided in closed arbitration;
- defended by the federal government;
- the state does not have access to the hearings; and
- state law is irrelevant.

The foreign investor is on par with the nation and chooses the court, the law, and level of transparency.

Property is defined to include future profits, market share, and market access which by their nature would allow compensation for partial takings, in conflict with the U.S. takings clause.

NAFTA on a number of grounds. These changes are the basis of much of the concern voiced by state and local governments. The concern is not unfounded, and has been reinforced by the actions of some investors.

Several California communities noticed a terrible smell and taste from their water taps. A study of Santa Barbara revealed that MTBE (methyl tributyl ethanol), an additive used to make gasoline burn cleaner, had leached into the wells. Separate scientific studies found MTBE to be carcinogenic and very difficult to remove from water. Aesthetically, a few drops of MTBE can make an Olympic pool-sized reservoir of water taste and smell like turpentine. Freshwater resources are critical to California, so to protect public health and the environment, the Governor of California called for a ban of the chemical.

Methanex, a Canadian firm that provides one component of MTBE, is currently challenging California's right to ban MTBE on the grounds that it violates NAFTA Chapter 11 obligations. The company has interpreted the ban as an expropriation of their market though it accounts for only 6% of their product sales. Methanex further claims that the state should have pushed for strict compliance with existing environmental inspection regulations of underground tanks rather than eliminating the chemical. To choose the more expeditious route of eliminating the chemical from the stream of commerce conflicts with Methanex's right to be governed by the least trade restrictive methods available. Methanex is claiming nearly a billion dollars in damages including good will, reputation and future profits. The challenge is being entertained by a tribunal at the time of writing though no arguments have been made public.

Domestically, the U.S. court system has been supporting cities affected by this chemical and making gasoline refiners pay. California cities have sued refiners for MTBE ground water well pollution. Courts have awarded cities close to \$40 million for remediation.

Implications for State and Local Governance

The manner in which state and local governments protect public health, encourage sensible growth, economic development and interpret their laws is in question under trade agreements. These traditional powers are not protected, and may be targets for elimination as "non-tariff barriers to trade" in some instances. The WTO and NAFTA change the way that laws are made, the interpretation of those laws in the court system, and the scientific standards on which they are based. Taxes on foreign businesses operating in the U.S. may be limited by NAFTA as will the ability of states to require state licenses, certifications, or the residency of key personnel under GATS. Performance requirements, bonds to ensure a fund for liability in case of dispute, and any preferences for local goods or labor may conflict with NAFTA. State and local governments are bound to the international trade agreement obligations and must comply with all of the restrictions on government market intervention.



Methanex v. U.S.

The Methanex case is resting on whether the U.S. must enforce environmental laws that require better underground storage tanks, or can choose to eliminate MTBE and only use chemical additives that don't leak from the tanks that are now in use.

Methanex claims that under the agreement the nation should have to pay them for their loss of business, or repeal the ban and pay for containers impermeable by MTBE to prevent the pollution.

California chose to ban MTBE rather than spend large sums of money to replace tanks or increasing inspections.

The U.S. court system has awarded California cities millions in damages from refineries for the environmental damage cause by MTBE. In either case, the financial burden is placed on the government, not manufacturers or users.

State Sovereignty Challenged

Laws that may have an impact on foreign investments must pass a test called the "trade-legal " requirement. Laws must pass

Some state members of Congress, such as California Senator Sheila Kuehl and Massachusetts Representative Byron Rushing are concerned that the obligations may go

a three-part test that proves that:

1. the objective is considered legitimate under the treaty;
2. it is the least trade restrictive alternative available; and
3. the measure does not constitute a disguised restriction on trade.

The analysis does not take into account the public policies, customs or goals of the government body making the law. The treaties require laws to be the least burdensome necessary to achieve the legitimate government objective. The highest priority in the treaties is to encourage, support and protect foreign investment. All other priorities are secondary.

so far as to encroach on state sovereignty. Both states and state legislators support free trade and understand the importance of foreign markets to US growth. California boasted \$1.7 billion of exports in 1999 and supported those exports with \$13.5 million of subsidies annually. [iv] Kuehl and Rushing are concerned, however, that the trade agreements lack procedures that promote meaningful public input and may undermine domestic legislation.

States currently pass laws that affect health, property rights, taxation, development, and environmental regulations. These laws are generally upheld if they are rationally related to a legitimate government purpose and do not conflict with or are not less stringent than federal law. NAFTA further burdens all U.S. "government measures" that may impact trade to be consistent with international standards.

Government measures defined loosely are rules or regulations from any government actor or authorized

contractor. Under the trade agreements, government measures may be challenged if they affect foreign investment profits, market share, or give preference to domestic investors. To be upheld, the laws have to be legitimate under international rules rather than rationally related to standards used in the U.S. The penalties for non-compliance involve huge and unpredictable financial awards. Previous treaties and agreements were voluntary and were enforced only by tariffs or boycotts. These new agreements extend the interpretation of "non-tariff barriers to trade" to include many state and local government laws and procedures.

The Legislative Process

Trade agreements have broad implications for the legislative process including changes in the formulation of laws, the public participation and representation of citizens and foreign investors, and the interpretation in the courts. Laws must be in compliance with the trade agreement obligations, and may be interpreted in international tribunals rather than the traditional courts. This circumstance limits citizen input, judicial interpretation, and the state's role as the democratic representative of citizen voice.

Who Makes These Agreements?

The federal government has the exclusive power to make agreements with foreign governments. The "treaties" discussed in this paper are actually presidential agreements. They carry the same weight as treaties, but the ratification process is significantly different.

For both, the executive branch formulates the U.S. goals by consulting with 30 industry specific advisory boards and negotiates with foreign nations through the United States Trade Representative (USTR).

For a treaty, the president must be advised by the Senate and receive the consent of 2/3rds of the Senate. A presidential agreement is approved by both houses, but requires only 51% in each house to carry. NAFTA was presented as a presidential agreement and the FTAA is also in that format.

Fast-track further limits the role of the Congress in affecting international agreements. Congress has 60 days to review the proposed agreement and then is limited to a yes or no vote. It is limited to 20 hours of debate. Congress cannot modify the agreement, but must reject it entirely to have it revised. The only opportunity for state and local governments to safeguard critical programs and get exceptions for specific laws is to participate in the negotiations before ratification.

Public Participation Must Include the International Community

Foreign investors will have an opportunity to ensure that the laws passed in the US will not negatively affect their investments. Regulators and rule makers have to provide a comment period open to all foreign investors who may be impacted by the resulting government measure. All rulemaking bodies must invest in communication procedures that announce pending and new rules to all potentially concerned parties including current and future investors. Investors may take this opportunity to explain to the state or locality why the proposed legislation or rule might conflict with a trade agreement, and outline how that might translate into an international arbitration and a substantial financial reward to the investor. These concerns may take precedence over the will of the citizens and the goals of the state.

Health Laws and Harmonization

Existing laws must also be harmonized with the participating countries. Either all countries have one set of regulations, or each party may simply accept each others' different laws as comparable or acceptable. *Harmonization* results in one law that is a compromise of the other laws. The point is to lower the uncertainty and transaction costs of investors by having similar laws in all countries whenever possible. The Western Governor's Association believes state standards may be compromised through this process. State laws regarding environmental protection, natural resource management and consumer safety are generally more stringent than the standards used by U.S. trading partners. [v] U.S. federal and state safety standards would have to be lowered to comply with the required harmonization preempting the states' role in setting the acceptable risk.

Once laws are harmonized, challenges may still be brought to tribunals under NAFTA. The controversy over Lindane is a good example. Lindane was targeted as a persistent organic pollutant (POP). Lindane has been used to kill head lice and to stop fungal damage in agricultural seeds. In these applications, Lindane has caused death, seizures and rashes in children and adults who have come into contact with the chemical. Equally troubling, the chemical breaks down very slowly once in the environment. It was considered for the POPs Treaty but was not included. [vi] Since it was not listed, but remained controversial, the U.S. and Canada harmonized their laws regarding its use. Lindane was to be sold freely until July 1, 2001, and the governments would fund a new study to assess the health risk. The compromise was that all U.S. and Canadian companies would stop manufacturing in December 2000 and sell the stock over the next six months. When the voluntary agreement was published, the Canadian announcement said that Lindane could not be used after July 1, 2001, and violators could be subject to a \$200,000 fine. Lindane dropped in value precipitously.

Harmonization

U.S. safety standards are likely to be compromised in the negotiation for a single legal standard.

Crompton is a United States manufacturer of Lindane. The manufacturer is now bringing a NAFTA challenge. Crompton says that it only agreed to take Lindane off the market if the study proved it was harmful, and that the government is acting in bad faith. [vii] The risk assessment by the governments was never completed, so Crompton is challenging the scientific basis for the ban. The governments had included the manufacturers in the initial decision, and Crompton is treating the government like a contractual partner that is in default rather than a regulatory authority obligated to protect human health. Crompton questions the need for Lindane to be banned, and is demanding \$100 million from Canada for the premature loss of market share, the retraction of the ban, and return of their license to manufacture the chemical. If the tribunal allows Crompton to move forward, this challenge threatens the finality of negotiations between parties to harmonize laws. Financial compensation for affected profits would be valued above the ability of government to stand by a compromise or otherwise legitimate legislation.

The Precautionary Principle Could Be Challenged

The Lindane case begs the question, "who decides?" Does a manufacturer have a burden to prove a chemical is safe, or must the government prove certain harm before acting to protect the public? The burden seems to be placed on the governments in the NAFTA and WTO cases at this time.

Crompton Corporation v. Canada

Lindane was nearly listed as a persistent organic pollutant (POP), which would have banned its use under the POPs Treaty. It has been used to stop spoilage of seeds as well as an ingredient in lice-removing shampoo. Canada was permitted to use Lindane on canola seeds, while US farmers treated 13 other crops. According to some US and European studies, Lindane is carcinogenic and acute exposure symptoms include seizures, skin rashes, and neuromuscular complaints. Crompton asserts that the ban is to benefit Canadian replacement products. This would violate the national treatment requirement that bans domestic preference over foreign goods. The next round of POPs negotiations may eliminate all use of Lindane, but Canada may have to pay the manufacturer damages under NAFTA before that is resolved.

U.S. governing agencies are generally allowed to use the precautionary principle to avoid damage to the public from a substance that is potentially harmful. The precautionary principle is a risk averse policy that favors erring on the side of safety when scientific evidence suggests that something may be harmful, but harm is not certain. The trade agreements require a scientific basis for government measures which suggests that the results of any study be reproducible and statistically significantly different from control groups. Less information tends to settle questions in favor of using the product until it is proven harmful rather. A government exercising caution where evidence is forthcoming or scant may be inviting a challenge. The same government entity may face some liability domestically for not acting quickly enough to protect the affected public. An imminent NAFTA challenge may make the decisions more economically driven because public policy and local conditions are irrelevant to international tribunals.

Foreign investors may try to impose international standards to challenge the scientific basis of the state or local government for restricting the use or release of what is considered a pollutant in the US. For example, the California legislature was convinced that there was enough scientific evidence that MTBE should not be introduced to the environment. Other researchers in Germany concluded that it was not dangerous, and the Canadian manufacturer is claiming that the U.S. should accept those scientific studies. The challenges may be resolved in the state or local government's favor, but at a significant cost to both the state and the federal government defender.

Professional Licensing

Harmonization is not limited to health or environmental legislation. NAFTA and GATS require that all laws affecting investment be as similar as possible in the participating countries.^[1] One of the first topics being considered by special GATS subcommittees is the issue of licenses for professionals. At this time, without the appropriate license with the credentials required by a state, lawyers, accountants, doctors and other professionals cannot operate. The trade proponents are striving to come up with universal criteria for licenses that will allow these services to be traded freely. This is a huge detour from the state character of licenses in the past that require specific knowledge of local customs and practices.

Protections for Current Laws Weak

There are some general exceptions that exempt open-ended categories of laws. These exceptions provide a false sense of security because in some cases these exceptions have sunset clauses, and in others they are available as candidates for compromises in future rounds of liberalization. The continued obligation to liberalize is called a "rollback" requirement. The grandfathered laws are restricted by a "standstill" requirement that means that the law can not be strengthened. This freezes future lawmaking powers at the point the agreement is negotiated.^[viii]

Exceptions may not protect natural resources

There is no guarantee that exceptions will be interpreted consistently over time. The General Agreement on Tariffs and Trade (GATT) has a general exception for protecting animals, plants, and exhaustible natural resources. It is not clear what those natural resources are. It is fairly certain that water is

State and local governments protect public health, encourage sensible growth, economic development and interpret their laws...These traditional powers are not protected, and may be targets for elimination

not among them since the USTR and the Supreme Court of the United States both consider water to be a commodity, and the GATT defines water as all water other than sea water. Although NAFTA defers to the GATT, NAFTA preempts the GATT where the two are in conflict, so GATT protections may be overruled by interpretations of NAFTA. There is a potential conflict between the reserved right to protect natural resources (GATT Article XX) and the obligation to continue exports of products at the average level of the previous 36 months (NAFTA Article 15). The implication is that a country would be obligated to continue natural resource exports regardless of changed local conditions or serious risk of unsustainable depletions.

as "non-tariff barriers to trade"...

A U.S. company is challenging a Canadian ban on the export of fresh water on this basis as well as other national treatment claims. Sun Belt, Inc. claims that British Columbia, a province of Canada, expropriated their profits by putting a temporary moratorium on freshwater export. Sun Belt had contracted with a local firm to export water to California. Sun Belt is asking for \$1.5 billion in lost profits and the reinstatement of the license to export. A company spokesperson has claimed that NAFTA has made them an active participant in Canadian political process, and a rightholder of Canadian water. NAFTA is controlling because, in Sun Belt's view, water is a commodity like any other, and therefore must be traded under NAFTA rules. The case has not been approved for arbitration by the tribunal at this point, but is evidence of the types of issues that may be raised under the agreements. It may inform future decisions of planners, conservationists and manufacturers alike.

It is important to note that British Columbia's moratorium was in effect before NAFTA was signed. Sun Belt is going back retroactively to say that it was owed the NAFTA treatment before the trade agreement was in existence. Legislators may be concerned that implications of having issues as critical as access to the freshwater supply can be decided by an international tribunal with no direct accountability to local citizens. The tribunals emphasis may be given to economic criteria over local public health and environmental quality concerns.

The Courts Lose Jurisdiction at the State and Federal Levels

The agreements invite foreign investors not only into the legislative process, but also to interpret laws once applied. This is a significant shift in influence that limits the ability of the state to act in an autonomous, independent, self-interested manner. If the resulting measure is perceived as discriminating against foreign investors, or gives domestic competitors an inadvertent advantage, the foreign investor can challenge the law. This challenge would be heard in international arbitration. Tribunals are selected by the two parties to the challenge (an investor and a party country) and they choose the standard of law that will be used to decide the controversy.

Both the venue and the finality of the courts are modified under NAFTA. The arbitration panels and international law replace the state courts as the venue for hearing complaints against a state action and the standards applied. Under NAFTA, the federal government defends the claim in an international setting according to whichever law the parties choose, which has generally been the international standard. The state does not directly participate, and state law is not considered unless the parties both agree that it will be the standard. If a domestic court decision is made, an unfavorable outcome for the foreign investor might encourage the investor to go into arbitration by claiming discrimination and avoid the state law.

U.S. Court System Avoided

Foreign investors can avoid U.S. state and federal courts. The claims are heard by an international tribunal.

The investor and country:

- Each select a judge, and jointly agree on a third.
- Jointly select laws to use (the law of either country or some international standard)

The tribunal:

- is closed to the public
- can ignore domestic law
- has limited appeals
- can award financial penalties

The *Loewen Group, Inc. v. United States* challenge is an example of this threat. [ix] Loewen, a Canadian funeral home, has been granted standing by a NAFTA tribunal to sue the United States for requiring a bond before the appeals process. Loewen was found guilty of illegal competitive tactics and was fined \$100 million compensation and \$400 million punitive damages award in the Mississippi Supreme Court. Mississippi requires that appellants post a bond (equal to 125% of the award) which would be due if the appeal fails. Loewen settled the case for \$175 million. Still dissatisfied with the outcome, in 1998 Loewen turned to the NAFTA process for relief. Loewen is claiming that the actions of the awarding jury and the court have been influenced by its status as a foreign company, and therefore are challenging the damages award. If Loewen is successful, there will be broad implications for all U.S. courts. If the NAFTA tribunal protects Loewen by declaring the Mississippi law invalid, then the impact of NAFTA will be that

- investors will not be required to exhaust remedies before going to arbitration,
- investors can go through the court system and then challenge it if not satisfied,
- court decisions will not be given weight by the tribunal or considered in their deliberations,
- no civil dispute with a foreign investor can be considered settled until a tribunal has also considered it.

If Loewen is successful, the U.S. court system could be circumvented entirely. While this would not be a lenient interpretation, it illustrates the restrictions on government action integral to the trade agreement. The way the NAFTA is written the arbitration panels are under no requirement to give the court or the state laws deference. A single foreign shareholder, without the consent of the company or country of origin, could claim an investment loss and challenge the legitimacy of the American court system. The courts would lose their ability to interpret the law for foreign cases. There would be two standards for disputes, one for foreigners set by NAFTA, and the traditional U.S. law for domestic companies and investors.

The Structure of the Agreements Creates a Democratic Deficit

As outlined above, foreign investors have the right to participate in domestic lawmaking, and if they are not satisfied with that process, can take their complaints to an international arbitration tribunal that is not available to similarly situated domestic investors. These arbitration hearings are not open to the public, and though the U.S. federal government would be a participant in any claim against a U.S. governmental entity, the proceedings remain behind closed doors unless both parties agree to make a public disclosure.

The success of the U.S. system is based on the transparency of the process, and the ability of citizens to participate in debates regarding laws, policies and actions. Public hearings are an opportunity for all stakeholders to be heard, and ideally come to a balance of interests. The U.S. system is built on the notion of checks and balances. If a lawmaking body exceeds its authority, the court or the executive can keep the legislature in check. International trade agreements lack such checks and balances. These trade agreements give foreign private investors the right to arbitration tribunals to second-guess the legislature and the courts. International law may be used as proof that a U.S. law is too stringent. Neither U.S. citizens nor state and local governments are allowed access to these tribunal proceedings.

"Civil society is based above all on the free generation and exchange of information, with openness and participation as prerequisites. It is the recognition that decentralized, flexible, locally rooted responses are indispensable..."

Bruce Rich, *Mortgaging the Earth*

Loewen Group, Inc. v. United States

Loewen Group is a Canadian funeral home that was sued in Mississippi by a local business for unfair competition. Loewen was found guilty of fraudulent business practices in their expansion effort. The jury awarded \$100 in compensatory damages, and an unprecedented award of \$400 million in punitive damages including emotional distress. Loewen chose to settle for \$175 million rather than put up the required bond for \$625 million to appeal the decision. Then the Canadian company decided to take the

case to a NAFTA tribunal. Loewen asserts that the bond for appeals is not reasonable and forced them to settle and requests \$725 million compensation. The law is of general application, not just for foreign companies. If successful, Loewen will circumvent the U.S. court system. The facts of the case are not in question, but the ability of the state of Mississippi to require a bond from domestic and foreign citizens alike before the appeals process begins. This is a significant threat to the finality of the court system, and could give foreign enterprises a way to avoid civil penalties for misconduct.

On a procedural level, domestic and foreign businesses have better access to the negotiators because corporations fill the 30 industry-specific advisory committees that have direct access to the President and the United States Trade Representative (USTR). The public can submit written comments to the Committee for the Participation of Civil Society, or to each negotiating group. No committee is obligated to respond to citizen inquiries. State representatives can try to influence Congress and the members of the committees, but are not privy to the negotiations within the advisory committees. After the trade agreements are passed, administrative staff often modify the text without public input. Under GATS, ongoing administrative harmonization is required to continue the process of liberalizing markets and removing trade barriers. As a government action, however, foreign investors can demand to be notified of these changes or seek damages later if profits are negatively impacted.

Enhanced Property Rights Conflict with Land Use Planning

Of all of the roles of local government, land use is the most specific to place. Many localities post signs at the edge of town announcing that local zoning is in place, and permits for building and businesses will be required. Zoning affects a broad range of on site land uses and allowed impacts on neighboring lands and waterways. The placement of businesses, residences, and the allowed uses of land are local decisions. Environmental regulations and emissions standards can be set by state governments and sometimes regional or local governments. The latitude to set restrictive land use regulations or environmental regulations to protect human health might be challenged under NAFTA and later trade agreements.

Environmental Regulations

The use of zoning balances the benefits of being a citizen with the rights of a landowner to profit from the use of the property. Commercial enterprises have always been heavily regulated and the courts consider it foreseeable that the status quo will change. Therefore, domestic investors have no reasonable expectation that profits from the property will be secured in perpetuity. Foreign investments may use a different standard for deciding appropriate compensation for losses of market share or profits. Governments may have to pay for environmentally based restrictions (air, water pollutant restrictions) if the regulations are strengthened due to a change in circumstance and inadvertently limit the return on investment expected by the foreign investor. The national government, as the party to the agreement, may be expected to satisfy that lost expectation of profit.

The strategic advisory role of the corporate interests may raise concerns. "The literature on regulation ... is almost universal in its conclusion that it is difficult, if not impossible to prevent the "capture" of [regulatory] systems by the interests they are supposed to regulate."

Luberoff, 2000

Land Ownership

NAFTA investor rights would consider restrictions on foreign land ownership or leasing to be discriminatory. Residency requirements for land ownership, use, or access to resources exist in some form in Nebraska, Oklahoma, Indiana, Kentucky, Mississippi, Wisconsin, Arizona, Colorado, North Dakota, Montana, Pennsylvania, Iowa, Minnesota, Oregon, Nevada, Alaska, Hawaii, Georgia, California, Maryland, Massachusetts, and Washington state.

Western Governor's Association

Ownership or Access to Natural Resources

Lack of access to natural resources may be considered discrimination in violation of the national treatment requirement. States that limit foreign access to minerals or water include Alaska, Montana, Arizona, Utah, Wyoming, Idaho, and Oregon.

Western Governor's Association 1997

Government compensation for property loss or the act of *expropriation* or *takings* is not new. The concept of takings in the domestic context awards compensation to citizens whose property is used or burdened for the public good. In the US, only the loss of use of the property *in its entirety* gets compensation unless the government physically occupies all or a portion of the land. (The citizen would be compensated only for the occupied portion). The courts have long held that the diminution of the value of property is insufficient to be considered a takings. The trade agreements suggest that *partial takings* may be granted to foreign investors. This would mean that counties that wanted to place restrictions on land use that required setbacks, buffer zones or denied dredge and fill permits might have to pay foreign investors for their compliance.

The *Metalclad v. Mexico* challenge illustrates this expanded definition of takings as well as the potential for private investors to overrule public health and environmental concerns. Metalclad is a US company that purchased land in Mexico with the intent of building a processing plant for toxic wastes. The Mexican regional and federal governments approved the venture. The building commenced and was completed based on representations of approval from the federal government. The local government never issued a building permit and refused to on the basis on the environmental impact report. The local government would not allow the plant to operate because it would have exacerbated the ground water pollution problem. In a desperate attempt to stop the plant, the community zoned the site as a preserve.

Metalclad took the claim to a NAFTA tribunal and was awarded \$16.8 million, (the cost of the building). The tribunal also could have awarded the lost profits estimated in the business plan or loss of reputation. Judge Tysoe, one of the judges who sat on the tribunal, voiced concern that this broad interpretation of the trade agreement could interfere with customary and legitimate zoning laws. [x] The potential for environmental damage or the health effects of ground water contamination were not considered to be critical to the determination of the case. The impact on the investor was the main concern of the tribunal.

Note that the community would not allow the property to be used as a toxic waste facility, but did not say that the property could not be used for other purposes. A U.S. court would not award takings if there were still economic uses of the property available. The ability to use the property is protected, but not a particular use. Particular uses must be consistent with local zoning, and broader public policies. The trade agreement does not incorporate any of these criteria in the deliberations. If foreign investors receive similar awards against the U.S., domestic investors may lobby for equal rights to partial takings in the future. In fact, this has been proposed in Congress and defeated. Compensation for partial takings would undermine the basis for land use law in the U.S.

"[T]his broad interpretation of the [agreement] could interfere with customary and legitimate zoning laws."

Judge Tysoe, British Columbia

Economic Development Restricted

Local and state governments use many mechanisms to enhance economic development. Many of the most successful programs include subsidies or preferences available only to resident businesses, or businesses that meet a certain criteria for a disadvantaged class. NAFTA and the WTO specifically target subsidies that in any way give preference to domestic business or discriminate against foreign investors.

Performance bonds, performance requirements, local input and labor requirements and local business preferences are among the activities that may be interpreted as non-compliant with NAFTA and the WTO. Programs that may be at risk include: [xi]

- Community reinvestment acts
- Living wage ordinances
- Use of public pension funds for redevelopment
- Purchasing criteria other than price and quality
- Minority business support
- Buy local or buy American policies
- Recycled or local content preferences

These programs are common programs used by local governments to support local businesses or draw investors to the community. The use of economic development to nurture local business is against the free market principles that guide international trade agreements. The goal of the agreement is to encourage foreign investment by leveling the playing field through harmonization or freezing regulation so that investments are more predictable. State and local governments lose flexibility and predictability within that process.

States use subsidies and tax breaks to encourage economic development, fund services for the poor, and reward initiatives that fulfill public purposes. These practices may be considered illegitimate if the result gives the government or domestic investors an edge over foreign investors. Any subsidies available to U.S. companies must also be made available to foreign concerns. Tax breaks must be available equally and without residency requirements.

Traditional Government Services May Be Challenged

As a provider of goods and services, governments receive special interest rates to save the public interest on large capital projects. If a government activity is also provided by private industry, any subsidy or better lending rates enjoyed by the government may be considered illegal subsidies that favor government providers over foreign private enterprise. For example, United Parcel Service (UPS) is challenging Canada's right to use their letter delivery routes to also deliver parcels. UPS claims that access to the Royal Post infrastructure is unavailable to UPS, and therefore puts the Canadian Post at an unfair competitive advantage. Under the NAFTA, any subsidies available to domestic market competitors must be available to foreign concerns as well. Tax breaks must be available equally. UPS, therefore, is demanding either access to this infrastructure, which would allow their packages to be carried by the Canadian letter carriers at no extra charge, or financial compensation equal to that value. There is no reason that this challenge could not be posed to the United States Postal Service if UPS is successful since the U.S. uses the same government-owned corporation arrangement and delivers the same services. The challenger could be a Canadian investor in Federal Express, or a sole proprietor with a license to deliver packages in Canada.

UPS v Canada

UPS is claiming substantively that this is a failure to provide national treatment (preferring Canadian competitors to U.S. counterparts) and an abuse of government monopoly power. Procedurally, UPS is bringing the challenge under Chapter 11 claiming a breach of a Chapter 15 requirement for Parties to properly control their government monopolies. UPS contends that any breach of the other chapters in the agreement are failures to comply with the minimum international standard of treatment required in Chapter 11. If this argument is accepted, then every violation of any part of the treaty would open a Party to a Chapter 11 dispute resolution. It is arguable that the dispute resolution section was intended to prevent discrimination or nationalization of property and was not expected to include other articles of the agreement.

Privatization Process Altered

Professor John Roberts defines the role of the state as an umpire between private interests, and an advocate for the public problem of market failure (Appleton 1994 at 206). [xii] Privatization has the potential to offer alternative provision of public goods and services. State and local governments fulfill this role when they carefully construct contracts for private industry to provide goods and services traditionally provided by the state (solid waste disposal, water distribution and treatment, etc.). However, the government has to play a market-structuring role to promote competitive efficiency while serving broader public values in the public service. [xiii]

In the NAFTA, GATS and FTAA regime, privatization is a matter of course, not a decision to be made by individual localities or public utilities. The trade agreements, to varying degrees, liberalize markets to provide goods and services that have been supplied by the government. Recall that governments provide public goods in the first place because of market failures such as externalities and free riders. From the GATS each party specifically lists the services that the government will open to private competition with public providers[2]. There is an exception for services that are provided by government agencies, but the caveat is that the service must not be available in the marketplace. Thus, the existence of private hospitals, schools and water treatment plants could open the door for private industry to compete with the government to provide these services.

Government latitude in a number of areas may be significantly reduced under the agreements. According to Barry Appleton, a Canadian plaintiff's attorney in NAFTA challenges, the trade agreement was drafted specifically to restrain the traditional role of the state. Quality and access to public services may be undermined if governmental control over the contracting process is weakened. Government subsidies currently used to lower costs and expand citizen access may be claimed by foreign investors as compensation for lost profit and market share due to the lower cost of government provision.

Costs May be Significant

There may be significant costs incurred by local and state governments in trying to satisfy these international obligations. Many localities would have to enhance administrative and legal departments to gain the expertise necessary to communicate the legislative agenda with potential investors in all participating countries.

It is unclear whether the localities and states that are challenged will be financially liable for the damages awarded to investors. The known challenges against the United States at this time include claims for \$1.8 billion. There may be other claims that have not been reported since, there is no obligation for either party of the arbitration or the tribunal to make it public. (The Loewen claim was admitted only after a Freedom of Information Act request). A group at the Fletcher School of Law and Diplomacy at Tufts University undertook a study to assess the potential financial liability posed by international trade agreements. They estimated the liability at \$32 billion in the first four years that all agreements are in effect. Over the following four years the estimate climbs to \$159 billion. [xiv] Legal fees, staff time, and lost productivity of government employees who will respond to these cases are not included in the estimates.

A Balance Between Economic and Governance Goals

The focus of these agreements is on increased trade and economic growth. These goals are not balanced by concerns with other public policies and governance goals. The historical legal framework of the U.S. may be altered dramatically by the property rights expansion for foreign investors. For example, the Clean Water Act relies on land use management techniques and zoning. The technology-forcing advances required by the Clean Air Act were costs absorbed by the private industries benefiting from the production of wastes. Both of these major federal initiatives rely on state and local cooperation and the takings law as interpreted by the Supreme Court. Government regulatory approaches such as these could be stymied by expropriation awards under the free trade agreement. Domestically, some litigators stress that rampant takings liability would bankrupt many local governments or divert financial resources from critical public works. [xv]

There needs to be a balance between the free trade agenda and the need for domestic governance. The restrictions and obligations of the trade agreements are substantial and may impact significantly state and local governments' ability to protect their residents, resources, and economic viability of local industry.

State and local governments are concerned that decision-making based on local conditions might be severely restrained and burdened by international interests entirely unfamiliar with the needs of the residents.

Reaction by State and Local Governments

Governments are trying to understand the best way to enjoy the benefits from markets and free trade provided by the agreements while retaining state and local governmental authority. The Western Governors Association (WGA), the National Council of State Legislators (NCSL), and the National League of Cities (NLC) are a few entities that have made public requests to the US negotiating body, the United States Trade Representative (USTR) for clarification of or protection from the trade agreement obligations. These entities are not against free trade. The National Conference of State Legislatures, for example, supports free trade, but recognizes that reservations can be made to avoid unnecessary preemption and preserve traditional state authority. [xvi] Similarly, the National Association of Counties (NACo) supports free trade, but not to the exclusion of federalism. NACo supports accountability including federal identification and communication of all impacts federal legislation may have on state and local operations. [xvii] Over a dozen counties and municipalities have passed resolutions requesting protection from the agreements or declaring that they will not participate in the agreement and do not consider themselves bound. Canadian public unions and some municipalities have been very critical of the agreement and have requested major revisions or repeal. Some of these groups have requested that the NAFTA not be used as a template for other agreements without revisions to Chapter 11.

Zoning that restricts development in order to protect drinking water sources, wetlands, or steep coastal areas from mudslides may have to pay foreign claims for partial takings if the tribunals interpret the actions as expropriations of land investment profits.

Despite the public controversy over international trade and the clearly communicated concern expressed to the USTR and members of Congress, the FTAA draft made public in 2000 contained a virtually verbatim replica of Chapter 11. The ability of state and local governments to eliminate the burdens of the legislative restrictions and the threat of Chapter 11 liabilities is hindered by the singular focus on the economic benefits of the agreement. Giving up the state right to immunity provides the corresponding right for U.S. companies to opt out of the court systems in other signatory countries. Allowing foreign input into our legislative process opens the door for U.S. business interests to shape foreign laws on subjects that may constrain profits abroad.

State and local governments could benefit from early participation in the negotiation process and by educating both their constituencies and representatives in Congress. State and local representatives should seek to understand the impacts of free trade on their constituents.

- Will investor rights may be in conflict with community values?
- Will takings legislation, if expanded, could make environmental and health regulations too expensive to enforce?
- Will subsidies and revenues be considered discriminatory?

State and local government representatives are the frontline of democracy and have an obligation to preserve the democratic, federalist character of the U.S. government. Democracy requires participation, representation, and debate. Federalism requires a clear delineation of powers shared between the state and federal governments. International trade agreements blur these distinctions, and grant foreign investors rights, participation, and representation superior to that of U.S. citizens.

[1] "Affecting investment" is a broad category that encompasses anything that could inadvertently change the property rights or

future expectations of the foreign investor including higher expenses of raw materials which might result in a loss of profit.

[2] GATS is a "bottom-up" approach that includes only what is listed. NAFTA and FTAA are "top-down" treaties, which means that all services that are not specifically excluded are liberalized.

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Options For County Nursing Homes in New York State

A Joint Project of the Civil Service Employees Association, County Nursing Facilities of New York, Inc. and the Department of City and Regional Planning, Cornell University

This web page is the product of several months of collaborative research between County Nursing Facilities of New York, Inc. (CNFNY), the Civil Service Employees Association (CSEA), and the Department of City and Regional Planning at Cornell University. Our goal in carrying out this research was to develop a better understanding of the current status of New York's county homes. Together we designed and administered three surveys for nursing home administrators and labor leaders. Research questions addressed include the financial health of county homes, the status of labor-management relations in these facilities, and the degree of interest in redesigning established service delivery models. In addition to the survey research, this page contains additional background information on state and national trends in the long-term care industry.

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Transfer of Development Rights Programs

Using the Market for Compensation and Preservation

Jason Hanly-Forde, George Homsy, Katherine Lieberknecht, Remington Stone

Local governments undertake transfer of development rights (TDR) programs to use the market to implement and pay for development density and location decisions. TDR programs allow landowners to sever development rights from properties in government-designated low-density areas, and sell them to purchasers who want to increase the density of development in areas that local governments have selected as higher density areas.

TDR programs appear to offer many advantages to local governments that want to control land use but also compensate landowners for restrictions on the development potential of their properties. TDR programs can be easier to implement than typical zoning programs; they make development more predictable and use the market to compensate landowners for lost property value. TDR programs are also more permanent than traditional zoning regulations.

Although TDR programs appears to be a potentially powerful land use tool, few communities have had success in using these programs because of the associated challenges . TDR programs do not reduce the need for zoning and can actually be more complex to administer. Communities may not support TDR programs, and local governments may have to invest in community education programs to explain them to the public. Lastly, although the permanency of TDR programs can be an advantage, it may also be a liability, since a community's land use needs change over time.

Local governments that are interested in TDR programs should consider both how to create a strong market for development rights in their communities and how TDR programs interact with the 'takings' issue. The final part of this paper presents advice and information on both these topics and ends with an evaluation of TDR programs as a governing tool.

- [What is the history of transfer of development rights programs?](#)
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Landownership was one of the first measures of citizenship in the United States. The passion to protect the right of property owners to reap economic gain from their land still burns strongly today. Because of this, local governments often encounter citizen resistance to land use controls that attempt to provide for a public good. As a result, zoning can be very difficult to implement.

Many planners tout transfer of development right (TDR) programs as a way to take the politics out of zoning. With TDR programs, the market makes land use and density allocations and compensates property owners whose development rights have been limited in order to preserve some societal good, such as open space, farmland or historic preservation. It is a potentially powerful tool, but in its thirty year history, it seems to have made little headway in communities across the country. This paper examines TDR programs, their benefits and their costs and suggests why the adoption of this tool has been limited.

What is the history of transfer of development rights programs?

Zoning was the first widespread attempt to balance individual property rights against the good of society. Early advocates also suggested that zoning would enhance property values (Karkainen, 1994).

In 1916, New York City enacted the nation's first comprehensive zoning ordinance after a spate of skyscrapers blocked sunlight from neighboring properties. At the same time, warehouses and factories were encroaching on fashionable retail areas of Fifth Avenue. The new zoning ordinance set both height and setback requirements and separated incompatible uses, such as factories and residences (City of New York Department of Planning, 2002).

From the beginning, critics complained about the unfairness of zoning since it benefits some landowners and limits others. In 1926 the U.S. Supreme Court ruled in the landmark case of *Village of Euclid, Ohio v. Ambler Realty* that the legal system recognizes many kinds of unequal burdens (Karkainen, 1994). The *Euclid* case required two hearings before the high court narrowly affirmed a community's ability to zone. (Callies, Freilich and Roberts, 1999)

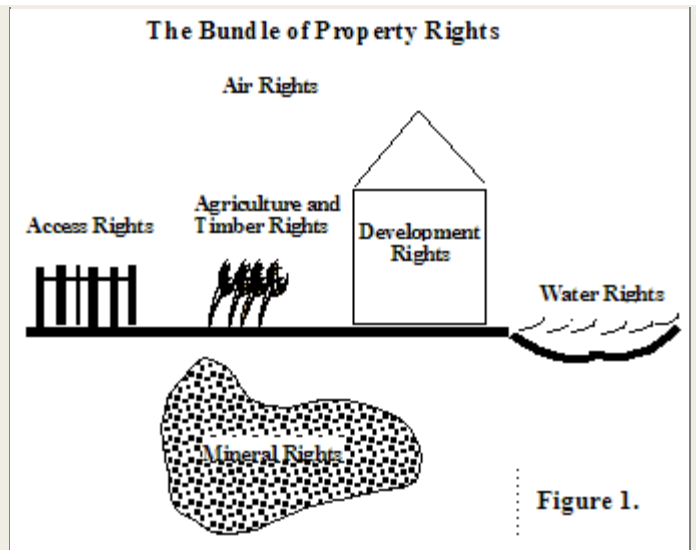
The idea of transferring development rights between properties was first introduced in New York City with the passage of that first American zoning ordinance in 1916. It allowed landowners to sell their unused air rights to adjacent lots, which could then exceed the new height and setback requirements. In 1968, the city Planning Commission changed the rules to allow transfers between lots several blocks apart (Johnston and Madison, 1997).

In the early 1980s, the command and control nature of many regulations came under fire as an inefficient. Policy makers searched for ways to govern using the market (Henig, 1989-90). In 1986, Australia created a system of tradable fishing permits to stabilize lobster populations. During the first half of the 1990s, a system of tradable pollution credits in the U.S. cut emissions of sulfur dioxide (which causes acid rain) in half (Brown, 2001). With these successes, market advocates found the world moving in their direction-toward answering all kinds of societal questions with economics. Land uses proved to be no exception.

What is a TDR program?

Most people have a very two dimensional view of their property-just a piece of land on which to build a house or commercial building. But the bundle of rights that comes with a piece of property is much more complex. Some physical rights, depicted in Figure 1, include the rights to build, exploit natural resources, restrict access and farm. Other legally enforceable rights include the right to sell the land, subdivide it, rent it out or grant easements across it.

TDR programs allow landowners to sever the building (aka development) rights from a particular piece of property and sell them. Purchasers are usually other landowners who want to increase the density of their developments. Local governments may also buy



development rights in order to control price, design details or restrict growth.

TDR programs strive for two main goals. First, communities can use TDR programs to preserve open space, agriculture, historic buildings or housing. And TDR programs make such preservation more equitable and politically palatable by compensating landowners who lose the right to develop their property.

How does a TDR Program Work?

To demonstrate the operation of a TDR program, we have created a fictional farming community called Circle County.

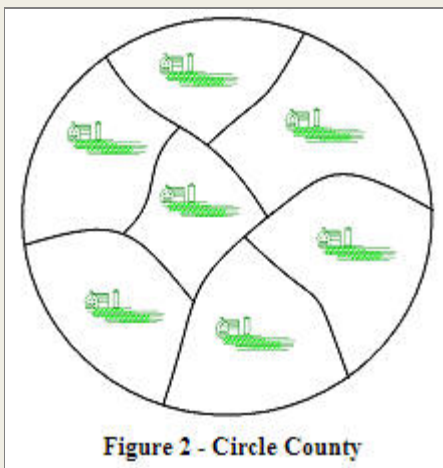


Figure 2 - Circle County

At first, Circle County is completely devoted to agriculture (Figure 2). However, its farms face development pressure from a growing urban area not depicted on the illustration.

At some point that pressure makes it economically less likely the land would remain in agriculture (Heikkila, 2000). Indeed many farmers call the option to develop their land their "retirement plan." When left to traditional zoning, market pressure often causes low density development, that is, suburban sprawl (Figure 3).

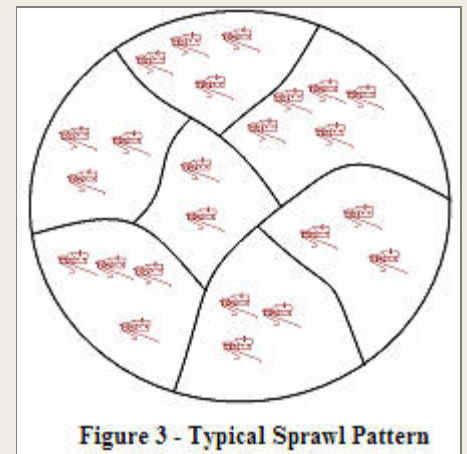


Figure 3 - Typical Sprawl Pattern

However, Circle County government leaders decided to preserve their rural character. Under traditional zoning the only option would have been to tell some farmers that they could not sell their land for development. Instead the government instituted a TDR program. Farmers in the northern and western parts of the county could sell their development rights to builders in the southern and eastern areas designated for more density (Figure 4).

What are the advantages of TDR programs?

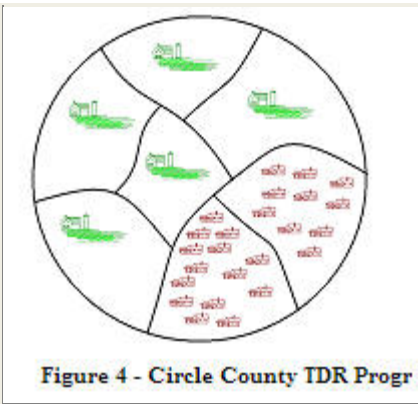


Figure 4 - Circle County TDR Progr

TDR programs compensate property owners.

Local governments use TDR programs to mitigate the economic impact of land use regulations, specifically to compensate

landowners for perceived partial takings (Johnston and Madison, 1997). This planning tool offers landowners a way to recapture some lost economic value when a property is downzoned^[1] from residential use to agricultural use for preservation purposes.

TDR programs are an easier way to implement zoning.

TDR programs do not replace zoning, but make strong land use regulations more politically feasible and easier to implement (Barrese, 1983). Local officials feel less political pressure if landowners are compensated for their "lost" rights. And a well-constructed TDR program reduces the demand for zoning variances, since developers will use the market, not their connections to the local zoning commission, to secure additional development rights.

TDR programs provide private funding for protection.

Finding public funds to protect open space and historic buildings is increasingly difficult as governments carefully watch their bottom lines. One reason local governments created TDR programs was to leverage market monies to achieve such goals. (Wolfram, 1981).

TDR programs make development more predictable.

Developers benefit from the clarity and consistency that TDR programs offer (Pruetz, 1997). Instead of incurring the costs and risks of negotiating for variances, developers can exceed certain zoning regulations simply by purchasing development rights from other property owners.

TDR programs are more permanent than zoning.

Since TDR uses deed restrictions or conservation easements to sever and extinguish development rights, public values such as open space and historic buildings are permanently protected. In contrast, zoning rules can change over time and with new administrations.

What are the challenges of TDR programs?

TDR programs do not reduce the need for planning.

TDR programs only work in conjunction with strong zoning ordinances and good comprehensive planning. However, building political consensus on zoning issues is always a challenge. As a result, successful TDR programs require the commitment and political will of the community (Lane, 1997).

TDR programs can require increased administration.

HOUSING IN SEATTLE

Seattle, Washington created a TDR program for affordable housing in 1985. The TDR program has created or preserved 559 units of affordable housing. It was recently reconfigured to create another 900 units.

(Walker, 2002)

"Zoning is just two public hearings and one vote away from changing."

Jim Lively, Planner
Michigan Land Use Institute

In reality, TDR programs may be more complicated and expensive to implement than traditional zoning. Local governments must oversee (or contract out oversight of) the market; track and defend deed restrictions; and assist in proper preparation of easement documents. In many cases, the local government may regulate the market through TDR banks[2] or other tools.

TDR programs require increased public education.

Citizens, real estate professionals, lawyers, assessors, and planners all need to be educated in the TDR process. Since successful programs require community buy-in, local governments must market the program, using mailings, public meetings, and advertisements. For example, efforts to institute a TDR plan in Santa Fe, New Mexico started with an all-day workshop (Pruetz, 2002).

Communities may not support TDR programs.

Despite public education efforts, it may be difficult to find areas willing to accept higher density development (receiving areas), since many people perceive that high density development decreases property values and quality of life.

TDR protects preservation values permanently.

Although some consider the permanence of a TDR transfer to be a benefit, it also limits the future options of a community as societal values and community characteristics shift.

How can local governments build a market for a TDR program?

Comprehensive land use and fiscal planning

Successful TDR programs start with strong comprehensive plans. Communities must encompass a enough land to have sufficient sending and receiving areas. Otherwise some kind of regional government or inter-municipal pact is needed to carry out the program and ensure the fair distribution of development and tax revenues. The planning process must also accurately gauge the desires of the community for development and preservation.

The supply side: sending areas

In the areas where land will be preserved, property owners must be motivated to sell their development rights rather than fully develop the land themselves. Commonly this is done by downzoning their land to a lesser density. Other factors may constrain development, such as environmental regulations, site problems or adequate public facility ordinances[3]. These factors can compel property owners to sell their development rights. In addition, a favorable transfer ratio from the sending area to the receiving may make the transfer lucrative enough to entice sellers. For example, in Montgomery County five times as many TDR credits could be transferred out as could be used on site.

The demand side: receiving areas

Designating the receiving areas can be the trickiest part of setting up a TDR program (Canavan, 1990). A working market requires that receiving areas face a demand for denser development than is currently allowed. For example, in Montgomery County developers used TDR

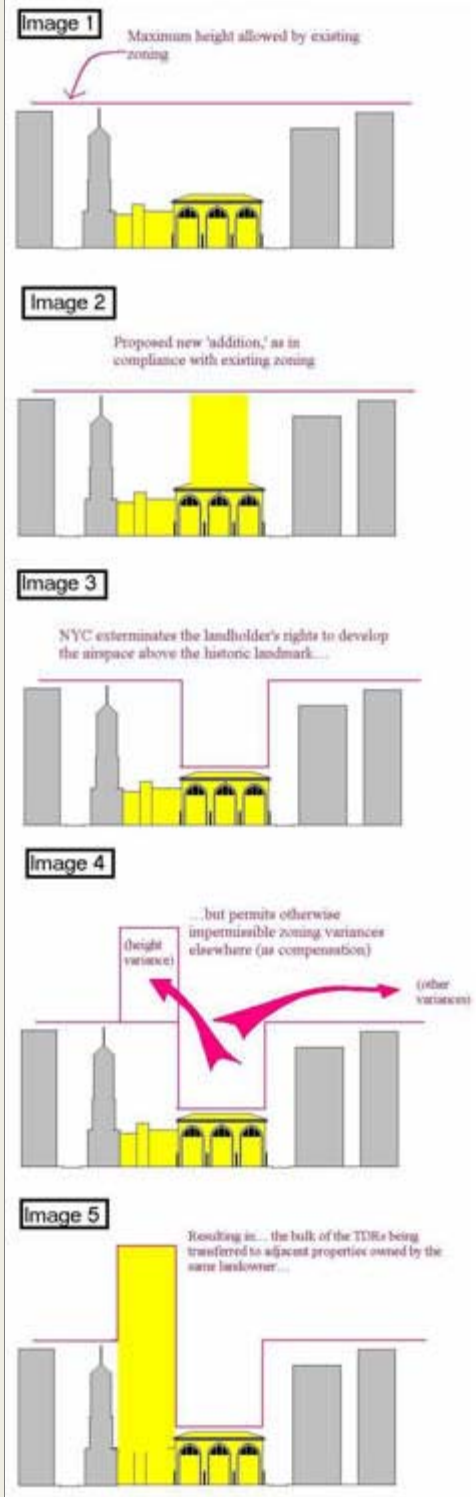
"[The process of creating] a valuable receiving area involves the kind of higher density zoning that many conservation-minded suburbanites want to prevent in the first place."

(Haar and Kayden, 1989, p. 151)

A MODEL TDR PROGRAM:
MONTGOMERY COUNTY, MD

The Montgomery County, Maryland is touted as having one of the most successful TDR programs in the nation. Since its inception in 1980, the county has protected over 50,000 acres of farmland and open space. Montgomery County's achievement is due in large part to its success

Figure 5. Grand Central Terminal



not just possible developers. Local citizens, land trusts and investors may all have an interest in the market for other reasons aside from development.

Sometimes a municipality may step in and act as a broker, buying TDR credits for later sale. This idea of a TDR bank is increasingly popular. Municipalities can act essentially as a federal reserve bank influencing the price of the development rights. Some communities also put conditions on the sale of rights from their bank in order to influence other aspects of development, such as design details or affordable housing

credits to build, attractive transit-oriented-neighborhoods around the Bethesda and Silver Spring Metro transit stations.

in forming a market for development rights.

(Montgomery County Planning Board, 2002)

Requirements that development projects use TDRs are an effective, if coercive, means of forming a market. And if communities eliminate alternative ways of achieving higher densities, such as variances, then the purchase of development rights becomes a necessity. This can have mixed results. The variance process is often viewed as flawed and tilted towards property interests. However, it can be much more responsive to changing community needs than a TDR program.

Other possible incentives for developers to buy building rights include maximum density bonuses, exemptions from some development impact fees, or even exemption from certain development standards like setback, open space, and parking requirements. (Pruetz, 1997)

Community participation in the comprehensive planning processes is particularly vital in receiving areas since many residents might believe that high density development lowers property values and diminishes quality of life.

Rights as currency

In communities with TDR programs, the rights become the currency of development. The development value (not price) of a TDR credit is set so that one equals another. Credits can be bought and sold at any time, not just when a particular development in the receiving site is pending. Also, a TDR should be a general investment available to anyone,

Grand Central Terminal, New York City

Grand Central Terminal, constructed in 1913, is one of the city's architectural masterpieces. In the late 1960s, the Penn Central Transportation Company wanted to construct a 53-story 'addition' over the protected landmark. The city decided the tower would destroy the character of the Terminal, so they allowed Penn Central to transfer the development rights to adjacent properties. (Figure 5)

requirements. Finally, if the government buys TDR credits without eventually transferring them to a developer, the program can be a tool for restricting growth, similar to the more common 'purchase of development rights' program.

Brokers often step in to facilitate transactions, charging a fee of six to seven percent of the total price just as in regular real estate transactions. In some cases brokers may wind up advertising their TDR services, possibly taking over the marketing function from the government (Pruetz, 1997).

Administration

Public education is essential so that everyone remembers the program goals and learns the operation of the market. Mailings to and public meetings for landowners in sending areas, potential developers and residents of receiving areas are an integral part of the education effort. TDR program staff can also assist people with the legal aspects of the program.

When deciding on the number of TDR credits to make available, most literature recommends setting the ratio of sending credits to potential receiving credits to at least 2:1. This leaves room for receiving sites to be developed without fully using TDR credits to increase density to the maximum allowable. Montgomery County has used more than half of the sending TDRs but found that the ratio is down to about 1:1. (Montgomery County Planning Board, 2002) As a result, the price of development rights has dramatically decreased, so the county is in the process of looking for more receiving sites.

Communities must monitor the progress of the program to ensure that goals are met. If local governments do not have the expertise or interest in administering a program, they can consider hiring a local land trust or other service provider.

Should local governments worry about TDR and 'takings' law?

The Fifth Amendment to the U.S. Constitution reads, in part, "nor shall private property be taken for public use without just compensation." Traditionally, a taking was defined as a physical seizure of property by the state.

However, in 1922 the U.S. Supreme Court ruled that governmental interference in the form of excessive regulation may be so burdensome to a landowner as to have the same effect as an actual physical invasion thus establishing the regulatory taking. (*Pennsylvania Coal Co. v. Mahon*). Land use zoning falls under this broad legally-murky category of regulatory takings.

To complicate matters, the High Court has ruled that a landowner must lose total use of the property before the government pays compensation. A *partial taking* need not be compensated at all. Consequently, the state has every incentive to have its actions deemed partial rather than full takings. Some municipalities view TDR programs as a way to achieve this goal.

In *Penn Central v. City of New York*, the Supreme Court seemed to indicate that TDR credits have a value that could prevent a total taking of property - and thus require compensation. However, in the more recent *Suitum v. Tahoe Regional Planning Agency*, this attitude seemed to change. In a concurring opinion, Justice Scalia wrote that "TDRs. have nothing to do with the use . of the land to which they are attached. The right

TDR and Land Trusts

Since the land trust community has experience in the facilitation and administration of purchase of development right programs, local governments may want to explore the possibility of partnerships with private land trusts.

Local land trusts may be able to assist with education of the community, the marketing of the program and the facilitation of the conservation easements or deed restrictions. Clear and comprehensive contracts between the local government and the land trust are an essential element of any partnership.

So far, private land trusts haven't had much participation in local government TDR programs (Land Trust Alliance, 2002). One notable exception is that many municipalities donate the conservation easements that extinguish transferred development rights to a local land trust.

to use and develop one's own land is quite distinct from the right to confer upon someone else an increased power to use and develop his land." However, Scalia goes on to praise TDR programs as a valuable land use tool, but not as a way for the government to avoid a takings claim.

It must be noted that the *Suitum* case concerned only the legal outer bounds of the issue - situations in which parcels in a given sending area are stripped of all rights to build. So long as a bare minimum of development is permitted on a particular set of landholdings, there may be no 'takings' issue. Montgomery County cleverly kept within the bounds of this loophole because it rarely zones land as zero-growth. It implemented a baseline minimum of one dwelling per 25 acres in its sending areas. (The result has been a proliferation of overpriced rural 'estates', which may be less desirable than maintaining agricultural land, but may be more attractive than the sprawling alternative.) (Pruetz, 1998)

Also, the *Suitum* case heard by the Supreme Court might have been deemed a 'just compensation' if Lake Tahoe had some sort of TDR bank in place, whereby the owner could have quickly and easily sold TDRs at a fair minimum price without having to enter the marketplace. A TDR bank ensures liquidity and bridges the time gap between when an owner wishes to sell rights and when a developer needs to purchase them.

Is a TDR program a good governing tool?

Salamon (2002) cites five criteria on which we can judge the quality of a particular governing tool: effectiveness, efficiency, equity, manageability and legitimacy. How do TDR programs measure up?

Effectiveness

Does the governing tool achieve its intended objectives? This is the most fundamental question that must be asked. As previously mentioned, there are essentially two goals for TDR programs: preservation and compensation. The most highly touted programs do well at preserving land and the preservation is, by and large, permanent. However, even the model program in Montgomery County, Maryland has hit a few snags in terms of compensation. Due to a lack of receiving area demand, farmers in the sending areas that still hold development rights find them worth a lot less than when the program started.

Efficiency

Are the results achieved at a reasonable cost? Again there are two ways to examine the efficiency of TDR programs. One is administrative costs. The other is the cost of preservation. Administrative costs can be somewhat higher than under traditional zoning. Markets must be formed and monitored. TDR credits must be created and administered. Also, there are no savings over traditional planning techniques since a comprehensive plan and complete set of zoning rules must already be in place for TDR programs to work.

On the other hand, sometimes the only way to preserve land or historic places is by buying property or development rights. That is impossible for many cash-strapped local governments to do with public funds. TDR programs allow private money to be used to achieve those goals.

Equity

Are TDR programs basically fair and do they redistribute resources to people who need them? TDR programs try to spread the wealth of development by allowing landowners, especially farmers who equate their ability to develop their land with their retirement, to recoup their investment. To achieve this, the sending and receiving areas must be built properly to make sure that TDRs remain valuable. Otherwise, landowners in sending areas will find their TDR credits worthless and their land still unable to be developed.

However, creating value for landowners in the sending areas creates another equity problem for those in receiving areas. Residents of the receiving areas may not want the higher density development. This problem is particularly severe when the receiving area is an already existing suburb.

Manageability

Creating TDR markets can be a complex task. Decisions must be made to set up sending and receiving districts, underlying zoning, density planning and credit ratios. Some programs also require government-run TDR banks. Every choice affects the demand for TDR credits, their price and the success of the program. As the number of successful models increase, manageability should become easier, but it remains a complex task.

Legitimacy and political feasibility

A TDR program, with its inherent goal of compensating landowners, is naturally more politically palatable than typical command and control zoning regulations. However, any kind of land use restriction generates controversy. Municipalities must build community support for the projects (Johnston and Madison, 1997). Successful TDR programs cannot be created by the will of an agency. Political legitimacy must be built over time.

For example, successful TDR programs typically have a pre-existing constituency built around the need for land use controls. In Montgomery County Maryland, the Planning Commission had extensively studied farmland economics. In Lake Tahoe, local residents faced an indisputable decline in water quality. In New Jersey's Pinelands program, the TDR program was the latest effort in a longtime farmland protection program (Johnston and Madison, 1997). Public education and buy-in are vital.

Conclusions

As policy makers continue to search for ways to use the market as a governing tool, local governments will continue to consider transfer of development rights programs. TDR programs can be effective, equitable governing tools that make zoning more politically feasible. These programs offer two key benefits to local governments: they compensate landowners for lost property value due to zoning, and they use the market to pay for the preservation of public goods.

However, these programs can be costly and difficult to administer compared to typical zoning. Local governments must oversee (or contract out) regulation of the market, complex operation for such an unusual good. Even with education and program marketing efforts, communities may not support TDR programs, especially when they are on the receiving end of increased density. Lastly, TDR programs usually protect land or buildings on a permanent basis. This is both an advantage and a disadvantage of this tool.

Communities should be aware that a TDR program is not a substitute for planning and zoning, rather TDR programs require strong zoning. Therefore, they may not provide a sure-fire way to avoid friction over property rights issues, although some innovative communities have designed their programs to lessen the likelihood of takings conflicts.

TDR programs will be most effective in communities facing strong development pressure, where officials believe it would be difficult to successfully implement traditional zoning restrictions to achieve preservation goals or where financial resources are not available for municipalities to buy land or development rights on their own. Montgomery County, MD offers the best example of how a community with these characteristics has formed and implemented a successful TDR program.

Despite its potential as a land use tool, transfer of development rights programs have been slow to catch on in communities. While there have been some visible successes, there have been many places where the schemes fail for one reason or another. So while policy advocates push transfer of development rights programs, it is likely that pragmatic local government officials are still reluctant to take the lead.

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[1] Downzoning: The practice of reducing the zoning of a property from a more to a less valuable use (e.g. from commercial to residential or from residential to agricultural.)

[2] TDR bank: A market regulation tool in which governments directly purchase development rights from landowners at a set price and then sell the development rights to developers in the future.

[3] Adequate Public Facilities Ordinances (APFO) require that sufficient infrastructure, such as water and sewer services, be in place before any development construction can commence.

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Prisons, Privatization, And Public Values

Stephen McFarland**Chris McGowan****Tom O'Toole**

**Presented to Prof. Mildred Warner
Privatization and Devolution CRP 612
December 2002**

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Introduction to Prison Privatization

The movement towards the privatization of corrections in the United States is a result of the convergence of two factors: the unprecedented growth of the US prison population since 1970 and the emergence out of the Reagan era of a political environment favorable to free-market solutions. Since the first private prison facility was opened in 1984, the industry has grown rapidly; gross revenues exceeded \$1 billion in 1997. This paper will examine the industry's growth in the US in recent decades, and its current scope. The evidence for and against claims that private prisons can realize gains in efficiency will be weighed, and implications of privatization for other public values including safety, justice, and legitimacy will be examined.

The Evolution and Scope of the Private Prison Industry

The birth of the contemporary American private prison industry may be traced to 1984, when the United States Immigration and Naturalization Service became the first federal agency to contract for private correctional services, with the Corrections Corporation of America. This initial movement toward the federal privatization of corrections was quickly followed by contracts for outsourcing developed by the US Marshals Service and the US Bureau of Prisons in 1986. The first county-level private prison contract was signed in

1984, between Hamilton County, Tennessee and the Corrections Corporation of America. Shortly thereafter, in 1985, the first state-level contract was signed, between the Commonwealth of Kentucky and the United States Corrections Corporation (NCPA 1995).

In 1987, approximately 3,122 inmates out of 3.5 million inmates were confined in private corrections facilities in the United States. By 2001, the total United States inmate population had swelled to a staggering 6.5 million inmates—123,000 of whom were confined in private facilities. This 4,000% increase in the number of prison beds in private hands was fed by the concomitant 90% growth in total inmate populations in the United States as a whole. (BOJS, 2001). Currently, over 32 states and Puerto Rico have formed contacts with corrections corporations. Figure 1, below, illustrates the inmate capacity of private prisons by state as of 1999 (Thomas, 2002).

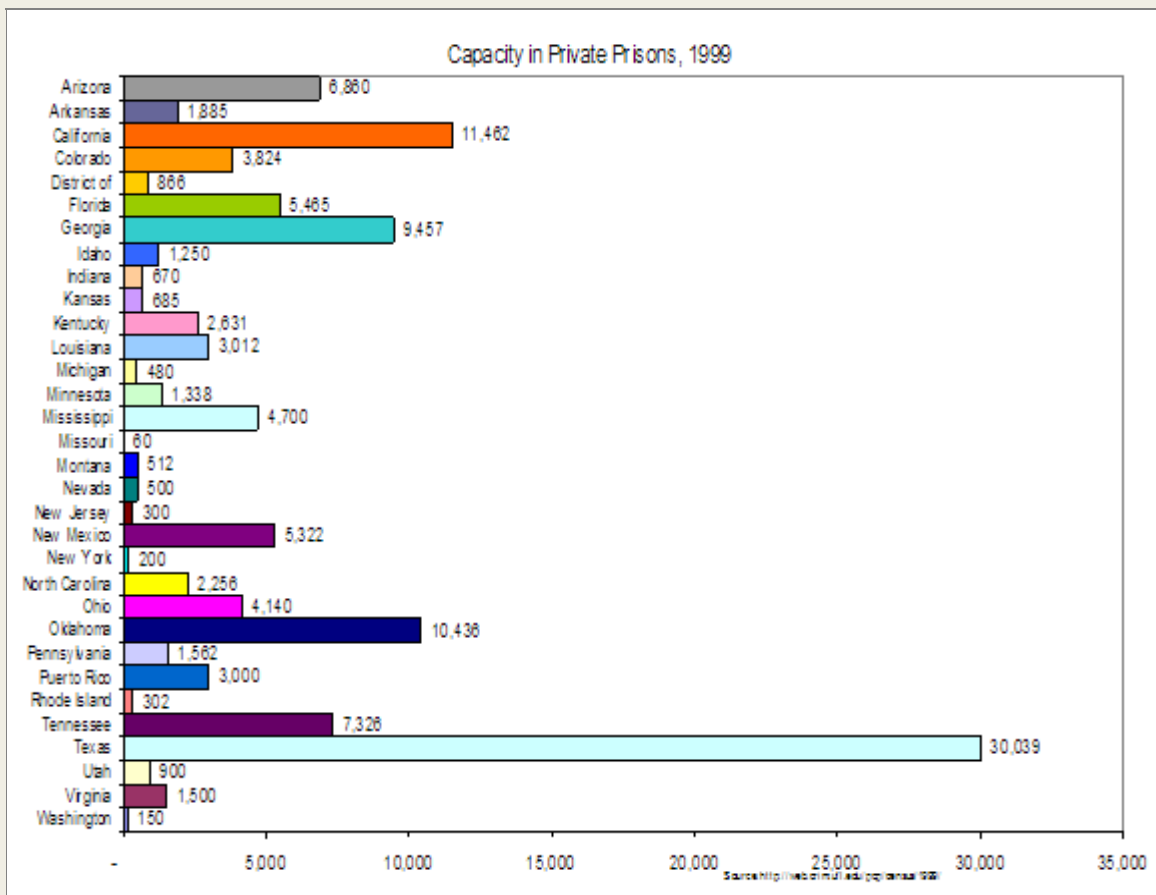


Figure 1

As the above chart shows, per 1999 estimates, Texas, California and Oklahoma exhibit the largest inmate populations incarcerated in private facilities, with populations of 30,000; 11,000; and 10,000 inmates, respectively (Thomas 1999).

Although Texas holds the highest number of our nation's private prison beds, the proportion of inmates in private facilities to the total Texas inmate population is only 10.1 percent. New Mexico outsources the largest proportion of its inmate population to private corporations (43.8 percent), followed by Alaska (31.7 percent), Montana (32.7 percent), Wyoming (28.3 percent), Hawaii (22.9 percent), Wisconsin (16 percent), Mississippi (16.9 percent), and Tennessee (15.5 percent) (Fig. 2-ok DOC, 2002).

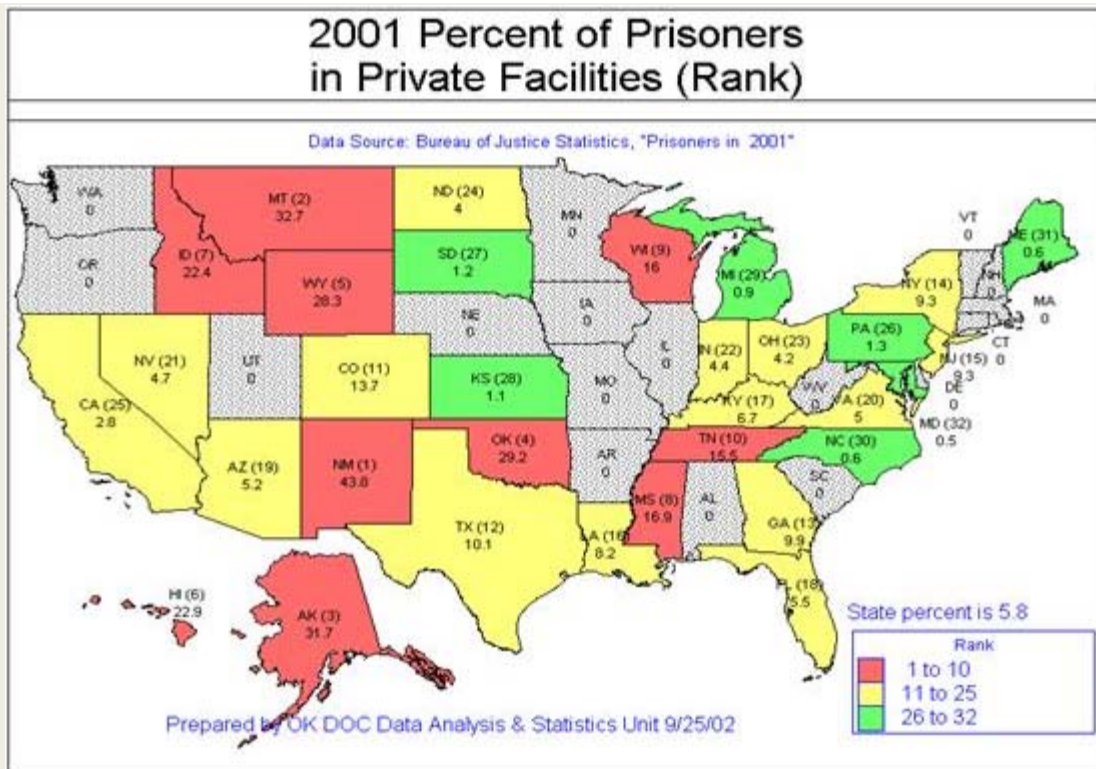


Figure 2

The financing of private corrections facilities varies from state to state, and, concurrently, from facility to facility. The per diem rate formed through a contract in Oklahoma, for example, may be substantially different from that formed in Tennessee. In general, however, there are two broad methods of financing the capital costs incurred through the construction of private corrections facilities – either the corporation undertakes the construction of the private corrections facility without public assistance and rents its services to a contracting jurisdiction, or the jurisdiction issues bonds to finance facility development. When bonding occurs, the private corporation normally administers the prison for an established period of time, after which control is diverted back to the contracting jurisdiction (Leonard, 1990: 71-76).

Operational costs of private corrections facilities vary depending upon both the type of facility and programs offered to assist in incarceration or rehabilitation. A facility's security classification has the greatest impact on its operating cost. In Oklahoma, the average rate for a medium security facility is forty-eight dollars per prisoner per day. This rate is subject to change with each subsequent contract negotiation. Indeed, in 2002 New Mexico was able to renegotiate the contracted per diem rate for one of its maximum security facilities from ninety-three dollars to sixty-five dollars. Rates can also be adjusted upward; corrections companies operating in Oklahoma have realized a forty cent (\$0.40) increase in their per diem rates as a material incentive for the provision of drug and alcohol rehabilitation programs (OK, DOC, 2002).

In 1999 there were 14 private prison corporations operating in the United States, with a total capacity of 122,871. The two largest, Corrections Corporation of America and Wackenhut Corrections Corporation, operated 55.6% and 21.73% of the total market share, respectively. Table 1 (below) lists the largest private prison firms operating in the United States, with their total capacity and market share, as of 1999 (Thomas, Charles, 1999 Census).

Table 1: Firms Operating in the United States in 1999

Management Firm	Capacity of Facilities Under Contract in United States	Market Share of United States Contracts
Alternative Programs, Inc.	340	0.3%
Avalon Correctional Services, Inc.	350	0.3%

The Bobby Ross Group	464	0.4%
CiviGenics, Inc.	2,791	2.3%
Cornell Corrections, Inc.	7,138	5.8%
Correctional Services Corporation	6,517	5.3%
Correctional Systems, Inc.	272	0.2%
Corrections Corporation of America	68,256	55.6%
The GRW Corporation	362	0.3%
Management & Training Corporation	9,177	7.5%
Maranatha Production Company	500	0.4%
Wackenhut Corrections Corporation	26,704	21.7%
Totals	122,871	100%

Private Prisons, the Efficiency and Quality Questions

Most arguments for the privatization of prisons revolve around one issue: efficiency. The purpose of privatization of any government undertaking is to improve the quality of the service provided without increasing the costs, or to decrease the costs without decreasing the quality of service. It is mainly on the strength of claims to efficiency that prison privatization expands in scope.

Proponents believe that private prisons not only costs the taxpayer less, but also require the state-run agencies to operate more efficiently themselves. When private companies are allowed to enter into the market for prisons, they argue, state run facilities are forced to operate more efficiently or risk losing their funding. Those who oppose prison privatization point to studies claiming that the superior efficiency of private facilities has not been conclusively demonstrated (GAO, 1996). Few available studies account for both cost and quality, making conclusive judgment about efficiency impossible. Insofar as savings are realized, they argue, it is through making dangerous cuts in labor costs (Greene, 2001). Further, they say, studies comparing costs have not thoroughly accounted for overhead costs and costs of negotiating contracts, thus underestimating the cost of private facilities as compared to public ones.

Whenever a public service becomes privatized a question arises as to whether or not the service quality will be affected, either positively or negatively. But within the realm of prisons though there is a dispute which has arisen over what quality of service actually means. Some argue that the purpose of a correctional facility is to rehabilitate the offender, so upon release s/he can reenter society and become a productive member. Others believe that the purpose of prisons is to lock away those who commit crimes, so that they are not free to commit additional crimes in society. In this view, prisons are meant to be a deterrent, to help persuade people from committing the crimes. Generally speaking, there are three main types of issues when looking at quality.

- Security of the institution; number of escapes, number of deaths, etc
- Rehabilitation efforts; Drug Rehabilitation, Education, etc.

- Quality of life; medical treatment, food, recreational services, etc.

Privatization Proponents

A study of the quality of prisons in New Mexico showed that private facilities had a higher quality of service in all but one category, "care", as figure 3 (Montague, Erik; August 2001) below shows.

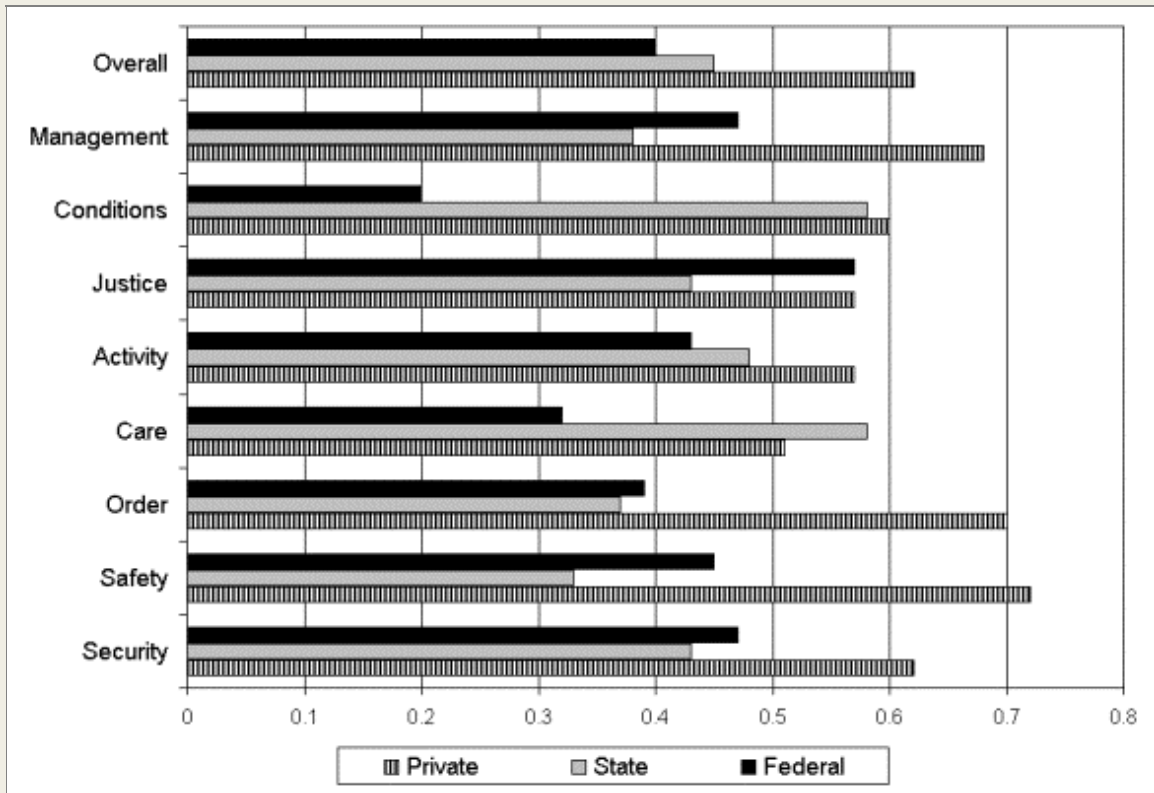


Figure 3

The study was based on a Bureau of Prisons survey and included both prisoners and correctional staff in the respondents. When comparing federal, state and private facilities within New Mexico, the private prisons were more highly rated by respondents in almost every category. Doubts regarding the quality of the facilities are not supported by this analysis.

Proponents of privatization argue that private prisons, through innovative design and management, and by realizing economies of scale, can lower the overall costs of incarceration:

- Studies in both 1997 and 2000 by the State of Arizona of costs associated with both public and private prisons found evidence of cost savings:
- The 1997 Study found average costs per inmate per day in government prison was \$43.08, as compared to \$35.90 in the private prison, estimated savings of 17% (Thomas, 1997)
- The 2000 Study found average costs per inmate per day in government prisons was \$46.72 in 1998 and \$45.85 in 1999, as compared with the average costs of \$40.36 in 1998 and \$40.88 in private facilities, estimated savings, of 13.6% in 1998, and over 10% in 1999. (Dept. of Corrections, Arizona, October 2000)
- Corrections Corporation of America claims that between 1994 and 1998, the states that contracted with them for prison facilities saved a total of \$248 Million in costs. (www.correctionscorp.com)
- 1996, Louisiana conducted a survey of the costs of three identically built prisons, one run by the state and the other two by private corporations. The study found that the average per diem rate of the state facility was \$26.76 while the average cost for the private facilities were \$22.96 and \$23.51, savings of 14 to 16 percent. (Reason Policy Institute, Pg. 4)

Opponents of Privatization

Critics of privatization claim that there are no true efficiency gains from privatization, arguing that comparative studies of efficiency often ignore a number of key factors, by looking only at the operational costs (per diem rates). In 1996 the US General Accounting Office brought into question a number of the key assumptions that the proponents of privatization claim. Ultimately, the GAO found that there was no evidence conclusively demonstrating efficiency gains from privatization (GAO Reports, GAO/GGD-96-158). The GAO pointed out flaws in many of the studies touting efficiency gains from prison privatization. They found virtually no reliable multi-year studies. Those that they did find suffered from flaws including: failure to compare similar institutions, failure to account for both cost and quality, or lack of a nuanced account of hidden costs.

The cost of contract negotiation is an example of a cost that is often overlooked. The process of gathering proposals from corporations, analyzing them, and determining who is awarded the contract is an expense that is usually ignored. This is an additional cost that the state must endure in determining whether or not to contract out the service. Another cost that can raise the operation costs of any given contract is excessive health care costs. When a contract is negotiated between a state and a private corporation for the costs of a correctional facility, generally a negotiated health care rate is established, and anything above this amount must be covered by the state. While the rates negotiated will cover a majority of the health care needs of an inmate, in cases of severe disease this is not usually the case, and the additional costs must be borne by the state, which is ultimately responsible for the health of the prison population.

Another possible explanation for the appearance of efficiency gains is the shift in tax burden to local municipalities. In years past, the mentality of "Not In My Back Yard" (NIMBY) arose whenever a new prison facility was to be built. Then, as areas began to see that there were possible economic gains by the placement of a prison near an economically impoverished town, the mentality began to change. Rural towns began to see prisons as a stable economic source for the area, and municipalities began to offer economic development funds to private prison corporations for the construction of new facilities within their jurisdiction.

Table 2: Subsidies Given to Corporations (Jail Breaks, 2002)

Operating Company	# of Facilities in Study	% Of Facilities with Subsidies	Total Value of Construction Bonds (<i>in millions</i>)	Total # of Subsidies Found
Corrections Corporation of America	37	78%	\$406.4	41
Wackenhut Corrections	16	69%	\$165.5	21
Cornell Companies	2	50%	\$0.0	1
Five Others	5	60%	\$56.6	4
Total	60	73%	\$628.6	67

What is often overlooked is that there is no clear evidence of prisons being a strong source of economic growth. As in the case of military bases, while the creation of a new prison, or the loss of a former older facility may make people believe that excess economic growth will occur, there is little evidence supporting these statements. (Hooks, Gregory; 2002).

Public Values

Efficiency aside, prison privatization presents some serious dilemmas regarding public values such as safety, justice, rehabilitation, and legitimacy.

- **Safety:** Do private prisons pose a threat to the safety of prisoners, prison workers, or the general public?

- Justice: Are the mechanisms of private prisons liable to distort sentencing?
- Rehabilitation: Can the profit motive be reconciled with the need to prepare inmates for productive lives after prison?
- Legitimacy: Is incarceration an inherently governmental function? Is it right that profits be reaped from human imprisonment?

Safety

Opponents of private prisons argue that their incentive to cut costs to maximize profits presents a threat to the safety of prisoners, prison staff, and the public at large. They argue that private prisons tend to have fewer guards with less experience, which results in an increased rate of violent incidents behind bars. One study found violent incidents to be as much as 50% more frequent in private prisons (Greene, 2001). Also, private prisons may pose an increased risk of prisoner escape; a study cited by the Reason Public Policy Institute, no foe of privatization, found that government-run prisons have fewer escapes, less substance abuse and greater recreational and rehabilitation measures in place (Moore, Adrian 1998).

Further, some critics of privatization claim that the relative ease with which private industry can construct new prison cells leads to an over-reliance by government on incarceration at the expense of preventive social programs-- programs which, they argue, are more effective in preventing violence (Logan, 2002, Currie 1998). A study by Grassroots Leadership found that discretionary funds in the state of Mississippi were being routed from education to private prisons (www.grassrootsleadership.org).

Industry supporters, on the other hand, argue that through innovation in prison design and operation, private prisons are made safer than public facilities. Proponents argue that the profit motive creates incentives for safety, as violent disturbances in facilities leads to greater costs in the long run (Lissner et al, 1998) . A safe prison, they argue, is a profitable prison.

Justice

Those who oppose prison privatization make the case that the industry has the incentive and the wherewithal to extend the amount of time convicts will remain in prison, and that this presents a threat to justice. The industry, they say, can extend sentences in two ways. First, it has thrown its influence, through lobbying and campaign contributions, behind "tougher" laws such as "three strikes", mandatory minimum sentencing, and "truth in sentencing" that increase the duration of sentences. The conservative American Legislative Exchange Council (ALEC) has been extremely active in advocating truth-in-sentencing and three strikes policies throughout the United States. This organization is heavily funded by the corrections industry, and indeed ALEC's Criminal Justice Task Force is co-chaired by Brad Wiggins, a former director of business development for the Corrections Corporation of America (Bender, 2000). The strength of these kinds of political influence, opponents fear, will only increase as the industry grows. As one observer notes, corrections corporations have "paid handsomely to play the public policy game, and will likely do so again"(O'Connell, 2002).

The second way opponents of privatization worry that private firms will distort the administration of justice is by exerting undue influence on parole hearings. Opponents argue that since prison firms are generally paid per prisoner per day, they have an incentive to extend inmate stays as long as possible, and so are liable to reduce prisoner's chances for parole or good time off by exaggerating or fabricating disciplinary infractions (DiIulio, 1990).

Industry supporters point out in response to these concerns that industry campaign contributions are smaller than those made by public sector unions (Moore, 1998). There is no evidence, they say, of private prison officials manipulating parole decisions.

Rehabilitation

The profit motive, opponents of privatization say, distorts the function of prisons towards incapacitation and away from the provision of rehabilitative services that would help prisoners rejoin society productively, and curb recidivism. Corrections firms have no incentive, they say, to provide costly rehabilitative treatment and services. Industry analysts respond that it all depends on the contract. There is much potential for contracts

to be structured in ways that provide incentives to firms to provide services such as drug treatment (Lissner, et al, 1998.). Indeed, in Puerto Rico and Australia, pilot programs are being conducted with so called "outcome-based contracting", wherein fees are tied to the impact and measured outcomes of incarceration (Cornell et al, 1998).

Legitimacy

Opponents of privatization argue that it is an illegitimate delegation of government authority to allow private companies to take control of an integral part of the justice system. Proponents of privatization disagree. They make a distinction between the function of the courts and that of the prisons. It is the proper duty of the public sector, they allow, to determine just sentences for violations of the law. But the duty of the prisons, they argue, is merely to carry out the sentence of the courts, and they see no reason why this task ought not be delegated to a private entity. Opponents of privatization claim to the contrary that it is difficult or impossible to distinguish these two functions, given the level of control that prison officials have over the nature (and, potentially, the duration) of an inmate's stay. Prison officials have the prerogative to impose disciplinary measures ranging from revocation of yard privileges to the imposition of solitary confinement, and so have a great deal of control over just how punitive an experience each sentence truly is (DiIulio, 1990).

Shifting Public Values

Champions of the private prison industry justify its continued expansion by pointing to the public will for increased incarceration. Voters have consistently been supportive of harsher sentencing measures that create a demand for more prison beds. And yet there is a growing movement that has come to see increased incarceration in general, and growth of the private prison industry in particular, as a threat to public values. For example, the mission statement of the Grassroots Leadership organization's "Public Safety and Justice Campaign" reads:

For-profit private prisons, jails or detention centers have no place in a democratic society. Profiteering from the incarceration of human beings compromises public safety and corrupts justice. In the spirit of democracy and accountability, we call for an end to all for-profit incarceration(www.stopprivateprisons.org).

Grassroots Leadership has organized religious, labor, student, and community groups to fight private prisons through media advocacy, education, lobbying of government officials at all levels, and pressuring corporations involved in the private prison industry. For example, Sodexo Marriott, the largest single investor in CCA, divested its holdings in the prison firm in response to pressure on college campuses to cancel food service contracts. (www.grassrootsleadership.org)

Many states, such as Louisiana and New York, in response to pressure from labor unions and other groups, have enacted moratoriums on or banned private corrections facilities, while other states, such as Wisconsin, have enacted statutes that prohibit the construction of private prisons on speculation-- that is, without prior contract (AFSCME, 2002). While the growth of this billion dollar industry seems to have slowed at the level of the state prison, the federal government now seems to be contracting for many of its facilities with private firms (www.grassrootsleadership.org). It remains to be seen whether the efficiency gains promised will be realized, and whether the government can, through innovative contracting, reconcile the dilemmas that prison privatization poses with respect to public values.

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A succinct account of the potential strengths of prison privatization.

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A cogent analysis of the moral and ethical questions raised by prison privatization.

DOC, State of Oklahoma. *Private Prisons*. www.doc.state.ok.us/docs/private_prisons.htm

Contains useful information about private prisons in the state, as well as many good links to articles, studies, charts, and other web-sites.

Grassroots Leadership Homepage. <http://www.grassrootsleadership.org>

This activist organization has devoted itself to organizing labor, religious, and community groups to work together towards abolishing private prisons. The site contains links, press releases, an online newsletter, journalism, and academic studies.

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This anti-privatization paper includes troubling anecdotal evidence of abuses of authority in private institutions.

Hooks, Gregory; Mosher, Clayton; Totolo, Thomas and Lobao, Linda "The Prison Industry: Carceral Expansion and Employment in U.S> Counties, 1969-1994" DRAFT, September 2002

This is a draft paper currently being considered for publication in the Social Science Quarterly. The draft was provided by Gregory Hooks, and is a collaboration between sociologists at Washington State University and Ohio State University.

Jail Breaks, "Economic Development Subsidies Given to Private Prisons" Good Jobs First, 2002

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This anti-privatization site looks at the investment by municipalities in prisons as a means of economic development.

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A thorough and succinct list of the various arguments for and against, without analysis. This pro-privatization site is maintained by Prof. Charles Logan of UConn, and has many links to studies and other sites.

Douglas C. McDonald, ed. *Private Prisons and the Public Interest*. New Brunswick: Rutgers University Press, 1990.

The data in this collection of articles from a wide range of perspectives are no longer current, yet it contains analysis of many financial, moral, contractual, and political issues that continue to be central to the prison privatization debate.

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This survey of studies from this right wing/libertarian think tank concludes that private prisons can save 10-15% in costs without sacrificing quality. Few of the studies the survey examines combine analysis of cost and quality together, so conclusions about efficiency gains are questionable.

Moore, Adrian T and Segal, Geoffrey "Weighting the Watchmen: Evaluating the Costs and Benefits of Outsourcing Correctional Services" Reason Public Policy Institute, January 2002

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Parenti, Christian. *Lockdown America: Police and Prisons in the Age of Crisis*. New York: Verso, 1999.

This piece of journalism, illustrated with vivid examples, places prison privatization within the political-economic context of the 30-year history of the rise of the 'prison-industrial complex'.

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The homepage for the anti-prison privatization campaign organized by Grassroots Leadership.

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This pro-privatization site contains some useful information on the number and location of private prisons, as well as links to other sites maintained by private prison supporters. The site's content should be held strongly suspect, as its author, Charles Thomas, was found to be in conflict of interest after accepting a large consulting fee from the Corrections Corporation of America.

Torres, Sam and David Schichor. "Has the Privatization Concept Been Successful?", in *Controversial Issues in Corrections*, Charles B. Fields, ed. Boston: Allyn and Bacon, 1999.

A succinct debate on the merits of prison privatization.

U.S. General Accounting Office, "Private and Public Prison: Studies Comparing Operational Costs and/or Quality of Service," GAO/GGD-96-158, August 1996

This survey of early-1990's research comparing public and private prisons on measures of cost and quality finds no evidence of efficiency gains from privatization that can be generalized, and makes useful recommendations for designing further research studies.

Eric Montague "Private Prisons: A Sensible Solution" Policy Brief, Washington Policy Center August 2001

This policy brief provides an analysis of several states' attempts at prison privatization and provides some strong evidence in support of privatization. The purpose of the policy brief was the privatization of prisons in Washington State.

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Mitigating Corruption in New Public Management

Presented to Prof Mildred Warner
Privatization and Devolution CRP 612
December 2002

By:

Andre Gratto
Bryan Preston
Thor Snilsberg

Revised by:

Andre Gratto
Bryan Preston

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Executive Summary:

Corruption has been identified as a major barrier to economic and social development in developing countries, and considerable research has been done into the causes of and the solutions to corruption in these countries. Several factors that lead to or mitigate corruption in developing countries have been clearly identified: Revenue Proximity, Accountability, Information Transparency, Participation, Equality of Power/Wealth and Culture. In contrast, virtually no research has been directed at corruption in the context of the trends toward what is known as the New Public Management, or NPM. NPM is a new pattern of governance associated with the use of a wide range of different "tools" and with a reliance on third parties to manage and deliver government services. However, the factors of corruption identified by international research can be used to provide an environmental design framework to advise planners and public officials about the potential for corruption and how it can be mitigated with the NPM.

The Emergence of New Public Management

New Public Management (NPM) is a public management trend that is gaining popularity throughout the United States. The NPM style of government involves using a wide range of "tools" like grants, loans, contracts, vouchers, and other alternatives to direct government provision. Many of these rely on third party actors to play an active role in delivering government services or to act in the public good. These actors form shifting networks of third parties that work with each other and with government agencies.

New Public Management is perhaps most distinguished by its use of internal competition to accomplish its ends but is multi-faceted. Rhodes (1996) notes that NPM refers to two concepts. The most relevant to this paper is the new institutional economics. "The new institutional economics refers to introducing incentive structures (such as market competition) into public service provision. It stresses aggregating bureaucracies; greater competition through contracting-out and quasi-markets; and consumer choice." (Rhodes, 1996.)

The NPM style of government involves distinguishing between policy decisions and service delivery. Service delivery, proponents of NPM argue, is best left to "entrepreneurial" governments based on principles like

competition between service providers, outcome based performance standards, decentralized authority, market mechanisms and other qualities not traditionally found in government bureaucracy. Rhodes notes that "NPM and entrepreneurial government share a concern with competition, markets, customers and outcomes." (1996)

How does corruption relate to New Public Management?

As Salamon notes, "What is distinctive about many of the newer tools of public actions is that they involve the sharing with third-party actors of a far more basic governmental function: the exercise of discretion over the use of public authority and the spending of public funds." (Salamon, 2002) As such, New Public Management has two major implications for corruption. First, NPM creates the potential for corruption in a wide range of actors and that the *flexibility* of these networks makes it more difficult to maintain accountability and oversight. Secondly, and perhaps more importantly, the line between the government and private actors becomes increasingly blurred in NPM.

Unfortunately, there is very little empirical research into the relationship between corruption and NPM. Most of current research focuses on developing countries where development agencies like the World Bank focus most of their attention. There is also a substantial amount of cross-national studies that compare the level of perceived corruption across many countries. Neither of these sources looks at corruption at the sub-national level in developed countries, and this is where NPM strategies are most common.

This paper attempts to move past the lack of empirical research specifically aimed at corruption in NPM environments by using common themes, lessons and issues taken from the international corruption research. Hopefully, these factors will help policy makers mitigate corruption in NPM environments by providing an environmental design framework that reduce the potential for corruption.

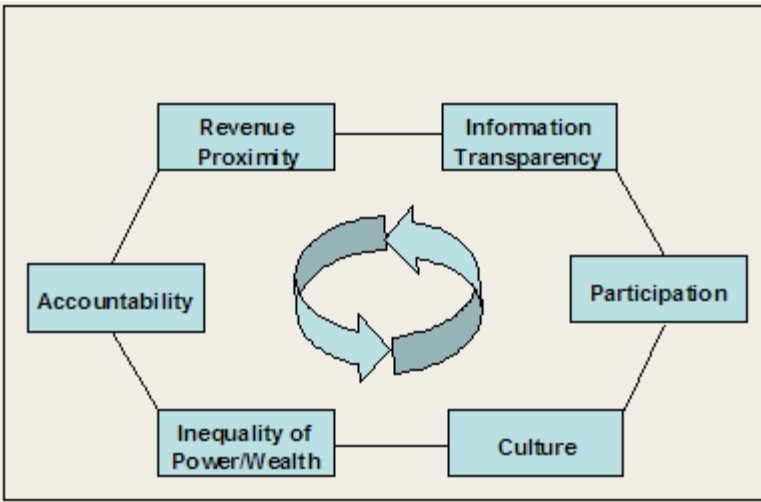
What is corruption and why is it bad?

The literature review produced several definitions of corruption. Harrison & Huntington define it as "...efforts to secure wealth or power through illegal means – private gain at public expense" (Harrison & Huntington, 2001) However, this defines corruption in terms of legality, which makes it difficult to talk about corruption across different legal systems. A better definition is "the misuse of public power for private profit." (Joseph Senturia, as quoted by Smelser, 1971) This definition encompasses a wider range of activities, but there was concern that it did not require intentional misuse (as opposed to accidental or unknowing uses of public power that benefit individuals at the expense of the public). This paper ultimately took these definitions and defined corruption as *the intentional abuse of public power for private gain*. This includes all cases where an organization or individual abuses government authority, influence or funds for private benefit or the benefit of another private actor.

Empirical research into the effects of corruption shows that it is not simply a moral concern or a matter of principal. Rather, corruption has a very negative effect on government performance and on the well being of individuals without money or power. International research has shown that a .78% increase in the rate of corruption leads to a decline of the income growth among the poor of 7.8% (Lipset and Lenz in Harrison and Huntington, 2001). It is no surprise, then, that the World Bank called corruption the "single greatest obstacle to economic and social development." The perception of corruption also has negative consequences as citizens are likely to grow cynical of government when they feel the government does not work on their behalf.

Why does corruption occur?

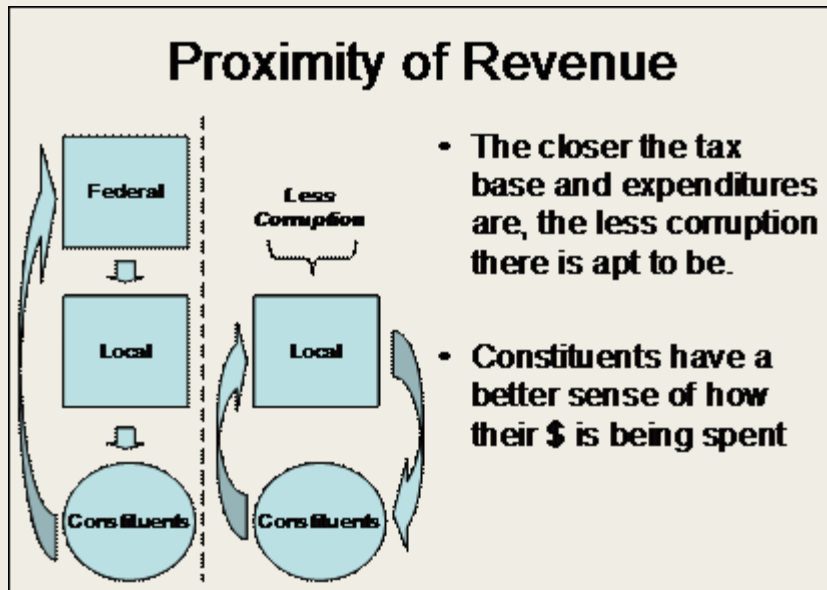
The temptation to abuse public power for private gain is a natural result of peoples' self-interest. This temptation can be reduced by creating an environment where corruption is difficult and does not pay. Planners and policy makers can create such an environment by understanding the environmental factors that influence corruption.



As mentioned earlier there is very little research focusing specifically on corruption within New Public Management. There is, however, a fair amount of international research that has been done on corruption in general and by studying this we hope to identify environmental factors of corruption that can be used in any municipal context. Examining case studies and other research, primarily done by the World Bank, this report identifies six environmental factors that have an impact on corruption in international contexts. They are: Revenue Proximity, Accountability, Information Transparency, Participation, Inequality of Power/Wealth and Culture.

Participation, Inequality of Power/Wealth and Culture.

Although each has its own drivers, these factors are closely related to each other and tend to reinforce one another. Focusing on any one factor at the expense of the others will not effectively curb corruption. Each factor has to be dealt with individually and as a set.



Proximity of Revenue

Proximity of revenue is how close tax revenues are to their respective expenditures. The further removed the source of funds is from those who decide how the money will be allocated, the greater the potential for corruption. (Fisman & Gatti, 1999.) Take two different situations: In the first, the Federal government allocates a portion of its total tax revenues to a certain state with the understanding that the state will then allocate this money appropriately. In the second, the state taxes its own citizens and then returns that money to those same citizens in the form of services, etc. In the second example, the citizens receiving the services will hold the provider more accountable as they seek to

“get what they pay for.” Whereas in the first example the state intermediary could opt not to forward federal money at all or could redirect monies from the intended allocation without the citizens missing the intended services .

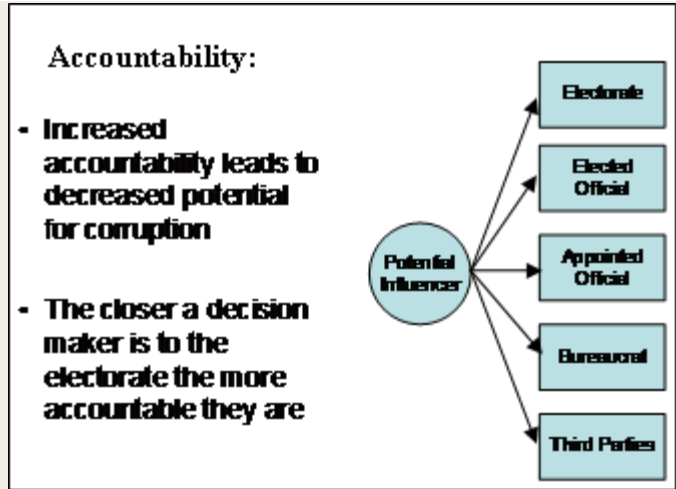
Accountability

Accountability is similar to proximity of revenue but instead of dealing with money it concerns power. The idea here is that the closer a decision maker is to the electorate the less potential for corruption . If the electorate does not approve of the actions of an elected official they can vote him/her out of office. If the electorate does not approve of the actions of an appointed official or third-party agent, they have much less recourse.

This dynamic is especially important given the trend in the United States toward

“Local elites often take leadership roles... this can result in the hijacking of resources unless transparency and accountability are somehow enforced.” (Litvack, Ahman, Bird, 1998)

“one way to improve local participation and accountability is through transparent budgeting processes and public procurement procedures.” (Litvack, Ahman, Bird, 1998.)



NPM. Under NPM there is an increasing reliance upon third-party providers which are even further removed from the electorate than civil servants and as a result are even more susceptible to corruption. Long-term contracts that lock in third parties for extended periods of time may further increase the potential for corruption.

Information Transparency

Informational transparency is the third environmental factor. It contributes to the reduction of corruption in two ways. The first is that it helps identify those who are currently engaging in corrupt activities. This could be through audits, open budgeting processes or contracting and bidding that is open to the public and the media. The second is that informational transparency creates environments which are unappealing to those tempted by corruption. Nobody wants to get caught and so creating environments where the “lights are always on” makes those who might be tempted by corruption to think twice.

The preponderance of third parties – particularly in the private sector – with the movement toward NPM has important implications with regard to information transparency. For profit concerns often view certain types of information as proprietary. This means that they deem this information necessary for them to maintain a competitive advantage in their respective markets. There may be times when a public entity may need access to this proprietary information in order to make effective decisions about the continuation of contracts. In situations like these, information transparency may conflict with the private proprietary information of the third party. Sacrificing transparency for the sake of relationships with third parties will increase the potential for corruption.

Participation

Closely linked with information transparency is participation. All the information in the world is useless unless citizens engage and act upon that information. The opposite is true as well. Participation, regardless of how well intended, is blind without transparency. To truly mitigate corruption, municipalities need *informed* participation and this comes from transparency. In addition to intuitively making sense, research has shown that democracy (participation) is positively correlated with reducing corruption internationally. (Lipset and Lenz in Harrison and Huntington, 2001)

Inequalities of Power and Wealth

The fifth environmental factor which contributes to corruption is inequalities of power and wealth. As the difference between the “haves” and “have-nots” within a municipality increases there is a tendency for those with money and power to not only hoard and increase their shares, but also to strengthen their positions. This

“Often, corrupt opportunities arise from discrepancies of power between public officials or community leaders who have control over a good or service and the poor who lack education, knowledge, access to information, the financial resources as well as good connections.” (Teggemann, 2002.)

makes it more difficult for those without money or power to engage in the civic process and have a voice. This is an especially dangerous factor because it can become self-perpetuating as those in power institute structural changes to discourage real transparency, participation and accountability. The result can be a viscous circle leading to even greater discrepancies in power and a greater potential for corruption because corruption tends to slow economic

growth in the lower strata.

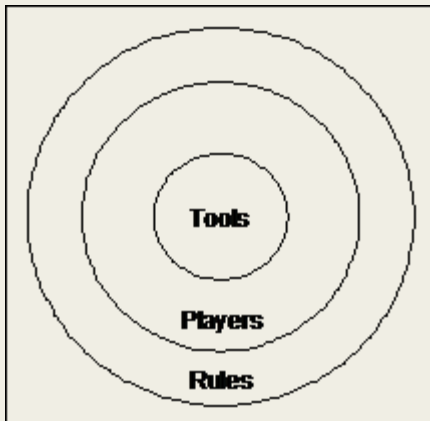
Inequality also increases the opportunities for what Smelser (1971) calls “crossing-over.” This occurs when those with wealth or political power, but not both, use one to gain the other. Typical examples include a police officer using his political power to receive bribes or a business man using bribes to influence government policy.

Cultural Norms

Robert Merton, in his book *Social Theory and Social Structures* (1968) details the final environmental factor – cultural norms. Merton puts forward what is called a “means-ends” schema that suggests corruption is more prevalent in those cultures that place a high premium on financial achievement or success but which lack the means to attain these goals. Empirical data bears out this hypothesis in countries such as Russia, South Korea and Turkey which are relatively low in terms of affluence but which have relatively high cultural norms of achievement. (Lipset & Lenz. 1998.)

But how are cultural norms and their impact on corruption relevant to NPM? Although there is no data to support this, there is a striking similarity between the rise of NPM in the United States and the means-ends schema. As the Federal government continues to pass responsibility for the provision of public goods and services to the state and local levels there is an increasing expectation of success placed on local governments to solve problems and provide a growing array of services. However, local governments have limited powers to raise revenue. They are entirely dependent upon the monies they receive from the state and federal governments, property taxes, user fees, and other sources of revenue . This is, in effect, creating the same disequilibrium between expectations for success and the means to achieve them in local governments in the United States as Merton observed in individuals in other countries. The result will, in all likelihood, be an increased potential for corruption within local governments as they try to “do more with less.”

How can corruption be mitigated at the local level?



Mitigating corruption at the local level revolves around taking a proactive approach to designing the decentralized networks that make up the backbone of new public management. These networks consist of three key components: *tools*, *players* and *rules*. Municipalities can best address the environmental factors of corruption by designing the right balance of these key components. Like the factors of corruption each has its own primary elements but they all work together to influence and reinforce each other. Designing an effective system requires equally diligent attention to all three.

Tools

While tools are often determined by a higher level of government in the process of policy development, a deep understanding of the tool is critical at the local level. Tools are the heart of any decentralized system. Tools determine the type of

intergovernmental transfer, the vehicle of that transfer and the delivery system or agency responsible. While tools can be classified in many ways, it is important to understand that tools have different degrees of directness and automaticity. These characteristics often determine how and what types of corruption a system is susceptible to.

“Automaticity measures the extent to which a tool utilizes an existing administrative structure to produce its effect rather than having to create its own special administrative apparatus.”

“Visibility measures the extent to which the resources devoted to a tool show up in the normal government budgeting and policy review processes.”

(Salamon, 2002.)

Direct tools can be less corrupt because they shorten the distance between policy and public administration and make it easier to define the agency accountable for administration. However, as local officials know, indirect tools such as grants, loan guarantees and vouchers have become increasingly common. As third-parties gain greater control over the spending of public monies and the operation of public funds, local officials must be keen to potential principal agent problems and emphasize relationships between organizations. (Salamon, 2002.)

Tools with a high degree of automaticity are often popular with local governments decentralizing the provision of public services. By utilizing preexisting administrative structures these tools often invite agents with little or no experience providing public goods to the table (Salamon). Tools that are highly visible are less prone to corruption. By definition, such tools allow for transparency and easy access to information by

outside monitors.

Players

Players involve everyone from municipal employees, to elected and appointed officials, to third party contractors or agents. In NPM we see an increasing number of third party agents. These third-party agents often vary between localities and differ in their capacity to deliver public goods. A principal agent problem often exists between local government and its agents. The principal-agent problem refers to the difficulty employers (the principal) have ensuring that employees (agents) to act in the best interest of the employers. Depending on the number of third-party agents involved in the network and the level of cooperation required among agents, principal agent problems can also arise between agents themselves. Third-party agents may not be accustomed to working with one another and may operate in very different ways. This can make managing the relationships between agents difficult and may open many opportunities for corruption.

Rules

The rules that govern decentralized networks can not be neglected. Rules can establish working relationships between agents, improve transparency of information and establish accountability throughout the provision of public services. Network rules can come from contracts between third parties and municipalities, or they can come from legislatures in the form of laws. When specified in contracts, the contractual relationship should be open to amendment by both principals and agents. Ideally, the relationships between agents can be worked out over time as agencies become familiar with each other's roles. Network rules need to be sensitive to each agency's culture and modus operandi as well as with the intent of limiting the opportunities for corruption.

An example of a very effective rule toward mitigating corruption passed in the Massachusetts legislature is the Pacheco-Manard Act. This act was passed in response to the ineffectual Weld privatization efforts in the early 1990s. It states simply that all contracts must undergo a uniform cost analysis. (Sclar, 2000). Although a seemingly simply law, it has far reaching impact on both accountability and transparency in contracting and as a result also serves to mitigate corruption in the Massachusetts contracting process. Before the existence of this rule, decisions with regard to awarding contracts could be justified in any number of ways. There was no set accounting standard. With the presence of the Act, however, all parties are measured equally and contracts are a step closer to being awarded to those best able to provide the services truly needed by the municipality rather than those best able to game the system or have influential contacts.

Similar to thinking about the changing roles of the players in new public management, the increase in third

party relationships in NPM means that an increasing number of rules that govern an area's ability to govern itself will come from contracts. For this reason a special focus needs to be placed on the short-term and long-term effects contract terms as well as the enforceability of these terms. Much of this will revolve around the ability to effectively monitor and change contractual relationships. Another way to look at protecting against corruption in the contracting process is by analyzing whether or not it makes sense to contract out services at all.

In the case of New Public Management this is a decision that will need to be made continually. This decision becomes a de facto rules question. Do we stick with the current system (whatever that may be) and its rules or do we negotiate a new system through a contract (a new set of rules). In his assessment of this process Sclar offers some important advice on those four things that one should think about continually when making these types of decisions. (Sclar, 2000.)

1. The first is to utilize good accounting practices regardless of whether you are providing services in house or contracting out. This includes understanding the true cost of the services in question through the use of activity-based cost accounting. The other important element here is to always fully account for transaction cost when contemplating a change in service provision.
2. The second rule is to always compare "three" alternatives. Whereas most people think in terms of should I contract a service out or not planners should entertain a third option. Namely, should I continue to provide services in house the way we are now? Should I contract the services out? Or should I restructure internally and continue to provide services in-house. This third alternative tends to yield the best results while at the same time being considered the least.
3. The third bit of advice is to make meaningful participation possible. This important bit simply implies that systems are comprised of people and any rules that are made concerning the development of new rules for the system should include the various people who will be effected by the rules. This may be unions, contractors, constituents or others. Both from an intelligence gathering perspective as well as a buy-in perspective this is crucial to arriving at sustainable solutions.
4. And fourthly, politics needs to be removed from contracting if at all costs. Ideally this would be accomplished by passing a law banning campaign contributions from contractors but in the absence of this strict enforcement of accountability and transparency rules will have to suffice.

Tying it all together – Leadership in New Public Management

Thinking about the components involved in the decentralized networks of new public management in terms of tools, players and rules can be helpful in keeping track of the various forces that may lead to corruption. But simply keeping track of these forces is not enough. To truly mitigate corruption requires a constant attentiveness to the interplay of the myriad forces that manifest themselves in the forms of tools, players and rules and the ability to react accordingly. This is leadership. For, although one can design systems that help mitigate corruption the new public management, by its very nature of involving so many different parties, will be constantly changing. As a result, the systems will need to constantly change as well.

Leaders in new public management will need to be fluent in their use and understanding of the various tools, players and rules available to them. They are the glue that will enable the systems to work. And they are also the individuals that will need to recognize when the current system is no longer appropriate and needs to be changed – whether this means contracting out a service, changing contractors or making the decision not to contract at all. The ability to both interpret and act on situations these situations takes training and this training takes money. And where does the money come from? It needs to come from the very municipalities that are trying to save funds by contracting out services. The irony here is that in order to make the new public management system of government work -- a system that has gained popular appeal by its purported ability to cut costs through the use of competition -- additional investment in government workers are needed so as to avoid the expensive threat of corruption.

Irony aside, the important thing to keep in mind here is that in order for corruption to be effectively mitigated under new public management it will require a new approach to leadership in the public sector. In

order for this to happen effectively norms among the public that have until now not endorsed the types of leadership training that are more commonplace in the private sector will have to change. So, although new public management does create the increased possibility of corruption it can be controlled. But this will require not only a new model of leadership for the public sector but also a new willingness on behalf of constituents to fund these new models in hopes that in the long run the quality of the services they receive are commensurate with the money being spent.

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This is one of the best empirical studies available that look at how several variables, across countries and within them, relates to corruption. The authors look at variables like CDP, decentralization, civil liberties, and the relative size of federal transfers to states.

Lipset, Seymour M. & Lenz, Salman. "Corruption, Culture, and Markets" in Harrison, Lawrence (editor) and Huntington, Samuel (editor). *Culture Matters: How Values Shape Human Progress*. New York, Basic Books. 2001.

Culture Matters is a collection of meta-studies on corruption. Lipset et al note the empirical relationship between corruption and poverty that other studies have found, and cite empirical support of Merton's means-ends schema.

Litvack, Lennie, Ahmand, Junaid & Bird, Richard. "Rethinking Decentralization in Developing Counties." The World Bank. Washington, DC. 1998.

This article deals with how to decentralize governments effectively. Corruption is one key concern in decentralization, and the paper discusses several strategies and case studies for increasing participation, accountability and transparency, and why these factors are important.

Merton, Robert King. *Social Theory and Social Structure*. 1968. New York: The Free Press

Merton's work is a classic of modern sociology, and deals with a wide range of topics. The most useful for those dealing with corruption is his "ends-means" framework. Those societies that stress ends that are beyond the means of most people to achieve will create corruption.

Rhodes, R. A. W. 1996. "The New Governance: Governing without Government." *Political studies* XLIV: 652-667.

Rhodes discusses several conceptions of governance, including the minimal state, corporate governance, the new public management, "good governance," a socio-cybernetic system and others. He defines governance as "self-organizing, interorganization networks" and defends this definition.

Salamon, Lester M. 2002. *The Tools of Government: A Guide to the New Governance*. Oxford: Oxford University Press.

Salamon surveys about a dozen different government tools, from loans to social regulation, and rates each on several criteria. These include automaticity, directness and visibility, which are strongly related to reducing the potential for corruption.

Sclar, Elliott D. 2000. *You Don't Always Get What You Pay For: The Economics of Privatization*. New York: Cornell University Press.

This is an excellent book that focuses on government contracting. It also deals with the difficulty in

writing a good contract, contract enforcement, oversight, and other issues that deal with corruption in government contracting.

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<http://www1.worldbank.org/publicsector/anticorrupt/corpov.htm>

This is the World Bank's online source for corruption related material. Much of this relates to developing countries, and especially to managing the World Bank's projects in these countries, and their broad recommendations (like an open media, independent judiciary and well-paid civil servants) are also aimed largely at developing countries.

Restructuring Local Government

[Economic Development](#)[Government Restructuring](#)[Special Projects](#)[Databases](#)

Labor-Management Cooperation

As local governments nationwide struggle with demands for quality service delivery and fiscal constraints, they are employing a number of strategies. While these include privatization and intermunicipal cooperation, another technique that can lead to greater efficiency and cost savings is labor-management cooperation. The following background articles and special report examine some of the critical issues surrounding effective implementation of cooperative labor-management practices.

- [Industrial Relations Theory](#)
- [Transforming Work](#)
- [Cooperative Workplace Structures](#)
- [Incorporating Multiple Stakeholders](#)
- [Mutual-Gains Bargaining](#)

Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

- [Full Text](#)
- [Executive Summary](#)
- [Conclusions](#)
- [Resources](#)

Tools for Cooperation:

- [Labor-Management Committees](#)
- [Mutual-Gains Bargaining](#)
- [Total Quality Management](#)

Case Studies of Three New York State Counties:

- [Genesee County](#)
- [Ontario County](#)
- [Tompkins County](#)

Background: [New York State Civil Service Law](#)

Restructuring Local Government

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Local Government Restructuring in New York State: Summary of Survey Results

Mildred Warner¹ and Robert Hebdon²

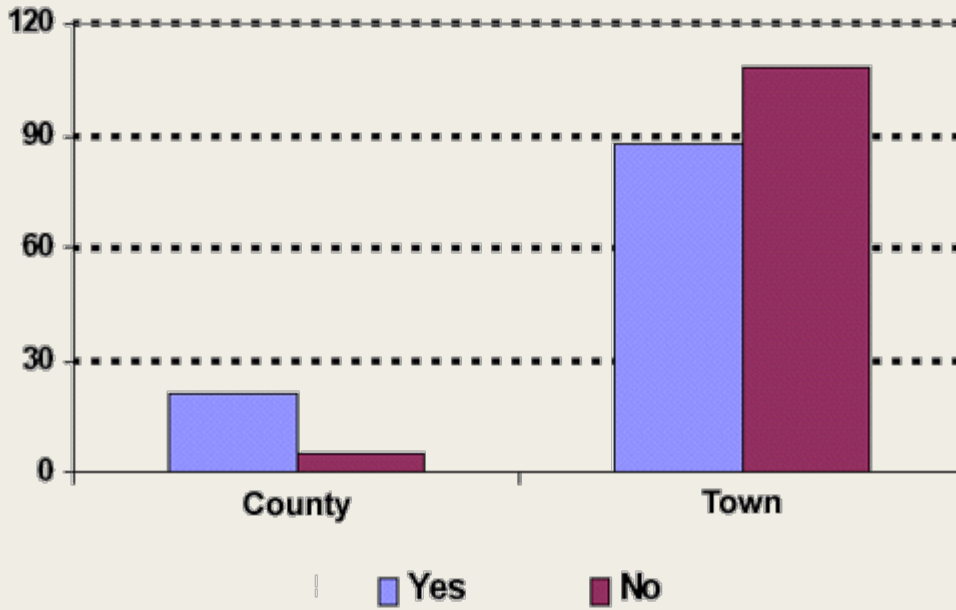
Surveys on restructuring of service delivery were distributed to the chief elected officials in all town (932) and upstate county (57) governments in New York State from November 1996 to March 1997. A total of 26 counties and 196 towns responded for an overall response rate of 22%. This research, undertaken in collaboration with the County Legislators and Supervisors Association (now the New York State Association of Counties) in 1996 and 1997, found that half of responding governments had implemented some form of restructuring since 1990.

Restructuring in New York State primarily involves public sector innovation rather than privatization. Intermunicipal cooperation was the predominant form of restructuring, while privatization was the second most common form of restructuring. Significant levels of reverse privatization and governmental entrepreneurship were also found. Incidence of restructuring was highest among counties, and in the following service areas: public works, public safety, and general governmental support functions.

Impact on local budget and economic efficiency were the most important factors in the decision to restructure services. Concerns with service quality and community values were also important. Labor and management concerns were also significant but unionization was not considered a major factor. Legal and political concerns, availability of information and experience with past restructuring were also important. Local governments in New York State critically assess their restructuring options to enhance efficiency while maintaining service quality and reflecting community values. Economies of scale and competition are keys to efficiency, not privatization per se. Thus, local governments employ a variety of restructuring options. They achieve economies of scale by cooperating with other governments, and they promote competition by encouraging public sector units to compete with private sector providers. The charts and text below summarize some of the key findings of the survey.

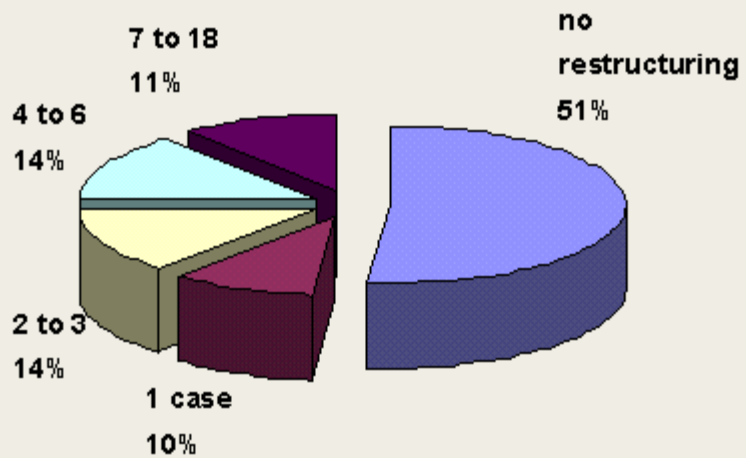
County governments are more likely to restructure than towns. Twenty-six of 57 counties responded. Of these, 21 had restructured. 196 of 932 towns responded. Of these, 88 had restructured. Many towns felt they were too small or too rural to experiment with alternative forms of service delivery.

RESTRUCTURING ACTIVITY BY RESPONDING GOVERNMENTS



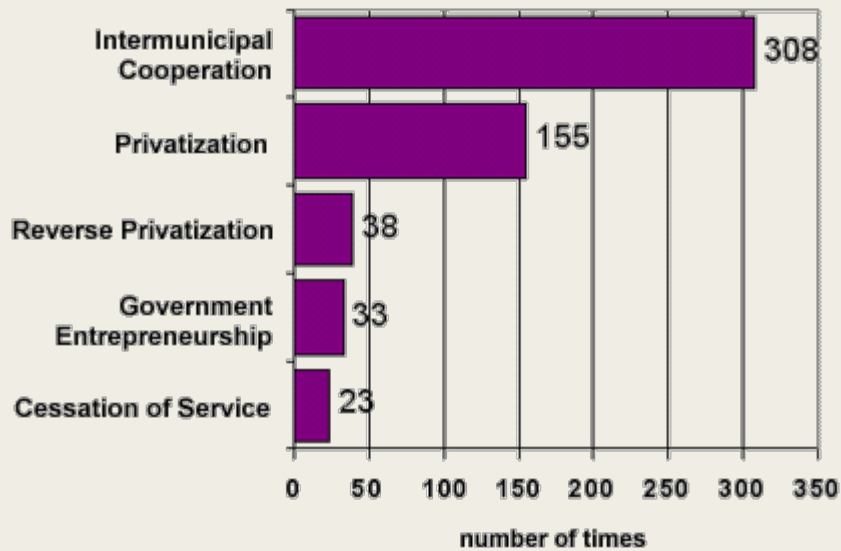
Governments that restructure in one area are more likely to consider restructuring in other areas as well. Of the 49 percent of responding governments that had restructured, most described several cases of restructuring.

Amount of Restructuring by Local Government



Intermunicipal cooperation is the most common form of restructuring among town and county governments in New York State (54% of the total). Privatization is the next most common form (28%) but reverse privatization (7%) and governmental entrepreneurship (6%) provide a counterbalance. Competition is key to improved efficiency, and local governments in New York State use reverse privatization to create competition between public and private

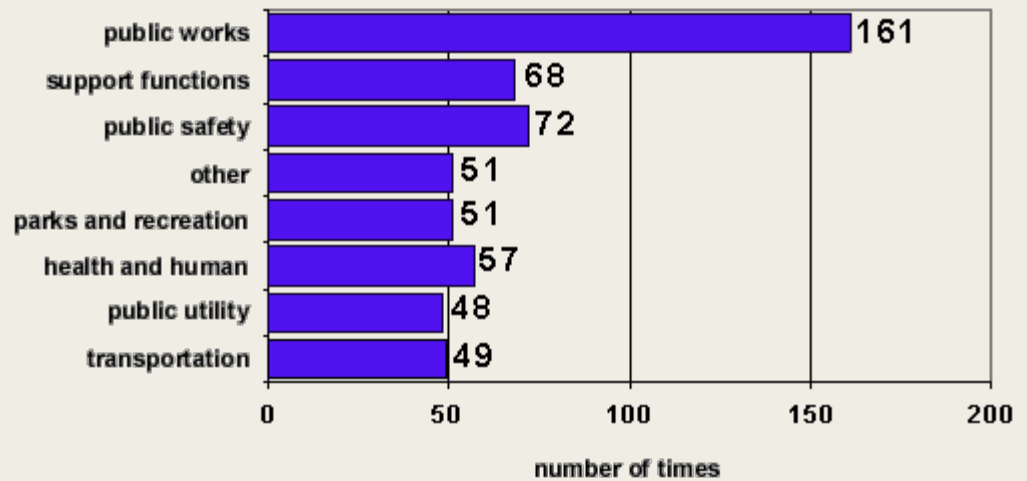
Restructuring by Type



service providers. Governmental entrepreneurship is used to achieve economies of scale within the public sector by offering services to private sector customers. Cessation of service (8%) is rarely chosen as a restructuring method.

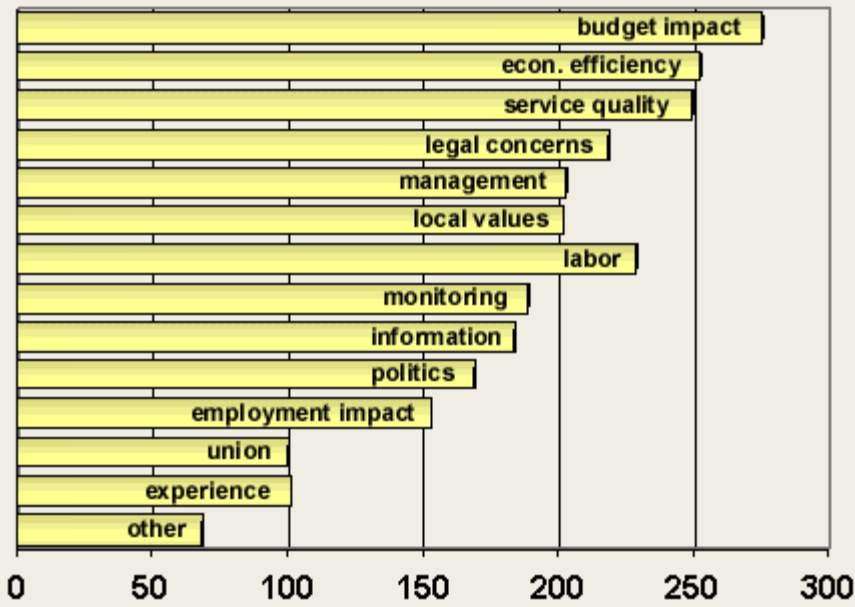
Restructuring was most common in public works. This is not surprising since there is a strong tradition of highway department collaboration throughout New York State. Administrative support and public safety were the next most common areas to be restructured.

Restructuring by Service Area



Local officials in New York State take a pragmatic approach to restructuring. They are not driven primarily by political or unionization concerns. Budgetary impact, economic efficiency and service quality were the most important factors in government decisions to restructure. Technical issues around service delivery (management, labor, legal concerns and information and monitoring) were next in importance. Community values about the structure of service delivery were also important. Politics and

Factors Affecting Restructuring Decisions

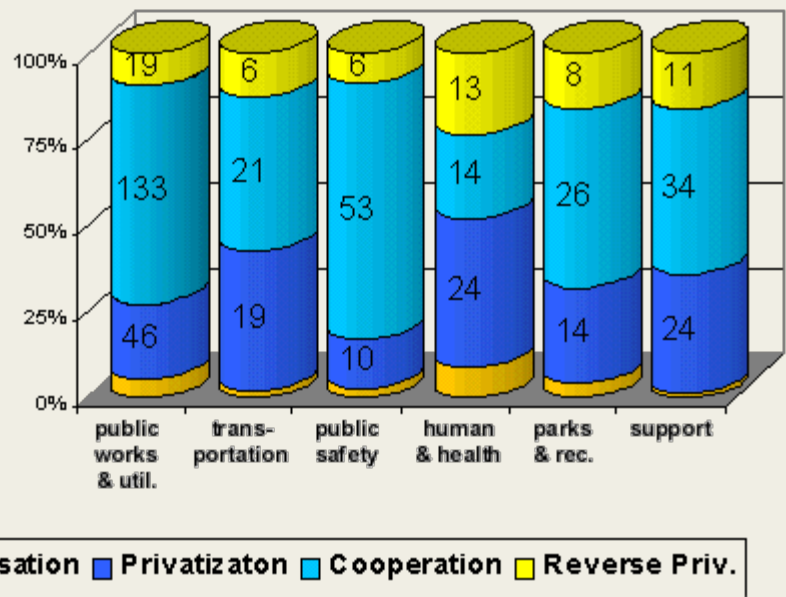


unionization were not important factors in the decision to restructure. Ranking of these factors did not vary significantly between those governments that restructured and those that did not.

% Max. = The total weighted importance of each factor divided by the total weighted importance of the highest scored factor

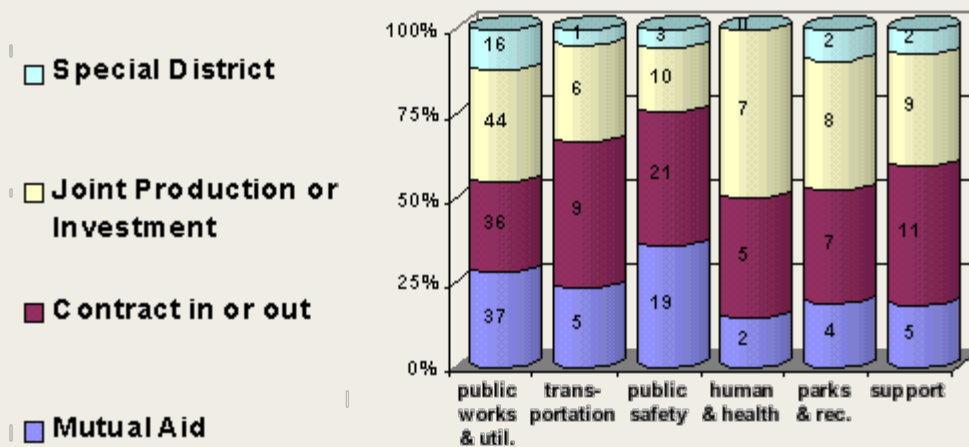
Intermunicipal cooperation was the most common form of restructuring in all service areas except health and human services. Privatization ranked next in importance. In health and human services privatization was the most common form of restructuring. Reverse privatization occurred roughly 25% of the time in health and human services, parks and recreation and administrative support. In public works and public safety, reverse privatization was rare.

Incidence of Restructuring by Type and Service Area



Intermunicipal cooperation allows governments to achieve economies of scale and still keep services in the public sector. Historically mutual aid agreements have been popular

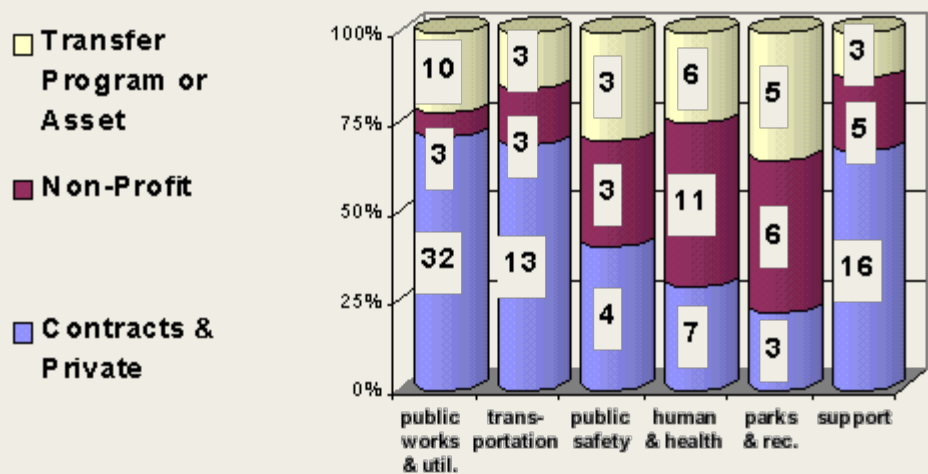
Cooperation Type by Service



in New York State and continue to be used widely in public works and public safety. Contracting in or out with other governments is the most common form of intermunicipal cooperation. Although few special districts have been formed, joint production of services is becoming more widespread.

Governments can transfer authority for service provision completely to a private sector player or maintain some authority over service provision by contracting out. Town and county governments in New York State prefer contracting out to program transfer as it allows them to maintain some authority over service provision. Contracting out to the private sector was most common in public works, transportation and administrative support services. Contracting out to the non-profit sector was most common in health and human services and parks and recreation.

Privatization Type by Service Area



[Mildred Warner](#) is Assistant Professor in the Department of City and Regional Planning at Cornell University.

Robert Hebdon is Assistant Professor in the School of Industrial and Labor Relations at Cornell University.

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WATER PRIVATIZATION DOES NOT YIELD COST SAVINGS

By *Mildred E. Warner*

Proponents of privatization consistently argue that it saves costs due to competitive pressures private providers face to be more efficient. Over the last four decades there has been considerable experimentation with privatization. Results are inconsistent. Some cases find savings; others do not. To get beyond the “battle of the case studies” my colleagues and I conducted a meta-analysis of all published studies on water distribution (Bel et al 2010). A comprehensive scientific analysis shows the value of a careful review of theory and empirical evidence in making policy choices. Our analysis found no empirical support for cost savings.

“That private production has failed to deliver consistent and sustained cost savings in these two important sectors offers a useful insight to public managers. Cost savings crucially depend on the nature of public service markets, the characteristics of the service itself, the geographical dimension of the market in which the city is located, and the industrial structure of the sector. City managers should proceed with caution.” (Bel et al 2010).

What explains differences in study results? Is it due to specific management, location and context factors? Can differences in study results be explained by type of empirical analysis or bias among reviewers and publishers? Is it possible to draw some broader conclusions about whether privatization, in reality, actually leads to cost savings? What does local government experience with water privatization actually show?

This chapter presents comprehensive research confirming that privatization of water does not lead to cost savings. It also presents data showing privatization is the least common approach to water service delivery among US local governments. These empirical results reflect a careful reading of neoclassical economic theory which predicts water would be a poor candidate for privatization.

META-ANALYSIS OF STUDIES WORLDWIDE

When there are mixed results across a range of studies, researchers can employ meta-analysis techniques to assess the quality of different study results and determine, given the weight of the empirical evidence, whether a given result holds. This is how it works. We analyzed all the published large scale quantitative studies of water collection from around the world published between 1960 and 2009 – seventeen in total (See Bel and Warner 2008 for a thorough description of each study). Eleven of these studies were from the US, three from England and Wales, and three from Eastern Europe, Asia and Africa. These were not case studies. They were large scale cross-sectional studies assessing differences in costs related to public or private production in water delivery across many communities (both urban and rural). Sample sizes were smallest in the UK studies (10-30 municipalities), but large in the US studies (86-319 municipalities per study) and the developing country studies (50-655 municipalities per study).

What can large scale, cross sectional comparisons of public and private water systems tell us about differences in costs? The majority of the studies (11) found *no difference in costs* between public and private production. This was true of all the studies conducted outside the US and the UK. Only three studies found private production to be less costly and these studies were all from the US during the 1970s and 1980s. The four studies finding public production to be less costly were also from the US.

To test further for what might explain the differences in study results, we conducted a meta-regression analysis controlling for sample size (larger studies are more robust), country (differentiating US and UK studies from others), and functional form of the regression analysis. These statistical results confirmed no difference in costs between public and private production of water service. Cost savings were more likely to be found in the earlier studies suggesting that cost savings, if any, erode over time. Furthermore, we found statistical evidence of publication bias in favor of cost savings (See Bel et al 2010).

These empirical results challenge the widespread claim that privatization should result in lower costs. Were these unexpected empirical results a result of problems with implementation on the ground? Or is it a more fundamental problem – a misreading of economic theory? We claim the later. Neoclassical economic theory argues for a careful review of market structure, incentives and actors to determine when private production might result in lower costs than public production. Privatization proponents failed to understand or follow basic economic theory. Expectations of costs savings under privatization are not supported by a careful reading of economic theory. Let me explain.

There are four major bodies of neoclassical economic theory that are relevant to this debate: public choice, property rights, transactions costs and industrial organization.

- Under public choice theory the expectations of cost savings derive primarily from competition, but competition is rarely present in public service markets, and almost never in water. In fact, water distribution is a natural monopoly and so introducing competition would *raise* costs.
- Property rights theory argues private owners will have incentives to innovate because they derive profits from such innovation in a manner that public agencies do not. However, the theory also predicts that private owners will reduce quality in order to enhance profits, unless careful regulatory oversight is ensured. Careful regulation is one explanation why cost savings are not found in water delivery – private owners find it difficult to shirk when public regulation is strong.
- Transactions costs theory argues there are transactions costs of contracting (information asymmetry, contract management and monitoring) that may be higher than the costs of internal delivery. This is especially true in long term contracts for asset specific services. Such services, of which water is one, are not good candidates for privatization.
- Finally industrial organization theory argues that one should look at the entire sector – its organization, actors and their incentives – before making a decision to privatize. If that had been done by privatization advocates; water privatization would not have been promoted.

Anti-privatization advocates often use political economic theory to explain privatization and the desire to transfer wealth and power to private partners. Such theory may explain a lot of what

drives privatization practice worldwide. However, even a conservative reading of standard neoclassical economic theory *does not* support privatization in the case of water service. Why did promoters of privatization choose to ignore the neoclassical economic theory in which they are so well trained? That is a subject others are better prepared to discuss. My purpose here is to clarify what the weight of empirical evidence shows and demonstrate how these results – of no cost savings under privatization – should have been theoretically predicted.

US LOCAL GOVERNMENT EXPERIENCE

Next let me turn my attention to the practice of local governments in the United States – the region I know best. Local government managers are not economic theorists. They are pragmatic managers interested in choosing the most efficient and equitable approach to service delivery. The International City/County Management Association (ICMA) collects data on how US city managers deliver a range of public services and we can use this data to determine how common and effective privatization is. The US is a good place to explore this question because we arguably have the most favorable conditions for privatization of any nation. We have robust, competitive markets at the local level. We have city managers who believe in market delivery. We have user fees that make water contracts attractive and potentially profitable to private purveyors. And we have a fiscal crisis that causes city managers to look at the potential of private investment to upgrade water systems. What we do *not* have is a higher level of government or an international funder forcing city managers to choose privatization. That decision is left to local managers. Let’s see what they decide.

Over three quarters of US local governments surveyed by the ICMA provide water distribution entirely with public employees. Over two thirds of municipalities provide water treatment publicly and over half provide sewage collection and treatment publicly. These rates have remained relatively stable over time. For profit contracts only account for six to eight percent of service delivery in any of these three service areas. Governments that do not provide these water services directly with public employees are most likely to do so with inter-municipal cooperation (14 – 27 percent). These inter-governmental contracts permit the realization of economies of scale in service delivery while still keeping the service public. See Table 1 below.

Table 1. Delivery Alternatives for Water Services, US Local Governments, 2002-2007

Pure Public Delivery	Water Distribution	Water Treatment	Sewage Collection and Treatment
2002	76%	71%	61%
2007	72%	65%	58%
For Profit Contract			
2002	7%	6%	8%
2007	6%	6%	7%
Inter-Municipal Cooperation			
2002	14%	18%	26%
2007	16%	24%	27%

Author Analysis: ICMA Alternative Service Delivery Surveys 2002: N=1133, 2007: N=1474.

The overwhelming preference for public delivery of water services among US municipalities suggests local government managers understand something about water markets. Let's see how their practice illustrates a latent understanding of economic theory.

Recall, that public choice theory argues competition will be critical in determining any cost savings from privatization. What do we know about competition in US local government water markets? I conducted a survey of competition in local service markets with ICMA in 2007. Across all responding local governments, the average number of alternative suppliers was less than one for water distribution (0.79), water treatment (0.88) and sewage collection and treatment (0.67). (See Warner and Hefetz 2010). These results confirm that water service is a natural monopoly. As one city manager explained to me, "If there is no competition, when I privatize, I simply substitute a private monopoly for a public one. Monopolies extract monopoly rents. At least in the public monopoly I can use those rents to extend service."

Property rights theory notes private managers will have incentives for innovation, but this may come at the expense of service quality as they seek to enhance profit. ICMA added a question to its survey asking why local governments contract back-in previously privatized services. The answers are telling. Problems with service quality ranks first (61%). Lack of cost savings ranks second (52%). Improvements in public delivery rank third (34%). Political concerns rank last (17%). (See Warner and Hefetz 2009). Recall that water rates in the US are not high with respect to household income so this is not a service that raises strong political objections – unless there are problems with quality. City managers understand the critical importance of quality – best maintained through direct control.

Transactions cost theory tells us that services that are highly asset specific and difficult to manage and monitor as contracts, will remain public. Our 2007 survey with ICMA on competition also asked questions about asset specificity and contract management difficulty (See Warner and Hefetz 2010). Water distribution and treatment and sewage treatment were the top ranked of all 67 measured services on asset specificity (4.5 on a scale of 1 to 5). These three services ranked in the top fifteen most difficult to manage as contracts (3.5 on a scale of 1 to 5). City managers understand the inappropriateness of contracting out services with such high transactions costs.

Finally, industrial organization theory tells us to look at the structure of the sector, the actors and incentives in a comprehensive manner. The data presented above for the US show a sector dominated by monopoly providers in local markets and a service which is very asset specific and difficult to monitor. Over the 2002-2007 period, about nine percent of US managers experimented with a new contract for water service. But in the same period a similar percentage brought a previously contracted service back in house (reverse contract or remunicipalisation). Although US local government managers are willing to experiment with privatization, when it does not work, they bring the service back in house. Only ten percent of water distribution contracts were stable over the 2002-2007 period. Sewerage and water treatment contracts were more stable, but these are more likely to be inter-municipal cooperative agreements. When US city managers look for alternatives to direct public delivery in water service, they look to inter-municipal cooperation, not for profit privatization. Inter-municipal cooperation allows them to gain economies of scale, access to greater technical expertise and capital, while still keeping the service public.

Table 2. Contracting Rates, US Local Governments 2002-2007

SERVICE	Stable Public	Stable Contract	Reverse Contract	New Contract
Water Distribution	71.2%	9.7%	9.3%	9.7%
Water Treatment	66.8%	16.4%	7.9%	8.9%
Sewage Collection and Treatment	57.3%	25.2%	9.5%	8.0%

Source: 2002 and 2007 ICMA Alternative Service Delivery Survey, Author analysis.
 N=459 US Cities and Counties, respondents to both surveys.

The empirical lessons from thousands of local government managers tell a clear and compelling story. Water service is a poor candidate for privatization. There are better alternatives. With the weight of empirical and theoretical evidence now firmly showing that privatization is not an effective option in water service delivery, maybe international funders will turn their attention to the critically important question of alternatives that really work. The other chapters in this book explore those alternatives.

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Mildred E. Warner is a Professor in the Department of City and Regional Planning at Cornell University. She is an international expert on local government service delivery and privatization.

<mew15@cornell.edu> <http://restructuringlocalgovernment.org>

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Privatization and Reverse Privatization in US Local Government Service Delivery, 2002-2007

Mildred Warner, Dept of City and Regional Planning, Cornell University,
mew15@cornell.edu

Amir Hefetz, Haifa University, Israel ahefet01@campus.haifa.ac.il

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Abstract

Contracting out for urban infrastructure delivery has been an important reform pursued by cities in the last decades of the 20th century. However, using national surveys of US municipalities conducted by the International City County Management Association, this paper shows that rates of new contracting are balanced with reverse contracting – bringing previously privatized services back in house. Reversals reflect problems with service quality and lack of cost savings in contracted services. Recognition of the asset specific nature of infrastructure services, the need for monitoring and the importance of political opposition help explain these reversals.

Introduction

Privatization or contracting out of infrastructure service delivery was considered a more efficient approach to urban service delivery. However after four decades of experimentation with privatization we are seeing that the pendulum is swinging back toward public delivery – albeit with new forms of private partnership – short of arms length contracting. What drives these shifts? Has privatization offered the predicted efficiency advantages? What is the impact on service quality? In which service areas have reversals been the most common? Does this have more to do with market structure (e.g. the level of competition) or management capacity and political concerns of local government?

Using national survey data collected by the International City/County Management Association from municipalities across the United States in 2002 and 2007, this paper explores differences in contracting patterns across services. We differentiate stable public delivery and stable contracting from experimentation with contracting. Public delivery remains the most common form of municipal service delivery in the US and contracting, especially to non profits for social services, has been longstanding practice in the US. Experimentation has occurred at the margins with new contracting and reverse contracting - contracting back-in previously outsourced services. The notion behind privatization was that it would offer a superior form of service delivery to urban governments. The reality has been another story and the level of reverse contracting now equals the level of new contracting out. This paper will present results from the most

recent data - pairing the 2002 and 2007 surveys - to explain why municipalities reverse their contracts.

Literature Review

For close to 40 years policy makers have been experimenting with privatization (contracting out) as a means to save costs. Theoretically cost savings were expected under privatization due to competitive pressures private providers face to be more efficient. However, research on the privatization experience at the local government level challenges this received wisdom (Hirsch 1995, Boyne 1998, Hodge 2000). Expectations of costs savings are not well supported by a careful reading of economic theory, and empirically the evidence for cost savings is weak (Bel and Warner 2008). Theoretically, expectations of cost savings derive primarily from competition, but competition is rarely present in public service markets (Johnson and Girth 2009; Bel & Costas, 2006; Dijkgraaf & Gradus, 2007). Private owners will have incentives to reduce quality (Hart, Shleifer, and Vishny, 1997), and transactions costs of contracting may be higher than the costs of internal delivery (Nelson, 1997; Williamson, 1999).

Bel, et al. (2010) analyze all quantitative studies of privatization from 1965 to 2009 of water distribution and solid waste collection - the local government services with the widest experience with privatization worldwide. The authors employ meta-regression – a technique that evaluates the significance of common parameters across multiple studies – to determine whether the weight of empirical evidence in the 27 studies reviewed supports cost savings under private production. The analysis does not support a conclusion of cost savings. Furthermore, Bel et al. find statistical evidence of publication bias in favor of cost savings.

That private production has failed to deliver consistent and sustained cost savings in these two critical infrastructure sectors offers a useful insight to city managers. City managers are under pressure to identify ways to improve the efficiency of public service delivery. However, cost savings crucially depend on the nature of public service markets, the characteristics of the service itself, the geographical dimension of the market in which the city is located, and the industrial structure of the sector.

More careful attention is now being given to the challenges of relational contracting (Sclar, 2000) and how to manage limited competition in local service markets (Johnston and Girth, 2009). Problems with accountability in long term infrastructure contracting (Dannin, 2010) and the high transactions costs associated with infrastructure contracts (Whittington, 2009) raise questions about the efficiency of contracting. Planners have voiced special concerns over loss of public values due to failure to consider long term planning horizons and changing societal needs when structuring these contracts (Sclar, 2009). Public Private Partnerships are coming into vogue – as an alternative to privatization – because they maintain a relational interaction that may deal more effectively with changing circumstances (Savas, 2000). However, they also pose more serious accountability risks (Miraftab, 2004; Siemiatycki, 2010). With billions in infrastructure investment on the table, planners need to give special attention to the risks

and challenges of outsourcing and public private partnerships (Dannin, 2010; Warner, 2009).

While privatization assumes market superiority, more recent trends in public administration and planning urge the public sector to interact with markets *and* with communities to encourage democratic deliberation (Nalbandian, 1999; Alexander, 2001). This alternative reform has been coined the ‘new public service’ in public administration (Denhardt & Denhardt, 2003) and is quite similar to ‘communicative planning’ in the planning field (Sager, 2009). The result is a dynamic decision making process which integrates market mechanisms with citizen deliberation and voice (Warner, 2008; Allmendinger, Tewdwr-Jones, & Morphet, 2003). The rise in mixed delivery where governments use both private contracts and public delivery for the same service is evidence of this shift (Warner & Hefetz, 2008).

Privatization gained wide attention in the 1980s under the Thatcher and Reagan administrations as a means to shrink the size of government, promote market development and achieve economic efficiencies. This political agenda resulted in renaming the long standing local government practice of contracting, as ‘privatization’ (Feigenbaum and Henig, 1994; Adler 1999). However, when one looks at the trends over time in US local government contracting, they are notable for how flat they are. A recent Reason Foundation report shows that for profit contracting among US local governments has hovered around 18% for the entire period 1992 to 2007 (Warner and Hefetz 2009). What is hidden in these flat trends, however, is experimentation among governments and across services – a pattern of new contracting out and reverse contracting which this paper will explore.

The first empirical paper to study reverse contracting focused on local governments in New York State. It found reversals were one strategy used alongside privatization, inter-municipal cooperation and governmental entrepreneurship in a complex array of alternatives local governments use to balance concerns with efficiency, service quality, local impacts and politics (Warner and Hebdon, 2001). The first national study of reverse contracting was conducted by Hefetz and Warner (2004) and found reversals (at 11% of all service delivery) from 1992 to 1997 were two thirds the level of new contracting out (18% of all service delivery). Privatization peaked among US local governments in 1997 and a subsequent study that looked at the period 1997 to 2002 found that reversals at 18% of all service delivery exceeded new contracting out at 12% of all service delivery (Hefetz and Warner, 2007). This paper provides the most recent chapter in a continuing story. For the 2002-2007 period we find that reversals (11.6%) and new contracting (11.3%) are evenly matched. Notable in all these studies is that the dynamics of service delivery are located along the margin, 22-30% of service delivery. Privatization has been an experiment that varies over time, place and service. It is not a one-way street toward a superior form of delivery as was once claimed (Savas, 1987).

Similar reversals have been noted in the UK, which stepped back from compulsory competitive tendering in 1998 (Martin, 2002), and where local governments have reinternalized previously privatized services (Entwistle, 2005). Australia and New Zealand were also early privatizers who have shifted focus toward rebuilding internal

government capacity (Warner, 2008). The new 2002 Local Government Law in New Zealand argued that citizens are more than market-based service customers and local governments must balance market forces with other social objectives (LGNZ, 2003). Internationally reversals are also gaining more attention. A study of outsourcing in 25 Fortune 500 companies and two local governments by Deloitte Consulting reached similar conclusions – that outsourcing reduced internal intelligence and control, increased risks of service delivery and often failed to find a competitive efficiency market of outside suppliers (Deloitte, 2005). A recent book looking at public service and infrastructure projects around the world profiles a reassertion of the role of the public sector in public service provision to ensure equity, access and failsafe service delivery (Ramesh, et al., 2010). Even the World Bank (2006), a long proponent of privatization in water delivery, has begun to question the viability of its approach.

The US enjoys perhaps the most robust local markets for private service delivery. If privatization were to work well anywhere, it would likely be here. The US also is the only country that has longitudinal data that permit an analysis of contracting dynamics over time. This study will explore new contracting out and reverse contracting for a range of locally provided public services – giving attention to service characteristics, local market characteristics and political and monitoring concerns.

Data and Methods

To measure reversals we combine the International City and County Management Association (ICMA) surveys from 2002 and 2007. No national survey directly measures reversals in privatization. However the consistency of the ICMA survey design and sample frame allows pairing surveys over time to see if the form of service delivery has changed. The ICMA data cover 67 public services and ask how the service is delivered – by government directly or through contracts to for-profits, other governments or non-profits. The surveys also ask managers about factors that are motivators or obstacles to alternative service delivery.

The ICMA sample frame includes all counties with more than 25,000 population (roughly 1,600) and cities over 10,000 population (roughly 3,300). A quarter of all governments contacted respond (24% for 2002 and 26% in 2007) but only about 40 per cent of respondents are the same in any two paired surveys. To track changes over time, we paired the surveys and found 474 governments that responded to both the 2002 and 2007 surveys. The paired 2002-2007 sample is a representative subsample of the larger surveys.¹ We complement this data with a supplemental survey ICMA conducted in 2007 of 164 city managers asking their assessment of 67 urban services by the following characteristics: level of competition, asset specificity, contract management difficulty and citizen interest in the process of service delivery. We also use Census of Government Finance data from 2002 and Census of Population and Housing data from 2000.

¹ T test comparison of means and Anova show no significant difference by poverty, per capita income or population for the paired sample and the 2002 survey. There is a significant difference by population for the 2007 survey as its sample frame included an oversample of rural places.

The ICMA surveys only ask how the service is currently provided. To determine the level of new contracting out, and the level of reverse contracting we coded the data into three exclusive categories: the service is provided 1) entirely by government employees, 2) by mixed public delivery and private contracts, or 3) by contracts exclusively. We combined these exclusive alternatives over time to create a matrix that allows us to track changes in service delivery choice as shown in figure 1. This matrix method enables us to compare stability in form of service delivery and to assess shifts - towards outsourcing or reversals back towards public delivery. This technique is explained in more detail in Hefetz and Warner (2004).

Figure 1 about here

The combined 2002-2007 data set shows that the level of new contracting out at 11.3% is almost equal to the level of reverse contracting at 11.6%. Stable contracts constitute 35% of all service delivery, and stable public delivery constitutes 42% of service delivery. See Table 1.

The highest rates of stable contracting out are found in physical infrastructure services like transit, waste management and vehicle towing, and in social services like job training, elderly, drug treatment and homeless shelters. Physical infrastructure services are more likely to be contracted to the for-profit sector, while social services are more likely to be contracted to the non-profit sector. Hospitals are the one service that is completely contracted out and it is evenly split between non-profit, for-profit and inter-governmental contracts) (data not shown). The highest rates of stable public delivery are found in crime prevention, police and fire, water and sewer services, snow plowing and back office support services (personnel, billing, data processing). Back office services are the only services in this group where we see substantial levels of experimentation with new contracting out (>10%), but this is matched with similar levels of reverse contracting suggesting a lot of experimentation.

Table 1 about here

The services of most interest in the current analysis are the ones which exhibit high rates of new contracting or reverse contracting. These are services where there is more experimentation going on across municipalities. Theory would suggest the services most likely to be contracted out would have low asset specificity, low contract management difficulty and face competitive markets (Savas, 1987). While service characteristics explain part of the reason for new contracting out and reverse contracting, they only tell part of the story. When we rank the top twenty services by level of reverse contracting and new contracting we find ten services are on *both* lists (street repair, traffic signs, fleet management, building maintenance, park management, recreation, legal services, elderly services and public health). This suggests a constellation of factors including nature of local markets, management expertise and political preferences are also important in determining whether contracting is appropriate.

The ICMA added a question in the 2002 survey asking specifically what reasons motivated managers to contract back-in previously contracted services. The results are telling. In both the 2002 and the 2007 surveys, the top reasons for contracting back-in were inadequate service quality (73%, 61%), followed by inadequate cost savings (51%, 52%). Other factors included: improvements to local government efficiency (36%, 34%),

problems with monitoring (20%, 17%) and political support to bring the work back in house (22%, 17%). A similar survey of local governments in Canada found the same ranking of reasons for reversing privatization (Hebdon & Jallette, 2007).

We developed a model to look at the decision to newly contract out or reverse contract considering the following variables. Descriptive statistics of model variables are provided in table 2.

Table 2 about here

Service Characteristics – Transaction cost economics points to two key characteristics of a service – whether the service requires specific assets or technical expertise (*asset specificity*) and the difficulty of contract specification and monitoring (*contract management difficulty*). In the public sector an additional characteristic is important – the level of *citizen interest* in service delivery. These measures were taken from the supplemental survey ICMA conducted in 2007. Each characteristic was ranked on scale of 1 (low) to 5 (high) for each of the 67 services ICMA measures. The ICMA survey showed significant differences by metro status so we differentiated values by metro status (core cities, outlying cities, and independent rural places) for our sample. See Hefetz and Warner (2010) for values for each of the 67 services by metro status. An average value for each characteristic for each government was calculated using the mean value for each service by metro status and averaging across the actual mix of services each government provides. The set of services provided varies across place, so the variability of the mean scores provides independent values for each service characteristic for each place.²

Market Characteristics- Local governments face different local market conditions. The ICMA supplemental survey cited above also measured the number of alternative providers for each of the 67 services (0=govt only, 1=1 alt. provider 2=2, 3=3, 4=4+alternative providers). Using the same method as described above, we calculated the *mean level of competition* each local government faced for the mix of services it provided. We also measured market management behavior of local governments – the level of *mixed delivery*. Governments can create a semblance of competition by mixing contracts and direct service delivery for the same service.

² Mean values by metro status were imputed as expected scores into all provided services for each place in the paired survey sample. The final variables used in the regression models are the sum of the expected scores across all services provided divided by the number of services provided.

$$mean_agg_expscore_{ej} = \frac{\sum_{j=0}^s P_j * expscore_{ej}}{\sum_{j=0}^s P_j}$$

The value is the aggregated expected score across all provided services divided by the number of provided services where $P_j=1$ if service j is provided and $j=1,2,\dots,s$ service; $expscore_{ej}$ =expected score e for service j , e =asset specificity, contract management difficulty, citizen interest, and competition.

Fiscal Concerns- A primary motivation for contracting is to reduce costs. To account for fiscal concerns we include *average local government expenditure* for each local government from the Census of Government Finance, whether the local government faces *fiscal stress* and whether *inadequate cost savings* was listed as a reason for reversing contracts.

Monitoring – To ensure service quality and contract compliance, monitoring should be associated with new contracting out. But problems identified through monitoring could lead to more reversals. We include four measures of monitoring. If a government noted unsatisfactory *service quality* or *problems monitoring* contracts as reasons for reverse contracting, and if it engaged in a set of activities designed to promote *efficiency* (desire to reduce costs, monitoring service quality, monitoring costs, allowing competitive bidding and experimentation with alternatives)³. The efficiency index is included for both years 2002 and 2007. We also include a dummy variable if the municipality has a council manager form of government.

Opposition – Opposition to privatization could reduce the level of new contracting out and increase the level of contracting back in. We use an *opposition index* (opposition from employees, department heads, elected officials and restrictive labor agreements) from each year, 2002 and 2007.

Metro Status – Trends in privatization differ by metro status. Suburbs have historically had the highest rates of contracting while *metro core* and *rural* communities have had lower rates.

Controls – We also include controls for population and income. Larger governments with greater fiscal and managerial capacity may be more likely to experiment with new contracting out and reverse contracting.

Model Results

We ran probit models for reverse contracting and new contracting out. We see that service characteristics (related to transactions costs) provide only part of the explanation for why places choose to newly contract out or to reverse contract services. If a government has a higher level of asset specific services it is more likely to reverse contract and less likely to contract out. See Table 3. This reflects the higher transactions costs associated with contracting asset specific services. However, governments whose service mix are on average harder to measure or have more citizen interest show a higher level of new contracting out and a lower level of contracting back in. This is the opposite of what we expected but may reflect Stein's (1990) notion that governments will seek to contract out services that are difficult to measure and have high citizen interest in order to

³ The efficiency/monitoring index and the opposition index, described below were created by summing positive responses to component questions and dividing by the total number of questions in the index. $\sum f_i/N$, where $f=1$ if checked yes to question and 0 if not, and $i=1,2,\dots,N$ for questions.

reduce the political burden they face in dealing with such problematic services. Recall many of the services with high levels of new contracting are social services. These results suggest there is a political aspect to service management, not a mere economic one.

Table 3 about here

Two economic aspects are important: finances and market management. There is no significant effect of fiscal stress on government contracting decisions. Expenditures are higher both for places that reverse contracts (as more services are now inside government) and for places that newly contract out (possibly due to lack of cost savings from contracting). Concern with lack of cost savings is associated with a higher level of reverse contracting and a lower level of new contracting out, as expected.

Market management tells an interesting story. We see that level of competition is not significant in either model. Governments face a level of competition in the market that they cannot do much about. However, mixed delivery, where government stays in the game by providing the service alongside private contracts, is complementary to new contracting out and a substitute for reverse contracting. Mixed delivery is an active form of market management which can provide benchmarking to new contracting and this pressure on market providers can make reverse contracting unnecessary.

Metro status shows significant differences. Metro core cities have higher levels of reverse contracting and lower levels of new contracting. The same is true of more populated places. This may reflect the greater challenges with contracting in more heterogeneous urban environments. Greater management capacity, lack of suppliers in complex urban markets or more formalized labor opposition in more populous urban governments could be offered as explanations for this metro difference, but our controls for council manager, competition and opposition account for those factors.

Rural municipalities, by contrast, show higher levels of new contracting and lower levels of reversals. Rural areas have been slower to experiment with contracting (adoption curve) and have less capacity to reverse contracts once the service has been outsourced. Suburbs are the reference category – fewer reversals than metro core but more than rural places, and more new contracting than metro core but less than rural. Suburbs were the early innovators in contracting and their rates reached 20% of service delivery in 1997 and have not risen since (Warner and Hefetz, 2009).

The role of political and management variables is perhaps most interesting for our analysis. Monitoring for efficiency and opposition are two management and political features measured in our models. The results tell an interesting story. Although we saw problems with service quality was the top reason governments cited for reversing their contracts, it was not significant in either model. Neither did recognition of problems with monitoring have any effect on contracting direction. What matters is not what governments say are problems, but what they actually do about them.

Governments that had higher levels of monitoring for efficiency in 2002 have higher rates of reversals in 2007. However, current monitoring levels are associated with

lower rates of reversals – suggesting that monitoring can prevent the need for reversals. Higher monitoring in 2002 is associated with lower levels of new contracting, but current monitoring has no effect. Prior monitoring exposes problems which can be addressed by reversing contracts over time. A similar lagged effect is found with opposition. More opposition to privatization in 2002 is associated with a higher level of reversals in 2007, but current opposition has no effect. Prior opposition has no relationship to new contracting and current opposition has a weak but positive relationship to new contracting. This is the opposite of what such opposition would intend. These results suggest there is an accountability and political voice aspect to reversals but it is a lagged effect and is more important in explaining reversals than in explaining new contracting out.

Conclusion - Implications for Planners

Our analysis had shown that levels of new privatization are matched by levels of reverse privatization among local governments across the United States. Although there is considerable variation by service, what we also notice is that within the same service, some governments will newly contract out while others reverse their contracts, bringing work back in house. Quality problems and lack of cost savings drive the move to reinternalize service delivery. Early monitoring can identify the need for reversals but current monitoring and market management through mixed market delivery can reduce the need for reversals. Opposition also can lead to more reversals.

Simple recognition of problems with service quality and monitoring is not related to levels of new contracting or reversals. What matters is active monitoring and political action. This last result provides an important lesson to urban planners. There are a host of issues involved in urban service delivery and the continued use of contracting – especially long term infrastructure contracts and new public private partnership agreements - makes attention to quality and monitoring paramount. Our model results show that city managers have begun to recognize the importance of market management but attention to monitoring, citizen interest and service quality need to be more closely related to contracting levels – in and out – if public values are to be preserved as governments continue to experiment with new forms of contracting for service delivery.

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Mildred E. Warner
Cornell University

The Future of Local Government: Twenty-First-Century Challenges

Part II: The Future of Local Government

Local governments in the twenty-first century face challenges regarding service delivery, finance, the workforce, and citizen engagement. While privatization was a major innovation in the last decades of the twentieth century, lack of cost savings and the loss of public values in market provision are prompting reversals in privatization, increases in regulation, and new approaches to government enterprise. The twenty-first century must focus on rebuilding the capacity of local governments to finance critical infrastructure, attract and retain a skilled labor force, and engage citizen in designing innovative solutions to address public problems. Innovations in public service delivery will move beyond public private partnerships to models that more effectively balance accountability, equity, and efficiency concerns.

The focus of this essay is on local government and the future of public administration. Where will we be in 2020? Will we continue to see an erosion of local government authority, capacity, and service delivery? Will markets prove capable of filling in the gaps? Or will we see a reassertion of the importance of local government, with new models for regional integration, public finance, and service delivery that emphasize a public role? I predict that we will see continued pressure to pursue market approaches and, at the same time, a reassertion of the role of the public sector.

Prediction 1: There will be reversals in the privatization process of the last few decades. In the closing decades of the twentieth century, we embarked on a bold experiment with privatization, competition, and other forms of market-based, consumer-oriented government. That experiment has shown potential for private market solutions to the provision of public goods, but it also has shown its limits. Research now confirms that privatization alone does not result in cost savings (Bel, Fageda, and Warner 2010; Boyne 1998; Hodge 2000). Why? Competition is rarely present in

local government service markets, and private contracts often substitute a private monopoly for a public one. Local governments now recognize the need to manage their markets for service delivery. Private firms' primary objective is profit, whereas governments' primary objective is the public good. Public-private partnerships can help blend public and private objectives for mutual gain, but without careful attention to accountability and a long-term perspective, these partnerships can result in collusion and privileging of private interests over the public good.

The last decade has witnessed important reversals toward public provision in most of the countries that were early privatizers (Australia, New Zealand, the United Kingdom, and the United States) (Entwistle 2005; Hefetz and Warner 2004, 2007; Warner 2008). Problems with service quality under privatization and a lack of cost savings drove these reversals. The private sector is good at technological innovation, but government must provide the "civic core" to markets in order to ensure equitable access, high quality, and a longer-term investment view (Clark and Bradshaw 2004; Ramesh, Araral, and Wu 2010). New management reforms will focus more on careful regulation of private markets for public goods and new hybrid types of public enterprise.

I predict that we will see continued pressure to pursue market approaches and, at the same time, a reassertion of the role of the public sector.

Prediction 2: Pressures to privatize will remain high at the international level and with regard to infrastructure investment. At the international level, the General Agreement on Trade in Services (under negotiation) calls for an expansion in the privatization of public service delivery. However, the GATS governance structure undermines local government authority to set standards, negotiate contracts, and pursue redress in cases of contract failure. This makes it more difficult to use privatization as a tool even as the GATS insists on opening up local government services to more privatization (Gerbası and Warner 2007).

Mildred E. Warner is a professor of city and regional planning at Cornell University. Her research focuses on privatization and decentralization of service delivery among U.S. local governments.
E-mail: mew15@cornell.edu

At the local level, we have an infrastructure crisis and a lack of public capital for reinvestment. The Environmental Protection Agency (2003) and the Congressional Budget Office (2002) estimate that we will need \$20–30 billion per year for the next 10 years to rebuild water and wastewater systems alone. Prior waves of investment have enjoyed a federal and state partnership with public funds to make these public infrastructure investments (Warner 2009). That is needed again, but Congress is not focused on public infrastructure and states are strapped with serious fiscal crisis.

Local governments will be forced to turn toward more expensive and risky private capital to finance infrastructure renovation. These public–private partnerships will not be cheaper. They also may sacrifice critical public planning goals to short-term financial concerns, as shown in the recent decision by the city of Chicago to lease its parking meters for 75 years for \$1.1 billion. Not only is the present value assessed at twice that amount, with energy and climate change, the city will likely want to convert the parking lane to new use by pedestrians, bike, or dedicated public transit, but is locked in by the 75-year contract (Sclar 2009). Enthusiasm for privatization, free trade, and private investment must be tempered by a longer-term perspective that carefully assesses benefits and costs, and balances public goods values and long-term financial health with short-term investment opportunities.

Prediction 3: The next decade will witness a rebuilding of the capacity of local government. To do so requires (1) rethinking local government revenue sources, (2) renegotiating labor relations, and (3) rebuilding citizens' view of society. This will be difficult, but it is essential if we are to have a local government system in 2020 that is capable of sustaining economic development and a high quality of life. Let's take each of these challenges in turn.

First, local government revenue is based primarily on regressive tax instruments (property tax, sales tax, and user fees), and needs to be restructured to capture the growing parts of the economy (services, Internet sales). We also need a new financial partnership with federal and state governments, which are more capable of taxing mobile factors of production through the income tax. State and federal legislatures need to increase intergovernmental aid and give local government the revenue-raising tools it needs to meet its service obligations. Centralizing fiscal responsibility for social services (education and health) to the state level, removing local limits on property tax, and allowing taxation of Internet sales would be good places to start.

Second, rigid labor systems that discourage flexibility and innovation and raise costs must be restructured to balance labor costs with service demands. The current fiscal crisis will force a new kind of conversation between management and unions. However, as we move into a period of labor shortage (driven by demographic change), we need to identify ways to make local government an attractive employer. Building a new relationship with public sector unions will be required to address labor flexibility and pension and health care system reform, and to ensure that a balance between cost savings and employment attractiveness is crafted. Civil service protections reduce political interference, but the public sector must restructure employment relations to increase its attractiveness to young employees as we move into a new century characterized by labor shortage. Internal process reform has led to increased

efficiency in local government service delivery—showing the benefits of labor–management cooperation (Warner 2009).

Third, citizens need to be reengaged in the local governance process to recognize the value of public services and to understand the need to balance service demands with revenue generation. We need a policy discourse that recognizes that we need to raise taxes to fund public infrastructure. Our economic prosperity depends on it (Swartz 2010). The federal level has maintained service delivery by crafting a false balance between low taxes and massive debt. State and local governments are required to balance their budgets. The next few years will bring extraordinary fiscal crisis at the state and local level. If new revenue sources are not found, basic infrastructure and social service provision will decline, leading to a downward spiral of reduced economic prospects and lower quality of life. Experimentation with New Public Management approaches has focused on improving efficiency. But there are limits to efficiency gains. In the next decade, we must identify new revenue sources. Increased state and federal aid will be required to get through the current crisis, but in the longer term, local governments will explore the potential of government enterprise (to make money), expand user fees, and push for wider revenue raising authority. U.S. local governments are the most fiscally autonomous in the advanced industrialized world. As we devolve more functions to the local level, we must identify the funding sources to ensure a high quality of life.

Prediction 4: The proliferation of private “club” approaches to providing public goods will further fragment local government, undermining the goals of social inclusion and regional integration. Many public goods can be provided by private clubs—swimming pools, security services, roads, and so on—and doing so promotes more investment because the benefits accrue directly to the club members and are not dissipated across a broader public. This is why Business Improvement Districts (for downtown regeneration), and Common Interest Developments (for new housing development) are catching on like wildfire across the nation and the world (Glasze, Webster, and Frantz 2006). They provide flexibility, differentiate interests within the urban area, and promote increased private investment in public goods. These special districts and private governments outnumber multipurpose public government by a factor of 10 or more! By offering private solutions to public problems, they encourage and empower neighborhood interests to solve their own problems.

However, they also fragment the metropolitan region and make regional cooperation more difficult. Local governments need to reach beyond their boundaries and address regional concerns with their neighboring jurisdictions. Club approaches at the regional level are often focused on a single issue (transportation, water), but we need a multifunctional approach to address the challenges of sustainable, comprehensive planning. Local governments need to balance fragmentation with regional cooperation, diversity with inclusion.

At the community level, these club approaches privilege property owners and those already present in the community (Briffault 1999). Club approaches are built on common interests and typically lead to segregation by income, issue, and location; they provide superior services because of their ability to exclude those outside the club. But these are not the only stakeholders. Newcomers contribute

to the vitality of our communities. Demographic projections show an increasingly diverse constituency especially among the younger generation (Myers 2007). We need to ensure inclusion of these new citizens and new voices in our urban fabric. If not, local government will become like a Swiss cheese, with these clubs as the holes. Local government is the connective tissue that holds the disparate elements of community together in a broader process of community building. The proliferation of club good approaches may so stretch and weaken the connective tissue that local government may no longer be able to maintain the balance.

Frug (1999) argues that community building is the ultimate public good, and the ability to engage across difference is learned through the mixing that is promoted in public service provision. Mixed-income and mixed-age neighborhoods are more diverse and more resilient (Israel and Warner 2008). Research shows that baby boomers want to age in place, and to do so, they need communities that integrate young and old in housing and public services (Warner, Homsy and Greenhouse). The challenge of the new century will be to identify new models for integration—across age, income, and ethnicity—in urban service delivery. Clubs promote individual investment for collective action and citizen engagement in the production of services. The challenge is to break down the exclusionary boundaries. Government should explore ways to restructure the current property rights legal basis of clubs, to a broader citizen basis and thus limit their fragmentation effect on the local community.

Prediction 5: Local government will lead in taking a long-term view. Climate change and energy conservation will cause us to remake the urban landscape, changing the way we work and travel and our approaches to planning. The new urban landscape will build from the old, but incorporate the new. Distributed energy production, distributed work (more telecommuting), less automotive travel, and denser development are likely. Local governments will review their current planning codes and experiment with new forms that allow more mixed use, promote quicker market response to changing conditions, and experiment with new approaches to transportation, energy production, and service provision.

The next decade will be full of serious challenges. The past enthusiasm of public administration for market approaches and efficiency models will be moderated with renewed attention to the need to rebuild local government capacity—financially, managerially, and democratically. The challenges are great. Our hope lies in a local government sector that encourages us to practice citizenship, teaches us to constructively engage across our differences, and helps us build community. These are some of the challenges for local government in this new century.

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Reversing Privatization, Rebalancing Governmental Reform: Markets, Government and Citizen Participation

Mildred E. Warner

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**Cornell University, Dept. of City and Regional Planning,
mew15@cornell.edu <http://government.cce.cornell.edu>**

Overview

- Late 20th century experiment to expand role of markets in local government service delivery
- Privatization experience uneven
 - Lack of cost savings (Bel and Warner 2008a, 2008b)
 - Increases Inequality (Warner 2006)
 - Undermines Citizen Voice (Warner and Hefetz 2002)
- Reversals appear in the late 1990s
- Not a return to old bureaucratic delivery, instead
 - A shift to a new mixed position –
 - markets *and* public delivery
- Rebalancing Governmental Reform – Pragmatic Approach

Understanding Reversals

- Limits to Market Approaches
- Critical Role of the State
 - In constructing the social and legal foundations for markets to function
 - In acting as a market player - ensuring competition, regulation
 - In promoting innovation
 - In creating spaces for democracy and community building
 - In public planning to build a long term view
- Challenge – Finding the right balance

Reversals

- United Kingdom

- End Compulsory Competitive Tendering (1998). Shift to “Best Value” framework, ‘contestability’, ‘scrutiny’

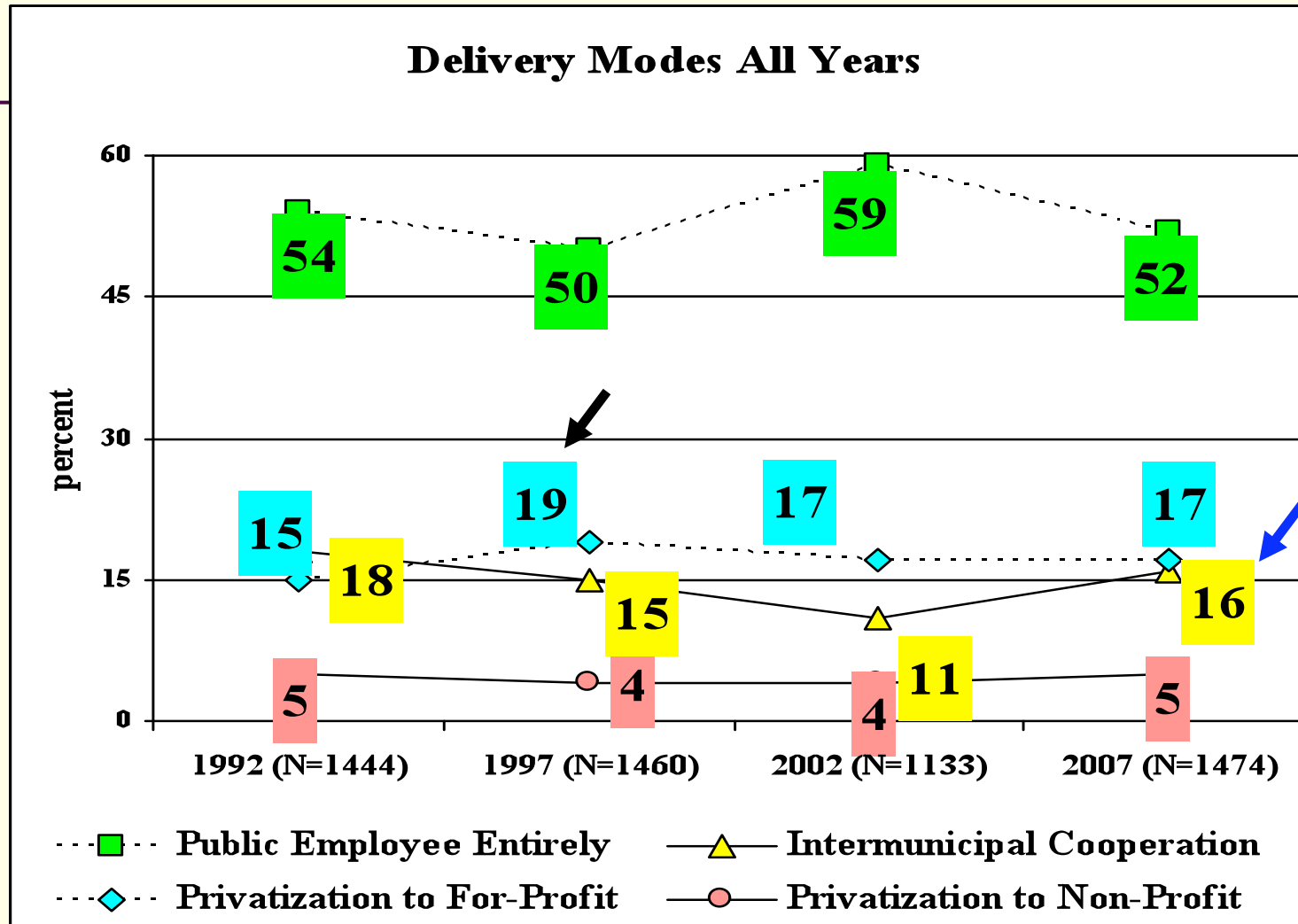
- New Zealand

- 2002 Local Government law to restore governmental capacity and build an accountability framework.
- Recognize multiple roles of local government
 - balance economic development, social wellbeing, environmental management and civic engagement.

Reversals

- United States – pro-market orientation but privatization never compulsory
- Contracting Out Peaks in 1997
- Rise in public and mixed public/private delivery
 - ensures government capacity – internal knowledge, innovation
 - market management - competition, benchmarking &
 - citizen voice in service delivery process

US Privatization Peaked in 1997

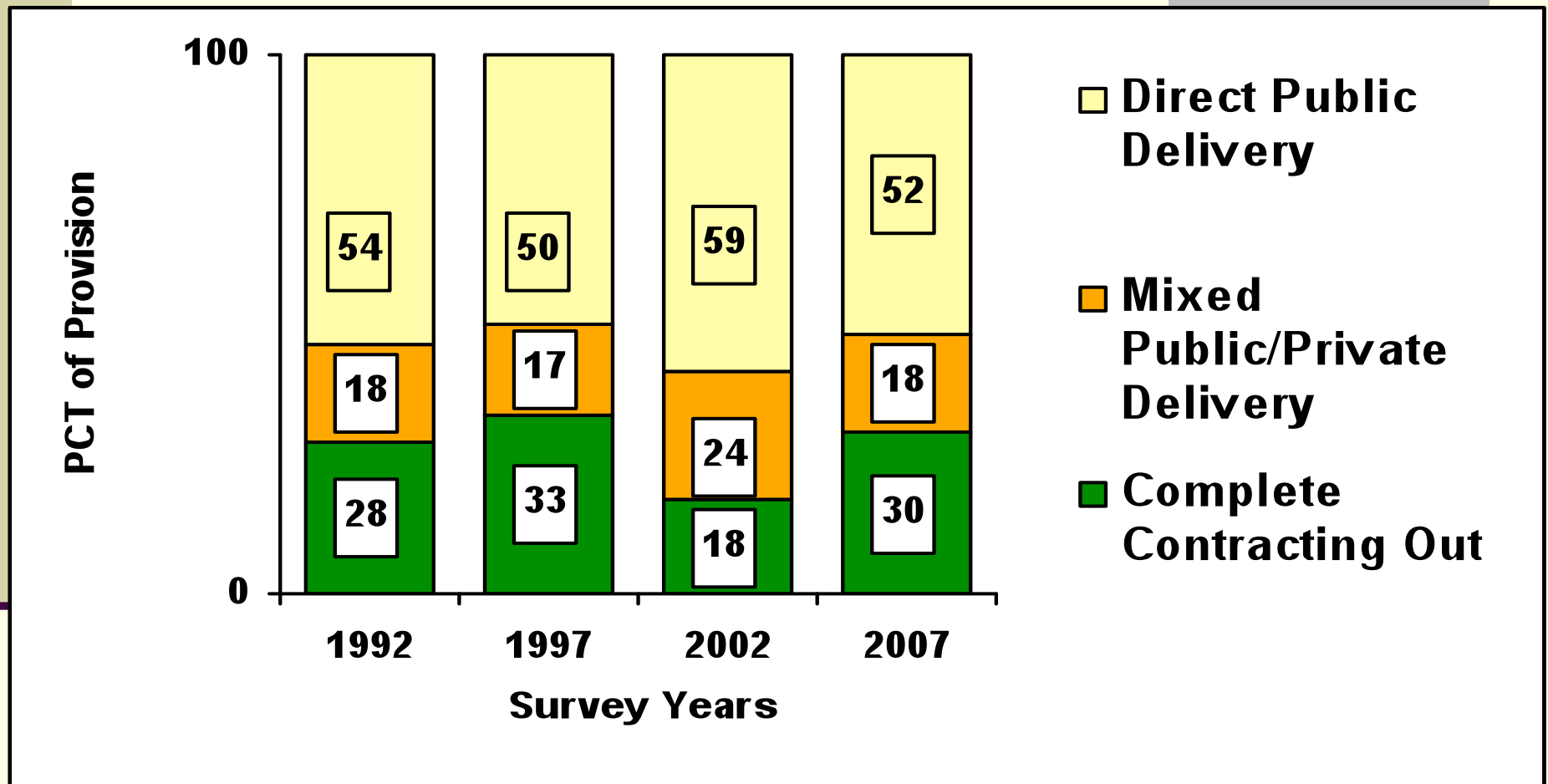


Average provision as % of total provision

Source: International City/ County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data, 1982, 1988, 1992, 1997, 2002, 2007

Contracting Peaked in 1997

Dynamic Process of Innovation and Reform

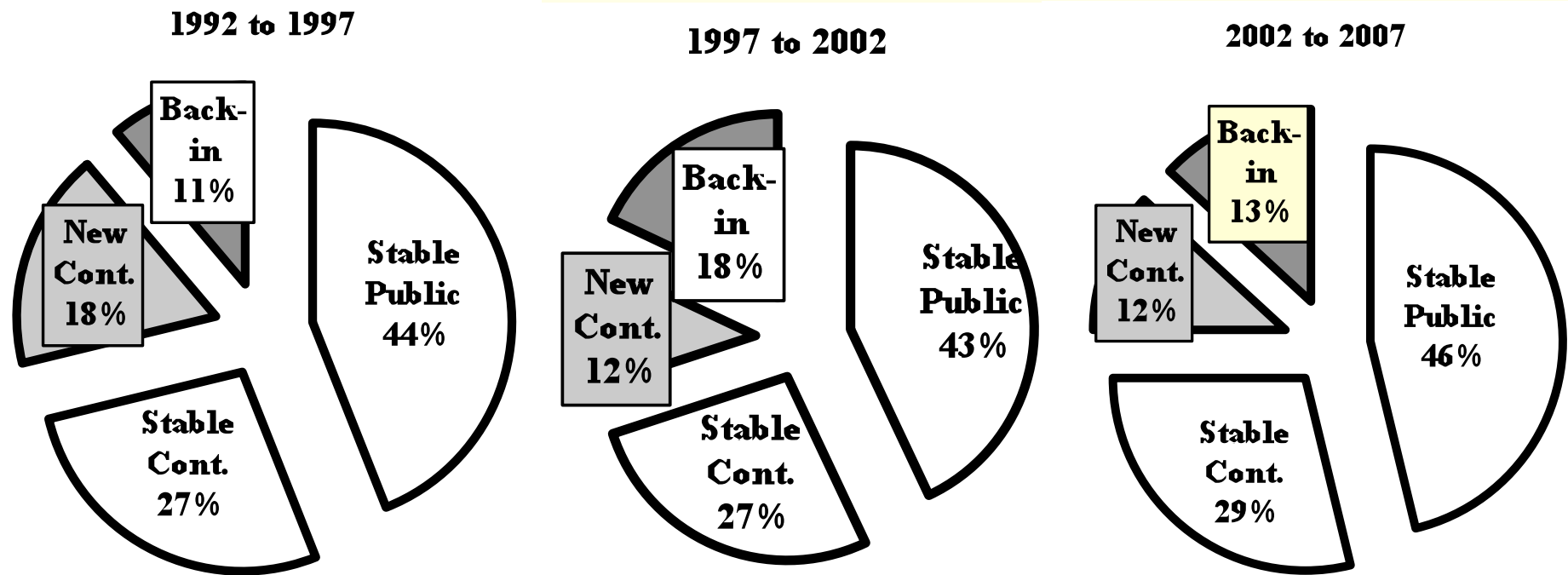


Source: International City/ County Management Association, Profile of Alternative Service Delivery Approaches, 1992, 1997, 2002, 2007 Washington DC. (Warner and Hefetz 2008) Sample Size 1100-1500 US municipalities nationwide

Reverse Contracting

- Local governments re-internalize (in source) previously contracted services
- Reasons: (Managers' Views)
 - Problems with service quality (61%) and lack of cost savings (50%),
 - Internal process improvement within the public sector (33%)
 - Citizen interest in bringing work back to public sector (25%)
 - Problems with Contract Management (17%)
 - (lack of competition, monitoring difficulties)

Most Delivery is Stable (contract or public), Experimentation is at the Margin



Average percent of total provision across all places.

Source: ICMA Survey of Alternative Service Delivery Approaches, 1992, 1997, 2002, 2007 Washington DC. US Municipalities Paired samples. N=500-600 (Hefetz and Warner 2004, 2007)

Cycles of Reform:

#1 Bureaucratic Management

Problem – corruption, cronyism

Solution – Public Bureaucracy - Technical Management, Expert Driven Planning, Separate Politics from Administration, Attention to Due Process

New Problems:

- Bureaucratic Rents
- Unresponsive, inflexible
- Inefficient
- Oversupply public goods

Cycles of Reform:

#2 New Public Management

Problem: Inflexible, unresponsive, slow

Solution: More Market – Competition, Privatization, Consumer Choice, Performance Management

New Problems:

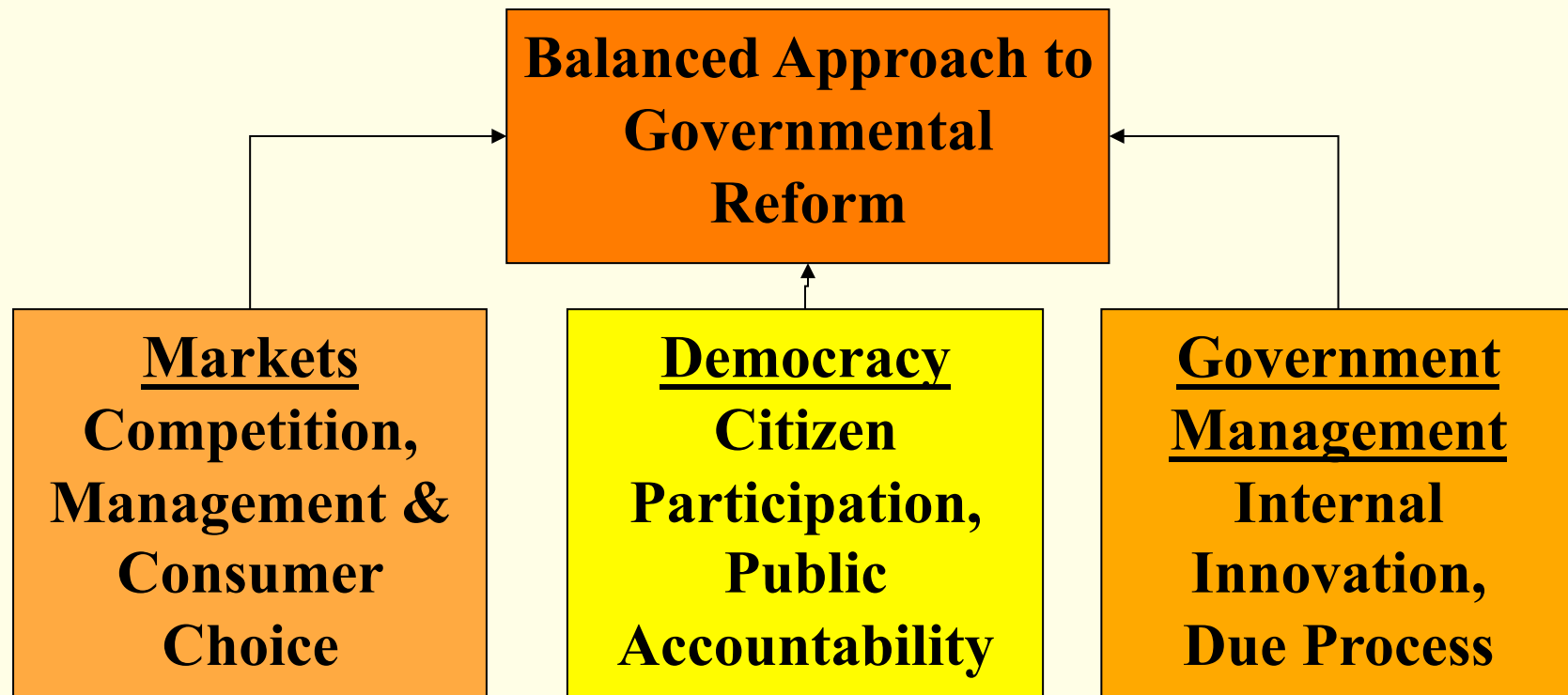
- Markets concentrate – competition erodes
- Contracting expensive, hard to monitor
- Relational contracting leads to collusion
- Citizen voice \neq consumer choice
- Competition creates inequality
- Decisions not socially optimal – preference misalignment, information asymmetries
- Loss of democracy and due process

Cycles of Reform:

#3 Reassertion of a State Role

Problem: corruption, costs increase, lose control

Solution: Rebalancing Reform – Markets,
Government and Citizen Participation



Learning from Past Reforms - Need to Balance Market and State

- Institutional Framework for Markets is Socially Constructed
 - Often lags market development (eg Post Socialist Transition)
 - Requires governmental capacity (regulatory standards, anti-trust law, enforcement capacity)
- Many Public Services are Natural Monopolies – public monopoly better than competition (Warner and Bel 2008)
- Human Interaction is more than market exchange: Redistribution, reciprocity, engagement
 - Privatization shifted the social contract, undermined citizen rights to services
- Community building is the ultimate public good
 - Public services provide the mechanisms for citizens to learn to engage heterogeneous differences

Government Role

- Market Manager – ensure competition, create institutional foundation for markets, regulation
- Bureaucratic Management - technical expertise, broader, longer term vision
- Deliberative Space – public engagement

- Public Service Provision is about more than cost & quality,
 - Includes accountability, voice and redistribution

- Reversals not a return to public delivery of the past
- Reflect a new balanced approach:
 - Markets, Government and Citizen Participation

Role for Unions: Frame the Debate in a New Way

Old Myths

- Markets are superior to government.
- Public sector workers are selfish and inefficient

■ Current Realities

- Markets are short term, self interested and unstable, but are also a source of innovation
- Government provides
 - the infrastructure that supports the economy and social wellbeing
 - the space for a collective conversation about long term societal goals.
- Public sector workers are innovative, service oriented and stewards of the broader public good.

Role for Unions

Within Country

Promote Internal Process Improvement – This is Critical

Recognize Need for Labor Flexibility

Recognize Need for Customer Service

Ensure Accountability – be the whistle blowers

Reclaim the Public Service Ethos - Protect Citizenship Rights

Internationally

Ensure contracting and labor standards, regulatory authority of sub-national governments

Watch GATS negotiations (Gerbasi and Warner 2007)

Sponsor a global conversation about the positive role of government

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Reversing privatization, rebalancing government reform: Markets, deliberation and planning

Mildred E. Warner

Dept of City and Regional Planning, Cornell University, United States

Abstract

The last decades of the 20th century witnessed a profound experiment to increase the role of markets in local government service delivery. However, that experiment has failed to deliver adequately on efficiency, equity or voice criteria. This has led to reversals. But this reverse privatization process is not a return to the direct public monopoly delivery model of old. Instead it heralds the emergence of a new balanced position which combines use of markets, deliberation and planning to reach decisions which may be both efficient and more socially optimal.

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1. Introduction

Experimentation with contracting out (privatization) of local government services grew over the 1980s and 1990s, but we have begun to see reversals in that trend. Compulsory competitive tendering has been abolished in the UK and Australia; New Zealand elected a prime minister focused on rebuilding internal government service delivery capacity; and US local government managers began to bring previously contracted services back in house in a process of reverse privatization. This reassertion of the public role is not the direct government monopoly of the past. Instead we see local governments using markets, but playing a market structuring role in building competition, managing monopoly and reducing transactions costs of contracting. But market management is not the only role of government. Managers also see the importance of engaging citizens in the public service delivery process. This paper describes both theoretically and empirically how this new approach to governmental reform balances the efficiency benefits of market-type engagement with the technical benefits of planning and the civic benefits of public engagement.

There has been a shift in understanding of the role of the state in public service delivery over the last few decades. The old public administration emphasized direct government delivery, hierarchical control, and a separation of politics and management to ensure due process for citizens and limit outside influence among public employees. This system was criticized as too slow and inflexible by proponents of the New Public Management who argued market-type management approaches could be effectively applied to the public sector (Hood, 1991; Osborne & Gaebler, 1992). New Public Management emphasized speed and flexibility and touted the advantages of markets for both greater private sector engagement and consumer voice for citizens (Savas, 1987). Market solutions suffer from high transactions costs and this has led to a new emphasis on network governance based on relational contracting and trust (Goldsmith & Eggers, 2004; Brown, Potoski, & van Slyke, 2007). However, the close relationships between contractors and government in network

E-mail address: mew15@cornell.edu.



Fig. 1. Rebalancing government reform.

governance undermine democratic accountability. The lack of control and accountability in contracting networks has led others to emphasize citizens are more than consumers and government more than a contract manager (deLeon & Denhardt, 2000; Denhardt & Denhardt, 2003; Sclar, 2000; Starr, 1987).

One of the intellectual foundations for market approaches to public goods is public choice theory (Tiebout, 1956). However, the public choice reliance on aggregated individual preferences in a market-type system can lead to public value failures because it allows no space for a deliberative social process of public participation (Bozeman, 2002). Problems with preference misalignment cause the aggregation of individual preferences to diverge from the collective social preference (Lowery, 1998). However, democratic approaches to aggregate individual preferences through voting may not be socially optimal or stable either according to social choice theory (Sager, 2002a). What is missing in both these approaches is a space for deliberation to identify collective needs and common solutions. Recent work in communicative planning and deliberative democracy shows that through deliberation individuals shift preferences toward more collective goals and thus arrive at a more socially optimal choice (Frug, 1999; Lowery, 2000; Sager, 2002b). When combined with markets and voting, deliberation may be both democratic and efficient.

In this chapter, I argue there is a rebalancing of government reform that capitalizes on the efficiency of markets, the technical expertise of planning, and the social choice of democracy without the problems of accountability and decision cycling that occur under any of these strands alone. This paper explores the theoretical basis for the emergence of such a balanced position, and provides evidence this is occurring in local government practice. Public managers have moved beyond the dichotomy of markets *or* planning, and instead embrace a mixed position which complements the advantages of markets with the benefits of public engagement. This balance between deliberation and markets recognizes citizens are more than consumers, and government is more than a market manager. Government creates the space for collective deliberation to occur and through this process a sense of the social is built. See Fig. 1.

2. Shifts in theory

2.1. Understanding the difference between market and government

The New Public Management revolution in local government promotes market-based management techniques to increase efficiency and citizen choice, but it fails to consider the subtle and important ways in which markets and government differ. Markets are based on the principle of utility maximization. Adam Smith articulated the notion of an invisible hand whereby producers and consumers in a market (motivated by individual utility maximization) would create competitive price pressure, promote innovation and ensure service quality thus securing socially optimal production. The key to this happy result was competition. But many services are natural monopolies, and thus do not benefit from the invisible hand of Adam Smith's competitive market. Competition erodes, and with it the guarantee of this market-based socially optimal result.

Key to the challenge of using markets for public goods is recognition of what creates a public good in the first place. Public goods, by definition, arise from market failure as self-interested individuals undersupply critical social goods or free ride on common resources. Congestion, pollution, and public health are all examples of market failed public goods which require some collective intervention to address. Typically this intervention is in the form of government regulation or production. With increased urbanization, externalities become more pronounced (congestion, public health impacts, etc.), more services experience market failures, and citizen demand for public provision increases.

This has led to the expansion of local government service delivery over time into new arenas of service delivery – e.g. garbage collection, water distribution, environmental management, infrastructure provision and human services.

However, market delivery mechanisms still may be possible for some of these goods. The potential of voluntary bargaining to address externalities, first articulated by Ronald Coase in his article on the Problem of Social Cost (1960), rests on the notion of a bargaining framework where individuals with full information and clear property rights pay producers of positive (negative) externalities to increase (reduce) them in a voluntary scheme. When the link between the supplier and the consumer is close, such payment schemes are easier to arrange. When larger numbers of actors are involved, these voluntary solutions tend to break down and government organization of production is preferred (Coase, 1960; Webster, 1998).

Recent scholarship suggests that in dense urban settings, the possibilities of voluntary solutions may be larger than once thought. For example in squatter settlements where government is unwilling or unable to extend basic services, individuals come together to provide services – urban transportation, water delivery – that might traditionally be provided by government (Gilbert, 1998). That people have voluntarily organized to meet collective needs attests to the power and potential behind voluntary market solutions. In arguing for the ‘spontaneous order’ created by markets, Webster and Lai (2003) suggest government delivery may hamper such private solutions through regulation and intervention that raises costs and restricts access, especially for the poor. This has been one of the rationales behind the promotion of market-delivered services for the poor (Graham, 1998).

While these market approaches show promise, they still require a significant government role. Where these market solutions are most pronounced (e.g. squatter settlements); property rights of consumers are least secure. This tilts the bargaining power toward the private producers of public goods and can lead to problems in price and quality due to inadequate government oversight. It also promotes an economic conception of citizenship where rights to basic services – even those critical to life such as water – are based on ability to pay. In developing countries, where market based schemes for water delivery have been promoted by foreign donors, we have seen large increases in consumer prices which have led to civic protest, most notably the water riots in Cochabamba, Bolivia (Kohl, 2004). These market solutions promote a version of citizen choice and empowerment based on market-based bargaining, that has been challenged as a veil to reduce citizenship rights to basic services (Miraftab, 2004). Even in developed countries, such as Canada, privatization has been challenged as an assault on both citizenship and democracy (CUPE, 2001).

There is something more fundamental and than cost and service quality in the public goods equation. Citizens expect involvement, voice and control over government decisions. Deliberation is the key to democracy. But anonymous and spontaneous markets do not create a space for deliberation. The individual can choose to buy or not, but deliberation on the nature of the choice is not typically part of a market. Markets, as aggregations of individuals, do not become social spaces for deliberation unless market governance is designed that way. Recall that the efficiency benefit of Adam Smith’s invisible hand was that it did not require deliberation. But as market solutions have been applied to public service delivery, problems with preference alignment have been found (Lowery, 1998). When individual preferences are substituted for public preferences (e.g. a private provider’s preference for profit vs. the public interest in access and service quality), we have failure of public goods again. Consumers may substitute individual preferences for public objectives when they shop as individuals in a privatized market for public goods. This has been found in voucher schemes for education, child care and job training where socially suboptimal choices are made by individual consumers who, due to lack of information or time, choose convenience over quality and thus undermine the intended societal educational benefits (Hipp & Warner, 2007; Lowery, 1998; Meyers & Jordan, 2006).

Recent research has shown that through deliberation, citizens shift their individual preferences more toward collective well being (Lowery, 2000; Sager, 2002b). Creating the space for such democratic deliberation is a key function of government. Frug (1999) has argued that such community building is the ultimate public good. Citizens in a democratic society must develop the capacity to engage difference, see common problems and craft socially optimal solutions. In planning, this has led to a new subfield of communicative planning which emphasizes how power imbalances can be altered through a deliberative process which allows more citizen voice and participation (Forester, 1999; Healey, 1996). In public administration attention is shifting back to a focus on citizenship, participation and public value. The role of government is not simply to steer a market process; it also must serve citizens (Denhardt & Denhardt, 2003, 2000). Governments must have the capacity to help citizens come together to identify problems and to debate choices (Nalbandian, 1999, 2005). Citizen engagement is more than the consumer orientation and competition advocated by New Public Management (Osborne & Gaebler, 1992). Citizens need more than the exit option of markets; they need the opportunity to stay, exercise voice, and invest in their community (Frug, 1999). Participation in

local decision-making is seen as the foundation for a democratic society. Learning to solve collective problems, to engage the heterogeneous diversity found in the urban landscape, and to practice deliberation – these are the foundations for a democratic society.

2.2. *Recognizing the civic within the market*

In order to use markets for public goods, more attention must be given to the civic foundations of markets and the potential for deliberation within them. The social construction of markets challenges the anonymity of the invisible hand, and shows the importance of trust and embeddedness in creating the social norms that permit markets to function (Granovetter, 1985; North, 1990). This line of research has been especially important in the transition literature on Eastern Europe and China. Market emergence requires a state role in creating the legal framework necessary to support market functioning (bonding, insurance and property rights). It also requires attention to social networks and changing social norms (Nee, 2000). Market entrepreneurship requires contestation and competition. Neither was encouraged under state socialism, and so building the norms for contestation and competition is part of the sociological foundation both for civic engagement and market emergence (Warner & Daugherty, 2004).

Some have argued that democracy and market economies are mutually reinforcing (Przeworski, 1991), and indeed this was the philosophy behind most international donor investment in Eastern Europe after the transition. However, inadequate social foundations for market functioning led to corruption and concentration of privatized assets into the hands of a few, understood as gangster capitalism or “the great stealing” in much of the region, especially Russia (Holstrom & Smith, 2000).

Markets naturally concentrate power. A *laissez faire* market does not naturally emerge. Absent state regulations to ensure more competitive market functioning, and social norms and networks to ensure broader bargaining power, concentration is an expected result. Even mathematical models of market systems show that wealth concentrates, and competition disappears as the models play out over time (Hayes, 2002). This is especially common in many publicly provided services which are natural monopolies, or tend toward monopoly – water, waste collection, electricity, etc.

Lowery (1998) has warned that public service contracting markets are at best, quasi markets of one buyer (government) and a few sellers. Thus these markets fail to create competition. This may be why local governments show more stability in their use of contracting for public goods if they focus on managing monopoly. Warner and Bel (2008), in their comparative study of water distribution and solid waste disposal contracting in the US and Spain, found Spanish local governments had both higher levels of contracting and more stable contracts than in the US. They attributed these differences to the Spanish focus on managing monopoly through mixed public/private firms which enjoy the benefits of natural monopoly (economies of scale) and private sector management, but retain public values and accountability. In the US, by contrast, local governments focus on promoting competition between government and private firms. This resulted in less contracting over all and much higher rates of reversals.

Lack of competition is not the only failure. Market-based solutions also create preference alignment problems as individuals substitute private preferences (convenience) for public preference (quality) (Hipp and Warner, 2007). Markets also can lead to preference errors on the part of purchasers due to information asymmetries and transactions costs (Lowery, 1998). Some of these market failures can be addressed through investments in the social foundation – public education, regulatory standards or anti-trust laws. The important challenge is to understand the social foundations of markets. The late 20th century was an experiment to see how far we could push the boundaries of market into state provision of market-failed public goods. However, if we want to use markets for public goods, then we must understand what is needed for those markets to work.

Market solutions for public goods promoted in both developing countries and Eastern Europe failed to give sufficient attention to the failures of quasi markets outlined above or the important social foundations of markets which help ensure their smooth functioning. Polanyi (1944) argued that human interaction is based on more than market exchange. Reciprocity and redistribution are key. When markets subordinate other aspects of human life, there will be a counter movement to moderate them. This may help explain the strong anti-privatization movement in water in Bolivia and South Africa. It also may explain the growth in reverse privatization we are seeing in the US and the shifts away from competitive tendering among the early privatizers: the UK, Australia and New Zealand.

Privatization requires government capacity to manage markets and citizen/consumer capacity to effectively engage them. Privatization is not a reduction in the role of the state as some pro-privatization theorists argue (Savas, 1987), but rather a shift in state role (Schamis, 2002) toward managing new tools (Salamon, 2002) including a more direct market

management role. The structuring of contracts, regulation of price and quality, as well as direct action as a supplier or purchaser in the market are all tools governments have used to engage markets more effectively in public service delivery. Privatization does not allow government to contract out and walk away, instead government must remain actively engaged as a market player directly providing services and contracting out in a dynamic process to ensure competition, efficiency, service quality and broader public objectives (Hefetz & Warner, 2004, 2007; Warner & Hebdon, 2001; Warner & Hefetz, 2008).

2.3. *The promise and failure of market approaches*

One of the purported advantages of market approaches to government was that they would give the consumer citizen more choice and voice in government service delivery. Tiebout (1956) showed that, especially at the local government level, a public market of competing local governments gave mobile residents choice in the tax/service mix of their communities, and provided competitive pressure for local governments to remain efficient. At a time of rapid suburbanization and geographic mobility in the post-WWII US, a public choice model based on mobility seemed reasonable. Later studies of such Tiebout sorting have challenged the assumption that decisions are based primarily on efficiency considerations. Sorting by race and class has had a major impact on the landscape of fiscal and service inequality in metropolitan areas (Frug, 1999; Lowery, 2000; Troutt, 2000; Warner & Pratt, 2005).

A strong sense of localism has led to the notion that public services are private, club goods, available only to residents within a particular jurisdiction (Frug, 1999). This narrowing of the public view has undermined efforts to cooperate at the regional scale. While such localism may promote democracy and choice, the need for planning at the metropolitan regional scale suggests the region may be the appropriate scale for a local focus today (Briffault, 2000). The challenge is how to create the appropriate forum for a regional democratic conversation (Frug, 2002). Both technocratic planning “things regionalism” and private market approaches “privatization” have been shown to exacerbate inequality and narrow voice to growth coalition elites (Bollens, 1997; Logan & Molotch, 1987; Warner, 2006b; Warner & Hefetz, 2002, 2003, 2008). We need a “people regionalism” that incorporates both the technical and the market but subjects it to social debate.

One of the promises of privatization is that it would give consumer citizens even more voice than voting (which is infrequent), or changing communities (which requires the means to move). By privatizing government services, citizen consumers would enjoy market choice and could shop for services on a more regular basis than they can vote or move between communities. However, empirical analysis of US contracting behavior shows that attention to citizen voice is lower among municipalities that privatize more (Warner & Hefetz, 2002). Because privatization is typically a contract between government as purchaser and one or a small group of suppliers, the citizen consumer does not see a choice of providers.

Similarly, market approaches could allow governments to obtain economies of scale at the regional level. Privatization and inter-municipal cooperation are popular local government reforms. However, neither promotes intra-regional equity. Privatization is favored by richer suburbs over rural or core urban communities (Kodrzycki, 1994; Warner, 2006a; Warner & Hefetz, 2003, 2008), and inter-municipal cooperation, because it is voluntary, does not lead governments to choose to cooperate with their less well off neighbors (Warner, 2006b).

Efficiency gains, another promise of the market model, have been fleeting. US research shows that only with monitoring did local governments experience efficiency gains under privatization (Warner & Hefetz, 2002). Meta analyses of privatization and cost studies show inconsistent results, but the majority of studies do not show cost savings under privatization (Boyne, 1998; Hirsch, 1995; Hodge, 2000; Bel & Warner, 2008a). Some have attributed this lack of efficiency gains to the high transactions costs of contracting (Hefetz & Warner, 2004; Sclar, 2000). Contract specification and monitoring have turned out to be more challenging and costly than first thought (Pack, 1989; Prager, 1994). While some of these costs can be controlled through a more careful market management role, transactions costs is not a sufficient framework for understanding the challenges of contracting (Bel & Warner, 2008b; Hefetz & Warner, 2007).

2.4. *Combining deliberation and markets*

We have seen above that markets do not ensure equity, voice or efficiency. Markets are a tool that can be used in public service delivery but they must be managed carefully to achieve the desired goals. Local government must have the capacity to structure markets and engage citizens in a deliberative process.

While the experiment with market reforms has been proceeding in public administration, in the field of planning renewed interest has been focused on deliberation and communication. Building from Habermasian dialogue, a field of communicative planning has arisen which focuses on the process of public participation and communication in planning decisions (Forester, 1999; Healey, 1996). Communicative planning sees a special role for the planner in clarifying options and challenging misinformation (Forester, 1989; Healey, 1997; Innes, 1995). While some critique communicative planning theory for being too focused on consensus and failing to adequately address power differences – especially the naïve assumption that the planner can be abstracted from his/her structural position in a nexus of power and professional expertise (McGuirk, 2001), others argue that planners can facilitate an advocacy planning process that challenges existing power structures and gives more voice to the poor (Krumholz & Clavel, 1994; Reardon, 1999).

Although market-based reform efforts have fuelled negative views of government among citizens and the media; local government managers show increasing interest in serving public values (Allmendinger, Tewdwr-Jones, & Morphet, 2003; Moore, 1995). Public opinion research in the US has found that citizens typically equate government with self-serving politicians or unresponsive bureaucracy, leading to a negative view (Bresette & Kinsey, 2006). But when the dialogue is reframed in terms of government creating the public structures that promote economic efficiency and security, then citizen views become more positive. The challenge is to rebuild the capacity of government to lead; and of citizens to participate in a collective deliberative process. Local government has a progressive potential exhibited by leadership at the municipal scale to promote innovation (Clavel, 1986). Nalbandian (1999, 2005) has articulated government capacity as the capacity to bring a community together to solve problems in a way that does not rend the social fabric, so they can come together again to solve the next problem. Based on the exciting innovations in Puerto Alegre, Brazil, city leaders around the world are experimenting with new models of citizen engagement – citizen budgets, citizen visioning, and encouraging neighbourhood control over service delivery (Abers, 1998; Osborne & Plastrick, 1997; Potapchuck, Crocker, & Schechter, 1998; Gaventa, 2004).

In this regard, the planner's role is similar to the local government manager's role, though the planner is primarily focused on process and the government manager on direct service delivery. How to incorporate this need for deliberation in the context of a more market-based system of government service delivery is the challenge.

Public choice theory incorrectly assumed that consumer choice in a competitive market could address public goods problems. Likewise, democratic alternatives, such as majority voting, have been shown to lead to unstable decision cycles and manipulation. Social choice theory has documented the impossibility of solutions which are both efficient, democratic and serve the public interest. Cycle free decisions involve some form of expert sovereignty (Sager, 2001, 2002b).¹ So neither voting nor consumer choice alone can yield a stable, democratic and socially optimal solution. Sager (2002b) suggests that deliberation can be used as a supplement in an iterative process that circumvents these problems. "Deliberation brackets preferences and voting brackets the giving of reasons, but shifting between these decision-making modes can bring both types of information into play. . . which helps to explain why decision cycles do not occur as frequently in practice as predicted by social choice theory." (Sager, 2002b, p. 376) Through deliberation individuals can see the need to shift toward more socially beneficial decisions (Frug, 1999; Lowery, 2000). This is the promise of a deliberative and democratic planning process. However, deliberation alone, can lead to the same kind of impossibility problems as voting (Sager, 2002b). So the challenge is to use a process that combines planning, markets, voting and deliberation.

3. Shifts in practice

The first section of this chapter documented a shift in theory from an emphasis on market approaches, to a more balanced concern with democracy and planning. I argue that local government, in its practice, is moving beyond the

¹ Research on social choice argues the impossibility of decision processes that are both manipulation-free and democratic (the Gibbard–Satterthwaite theorem), the impossibility of combining individual liberty and respect for unanimous preference rankings (Sen theorem), and the impossibility of amalgamating individual preference rankings in a way that is both consistent and democratic (Arrow theorem). For more detail on these theorems see: Arrow, K. J. (1963). *Social choice and individual values*. New York: John Wiley; Gibbard, A. (1973). Manipulation of voting schemes: a general result. *Econometrica*, 41, 587–601; Satterthwaite, M. A. (1975). Strategy-proofness and Arrow's conditions: existence and correspondence theorems for voting procedures and social welfare functions. *Journal of Economic Theory*, 10, 187–217; Sen, A. (1970). The impossibility of a Paretian liberal. *Journal of Political Economy*, 78, 152–157.

either/or dichotomy of planning or markets, and embracing a more balanced mixed position. Three brief examples will suffice.

New Zealand and the United Kingdom were early and radical innovators promoting extensive privatization through compulsory competitive tendering. In New Zealand, we are seeing a shift back with the new 2002 local government law which recognizes the need to rebuild government capacity to both manage markets and build the local foundation for democracy. Local government is seen as the forum where a balance between economic development, environmental and civic interests can be crafted. In the United Kingdom we have seen a shift away from Compulsory Competitive Tendering toward a ‘best value’ regime which includes a broader range of objectives than just efficiency. While terms such as ‘contestability’ and ‘scrutiny’ emphasize competition and accountability, there is also emphasis on citizen engagement. In the US, privatization was never compulsory, but support for market-based government is strong. However contracting out peaked in 1997 and reverse contracting is now larger than new contracting out. Concerns with reductions in service quality and lack of cost savings drove this shift. In each of these cases market approaches are not jettisoned; rather use of market is balanced by recognition of the need for a government management role – both to structure the market and to ensure a deliberative space for citizens.

3.1. *New Zealand*

New Zealand was an early leader in implementing market-based approaches to government. They tested the notion of enterprise units – focused on meeting goals and using a private sector management approach which promoted competition, outsourcing, privatization and a customer service orientation. Many services were sold off or privatized. New Zealand’s approach to reform served as an exemplar for other countries, especially the United States (Osborne & Plastrick, 1997). At the local level private companies emerged to manage roads, which are one of the largest budget areas for local government. New Zealand local government managers became experts in contract management. Contracting networks were viewed as more flexible than direct government and considered the wave of the future. As they moved from market management to partnerships, they recognized that partnerships need management and accountability.

However, the results of privatization were only partly satisfactory. Regulation alone was not enough; an accountability framework was needed, along with professional local government management. In the late 1990s New Zealand made a course correction and reasserted a government role. The election of Prime Minister, Helen Clark, in 1999, reflected in part a desire to rebuild government capacity.

Certainly a not inconsiderable part of my government’s time has been spent in rebuilding public sector capacity to deliver the results the public demands. . . . The public sector reform which went on in the 1980s and 1990s was aimed at making government agencies more efficient, but it was undoubtedly also aimed at ensuring that there was less government. Our reforms have banked the efficiency gains, but have looked to build effectiveness as well. . . . a high performance and highly skilled public sector is required. (Clark, 2005)

In 2002, a new local government law was passed (Local Government New Zealand, 2003). This law recognized that local government must balance competing objectives: economic development, social wellbeing, environmental management and civic engagement. This process is too complex for a simple market mechanism. The law recognized that citizens are more than market-based service customers. Local government must give more attention to the importance of a democratic base and citizen consultation.

New Zealand is ahead of the US in many respects. It has undertaken more privatization and outsourcing at the local level. Its performance management systems are more sophisticated, and it has an explicit audit and accountability framework. It undertook a significant amalgamation of local government in 1989 which created a structural framework for regionalism based on more sensible urban and ecological boundaries (e.g. regionalism that encompasses a watershed, or links city and suburb). Although a clearer framework for local government has been laid out, there are still problems creating effective regional collaboration and crafting the balance between environmental, social, economic and cultural objectives, especially in areas with development pressures. Consultation is not without its problems. A deliberative process can lead to more social choices, but too much consultation can lead to “governance exhaustion.” However, the notion of a more balanced position involving markets, democracy and planning has been articulated. Local government leaders are attempting to balance deliberative process with the efficiency of markets.

3.2. United Kingdom

The United Kingdom was another early innovator in privatization. With Margaret Thatcher, emphasis on competition and breaking the monopoly of government power was paramount. Competitive tendering was made compulsory from 1988 to 1998. But results suggest the program was not that successful in breaking the monopoly of local government control as a large percentage of contracts were won by local government teams (Szymanski & Wilkins, 1993). Nor was the program successful in saving money, as most cost savings eroded over time (Szymanski, 1996). With the election of Tony Blair in 1997, a shift back toward a more balanced position began. The “best value” framework was implemented in 1999 in recognition that local government needed to balance more objectives than simple cost efficiency. Greater attention was given to accountability and citizen engagement (Martin, 2002). Best value gave attention to speed, service quality and citizen voice in the service delivery process. Although the national government was keenly interested in promoting local government innovation and viewed contestability as a core reform, it also recognized the need to engage local government managers as partners, not rivals, in the reform process (Entwistle & Martin, 2005). Local government managers’ reluctance to externalize services reflected a public service ethos, the need for control and market management, and the need to retain core competencies within the public sector (Entwistle, 2005).

3.3. United States

In the United States public discourse at the national level regarding local service delivery was not as pronounced as in New Zealand or the United Kingdom. Local government reform is controlled at the state level and this leads to great diversity and more local government independence.

However, support for privatization was strong in the US. In 1982 the professional association of city managers, the International City/County Management Association commenced a Survey of Alternative Service Delivery to measure the level of privatization. That survey has been repeated every five years since. This permits tracking trends over time, something not possible in other countries. Although trends were relatively flat, there was increasing experimentation with privatization after 1992. But contracting out peaked in 1997, and in 2002 (the latest data available) we see a return to public delivery and a dramatic increase in mixed public and private delivery (Warner & Hefetz, 2008). See Fig. 2. As contracting out has fallen, mixed public/private delivery has grown. This mixed delivery occurs when governments both provide a service directly and contract out a portion. This creates competition between public and private providers, maintains government capacity and internal knowledge about the process of service delivery, and ensures continued citizen involvement in the service delivery process (Warner & Hefetz, 2008). Regression models for 1992, 1997 and 2002 show a priority for market management concerns, but emergence of a balanced concern with market management *and* citizen voice in 2002. The challenges of local government service delivery are about more than

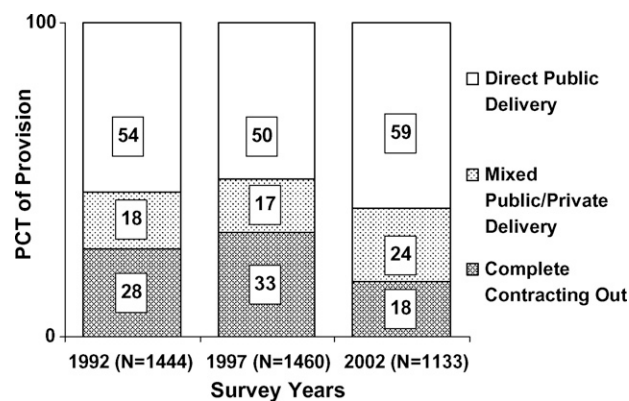


Fig. 2. Trends in local government service delivery, 1992–2002. Percent of provision averaged across all responding governments. Provision is percent of total number of services provided on average. Provision rates: 66%, 61%, 53% for 1992, 1997, 2002, respectively. Author analysis based on data from the International City/County Management Association, profile of alternative service delivery approaches, US Municipalities, 1992, 1997, 2002, Washington, DC. Reprinted from Warner and Hefetz (2008).

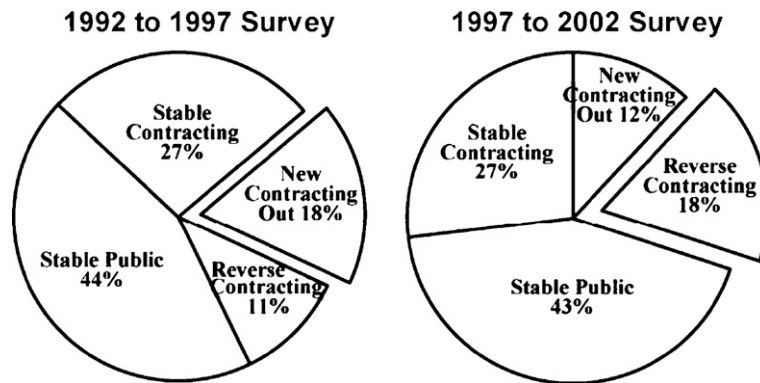


Fig. 3. Dynamics of local government service delivery, 1992–2002. Author analysis based on data from the International City/County Management Association, profile of alternative service delivery approaches, survey data 1992, 1997, 2002, Washington, DC. Reprinted from Hefetz and Warner (2007).

efficiency. Local government leaders and citizens alike recognize the need to balance multiple objectives: service quality, citizen participation and economic efficiency. This explains the emergence of a mixed market position.

Reverse privatization also grew dramatically over the decade from 12% of all service delivery in the 1992–1997 period, to 18% of all service delivery from 1997 to 2002 (Hefetz & Warner, 2007). See Fig. 3. ICMA added a question to its 2002 survey asking why managers brought previously contracted work back in house and the primary reasons were problems with service quality, lack of cost savings, internal process improvement, and citizen support for bringing the work back in house (Warner & Hefetz, 2004). A similar survey fielded in Canada the following year, found exactly the same rank order of reasons for reverse privatization (Hebdon & Jalette, 2008).

Statistical analyses of this shift over the decade 1992–2002 (Hefetz & Warner, 2007) show the increase in reverse contracting is only partially explained by transactions costs (asset specificity, monitoring). What is more important are place characteristics and citizen voice. Reverse contracting is part of a market management approach, but also is a response to increased attention to citizen voice. These results confirm the existence of a new balanced model of local government reform which gives attention to both markets and citizen voice.

4. Conclusion

The last decades of the 20th century witnessed a profound experiment to increase the role of markets in local government service delivery. However, that experiment has failed to deliver adequately on efficiency, equity or voice criteria. This has led to reversals. But this reverse privatization process is not a return to the direct public monopoly delivery model of old. Instead it heralds the emergence of a new balanced position which combines use of markets, democracy and planning to reach decisions which may be both efficient and more socially optimal.

Local governments play a key role in community problem solving and this is the fundamental public good. To do so, they must move beyond market models of government and promote deliberation and public participation. The New Public Management reforms focused on competition and entrepreneurialism. But competition is ephemeral in public service markets and provides a poor foundation for equity. Entrepreneurship encourages secrecy and risk taking that may be inappropriate for critical public services (deLeon & Denhardt, 2000; Kelly, 1998). Government is meant to be a stabilizing force, designed to reduce risk and ensure security. It is structured around principles of openness and stewardship where participation and representation are the foundation, not competition.

The privatization experience of the late 20th century has taught us that markets require governance. Managing markets for public services is both challenging and costly. These market networks limit traditional government mechanisms to ensure public control, accountability, representation and balance of interests. Using markets alone can lead to economic conceptions of citizenship (e.g. citizen rights defined by ability to pay, limited sense of public space, little collective sharing of externalities). Recognizing the democratic deficit in these arrangements has led to greater emphasis on public planning and democratic engagement. We see this in the reverse privatization trends and the emergence of a more balanced position that combines market approaches with participation and planning. At the beginning of the 21st century, this balanced approach is the new reform.

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- Sager, T. (2002b). Deliberative planning and decision making: An impossibility result. *Journal of Planning Education and Research*, 21(4), 367–378.
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- Warner, M. E. (2006a). Market-based governance and the challenge for rural governments: U.S. trends. *Social Policy and Administration: An International Journal of Policy and Research*, 40(6), 612–631.
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- Warner, M. E., & Bel, G. (2008). Competition or monopoly? Comparing US and Spanish privatization. *Public Administration: An International Quarterly*, 86(3), 723–725.
- Warner, M. E., & Daugherty, C. W. (2004). Promoting the 'civic' in entrepreneurship: The case of rural Slovakia. *Journal of the Community Development Society*, 35(1), 117–134.
- Warner, M. E., & Hebdon, R. (2001). Local government restructuring: Privatization and its alternatives. *Journal of Policy Analysis and Management*, 20(2), 315–336.
- Warner, M. E., & Hefetz, A. (2002). Applying market solutions to public services: An assessment of efficiency, equity and voice. *Urban Affairs Review*, 38(1), 70–89.

- Warner, M. E., & Hefetz, A. (2003). Rural–urban differences in privatization: Limits to the competitive state. *Environment and Planning C: Government and Policy*, 21(5), 703–718.
- Warner, M. E., & Hefetz, A. (2004). *Pragmatism over politics: Alternative service delivery in local government, 1992–2002*. The Municipal Yearbook 2004, Washington, DC: International City County Management Association. pp. 8–16.
- Warner, M. E., & Hefetz, A. (2008). Managing markets for public service: The role of mixed public/private delivery of city services. *Public Administration Review*, 68(1), 150–161.
- Warner, M. E., & Pratt, J. E. (2005). Spatial diversity in local government revenue effort under decentralization: A neural network approach. *Environment and Planning C: Government and Policy*, 23(5), 657–677.
- Webster, C. J. (1998). Public choice, Pigouvian and Coasian planning theory. *Urban Studies*, 35(1), 53–75.
- Webster, C. J., & Lai, L. W. C. (2003). *Property rights, planning and markets: Managing spontaneous cities*. Cheltenham, UK; Northampton, MA: Edward Elgar.

MILDRED E. WARNER

Dept. of City and Regional Planning
Sibley Hall, Cornell University
Ithaca, NY 14853
(607) 255-6816, 607-255-1971 (fax)
mew15@cornell.edu

<http://restructuringlocalgovernment.org>
<http://economicdevelopmentandchildcare.org>

EDUCATION

Ph.D. Development Sociology, CORNELL UNIVERSITY, Aug. 1997.

M.S., Agricultural Economics, CORNELL UNIVERSITY, May 1985.

B.A., History, OBERLIN COLLEGE, May 1979, Phi Beta Kappa.

EMPLOYMENT

Professor, CORNELL UNIVERSITY, Department of City and Regional Planning, Ithaca, NY 2008-present, Associate Professor 2004-2008, Assistant Professor 1998-2003.

Associate Director, CORNELL UNIVERSITY, Community and Rural Development Institute, Ithaca NY 1989-1997

Assistant Program Officer, THE FORD FOUNDATION, Rural Poverty and Resources Program, New York, NY, 1985-1988

Agricultural Extension Agent, UNITED STATES PEACE CORPS, Ecuador 1979-1981

ACADEMIC SERVICE

National Academic Society Memberships

American Planning Association, Member 2008-present.

Association of Collegiate Schools of Planning, Member 1998-present. Board member 2006-08.

Member Faculty Women's Interest Group 1998-present, Reviewer for Fannie Mae

Community Development Track 2000, session organizer at national conferences 2000-06.

Association for Public Policy Analysis and Management, member 1999 –2001, 2005-present

Community Development Society, member 1989-2009. Member Journal editorial board 2002-present.

Public Management Research Association 2009-2011.

Rural Sociological Society, member 1989-2009

Co-Chair, Rural Policy Interest Group, 1997-2000. Member, Professional

Communications Committee, 2000-2003, Worldwide Rural Research and Education

Network 2002-03, Nat'l Task Force on Persistent Rural Poverty, 1991-1993.

American Sociological Association, member 1999-2004.

Member of Editorial Board

Community Development: Journal of the Community Development Society, 2005-present

State and Local Government Review, 2009-present

Journal of Public Administration Research and Theory, 2011-present

Reviewer for the following journals

Agriculture and Human Values

Cambridge Journal of Regions, Economy and Society

Cities

Economic Development Quarterly

Environment and Planning A: Environment and Planning

Environment and Planning C: Government and Policy
Commonwealth Journal of Local Governance
Community Development: Journal of the Community Development Society
Journal of the American Planning Association
Journal of Industrial Economics
Journal of Planning Education and Research
Journal of Policy Analysis and Management
Journal of Public Administration Research and Theory
Journal of Socio Economics
Journal of Urban Affairs
Land Use Planning
Nonprofit and Voluntary Sector Quarterly
Public Administration: An International Quarterly
Public Administration Review
Public Budgeting and Finance
Natural Resources Forum
Regulation and Governance
Rural Sociology
Social Problems
Social Science and Medicine
State and Local Government Review
Urban Affairs Review

Planning Accreditation Board

Member of Review Panel – November 2009.

Research Grant Reviewer

US Dept. of Agriculture, Washington, DC

National Research Initiative and Small Business Innovation Research (SBIR) Grants

Member Grant Review Panel, SBIR, February 1994 and January 2000.

Cornell Ag. Expt. Station/Cooperative Extension Internal Research/Extension Grants 1998-2001.

Cornell University Service

Member, Faculty Committee on Program Review, 2009-2010

Faculty Steering Committee, Community and Rural Development Institute 2006-2011.

Polson Institute UCAN Network: University of Highlands and Islands, Cornell, Aberdeen and Newcastle on Rural Policy Research, 2006-11

Bronfenbrenner Life Course Center, affiliate 2002-present.

Cornell Population Center, affiliate 2008-present.

Bronfenbrenner Working Group on the American Time Use Survey 2006-08.

Polson Inst., “Rural Policy, Rural Disadvantage and Citizenship,” Working Group, co-leader 2002-2006.

Ad Hoc Committee on External Funding in the Social Sciences 2005-06.

Family and Community Food Decision-making Program Work Team, Cornell Cooperative Extension, 2000-2004.

CALS Central and Eastern Europe Program Committee 2000 – 2008.

Cornell Civic Leaders Fellowship Program, Selection Committee, Public Service Center 2002-2008.

Committee on Academic Programs and Policies, 2000-2004.

Faculty Committee, Kellogg Mid-Atlantic Consortium Faculty Leadership Development, 1998-9.

Statewide Economic Vitality Program Committee, Cornell Cooperative Extension, 1994-2000.

Steering Committee, Farming Alternatives Program, 1994-96.

Steering Committee, Institute for European Studies, 1994-96.

City and Regional Planning Department Service
Director of Graduate Studies 2007-2009
Executive Committee, 2006-2009
Search Committee 2005-07, Chair 2010
Undergraduate Program Committee 2001-2004
Curriculum Committee 2002 – 2004, 2005-07
Ph.D. Admissions Committee, 1998-2000, 2004, 2006, 2008, Chair 2007
Web Page Committee, 1998-2000, 2006-11

PROFESSIONAL SERVICE, EXTENSION AND CONSULTING

Privatization

Public Service International – Invited Speaker at Global Union Conference, Geneva, Switzerland, 2010

Innovations in Local Government – International City/County Management Association, 2009

Century Foundation, - Analysis of Local Government Infrastructure Challenges, 2008-2009.

Public Service International – Invited Speaker at International Conference, Oslo, Norway, 2008.

Alliance for Innovation, Invited member. Academic Network for Local Government Research Sponsored by the International City/County Management Association. 2007-present.

Centre for Local & Regional Government Research, Cardiff Business School, Wales, U.K. External advisor for study on competition and contestability June 2006 - March 2007.

Grupo FARO – Fundación para el Avance de las Reformas y las Oportunidades, Quito, Ecuador. External advisor on study of privatization of water in Guayaquil.

Economic Policy Institute, Washington, DC
Scholar in residence Spring 2005.
Research Associate, 2001- present. Advisor on national privatization trends, 1999-present.

International City/County Management Association, Washington, DC
Advisor on redesign of surveys of local government restructuring 1999-present.

National Association of Counties, Washington, DC
Advisor on national privatization and devolution trends, 2000-present.

National Research Council, The National Academies, Washington, DC
Transportation Research Board, Committee for a Study on Contracting Out Transit Services, reviewer, 2001.

Canadian Union of Public Employees, Ottawa, CA
Advisor on privatization trends. 2001-present.

American Federation of State, County and Municipal Employees, Washington, DC
Advisor on national privatization trends 1999-present.

Federation of Public Employees/ American Federation of Teachers, Washington, DC

Advisor on national privatization trends. Keynote speaker, national conference May 2001.

NYS Association of Counties, Albany, NY
Collaborative research project on local government service delivery restructuring 1997-1999.

County Nursing Facilities of New York State/ Civil Service Employees Association, Albany, NY
Collaborative Research project 1999-2000.

Child Care and Economic Development

Institute for Women's Policy Research, Affiliated Scholar, 2010-present.

National Child Care Information Center, Technical Assistance Advisor, 2009-present.

National Association of Child Care Resource and Referral Agencies, Analysis of Vouchers. 2009.

Save the Children – Post Katrina Disaster Relief in the Gulf Coast, Advisor on economic impact
2006-2007.

Wisconsin Head Start State Collaborative Project, Outreach on economic importance of child
care 2005-6.

Market Rate Survey Research Team. Member of Research Advisory Committee 2005-2007.

Consultant to the following state and local child care and economic development reports:
Chemung County, NY, Monroe and Ontario Counties, NY, Buffalo, NY, Long Island NY, NYC.

Fairfax Futures: The Fund for Early Learning and School Readiness, Outreach on economic
importance of child care, 2004.

Iowa Early Care, Health and Education Congress Research and Des Moines Business Partnership
research on economic importance of child care 2003.

Smart Start National Technical Assistance Center, Raleigh, NC. Outreach on economic
development impacts of child care 2003- present.

Mid-America Regional Council (Kansas City) and Kansas Department of Social and
Rehabilitative Services, Lead researcher on economic impact of child care study 2002-2003.

Massachusetts Department of Education, Research on economic impact of child care study 2002-
2003.

New York State Child Care Coordinating Council and NYS Office of Children and Family
Services, Research support on economic impact of child care for state and local studies 2002-
present.

U.S. Dept of Health and Human Services, Administration for Children and Families, Washington,
DC. Plenary speaker and workshop leader on child care as economic development. 2002-
present.

Windham Child Care Association and the Peace & Justice Center, Vermont .
Advisor for study "The Economic Impact of Vermont's Child Care Industry." 2001-02.

Early Education Partnership of Tompkins County/ Chamber of Commerce, Ithaca, NY
Advisor on design of community subsidy fund for child care, economic impact analysis 2000 - present.

General Economic Development

International City/County Management Association, Washington, DC
Advisor on redesign of national survey on economic development policy 1999-present.

National League of Cities, Advisory on economic development policy 2010-11.

National Community Investment Fund, Chicago, IL.
Advisor on rural banking initiative 2000 - 2001.

US AID Slovakia, Central Europe.
Consultant, July 6 - 16, 1999. Reviewed performance of ACDI/VOCA Rural Community Capacity Building Program to assess its impact on democracy building, economic development and women's development in rural Slovakia.

US Dept. of Agriculture, Washington, DC
Workshop Trainer, 1998 - 2002, Office of Community Development, Empowerment Zone/Enterprise Community Initiative.

SEEDS Steering Committee, The Population Council, New York, NY
Editorial Board Member, 1987 - present. Select and review practitioner-oriented case studies on women's economic development and empowerment projects from around the world.

NYS Rural Development Council, Syracuse, NY
Member, founding Steering Committee, 1995.

The Association of Women In Development, Washington, D.C.
Conference Program Co-Chair, September 1988 - November 1989.

Local Community Service

Tompkins County Community Foundation, Advisory Committee for Social Justice Fund, 2007
Tompkins County Democratic Committee, 2000 – 2004.
Early Education Partnership, Tompkins Co. Chamber of Commerce, 2000-2009.
Groton Elementary School, Surrogate Parent Advocate, Comm. on Special Ed., 1997-2005.
Groton Elementary School Site Based Management Team, 1995-97.
Tompkins County Rural Affairs Committee, Member, 1994-96.
United Way, Board of Directors, Ithaca, NY 1989-95. Planning Comm, 1989-91
Human Services Coalition, Board of Directors, Ithaca, NY 1989-93, Chair 1992.

GRANTS and CONTRACTS - Principal Investigator

Peppercorn Foundation, Child Care, Economic Development and Planning: Exploring the Links. \$40,000 2010-2011.

Peppercorn Foundation, Child Care, Economic Development and Planning: Exploring the Links. \$25,000, 2009-2010.

W.K. Kellogg Foundation via Alternative Finance Technical Assistance Consortium, \$20,000 for City/County Government Early Childhood Survey Project. 2009-2010.

Committee for Economic Development, \$10,000 for Workshop on Preparing for the New Century: Innovative Work and Family Strategies, June, 2009.

W.K. Kellogg Foundation, \$300,000, Linking Economic Development and Child Care Technical Assistance Project. With Louise Stoney, Alliance for Early Education Finance (co – PI), Smart Start National Technical Assistance Center (logistics coordinator), and Institute for Women’s Policy Research (fiscal agent). 2009-2010.

W.K. Kellogg Foundation via Smart Start National Technical Assistance Center \$67,500, Employer-Supported Child Care: An Alternative Financing Option, 2008-2009.

Bronfenbrenner Life Course Institute, \$6000, Incorporating the American Time Use Survey Data into Cornell Research, Working Group (with James Pratt, David Kay, Jeff Sobal and Yael Levitte) 2006-2008.

Cornell Institute for Social Science, \$5,000, Evaluating an Employer-Supported Child Care Program: An Ecological Approach, (with Taryn Morrissey and Moncrieff Cochran) 2006-2008.

W.K. Kellogg Foundation, \$1,240,000, Linking Economic Development and Child Care Technical Assistance Project. With Louise Stoney, Alliance for Early Education Finance (co – PI), Smart Start National Technical Assistance Center (logistics coordinator), and Institute for Women’s Policy Research (fiscal agent). 2006-2009.

North Carolina Partnership for Children \$62,000 for outreach and policy analysis on child care and economic development (subcontract of larger \$199,156 Kellogg Foundation project) 2004-05.

Mid-America Regional Council, Kansas City, MO \$25,000 subcontract for research on the Kansas Child Care Industry Study, 2002-03.

U.S. Dept. of Health and Human Services, Administration for Children and Families, \$755,400 for the period of 9/30/02 – 3/31/06. Research grant, “Linking Child Care and Economic Development.” 2002-2006.

U.S. Dept. of Agriculture, National Research Initiative, \$154,000 competitive research grant, “Privatization of Public Services: Implications for Rural Local Governments,” 2002-2007. NYC-121524

Rauch Foundation, \$22,000 “Linking Child Care and Economic Development,” for work in New York State, 2002-2003.

Massachusetts Department of Education, \$2,500 for research on the economic impact of child care, 2002.

Affinito-Stewart Grant Program of the President’s Council on Cornell Women, \$4,100 to work on book on Privatization: Markets, Public Values and Local Government, 2002-03.

Kate Cashel Fund of the Community Foundation of the Capitol Region (Albany, NY) \$6500 to support work on child care and economic development, 2002.

Polson Institute, \$15,000 for research on “Rural Policy, Rural Disadvantage and New Definitions of Citizenship,” with Nina Glasgow, 2002-2005.

Economic Policy Institute, \$15,000 for research on privatization of local government services 2001-2002.

W. K. Kellogg Foundation National Leadership Fellowship Program, \$15,000, “Addressing the Challenges of Welfare Reform: Ensuring the Affordability of Quality Day Care for all Families” 1999-2000.

W. K. Kellogg Foundation National Leadership Fellowship Program, \$68,000 1998-2000. Three year fellowship for personal leadership development and exploration of alternative approaches to human service delivery.

American Federation of State, County and Municipal Employees, AFL-CIO. \$1500 contract, Municipal Data Base on Contracting Back In. 1999.

U.S. Department of Agriculture, National Research Initiative. Competitive research grant “Devolution and Local Capacity: Implications for Inequality,” \$200,000 with James Pratt, 1997-2002.

U.S. Dept. of Agriculture Hatch Grants through NYS Ag. Expt. Station.
“Linking Child Care and Economic Development,” \$60,000, 2002-2006. NYC-121449
“Restructuring Local Government Service Delivery,” \$55,000 1997 -2002. NYC 121406
"Privatization of Local Government Services in New York State," \$16,300 with Robert Hebdon, 1996-98. NYC 173453

Cornell Office of the Provost. \$4000 for speakers to support courses on family and community development themes 2001-2002.

Cornell Faculty Fellows In-Service Grants.
\$4000 for course sequence on family and community development 2001-2002.
\$3500 for workshop course on New Policy Approaches to Day Care 1999-2000.

GRANTS and CONTRACTS (team member but not principal investigator)

Audit Commission, United Kingdom £99,750 external advisor to Centre for Local & Regional Government Research, Cardiff Business School, “Competition and Contestability: Costs and Benefits for Local Public Services,” June 2006 - 2007.

Inter-American Development Bank \$40,000 external advisor to Grupo FARO – Fundación para el Avance de las Reformas y las Oportunidades, Quito, Ecuador “The Impact of Water Concession on Guayaquil’s Poor: A Comparative Study with Quito.” Oct 2005-06.

U.S. Department of State: Bureau of Education and Cultural Affairs, \$199,992 “Special Educational Partnership Program in Regional Development Management in Bulgaria” to design a regional development masters program for Univ of Rouse. (P.I.s David Brown and Gerry White) 2003-2005.

Cornell Faculty Fellows In-Service

\$4000 for Curriculum Development to Create and Implement Outreach by Faculty and Students in the Department of City and Regional Planning” with P. Clavel, S. Christopherson and C. Gunn. 1998-1999.

Cornell/USDA, Hatch Research Funds

- * "Sustaining Rural Landscapes," \$18,000, competitive Hatch Grant through NYS Ag. Expt. Station with Chuck Geisler, Nelson Bills, Lois Levitan, Tom Lyson, Beth Barham, John Oakley and Judy Green, 1994-96.
- * "Socio-economic Determinants of Non Metro County Well Being," \$18,750, competitive Hatch Grant through NYS Ag. Expt. Station with Susan Christopherson and Vernon Briggs, 1993-96.

Northeast Regional Center for Rural Development

- * "Sustaining Rural Landscapes" \$5,250. With Chuck Geisler, Nelson Bills and Lois Levitan. Funds to support Extension publications, 1996.
- * "Comparative Approaches to Rural Development in the US and Europe," \$750, funds to support regional travel, 1993.
- * "Community Land Use and Economics Simulation," \$4,950, with Paul Eberts and Guy Burns. Funds to support development and testing of simulation, 1992.

Cornell University/Nitra Slovakia Mellon Foundation Project

- * "Restructuring of Local Government Services: Privatization, Inter-Governmental Cooperation and Public Entrepreneurship" Research collaboration between Dr. Anna Belajova and Dr. Maria Fazikova, Dept. of Regional Dev., Slovak Agriculture University, Nitra, Slovakia and Mildred Warner, Cornell University. Travel funds 1995, 1996, 1999.

Cornell Western Societies Program

Funds to support European participation at annual international research workshops, U.S. Dept. of Education funds, 1992-1995.

- * "Community Based Approaches to Environmental Management," \$2,000. Ithaca, NY, 1992.
- * "Comparative Approaches to Rural Development in the US and Europe," \$2,500, Ithaca, NY, 1993.
- * "Sustaining Agriculture and Rural Communities: Lessons in Land Use Planning from the US and Europe," \$2,500, Ithaca, NY, June, 1994.
- * "Sustaining Rural Landscapes: The Critical Link Between Environment and Community," \$1,600, Aurora, NY 1995.

Literacy Volunteers of New York State

- * "Rural Literacy and Community Development: An Agenda for Change," \$3,500. Conference and publication, 1994.

Cornell Center for the Environment

- * "Ethics and the Environment," \$2,000. Cornell Center for the Environment, for extension workshop, 1990.
- * "Solid Waste Management," \$2,000. Cornell Center for the Environment, for extension workshop, 1989.

Cornell Cooperative Extension

Funding for satellite teleconferences secured through contributions from Cornell Cooperative Extension and Cornell Media Services competitive grant pools. Teleconferences selected for competitive funding and subsequent videotape editing include:

- * "Newly Elected Officials Training," 1993 (\$2,500), 1994 (Videotape - \$500), 1995 (\$5,000).
- * "State Take Over of Medicaid," 1994 (\$2,000).
- * "Promoting Economic Vitality: What Local Government Can Do," 1995 (\$2,500).

Other partner agencies contributed \$500 to \$1000 to each of these teleconferences. State level partners include the Civil Service Employees Assoc., NYS Assoc. of Counties, Co. Leg. and Sup.

Assoc. of NYS, NYS Assoc. of Towns, NYS Dept. of State, NYS Office of Rural Affairs, NYS Office of the State Comptroller, NYS Dept. of Econ. Dev., NYS Rural Development Council and the NYS Planning Federation.

LANGUAGE

Fluent in Spanish (F.S.I. level 4, tested December 1981).
Intensive refresher course in Ecuador Summer 2005.

COURSES TAUGHT

CRP 4120/6120, ARME 433/633, WOMNS 411/611 Devolution and Privatization: Challenges for Urban Public Management (4 Credits) Offered fall 1998-2009, Spring 2011.

CRP 5850 Food System Planning, 1-2 credits, Spring 2011.

CRP 4160 – Rome Workshop - 6 credits, offered Spring 2010.

CRP 8900 Graduate Seminar, Rome Spring 2010.

CRP 7201, Research Design, (3 Credits) offered 1999, 2007, 2008, 2010.

CRP 8300 PhD ProSeminar, 2008, 2009.

CRP 4180/6180, AEM 434/634, WOMNS 420/620 Government Policy Workshop, (4 Credits). Offered Spring 1999, 2000, 2001, 2002, 2003, 2004, 2006

CRP 5074 Economic Development Workshop (4 credits) offered Spring 2009.

CRP 639 Decentralization in Developing Countries (2 credits) offered 2001.

CRP 639 Community Development and the Non Profit Sector (1 credit pre semester) offered 2 semesters 1998-99, (team taught with C. Gunn, P. Clavel, and S. Christopherson).

AWARDS

Economic Development Workshop “Planning for Family Friendly Communities,” (CRP 5074, Spring 2009), won Upstate NY Chapter of the American Institute of Certified Planners Outstanding Student Project Award 2009.

Planning for Social Inclusion, Finalist, American Planning Assoc. Oct. 2006.

Outstanding Program Award, Community Development Society, 2006. for Linking Economic Development and Child Care Project.

Excellence in Leadership Award, NYS Child Care Coordinating Council 2004.

Distinguished Professor, Cornell Institute of Public Affairs, 2003.

Government Policy Workshop “Women Work and Welfare,” (CRP 418/618, Spring 2000), won Upstate NY Chapter of the American Institute of Certified Planners Outstanding Student Project Award 2001.

Fellow, Kellogg National Leadership Program, 1997-2000.

Community Development Innovator Award, 1994. "Teleconferences for Newly Elected Officials." Award from CaRDI shared with New York State Dept. of State, NYS Assoc of Counties, County Legislators and Supervisors Assoc. of NYS, NYS Office of Rural Affairs, NYS Assoc. of Towns, Cornell Media Services and Cornell Cooperative Extension.

George F. Warren Award for outstanding graduate publication (for departmental research paper from MS thesis), Cornell University, 1986.

Jerome Davis Social Science Paper Competition (for unpublished research paper on public housing in Britain), Oberlin, College, 1979.

PUBLICATIONS

ARTICLES IN PEER-REFEREED JOURNALS

Hefetz, Amir and Mildred E. Warner 2011, "Contracting or Public Delivery? The importance of service, market and management characteristics," *Journal of Public Administration Research and Theory*, forthcoming.

Warner, M.E. 2011. "Club Goods and Local Government: Questions for Planners," *Journal of the American Planning Association*, forthcoming.

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Warner, Mildred E. 2010. "The Future of Local Government: 21st Century Challenges," *Public Administration Review*, 70(S-II): 145-147.

Shortall, Sally and M.E. Warner, 2010. "Social Inclusion or Exclusion? A Comparison of Rural Development Policies in the European Union and the United States," *Social Policy and Administration: An International Journal*, 44 (5): 575-597.

Zheng, Lingwen and Mildred E. Warner, 2010. "Business Incentive Use among US Local Governments: A Story of Accountability and Policy Learning," *Economic Development Quarterly*. 24(4): 325–336.

Bel, Germà , Xavier Fageda and Mildred E. Warner 2010. "Is Private Production of Public Services Cheaper than Public Production? A meta-regression analysis of solid waste and water services," *Journal of Policy Analysis and Management*, 29(3): 553-577.

Warner, M.E. 2009. Overview: The Regional Economics of Child Care," *Journal of Regional Analysis and Policy*, 39(1):37-39. http://www.jrap-journal.org/pastvolumes/2000/v39/warneroverview39_1.pdf

Liu, Zhilin and Mildred Warner, 2009. "Understanding Geographic Differences in Child Care Multipliers: Unpacking IMPLAN's Modeling Methodology," *Journal of Regional Analysis and Policy*, 39(1):71-85. http://www.jrap-journal.org/pastvolumes/2000/v39/liuwarner39_1.pdf

Morrissey, Taryn and Mildred E. Warner 2009, "Employer-Supported Child Care: Who Participates?" *Journal of Marriage and Family*, 71: 1340-1348.

Warner, Mildred E. 2009. "Regulatory Takings and Free Trade Agreements: Implications for Planners," *Urban Lawyer*, 41(3): 427-443.

Bel, Germà and Mildred Warner 2009 "Managing Competition in City Services: The Case of Barcelona," *Journal of Urban Affairs*, 31(5): 521–535.

Warner, Mildred E. 2009. "(Not)Valuing Care: A Review of Recent Popular Economic Reports on Preschool in the US," *Feminist Economics*, 15(2):73-99.

Warner, Mildred E. 2009. "Civic Government or Market-Based Governance? The Limits of Privatization for Rural Local Governments," *Agriculture and Human Values* 26(1):133-143.

Stoney, Louise, Anne Mitchell and Mildred E. Warner 2008. "Smarter Reform: Moving Beyond Single Program Solutions to an Early Care and Education System in the United States," *International Journal of Child Care and Education Policy*, 2(2): 53-68.

Warner, Mildred E. and Sally Shortall 2008. "Growth Coalitions and Rural Development Policy in the EU and the US" *EuroChoices Point de Vue*, 7(3):35-37.

Warner, M.E. 2008. "Reversing Privatization, Rebalancing Government Reform: Markets, Deliberation and Planning," *Policy and Society*, 27(2): 163-174.

Bel, Germà and M.E. Warner 2008, "Does privatization of solid waste and water services reduce costs? A review of empirical studies," *Resources, Conservation & Recycling*, 52: 1337-1348
DOI: 10.1016/j.resconrec.2008.07.014.

Warner, Mildred E. and Amir Hefetz 2008. "Managing Markets for Public Service: The Role of Mixed Public/Private Delivery of City Services," *Public Administration Review*, 68(1):150-161.

Warner, Mildred E. and Germà Bel 2008. "Competition or Monopoly? Comparing US and Spanish Privatization," *Public Administration: An International Quarterly*, 86(3): 723-736.

Bel, Germà and M. E. Warner 2008. "Challenging Issues in Local Privatization," *Environment and Planning C: Government and Policy*, 26(1): 104-109, editorial overview to special issue.

Hipp, Magdalena and Mildred Warner 2008. "Market Forces for the Unemployed? Training Vouchers in Germany and the U.S." *Social Policy and Administration*, 42 (1): 77-101.

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Gerbasi, Jennifer and M.E. Warner 2007. "Privatization, Public Goods and the Ironic Challenge of Free Trade Agreements," *Administration and Society*, 39(2):127-149.

Warner, Mildred E. 2006. "Inter-municipal Cooperation in the U.S.: A Regional Governance Solution?" *Urban Public Economics Review/Revista de Economía Pública Urbana*, 7: 132-151.

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Warner, M.E. and Anna Belajova, 1996. "Using Community Development Simulations in Divergent International Contexts," *Journal of Extension*, 34(4). (August, 1996).
<http://www.joe.org/joe/1996august/iw2.html>

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Warner, M.E., J.E. Pratt and A.M. Novakovic, 1986. "Potential Impacts of Routing Milk to Dairy Processing Plants on the Basis of Assembly Cost and Protein Content," *Journal of Dairy Science*, Vol. 69, No. 7, pp. 1972-1986.

Warner, M.E. and G.B. White, 1986. "An Economic Study of Potato Farm Diversification into Fruit Crops," *Acta Horticulturae*, No. 203, pp. 65-74, 1986. Selected paper at the International Horticultural Society Congress in Davis, CA, August, 1986.

EDITED VOLUMES

Warner, M.E. Editor, 2009. Special section on the Regional Economic Importance of Child Care in the *Journal of Regional Analysis and Policy*. 39(1).

Bel, Germá and M.E. Warner eds. 2008. *Challenging Issues in Local Privatization*, special issue *Environment and Planning C – Government and Policy*, 26(1).

Warner, M.E. editor, 2007. Special Issue: Child Care and Economic Development, *International Journal of Economic Development*, 9(3-4).

Bel, Germá, R. Hebdon and M.E. Warner eds. 2007. *Local Government Reform: Privatization and Public-Private Cooperation*, special issue *Local Government Studies*, 33(4).

Warner, M.E. editor. 2006. *The Economic Importance of Child Care for Community Development*. Special Issue *Community Development: Journal of the Community Development Society* 37:2. 115 pages.

Kohl, Ben and M.E. Warner. 2004. "Scales of Neoliberalism" special symposium in *International Journal of Urban and Regional Research*. 28(4).

BOOK CHAPTERS

Warner, M.E. and Zheng, Lingwen, 2011. "Economic Development Strategies for Recessionary Times: 2009 Survey Results," *The Municipal Year Book 2011*. Washington, DC: International City County Management Association.

Hefetz, Amir and M.E. Warner, 2010. "Privatization and Its Reverse: Explaining the Dynamics of the Government Contracting Process." chapter in *Organizing Government* ed by George Boyne and Rachel Ashworth, Sage, ISBN: 978-1-84860-121-5. Reprinted from *Journal of Public Administration Research and Theory*, 2004.

Zheng, Lingwen and M.E. Warner. 2010. "Local Economic Development, 1994-2004: Broadening Strategies, Increasing Accountability," pp 3-9 in *The Municipal Year Book 2010*. Washington, DC: International City County Management Association.

Warner, M.E. and Amir Hefetz. 2010. "Service Characteristics and Contracting: The Importance of Citizen Interest and Competition," pp 19-27 in *The Municipal Year Book 2010*. Washington, DC: International City County Management Association.

Warner, M.E. 2010. "Reversing Privatization, Rebalancing Government Reform: Markets, Deliberation and Planning," pp30-48 in *Reasserting the Public in Public Services: New Public Management Reforms*, ed by M. Ramesh, E Araral and X. Wu, London: Routledge.

Warner, M.E. and Amir Hefetz. 2009. "Cooperative Competition: Alternative Service Delivery, 2002-2007." Pp 11-20 in *The Municipal Year Book 2009*. Washington, DC: International City County Management Association.

Warner, M.E. 2007. "Razones y Bases de La Cooperación Intermunicipal en los EE.UU." chapter in *II Conferencia Internacional de Política Territorial*, Zaragoza, Spain: Fundación Economía Aragonesa.

Warner, Mildred E. 2007 "Market-Based Governance and the Challenge for Rural Governments: U.S. Trends," pp 36-52 in *Challenging Welfare Issues in the Global Countryside*, ed. by George Giarchi, Blackwell Publishing. (Also published in *Social Policy and Administration: An International Journal of Policy and Research* (2006) 40(6):612-631.)

Warner, M.E. and Amir Hefetz 2004. "Pragmatism over Politics: Alternative Service Delivery in Local Government, 1992-2002," pp 8-16 in *The Municipal Year Book 2004*. Washington, DC: International City County Management Association.

Warner, M.E. with Mike Ballard and Amir Hefetz 2003. "Contracting Back In – When Privatization Fails," chapter 4 pp 30-36 in *The Municipal Year Book 2003*. Washington, DC: International City County Management Association.

Warner, M.E., 2003. "Competition, Cooperation and Local Governance," chapter 19 pp 252-262 in *Challenges for Rural America in the Twenty First Century*, edited by David Brown and Louis Swanson, University Park, PA: Penn State University Press.

Warner, M.E. 2001. "Local Government Support for Community-Based Economic Development," pp 21-27 chapter in *The Municipal Year Book 2001*. Washington, DC: International City County Management Association.

Warner, M.E. 2000. "Structuring the Market for Service Delivery: A New Role for Local Government." pp 85-104 in *Local Government Innovation: Issues and Trends in Privatization and Managed Competition*, Robin Johnson and Norman Walzer eds. Westport, CT: Quorum Books.

Lyson, T., W. Falk, M. Henry, J. Hickey, M. Warner, 1993. "Spatial Inequality, Uneven Development and Rural Poverty," pp 106-135 in *Persistent Poverty in Rural America*, Task Force on Persistent Rural Poverty. Boulder, CO: Westview Press.

PROFESSIONALLY REVIEWED PUBLICATIONS

Hefetz, Amir and M.E. Warner. 2010. "Dynamics of service provision: service, market and place characteristics," DEAS Working Paper 2010-33, Department of Economics University of Milan Italy. http://www.economia.unimi.it/uploads/wp/DEAS-2010_33wp.pdf

Warner, Mildred and Raymond Gradus. 2009. "The Consequences of Implementing a Child Care Voucher: Evidence from Australia, the Netherlands and USA," Tinbergen Institute Discussion Paper, TI 2009-078/3, Erasmus University, Netherlands. <http://www.tinbergen.nl/discussionpapers/09078.pdf>

Warner, Mildred E. 2009. Local Government Infrastructure – and the False Promise of Privatization. A Century Foundation Report. New York: Century Foundation. <http://www.tcf.org/Publications/mediapolitics/warner.pdf>

Warner, M.E. and A. Hefetz 2009. Trends in Public and Contracted Government Services: 2002-2007, Reason Foundation Policy Brief #80, Los Angeles, CA: Reason Foundation. http://reason.org/files/pb80_privatization_trends.pdf

Israel, Evelyn and Mildred Warner 2008. "Planning for Family Friendly Communities," *PAS Memo*, American Planning Association, Chicago, IL. November 2008. <http://www.planning.org/pas/memo/open/nov2008/index.htm>

Warner, M.E. and George Haddow, 2007. "Child Care: An Essential Service for Disaster Recovery," Save the Children Issue Brief #3 June, 2007. http://government.cce.cornell.edu/doc/pdf/SaveIssueBrief3_07.pdf

Warner, M.E., Kristen Anderson and George Haddow, 2007. "Putting Child Care in the Picture: Why this service is a critical part of community infrastructure," *Planning*, (June 2007): 16-19. <http://government.cce.cornell.edu/doc/pdf/Planning%20Jun%202006.pdf>

Warner, M.E. 2007 "Planning for Inclusion: The Case of Child Care," *Practicing Planner*, 5(1) March 2007. http://government.cce.cornell.edu/doc/pdf/PracticingPlanning_Warner07.pdf

Warner, M.E. 2006 "Competition, Cooperation and Local Government", Challenges for Rural America in the 21st Century, Issue Brief # 4, Rural Sociological Society. <http://www.ruralsociology.org/briefs/brief4.pdf>

Warner, M.E. 2006 "Child Care and Economic Development: The Role for Planners," *Planning Advisory Service PAS Memo*, American Planning Association. Jan/Feb 2006. <http://government.cce.cornell.edu/doc/pdf/pasmemo0106.pdf>

Mildred Warner and Jennifer Gerbasi. 2004, "Is There a Democratic Deficit in the Free Trade Agreements? What Local Governments Should Know," *Public Management* 86:2 (16-21). Available at <http://government.cce.cornell.edu/doc/pdf/PublicManagement.pdf>

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Warner, M. E., 1992. "Poverty Alleviation and Rural Economic Development: The Need for a New Federal Partnership," *The Rural Sociologist*, Vol 12, No. 3, July 1992 pp. 61-63.

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Warner, M. E., 1989. "Why Has Rural Development Become a Priority in the 1980's?" *Human Ecology Forum*, Vol. 18, No. 1, pp. 19-22, New York State College of Human Ecology, Ithaca, NY.

EXTENSION PUBLICATIONS

There are many articles, project reports, data bases and summaries of the literature on my web site <http://government.cce.cornell.edu> or <http://economicdevelopment.cce.cornell.edu/>

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- *Community Coalitions for Child Care* – Adam Kroetsch
- *Labor Force Trends and the Role of Child Care in New York* – Yuki Tanaka
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- *Driving Child Care and Transportation Together* – Meredith Howell
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http://government.cce.cornell.edu/doc/pdf/Survey_May17.pdf

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http://government.cce.cornell.edu/doc/reports/childcare/tompkins_county.asp

Warner, M.E. and R. Hebdon. 1998. "Local Government Restructuring in New York State." *NYSAC News* 19(9) Also published at web site: <http://government.cce.cornell.edu>.

Warner, M.E., C. Hinrichs, J. Schneyer and L. Joyce, 1997. "Sustaining the Rural Landscape by Building Community Social Capital," *Community Development Reports*, Vol. 5:2, CaRDI, Cornell Univ.: Ithaca, NY. On the web at <http://www.cals.cornell.edu/dept/cardi/publications/cdr/cdr5-2.html>

NYS Pathways from Poverty Team, 1996. "Establishing Pathways from Poverty in a Block Grant Environment," *Community Development Reports*, Vol. 4:1, CaRDI, Cornell Univ.: Ithaca NY. Available on the web at <http://www.cals.cornell.edu/dept/cardi/publications/cdr/cdr4-1.html>

VIDEOS/CDs ELECTRONIC MEDIA

Keynote Panel, "Designing work-family policies to support families, employers and gender equality: Lessons from the US and the around the globe." Hosted by New America Foundation and Institute for Women's Policy Research, Washington, DC. Sept 16, 2010. Video available at http://economicdevelopmentandchildcare.org/technical_assistance/work_life

National Webinar, December 9, 2009, Assessing the Economic Impact of Child Care During Recessionary Times. Background materials, powerpoint and tape of webinar can be found at http://economicdevelopmentandchildcare.org/technical_assistance/stimulus
<http://www.iwpr.org/Media/EconImpactCCWebinar.wmv>

"Economic impact of Child Care," 2007, in the Science of Early Child Development, From Research to Practice series, Red River College in partnership with Canadian Council for Early Child Development.

"Go Public: Invest in Public Employees," (Professor Warner featured interview) Video developed by New York state Public Employees Federation, AFL-CIO. 2005.

"Child Care and Economic Development," 2005. in *Leading the Way to Quality Early Care and Education*, A Child Care Bureau Technical Assistance Tool, Washington, DC. Child Care Bureau.

CONSULTING AND PROJECT REPORTS

Bellettni, Orazio J., Paul Carrillo, Wladimir Brborich, Mildred Warner, Laura Timme, Elizabeth Coombs. August 2006. "Stay Public or Go Private: A Comparative Analysis of Water Services Between Quito and Guayaquil," Grupo FARO – Fundación para el Avance de las Reformas y las Oportunidades, for Inter-American Development Bank.

Calicchia, M., Greene, R., Lee, E., & Warner, M. 2005. *Disaster Relief Medicaid Evaluation Project*. Ithaca, NY: Cornell University, School of Industrial and Labor Relations. Prepared for the Office of Medicaid Management, New York State Department of Health by Cornell University, School of Industrial and Labor Relations. <http://digitalcommons.ilr.cornell.edu/reports/6/>

"The Child Care Industry: An Integral Part of Long Island's Economy," 2004. L. Stoney, M. Warner and K. Klockowski, Child Care Council of Nassau and Suffolk Counties, available at www.chilcaresuffolk.org and <http://economicdevelopment.cce.cornell.edu/>

"Investing in New York: An Economic Analysis of the Early Care and Education Sector," 2004. M. Warner et al. Prepared for NYS Child Care Coordinating Council and NYS Office of Children and Family Services. Available at <http://economicdevelopment.cce.cornell.edu/>

“Investing in the Child Care Industry: An Economic Development Strategy for Kansas,” March 2003. Mid-America Regional Council, Kansas. I conducted the economic analysis and was a primary author of the report. Available at <http://economicdevelopment.cce.cornell.edu/>

“The Economic Impact of Vermont’s Child Care Industry,” June 2002. Windham Child Care Association and Peace and Justice Center, I served on the advisory committee.

Warner, M.E. 2001 “Arkansas Reflections” Memo submitted to National Community Investment Fund and included in the Trustees Briefing Book for the March 2001 meeting.

“Evaluation of the Rural Community Capacity Building Project of ACDI/VOCA-Slovakia,” submitted to US Agency for International Development, Slovakia, July 15, 1999. Other review team members included Frank Mertens and Mark A. Smith from US AID Washington, and Thomas Potts, Clemson Univ.

Ballard, Michael, Kevin Sherper and Mildred Warner, 1999. “Options for County Nursing Homes in New York State,” Report presented to the County Nursing Facilities of New York State and the Civil Service Employees Association, May 1999, Department of City and Regional Planning, Cornell University, Ithaca, NY. Web site address <http://government.cce.cornell.edu>

Burt, M., L. Goldberg, K. Guild and M. Warner. 1999. “Aspiring to Excellence.” *Colloqui*, pp 33-44. Cornell University, Ithaca, NY. Earlier version with complete case studies “Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State,” 1998 found on my web site <http://government.cce.cornell.edu>.

Warner, M.E., 1978. Community Building, The History of the Atlanta University Neighborhoods, Published by Department of Budget and Planning, Atlanta, GA.

CONFERENCE PROCEEDINGS

Warner, M.E. and Amir Hefetz, 2001. “Uneven Markets: Privatization and Public Service Delivery in U.S. Cities.” Proceedings of the International Forum for Research and Development, pre conference to U.N. Habitat II New York, NY June 4-6, 2001. Conference Proceedings Vol. 1. no. 6: Privatization of Service Delivery in Mega Cities. Earlier version CRP Working Paper #196.

Warner, M.E., Anna Belajova, Maria Fazikova and Andrea Siebenmanova. 1999. “Local Government and Rural Development in the Visegrad: Challenges and Opportunities,” Also published in *Rural Development in Central and Eastern Europe*, David Brown and Anna Bandlerova eds., proceedings of Research conference Dec 6-9, 1999 Podbanske Slovakia. Slovak Agricultural University, Nitra Slovakia. Earlier version Working Papers in Planning No 191. Department of City and Regional Planning, Ithaca, NY: Cornell University.

BOOK REVIEWS

Warner, M.E., 1996. Book Review of *Rural Development in the United States: Connecting Theory, Practice and Possibilities* by William A. Galston and Karen J. Baehler, Westview Press, 1995, *Journal of Rural Sociology*.

Warner, M.E., 1991. Book Review of *Reclaiming Capital: Democratic Initiatives and Community Development* by Christopher Gunn and Hazel Dayton Gunn in *Journal of the Community Development Society*, Vol. 22, No. 2.

WORKING PAPERS

Warner, M.E. Anna Belajova, Maria Fazikova, Andrea Siebenmann, 2003. "Resistance and Reliance: Challenges to Decentralization in Rural Central Europe," working paper.

Warner, M.E. 2000. "Devolution and Inequality: The Importance of State Policy." Paper presented at the Rural Sociological Society Conference August 2000, Washington DC.

Warner, M.E., Anna Belajova and Maria Fazikova. 2000. "Households, Markets and the State: A Gender Analysis of the Transition to Capitalism in Slovakia," presented to Association of European Schools of Planning, Brno, Czech Rep. July 2000.

Warner, M.E., 1985. "An Environmental Risk Index to Evaluate Pesticide Programs in Crop Budgets," Agricultural Economics Research Paper, No. 85-11, Cornell University, Ithaca, NY.

Warner, M.E., 1985. "Enterprise Budgets for Potatoes, Wheat, Cauliflower, Peaches and Table Grapes on Long Island, New York: A Comparison of Costs, Returns and Labor Requirements," Agricultural Economics Research Paper, No. 85-12, Cornell University, Ithaca, NY.

Warner, M.E., 1985. "A Multi-period Linear Programming Model of Diversification into Fruit on Long Island Potato Farms," Agricultural Economics Research Paper, No. 85-13, Cornell University, Ithaca, NY.

Warner, M.E., 1983. "Is Rotation Feasible? A Linear Programming Model of Small Scallion Farms in the Central Highlands of Ecuador," Agricultural Economics Staff Paper, No. 83-16, Cornell University, Ithaca, NY.

RECENT ORGANIZED RESEARCH SESSIONS AND WORKSHOPS

Session Organizer, Privatization and Regulatory Reform in Network Infrastructure: US EU Comparisons, at the American Association of Policy Analysis and Management, Boston, MA. November 2010.

Session Organizer, "Reinvigorating Urban Infrastructure: Rediscovering Urban Planning," Association of Collegiate Schools of Planning, Washington, DC, October 2009.

Session organizer, "Privatization and Infrastructure: US and International Experience," Association of Collegiate Schools of Planning conference, Milwaukee, WI October 2007.

Session Organizer, "Local Services Privatization: International Perspectives," Association of Public Policy and Management Conference, Washington DC, November 2007

Session organizer, "Planning for Child Care and Economic Development," Association of Collegiate Schools of Planning conference in Fort Worth, Texas, November 2006.

Session organizer, "Child Care and Economic Development," Association of Public Policy and Management Conference, Madison, Wisconsin, November 2006.

International Workshop on *Local Government Reform: Privatization and Public-Private Collaboration*, Universitat of Barcelona, Barcelona, June 12-13th 2006, co-chair Scientific Committee with Germa Bel.

"Managing Markets and Citizen Voice: Understanding Mixed Public/Private Delivery of City Services" presented at session on Service Delivery in the New Millennium: Lessons from the ICMA Alternative

Service Delivery Dataset, Association of Public Policy Analysis and Management conference Washington DC, November 2005.

Session organizer, "Beyond Efficiency: Challenges in City Service Delivery," Association of Collegiate Schools of Planning conference in Kansas City, November 2005.

"Articulating the Economic Importance of Child Care", National workshop sponsored by Cornell Linking Economic Development and Child Care Project, Ithaca, NY May 2005.

Session organizer, "Human Services and Economic Development," American Collegiate Society of Planners Conference, Portland, OR October 2004.

Co-Organizer of Conference Track, "Rural transformations and vulnerable populations / Decentralization, privatization and the challenges for regional policy," 9th World Congress of Rural Sociology, Trondheim, Norway, August 2005.

Polson Institute Working Group on Rural Policy, Rural Disadvantage and Citizenship, Cornell Fall 2002
"Governance, Accountability and the Distinctions between Public and Private: Questions for Planners." Workshop with Dan Gutman, Nov 15, 2002.
"Social Exclusion, Rural Poverty and Rural Policy" workshop with Mark Shucksmith Oct 28, 2002.

"The Governance Implications of Privatization: A Comparative International Critique," organized paper session for American Collegiate Schools of Planning National Conference November 2002, Baltimore, MD.

"Privatization, Globalization and the Implications for Local Action" session organized for Planner's Network Conference, Rochester, NY June 2001.

"Privatization: Implications for Sovereignty, Accountability and Public Action," organized paper session for American Collegiate Schools of Planning National Conference November 2001, Cleveland, OH.

"Reevaluating Metropolitan Regionalism," organized (with Stephen Wheeler) paper session for American Collegiate Schools of Planning National Conference November 2000, Atlanta, GA.

"Locality, Inequality and the State," organized paper session for Rural Sociological Society, National Conference, August 2001, Albuquerque, NM.

"Federal Funding, Devolution and Rural Well Being" organized paper session for Rural Sociological Society, National Conference, August 2000, Washington, DC.

"Devolution, Democratization, and Inequality" organized two paper sessions for Rural Policy Interest Group, Rural Sociological Society, National Conference, August 1999, Chicago, IL.

"Devolution and Welfare Reform," organized pre conference seminar for Rural Policy Interest Group of Rural Sociological Society, National Conference, August 1998, Portland, OR.

RECENT INVITED RESEARCH PRESENTATIONS

Warner, M.E. "Infrastructure Provision via Club Goods: Implications for Local Governance," Paper presented at session, Privatization and Regulatory Reform in Network Infrastructure: US EU Comparisons, at the American Association of Policy Analysis and Management, Boston, MA. November 4, 2010.

Warner, M.E. "Privatization and Reverse Privatization in US Local Government Service Delivery, 2002-2007," presented at session From Global to Local: The Planning and Implementation of Infrastructure across Multiple Scales, at the American Collegiate Society of Planners, Minneapolis, MN, Oct. 7, 2010.

Gregory Smith, Mildred Warner, Carlotta Fioretti, Claudia Meschiari, "Rome Planning Workshop: An Inductive, Experiential Approach to Neighborhood Studies," presented to the Association of Collegiate Schools of Planning, 51st Annual Conference, Minneapolis, Minnesota, Oct 9, 2010.

Warner, M.E. "Local Government Privatization: New Challenges in Governmental Reform," Presented at conference, Public Administration in Israel – Problems and Challenges, School of Political Sciences, The University of Haifa, Israel, May 27, 2010.

Warner, M.E. "Public Service Delivery Reform: From Competition to Capacity and Public Engagement," presented to Division of Public Administration and Policy, School of Political Sciences, The University of Haifa, Israel, May 26, 2010.

Warner, M.E., "Understanding Public Service Delivery Sourcing Choices: The Role of Transactions Costs, Competition, Citizen Interests and Spatial Characteristics," IX Milan European Economy Workshop, Milan, Italy, June 2010.

Girth, A., Hefetz, A., Johnston, J. and Warner, M.E. 2009. "Contracting for Local Government Services in Noncompetitive Markets: Management Responses and Policy Implications," Association of Public Policy and Management, Washington, DC November, 2009.

Warner, M.E. 2009. *Preparing for the New Century: Innovative Work and Family Strategies: Innovative Policies and Workshop Report*, Association of Public Policy and Management, Washington, DC November, 2009.

Hefetz, Amir and Warner, M.E. 2009. "Dynamics of Service Provision: Service, Market and Place Characteristics," Public Management Research Association, Columbus, OH, October 2009.

Warner, M.E. 2009. Local Government Infrastructure – and the False Promise of Privatization, Association of Collegiate Schools of Planning, Washington, DC, October 2009.

Warner, M.E. 2008 "Reversing Privatization, Rebalancing Government Reform: Markets, Government and Citizen Participation," Public Services International, Oslo, Norway Nov 26-28, 2008.

Morrissey, Taryn and M.E. Warner 2008. "Employer Supported Child Care: Who Benefits?" Presented on Work-Family Panel of American Psychological Association, Boston, MA Aug. 2008.

Cimbaluk, Lisa and M.E. Warner, "What is the Role of State Aid? Redistribution vs. Development?" presented to the Rural Sociological Society, Manchester, NH, July 2008.

Israel, Evelyn and M. Warner .Planning for Family Friendly Cities," Presented at American Collegiate Society of Planners/Association of European Schools of Planning, joint conference Chicago, IL July 2008.

Warner, M.E. 2008. "Market Governance and Inequality," Presented to the QUCAN Partnership Research Seminar, Cornell University, June 10-12, 2008.

Warner, M.E. 2008. "Privatization of Local Service Delivery," presented at workshop on Government Restructuring, Privatization, Regulation and Competition, Grup de Recerca en Polítiques Públiques i Regulació Econòmica, Harvard University, Boston, MA. June, 2008

Warner, M.E. 2007. "Reversing Privatization, Rebalancing Government Reform: Markets, Deliberation and Planning," Paper presented at *Reasserting the Public in Delivery of Public Services*, National University of Singapore, Sept 27, 2007.

Warner, M.E. 2007. "Privatization of Local Service Delivery," presented at workshop on Government Restructuring, Privatization, Regulation and Competition, Grup de Recerca en Polítiques Públiques i Regulació Econòmica, Harvard University, Boston, MA. June, 2007.

Shortall, Sally and Warner, M.E. "Social Inclusion or Exclusion? A Comparison of EU and US Rural Development Policies," presented at QUCAN Rural Policy Network conference, Inverness, Scotland March 21-23, 2007.

Warner, M.E. "Cooperación Intermunicipal: ¿Un Camino hacia la Consolidación Equitativa? ¿(o No)?" Keynote presentation at the II Conferencia Internacional de Política Territorial. Fundación de Economía Aragonesa, Zaragoza, Spain. Nov 22-23, 2006.

Warner, M.E. 2006 "Planning for Inclusion: The Case of Child Care," Planning and Social Responsibility Symposium, American Planning Association, Am Collegiate Society of Planners, Fort Worth, Texas, Nov. 2006.

Warner M.E. and Amir Hefetz 2006. "Managing Markets for Public Service: The Role of Mixed Public/Private Delivery of City Services," International Workshop on *Local Government Reform: Privatization and Public-Private Collaboration*, Universitat of Barcelona, Barcelona, June 12-13th 2006.

Warner M.E. and Amir Hefetz 2006. "Combining Markets with Planning: A Social Choice Approach to Understanding Reverse Contracting in US City Services," International Workshop on *Local Government Reform: Privatization and Public-Private Collaboration*, Universitat of Barcelona, Barcelona, June 12-13th 2006.

"Privatization Trends among US Municipalities: From Reinvention to New Public Service" Presented to Centre de Referencia en Economia Aplicada, Universitat de Barcelona June 12, 2006.

"Understanding Child Care in the Regional Economy," Child Care Bureau Research Consortium conference April 2006, Silver Spring, MD.

"Rural Development Policy: Multi-functionality, Social Inclusion and Markets," with Daniel Alquist and Megan Gremelspacher, presented at Rural Research Workshop, sponsored by UCAN: University of Highlands and Islands, Cornell, Aberdeen and Newcastle, March 20-21, 2006 Newcastle, England.

"Privatisation Trends within U.S. Local Government" Invited Lecture, Centre for Local and Regional Government Research, Cardiff Business School, Cardiff University, Cardiff, Wales March 24, 2006.

"Joining the Mainstream: Linking Child Care with Economic Development Planning," Invited speaker for Institute for Women's Policy Research Eight International Women's Policy Research Conference, "When Women Gain, So Does the World," June 21, 2005, Washington, DC.

"From Reinvention to Public Service: Local Government Privatization Trends 1992-2002," National Association of Counties, Washington, DC, June 1, 2005.

“Reframing Social Policy as Economic Development: The Example of Child Care,” Center for Budget and Policy Priorities, Washington, DC. May 24, 2005.

“From Reinvention to Public Service: Local Government Privatization Trends 1992-2002,” International City/County Management Association, Washington, DC May 12, 2005.

“From Reinvention to Public Service: Local Government Privatization Trends 1992-2002,” Economic Policy Institute, Washington, DC April 22, 2005.

“Privatization Trends: Recent Evidence from the U.S.,” Industrial and Labor Relations Conference, January 2005. Philadelphia, PA.

“The Child Care Market and the Regional Economy: A View from South of the Border,” Child Care for a Change Conference, November 12-14, 2004. Sponsored by the Canadian Council on Social Development Winnipeg, CA.

“Government Services and Economic Development: Sociological Reflections,” Presented to Dept of Development Sociology, Cornell University May 2004.

“Privatization of Local Government Services” Presented to Economics Department, Universitat de Barcelona, Spain, March 2004.

“Understanding the Impact of Child Care on Local Economies,” presented to Child Care Research Symposium, Child Care Bureau, Washington, DC April 2004.

“Privatization: Theoretical Propositions, Empirical Realities,” Presented to Campbell Public Affairs Institute Maxwell School, Syracuse University, Syracuse, NY March 2, 2004.

“Child Care and Economic Development,” Presented to the Department of Rural Sociology, University of Wisconsin, Madison, WI, February 9, 2004.

“Child Care as Social Infrastructure and Economic Development,” Presented to the Department of Sociology/Rural Sociology, Iowa State University, Ames, Iowa. November 17, 2003.

“Child Care as Economic Development: Theoretical and Empirical Challenges,” workshop organized and presented to Research Symposium, Child Care Bureau, Washington, DC April 2003.

“Privatization: Theoretical Propositions, Empirical Realities,” Presented at Economic Policy Institute’s International Privatization Research Conference, Washington, DC April 2003.

“Decentralization, Privatization and Spatial Inequality,” Presented at Cornell Institute of Public Affairs seminar April 2003.

“Child Care Finance as Economic Development,” Presented to *Financing the Next Generation of Community Development*, SUNY Buffalo Law School, Buffalo, NY October 18, 2002.

“Conceptualizing Inequality – New Stratification Issues: Decentralization and Privatization,” presented at *Spatial Inequality Workshop*, Am. Sociological Assoc. Fund for Advancement of the Discipline, September 20-22, 2002, Columbus, OH

“Trends in Privatization of Local Government Services: Implications for Labor’s Response,” Industrial and Labor Relations brownbag research seminar, Cornell University, October 2001.

“Privatization and the Market Structuring Role of Government,” City and Regional Planning Colloquium Seminar, Cornell University, September, 2001.

“Resistance and Reliance: Rural Local Government Reform in Central Europe,” International Studies in Planning Seminar, Cornell University, February, 2001.

“The Unevenness of Market Solutions to Problems of Public Service Delivery in U.S. Cities.” with Amir Hefetz, Invited paper at *International Forum for Research and Development, pre conference to U.N. Habitat II* New York, NY June 4-6, 2001. (Earlier version CRP Working Paper #196).

“State Policy Under Devolution: Redistribution and Centralization,” invited presentation at National Tax Association Spring Symposium, *Tax Policy for a New Economy*, Washington, DC May 7-8, 2001.

“Privatization and the Market Structuring Role of Local Government,” with Amir Hefetz, lead presentation at the Economic Policy Institute’s Conference, *Privatization: Evidence, Trends and Alternatives*, Washington, DC January 11, 2001.

“Trends and Factors in Local Government Restructuring 1982-1997” with Bob Hebdon at Research Strategy Session on Privatization sponsored by American Federation of State, County and Municipal Employees and Economic Policy Institute, Washington, DC, April 12, 1999.

“Local Government and Rural Development in the Visegrad: Challenges and Opportunities,” with Anna Belajova, Maria Fazikova and Andrea Siebenmanova. Presented at Research Conference on Rural Development in Central and Eastern Europe, Podbanske, Slovakia Dec. 6-9, 1999.

<http://sun.uniag.sk/rurdev99>

“Devolution and Inequality” Cornell Institute of Public Affairs, Fall Seminar Series, Cornell University, September, 1998.

“Social Capital Construction and the Role of the Local State.” Invited paper presented at *Social Capital: An International Conference Bridging Disciplines, Policies and Communities*, at Michigan State University, April 20-22, 1998.

RECENT INVITED EXTENSION PRESENTATIONS

Keynote Speaker, “Invest or Panic? Strategies to Support Child Care During Recessionary Times,” annual conference, Illinois Child Care Resource and Referral Association, Bloomington, IL Nov. 19, 2010.

Invited Speaker, “Dialogue With National Experts on Privatization,” Rutgers 6th Labor and Management Partnership Conference, “Is Collective Bargaining Broken?” Co-Sponsored by NJEA, Rutgers, School of Management and Labor Relations, December 10, 2010.

Invited Speaker, “Planners’ Role in Creating Family Friendly Communities: Action, Participation and Resistance,” International Making Cities Liveable Conference, True Urbanism: Planning Healthy, and Child-Friendly Communities, Charleston, SC Oct. 17-21.

Invited Panelist, “Privatization, Reverse Privatization and Public Private Partnerships,” Council of Global Unions – Quality Public Service Conference, Geneva, Switzerland Oct 12-14, 2010.
<http://www.qpsconference.org/content/resources>

Keynote Panel, “Designing work-family policies to support families, employers and gender equality: Lessons from the US and the around the globe.” Hosted by New America Foundation and Institute for

Women's Policy Research, Washington, DC. Sept 16, 2010. Video available at http://economicdevelopmentandchildcare.org/technical_assistance/work_life

Guest Speaker, La privatizzazione dei servizi pubblici: confronti e prospettive internazionali, Casa del Municipio, Municipio XI, Biennale dello Spazio Pubblico, Roma, Italy, April 30, 2010.

Session Organizer, *Multi-Generational Planning – Imagining the Community You Want to Live In*, American Planning Association National Conference, New Orleans, LA, April 11, 2010.

Keynote Panel, Big Ideas for Local Government at the Dawn of the 21st Century, Alliance for Innovation Big Ideas Conference, cosponsored by the International City County Management Association, Atlanta, GA Oct 23-25, 2009.

Keynote Speaker, “From Child Care to Care Supports: Current Successes, Future Challenges,” *Early Care and Education Finance: New Strategies to Invest, Innovate, and Advance Public Policy* November 12-13, 2009, Washington, DC.

Keynote Speaker, “Assessing the Economic Impact of Child Care During Recessionary Times,” National Child Care Administrators Conference, Child Care Bureau, US Dept of Health and Human Services, Washington, DC July 2009.

Workshop Organizer and presenter, *Preparing for the New Century: Innovative Work and Family Strategies*, National workshop on Work-Life Policy, Cornell University, Ithaca, NY June 2009.

Workshop Organizer and Presenter, “*Revisiting economic impact studies -- how can we use them in tight fiscal times?*” Linking Economic Development and Child Care Smart Start Preconference Workshop, Greensboro, NC, May 2009.

Workshop Organizer and Presenter, *Planning for Family Friendly Cities*, American Planning Association National Conference, Minneapolis, MN, April, 2009.

Invited Speaker. Panel on Expanding Quality Early Care and Education at conference, *Achieving Equity for Women: Policy Alternatives for the New Administration*, sponsored by Institute for Women's Policy Research, Washington, DC. April 2, 2009.

Invited speaker. “Understanding the Child Care Market,” Plenary Panelist on Panel *Are Vouchers an Effective Strategy for Financing Child Care?* National Association of Child Care Resource Agencies, Washington, DC, March 2009.

Session Organizer and Presenter, Financing Early Care and Education: Building Links with Economic Development Policy and Practice - A Facilitated Conversation, June 17 - 18, 2008, Aspen Institute, Washington DC.

Session Organizer and Presenter, Venture Grant Learning Community Meeting, Preconference to National Smart Start Conference, May 2008. Greensboro, NC

Session organizer, “Planning for Family Friendly Cities,” American Planning Association annual conference, April 2008, Las Vegas, NV.

Invited Speaker, International Perspectives on Child Care: Gender Equality or Economic Development, Economic Justice Summit, National Organization of Women, Atlanta, GA, April 11-12, 2008.

“Linking Economic Development and Child Care,” Governor’s Summit on Education, Workforce and Economic Development: Partnerships and Possibilities, January 2008. Orlando, Florida.

“Child Care: Policy, Planning and Economic Development,” Venture Grantee Meeting, May 8, 2007, Greensboro, NC, preconference to Smart Start 2007 national conference.

“Reframing Childcare as Economic Development: Exploring the Theory, Method, Practice and Strategy of Economic Impact Studies.” Child Care Coalition of Manitoba, Canada, April 23-24, 2007.

Session organizer, “Planning for Family Friendly Cities: The Role of Child Care,” American Planning Association annual conference, April 2007, Philadelphia, PA.

“The Critical Link Between Child Care and Economic Development,” Keynote presentation, 6th annual Policy Breakfast, Sponsored by United Way Success by 6, Greater Syracuse Chamber of Commerce, Metropolitan Development Authority, Syracuse, NY Dec. 7, 2006.

Warner, M.E. 2007 “Planning for Inclusion: The Case of Child Care,” presented at Planning and Social Responsibility Symposium, American Planning Association, Ft. Worth, TX November 2006.

“U.S. Trends in US Local Government: From Reinvention to Public Service,” UTS Center for Local Government, Sydney, Australia, July 24, 2006

“Linking Economic Development and Child Care,” Presented to New Zealand Treasury, and Departments of Labour, Education, Social Development, Women’s Affairs and Maori Affairs, Wellington, New Zealand, July 19, 2006

“Local Government: Serving Citizens in a Competitive World,” Keynote speaker, Local Government New Zealand Leading Communities Conference, July 17, 2006.

“Linking Child Care and Economic Development,” Keynote presentation at New York Statewide conference *Cultivating Connections Between Economic Development and Child Care*, cosponsored by NYS Child Care Coordinating Council and Linking Economic Development and Child Care Project, Ithaca, NY, May 2006.

“Using Principles of Economic Development to Shape Business Leaders Agendas,” Early Childhood Finance Learning Community conference March 5-6 2006. Greensboro, NC.

“Early Care and Education: A Regional Economic Framework,” keynote presentation at Strongest Links Conference, January 13, 2006, Madison, WI.

Consultative Session on Establishing An Early Care and Education Private Employer Organization, Sponsored by the Annie Casey Foundation, Baltimore, MD Dec 12-13, 2005.

“Early Childhood Education and Economic Development,” Economic Action Research Network, National Conference, Cleveland, OH Oct 1, 2005.

“Privatization, Free Trade and the Erosion of Government Authority,” National Public Policy Education Conference, Farm Foundation, Washington, DC Sept 20, 2005.

“From Reinvention to Public Service: The Potential and Limits of Market Based Government,” and “Possible Futures: Competitive City or Cooperative Community?” Invited keynote speaker at The Future of Local Government Conference, Melbourne, Australia, June 7-8, 2005.

“Economic Development Policy: An Opportunity to Strengthen the Child Care Sector,” National Teleconference to State Child Care Administrators and Federal Child Care Bureau Staff, May 2005.

“Regional Economic Modeling and Economic Development as Applied to Child Care,” National Technical Assistance Teleconference for National Child Care Information and Referral Staff, May 2005.

“Human Services as Economic Development,” Key note address Human Services Coalition Annual Meeting, Feb. 2005, Ithaca, NY.

“Economic Development Strategies to Promote Quality Child Care,” Pre Conference on Early Care and Education Finance Reform, Smart Start National Technical Assistance Center, Greensboro, NC Jan 23-4, 2005.

“The Business of Early Learning: Linking Child Care & Economic Development,” presented at the Early Learning is Good Business Summit for Business and Civic Leaders, Fairfax County, VA June 3, 2004

“Child Care and Economic Development,” Presented to the American Bar Association Forum on Affordable Housing and Community Development Law, Feb 28, 2004. Miami Beach, FL.

“Economic Development Links,” Learning Community on Early Care and Education Finance Reform, Smart Start National Technical Assistance Center, Greensboro, NC Jan 25-6, 2004.

“A Regional Economic Analysis of the Child Care Sector in NYS,” Presented to the NYS Child Care Coordinating Council, Annual Meeting, Albany, NY, Jan. 14, 2004.

“The Economic Importance of the Early Care and Education Sector” presented to the Iowa Early Care, Health and Education Congress, Ames Iowa Nov.18, 2003, and presentation to the Business Council in Des Moines.

“Linking Early Care and Education and Economic Development: Four Challenges,” Workshop presented at the State Administrator’s Conference, Washington, DC, August 2003.

“The Economic Impact of the Early Care and Education Sector,” Presented to the Annual Meeting of the Child Care Resource and Referral Councils of Nassau and Suffolk Counties, NY, June 2003.

“How can we use economic development strategies to help finance early care and education?” Workshop presentation at *A Learning Community: Early Care and Education Finance Reform*, preconference to 2003 National Smart Start Conference, Greensboro, North Carolina, January 26-27, 2003.

“The Economic Impact of Child Care in Tompkins County,” Tompkins Co Workforce Development Board November 17, 2002.

Workshop Presenter, “Issues to Consider in Conducting an Economic Impact Assessment of the Child Care Sector,” Mid-America Regional Council, Kansas City, MO August 2002.

“Child Care as Economic Development,” Plenary Speaker and Workshop Presenter, National State Administrator’s Conference, U.S. Dept. of Health and Human Services, Administration for Children and Families, Child Care Bureau, Washington, D.C., August 2002.

“Building Social Capital Through Economic Development,” CaRDI-USDA Rural Community Development Training Institute Ithaca, NY, July 17, 2002 .

“Child Care as Economic Development,” Plenary Speaker, New England Workforce Partners for Early Care and Education, Stowe, VT. May 2002.

“Child Care as Economic Development” presented at *Everything Old is New Again: The New Approach to Community Development* conference, sponsored by Cornell University, Syracuse, NY May 23, 2002.

“Building Social Capital Through Economic Development,” CaRDI-USDA Rural Community Development Training Institute, Orlando, FL, February 2002.

“Child Care as Economic Development,” Plenary Speaker and workshop presenter, Region 1 Early Care and Education Conference, Brewster, MA April 2002.

“Building Social Capital Through Economic Development,” CaRDI-USDA Rural Community Development Training Institute, Ithaca, NY, November 13, 2001.

“Early Education Partnership: Coming Together for Child Care,” with Sue Dale-Hall, Faculty Symposium on Service Learning, Cornell University, January 18, 2001.

“Innovative Economic Development Strategies,” with Martha Armstrong Tompkins County Area Development, CaRDI Social Trends and Outlook Conference, Ithaca, NY June 5, 2001.

“Understanding Privatization of Local Government Services,” Plenary speaker (with Elliot Sclar) at Federation of Public Employees National Conference, Detroit, MI May 11, 2001.

“Public Values vs. Private Interests: Who Wins and Who Loses under Privatization,” workshop at Federation of Public Employees, National Conference, Detroit, MI May 10, 2001.

“Roundtable of Rural Development Banking Issues,” in Helena, AR as part of National Community Investment Funds’ Trustee’s Meeting December 4-5, 2001.

“Dialogue with Urban Executive Directors and CRP Faculty,” Ithaca, NY, March 30, 2000.

“Building Social Capital - Creating a Learning Cluster,” “CaRDI Community Development Inservice Training: Building Skills for Participatory Community Development, Ithaca, NY, April 11, 2000.

“Transforming Local Banks into Community Development Financial Institutions” with Lisa Richter of the National Community Investment Fund, 4th Annual Rural Development Training Conference, USDA EC/EZ Initiative, Silver Spring, MD June 7, 2000.

“Building Social Capital” CaRDI/USDA Executive Training Institute for Directors of Empowerment Zones and Enterprise Communities, Ithaca, NY, Nov. 18, 1999.

“Local Government Restructuring - The Need for a Debate about Public Values” Workshop held for Extension agents, Ithaca, NY, October 18, 1999.

“Building Social Capital: The Role of Cooperative Extension,” CaRDI Community Development Inservice Training: Building Skills for Participatory Community Development, Ithaca, NY, October 19, 1999.

“Building Social Capital,” 3rd Annual Rural Development National Training Conference, USDA Empowerment Zone/Enterprise Community Initiative, Memphis TN. Sept 16. 1999.

“Building Social Capital” Workshop for USDA Directors of Empowerment Zones and Enterprise Communities, Cornell, May 13, 1999.

“Restructuring Local Government Services in New York State.” Paper presented at Local Government Workshop, University of Agriculture, Nitra, Slovakia. March 16, 1999.

“Building Social Capital” Workshop for USDA State Directors of Rural Development, Ithaca, NY, November 14, 1998.

“Building Social Capital,” Workshop at Association of Cornell Cooperative Extension Educators, Waterloo, NY, October 14, 1998.

“Privatization and Restructuring of Local Government Services in New York State,” New York State Association of Counties, Statewide conference, Buffalo, NY, September 14, 1998.

President’s Council on Sustainable Development, Metro/Rural Strategies Task Force, national workshop on *People, Places and Markets: Comprehensive Strategies for Building Sustainable Community*. June 28-30, 1998. Invited to serve as discussion leader.

W. K. Kellogg Foundation, Devolution Initiative Networking Meeting, Washington, D.C. June 2-3, 1998. Invited participant.

“Confronting the Challenges of Collaboration - Theoretical Concerns and Practical Responses” and “Collaboration Tools - Applying Your Understanding to Make it Happen Back Home” two sessions organized for the NYS Rural Development Council Annual Conference, Syracuse, NY, April 27-28, 1998.

OTHER RECENT RESEARCH PRESENTATIONS

“Cost Savings and Privatization: Meta Regression on Water and Waste Services,” with Germà Bel, and Xavier Fageda, 2008. presented at Association of Public Policy and Management Conference, Los Angeles, CA November 6-8, 2008.

“Planning for Family Friendly Communities,” with Evelyn Israel, paper presented at joint conference of American Collegiate Society of Planners and Association of European Schools of Planning, July 11, 2008.

“Privatization and Cooperation: Addressing Regionalism through Markets” Presented at special organized session on Local Services Privatization: International Perspectives, American Public Policy and Management Association conference, Washington, DC, November 2007.

“Regulatory Takings and Free Trade Agreements: Implications for Planners” paper presented at special organized session on Property Rights and Compensation Mandates, at the American Collegiate Society of Planners, Milwaukee, WI, October 2007.

“Smarter Reform: Moving Beyond Single Program Solutions to an Early Care and Education System,” presented at special organized session on Child care at the American Public Policy and Management Association conference, Madison, WI November 2006.

“Child Care and Economic Development: New Frames, New Opportunities and Continuing Challenges,” paper presented at special organized session on Planning for Child Care and Economic Development, Association of Collegiate Schools of Planning conference in Fort Worth, Texas, November 2006.

“No Room for Simple Solutions: Mixing Markets with Planning in US City Services” with Amir Hefetz, Presented at special session, Beyond Efficiency: Challenges in City Service Delivery, Association of Collegiate Schools of Planning conference in Kansas City in November 2005.

“Planning or Markets? Comparing US and Spanish Privatization,” with Germa Bel, Presented at special session, Beyond Efficiency: Challenges in City Service Delivery, Association of Collegiate Schools of Planning conference in Kansas City in November 2005.

Warner, M.E. “Economic Development Strategies to Promote Quality Child Care,” poster presentation at National Child Care Research Consortium, Baltimore, MD, March 2005.

Warner, M.E. “Competitive Government, Free Trade and the Challenge of Citizenship,” presented at the International Rural Sociology Association meetings, Trondheim, Norway August 2005.

Warner M.E. and Zhilin Liu, “The Importance of Child Care in Economic Development: A Comparative Analysis of Regional Economic Linkage,” American Collegiate Society of Planners Conference, October, 2004. Portland, Oregon.

Warner, M.E. “Pragmatism Over Politics: Local Government Privatization Trends 1992-2002,” presented to the Law and Society Conference, Chicago. May 2004.

Warner, M.E. “Privatization and Its Reverse: Explaining the Dynamics of the Government Contracting Process,” Presented at the Eight International Research Symposium on Public Management, Budapest, Hungary April 2004.

Warner, M.E. 2003, “The Economic Impact of Child Care,” Presented at the joint annual meetings of the Rural Sociological Society and American Association of Agricultural Economics, Montreal, August 2003.

Warner M.E. and Amir Hefetz 2003, “Privatization: Theoretical Propositions, Empirical Realities,” Presented at the joint annual meetings of the Rural Sociological Society and American Association of Agricultural Economics, Montreal, August 2003.

Warner, M.E. and Jennifer Gerbasi. 2002. “Privatization, Free Trade and the Erosion of Government Authority,” CRP Working Paper #203. Presented at American Collegiate Society of Planners Conference, November 2002.

Hefetz, Amir and M.E. Warner 2001. “Contracting Out and Back-In: The Role of Monitoring,” CRP Working Paper #201. Dept. of City and Regional Planning. Presented to the American Collegiate Society of Planners Conference, Baltimore, MD. November 2001.

Warner, M.E. and James Pratt, “A Neural Network Analysis of Spatial Diversity under Devolution,” CRP Working Paper #202 presented at the Rural Sociological Society conference, Albuquerque, NM, August 2001.

Warner, M.E. and A. Hefetz. “Privatization and the Market Structuring Role of Local Government” Planner’s Network Conference, Rochester, NY, June, 2001.

Warner, M.E. and A. Hefetz. 2000. “Cities and Service Delivery: Regions or Markets?” Paper presented at the American Collegiate Society of Planners conference, Cleveland OH, November 2000.

Warner, M.E. 2000. “Devolution and Inequality: The Importance of State Policy.” American Sociological Association, Washington, DC, August, 2000.

Warner, M.E. 2000. “Devolution and the Emerging Structure of Spatial Inequality,” Rural Sociological Society conference, Washington, DC, August 2000.

Warner, M. E. 2000. "Resistance, Neoliberalism and Local Government Reform in Central Europe," Rural Sociological Society, Washington, DC, August 2000.

Warner, M.E., Anna Belajova, Maria Fazikova and Andrea Siebenmanova. 2000. "Planning for Rural Development: The Critical Role of Local Government," Association of European Schools of Planning, Brno, Czech Republic, July 2000.

Warner, M.E., Anna Belajova and Maria Fazikova. 2000. "Households, Markets and the State: A Gender Analysis of the Transition to Capitalism in Slovakia," Association of European Schools of Planning, Brno, Czech Republic, July 2000.

Warner, M.E. 1999. "Devolution and Inequality: The Importance of State Policy." Association of Collegiate Schools of Planners conference, Chicago, IL, November, 1999.

Warner, M.E. and Amir Hefetz. 1999. "Patterns of Alternative Service Delivery: Is There a Rural Dimension?" Rural Sociological Society conference, Chicago, 1999.

Warner, M.E. and R. Hebdon. 1998. "Restructuring Local Government Services: Privatization or Government Innovation?" Association of Collegiate Schools of Planners conference, Pasadena, CA, November, 1998.

Warner, M.E. 1988. "Devolution and Local Government Capacity for Investment: Historical Trends 1972-1992." Presented at the Rural Sociological Society conference, Portland, OR, August 1998.

Warner, M., C. Hinrichs, J. Schneyer, and L. Joyce, 1997. "Collaborative Research Between Extension Agents and University Based Researchers: Challenges to the Traditional Research Paradigm," Paper presented at the Cornell Participatory Research Action Network Seminar Series Jan. 29, 1998 and at the International Community Development Society Meetings, Athens, GA, July 1997.

Warner, M.E. 1997. "Labor Market Structure, Local Government Investment and County Well-Being: U.S. Mid-Atlantic and East North Central States, 1970-1990," Paper presented at Rural Sociological Society meetings, August, 1997, Toronto, Canada.

Belajova, Anna, Maria Fazikova, and Mildred Warner, 1996. "The Changing Role of the State and the Market on Household Welfare and the Position of Women in Slovakia," Paper presented at the Feminist Economics Conference, American University, Washington, D.C., June 22, 1996.

RESEARCH SYMPOSIA Designed and organized while Associate Director at CaRDI

"Rural Poverty and Community Sustainability," February, 1990.

"Rural Economic Development in the US and Europe," June, 1993.

"Lessons in Rural Land Use Planning from Europe and the US," June, 1994.

"Manufacturing Clusters," July, 1994.

"Sustaining Rural Landscapes: The Critical Link Between Environment and Community," June, 1995.

"Innovations in Local Government Service Provision," June, 1996.

EXTENSION WORKSHOPS Designed and organized while Associate Director at CaRDI

Teleconferences –

"Newly Elected Officials Training," 1993.

"State Take Over of Medicaid," 1994.

"Promoting Economic Vitality: What Local Government Can Do," 1995.

"Newly Elected Officials Training," 1995.

County Government Institutes –

"Budgeting in County Government," 1991.

"Improving the Management and Productivity of Local Government," 1992.

"Using Negotiation to Improve the Enterprise of Government," 1993.

"Total Quality Management in Local Government," 1994.

"Mutual Gains Negotiation: A Training for Local Governments," 1995.

"Multi-party Collaboration in Local Government," 1996.

"Privatization of Local Government Services in New York State," County Legislators and Supervisors Assoc. Annual Meeting Poughkeepsie, NY, June 10, 1996.

Other Extension Conferences –

"Ethics Made Practical: Fairness, Participation and Power in Local Decision Making," 1990.

"Who Cares About Families and Households: Society or the Individual?" 1991.

"Valuing Diversity," 1992.

"Partnerships in Community Development: Linking Social Services and Economic Development," 1993.

"Small Business Development: Challenges and Opportunities," 1994.

"Rural Literacy and Community Development: An Agenda for Change," 1994.

Editor, *Community Development Reports: Research Briefs and Case Studies* (16 issues 1993-96). Back issues can be found on CaRDI's web site <http://www.cals.cornell.edu/dept/cardi/publications/cdr/>

LEGISLATIVE BRIEFINGS

Warner, M.E. with Yizhao Yang and Martha Wittosch, 1999. "Devolution and Local Government Capacity: Prospects for Rising Inequality," Legislative Briefing for Maurice Hinchey and staff Cornell University, March 1999.

Warner, Mildred E., 1991. "Poverty Alleviation and Rural Economic Development: The Need for a New Federal Partnership," President's Council on Rural America, Northeast Regional Hearings, Binghamton, NY.

Brown, David L. and Mildred Warner, 1989. "Policy Options for Rural America," U.S. House of Representatives: Agriculture Subcommittee on Conservation, Credit and Rural Development, Leroy NY.

Legislative Briefings designed and organized while Associate Director at CaRDI

"Industrial Development Agency Accountability," for NYS Dept. of Economic Development and Legislative staff, Albany, NY, July, 1994.

"Federalism and Flexibility: Devolution of Responsibility and Opportunity to Local Government," to NYS Legislative Commission on Rural Resources, Albany, NY, May, 1991.



Economic Development Workshop: Planning for Family Friendly Cities

CRP 5074 FGSS 420/620 4 credit hours

Friday 9:05 am -12:05 pm, Spring 2009

208 W. Sibley

Class web site: <http://blackboard.cornell.edu>

Other important material can be found at <http://economicdevelopment.cce.cornell.edu>

Prof. Mildred Warner, City and Regional Planning

mew15@cornell.edu 255-6816, 204 W. Sibley

Office Hours: generally 2:00-4:00 Wednesdays and Fridays

Course Description:

Although much has recently been made of the return of empty nesters and young professionals to the centers of our cities, planning that prioritizes these groups often ignores the needs of families with young children. At the same time, transportation costs and segregation of uses means the suburbs are not meeting family needs to the extent their popular conception suggests. Research shows that families are important to a community's growth, sustainability, and diversity, and planning for the full life cycle, from children to the elderly, benefits all. A 2008 APA survey (conducted by Cornell University) revealed that the majority of planners believe families are a critical element of the community and more careful attention should be given to their needs. Zoning ordinances, transportation planning, child care facility siting and funding, and public participation are all areas where planners can work to make changes that will attract and support families with children.

In this workshop we will probe the 2008 APA survey more deeply and identify cases of successful planning practice to profile for the upcoming April 2009, national conference of the American Planning Association.

Students will work with representatives from the APA, the American Association of Retired Persons and practicing planners at the local level throughout the US to profile best practices. Students will learn skills in economic and social policy analysis, planning, design and the process of policy change.

Learning Objectives:

1. Become informed about the current state of family friendly planning across the US.
2. Become familiar with the many ways planners can work to address the needs of families.
3. Develop practical suggestions on how to implement family friendly change at the community level.

Client: American Planning Association

We will be developing case material for presentation at two upcoming sessions of the American Planning Association's national conference, scheduled for April 27-29 in Minneapolis, MN.

APA Sessions

APA Session 1. Planning for Family Friendly Communities

Session scheduled for Monday, April 27 4:30-5:45

A recent APA survey showed that the majority of planners believe families are a critical element of the community and more careful attention should be given to their needs. The challenge is in how to identify and address these needs. This session will present tips on zoning, finance, housing, facility siting, and ways to involve families in the planning process. (Sponsored by PAS Memo)

Description: This session will bring together experts in planning at the community level who have addressed zoning barriers, new approaches to child care facility development, new approaches to transportation planning and finance, and new participatory approaches that more effectively involve families in the planning process. Economic developers and planners across the country are recognizing the need to involve families in community planning decisions. Come discuss new ideas on the “what” and “how” of successful family friendly planning with these experts.

Participants:

Dr. Mildred Warner, Professor of City and Regional Planning, Cornell University, Ithaca, NY 607-255-6816 mew15@cornell.edu <http://economicdevelopment.cce.cornell.edu>
Co-Director of National Linking Economic Development and Child Care Project. Expert on the economic impact of child care and new roles planners can take in building family friendly communities. Co-led APA survey of planners’ role in creating family friendly cities.

Ellen Dektar, Coordinator, Alameda County Local Investment in Child Care, Oakland, CA 510.208.9578 ellen.dektar@acgov.org Website www.lincc-childcare.com Expert on new ways to incorporate family needs in transportation systems in terms of route design and collocating child care facilities at transit hubs.

Dr. Kristen Anderson, Child Care Coordinator and Planner, Redwood City, CA 650.780.7336 E-mail: planningforchildcare@yahoo.com
Expert on planning for child care. Author of *Planning for Childcare In California*, 2006. Her book covers everything from housing, to industrial park development to transportation and zoning codes. She will also discuss financing options.

Teresa Garcia, Mission Economic Development Agency, 3505 20th Street San Francisco, CA 94110, 415-282-3334 x11 mtgarcia@medasf.org
Expert on involving families in community design processes. Led a comprehensive planning process that involved diverse voices

Coordinator:

Ann F. Dillemath, Research Associate, Planning Advisory Service, American Planning Association, 122 S. Michigan Avenue, Suite 1600, Chicago, IL 60603, (p) 312.786.6352, (f) 312.431.9985, adillemath@planning.org

APA Session 2. Life-Cycle Housing: How to Keep Children, the Workforce, and Older Americans at Home in the City

Session for the 2009 American Planning Association Conference in Minneapolis
The session will be held Wednesday April 29th from 9:30 a.m. to 10:45 a.m..

Description: Cities are becoming the "smart" choice in the face of rapid changes in demographics, consumer preferences, and energy costs. Communities that incorporate residents across the entire life course often are more vibrant and sustainable. Learn why few cities are adequately prepared to support accessible and affordable lifecycle housing.

Presenters:

Jennifer M. Raitt, Chief Housing Planner, Metropolitan Area Planning Council 60 Temple Place, 6th Floor, Boston, MA 02111, 617.451.2770 x2056 JRaitt@mapc.org
Chair of the APA Housing and Community Development Division.

Nelson Hernandez, Vice Chair of the APA Housing and Community Development Division will moderate instead of Jennifer. "Hernandez, Nelson" nhernandez@ci.ventura.ca.us

Rodney Harrell, Strategic Policy Advisor for Housing, AARP Public Policy Institute, 601 E Street NW, Washington, DC 20049 Washington, DC (202) 434-3866 RHarrell@aarp.org

Mildred Warner, Professor of City and Regional Planning, Cornell University, Ithaca, NY 607-255-6816 mew15@cornell.edu <http://economicdevelopment.cce.cornell.edu>

Co-Director of National Linking Economic Development and Child Care Project. Expert on the economic impact of child care and new roles planners can take in building family friendly communities.

Lynn Ross, State and Local Initiatives Director, National Housing Conference and Center for Housing Policy, 1801 K Street NW, Suite M-100, Washington, DC 20006, 202.466.2121 x 237 lross@nhc.org Expert on housing solutions for working families.

Schedule for Class

January 23 – Overview of Class, Project and Client

Jan. 30 - Understanding the Issues

Students will read and present on the following materials on Jan 30th
Everyone read

Israel, Evelyn and Mildred Warner 2008. "Planning for Family Friendly Communities," *PAS Memo*, American Planning Association, Chicago, IL. November 2008.
<http://www.planning.org/pas/memo/open/nov2008/index.htm>

Warner, M.E., Kristen Anderson and George Haddow, 2007. "Putting Child Care in the Picture: Why this service is a critical part of community infrastructure," *Planning*, (June 2007): 16-19.

<http://government.cce.cornell.edu/doc/pdf/Planning%20Jun%202006.pdf>

Students Select and Present on the one or two of the following

Warner, Mildred E. 2006. "Putting Child Care in the Regional Economy: Empirical and Conceptual Challenges and Economic Development Prospects," *Community Development: Journal of the Community Development Society* 37 (2): 7-22.

<http://government.cce.cornell.edu/doc/pdf/7-22%20warner.pdf>

Warner, Mildred E 2009. "(Not)Valuing Care: A Review of Recent Popular Economic Reports on Preschool in the US," *Feminist Economics*, 15(2):

<http://government.cce.cornell.edu/doc/pdf/NotValuingCare.pdf>

Warner, M.E. 2007 "Planning for Inclusion: The Case of Child Care," *Practicing Planner*, 5(1) March 2007. http://government.cce.cornell.edu/doc/pdf/PracticingPlanning_Warner07.pdf

Warner, Mildred E., 2007. Child Care and Economic Development: Markets, Households and Public Policy, *International Journal of Economic Development*, 9(3):111-121.

http://government.cce.cornell.edu/doc/pdf/warner_1.pdf

Warner, M. E. *Child Care and Economic Development: The Role for Planners*, PAS Memo, American Planning Association. Jan/Feb 2006.

<http://government.cce.cornell.edu/doc/pdf/pasmemo0106.pdf>

LINCC, Linking Investments in Child Care (2008). *Building child care into new developments: a guide for creating child care facilities in transit-oriented developments*.

http://government.cce.cornell.edu/doc/pdf/lincc_dev_BR_web.pdf

Anderson, Kristen. (2006). *Planning for Child Care in California*. Solano Press Books.

February 6 Review and Select Case Studies (from APA survey and other sources)
Review Database from APA survey – see excel file on blackboard

Discussion of Case Study Research Method

Read:

Yin, Robert K. "An Abridged Version of Case Study Research" in L. Bickman and D.J. Rog, eds., *Handbook of Applied Social Research Methods*, Thousand Oaks: Sage, 1998: pp. 229-59.

Feb 13 Discussion with Ann Dillemath and Lynn Ross about what materials would be most useful for APA members

Feb 20 Presentation of Initial Outlines for Research and Case Studies

Feb 27 Work Session

March 6 Work Session

- March 13 Presentation of First Draft of Case Materials
- March 20 Spring Break
- March 27 Feedback and Review of Materials
- April 2 Work Session
- April 10 Presentation of Second Draft of Case Materials
- April 17 Work Session
- April 24 Presentation of Final Draft of Case Materials
- April 27-29 Attend APA if you wish
- May 1 Evaluate APA presentation and Experience

Additional Resources

Center for Transit-Oriented Development and Center for Neighborhood Technology. 2006. *The Affordability Index: A New Tool for Measuring the True Affordability of a Housing Choice*. Washington, D.C.: Brookings Institution.

http://www.brookings.edu/reports/2006/01_affordability_index.aspx

City of Austin Families and Children Task Force. 2008. *Families and Children Task Force Report Recommendations*.

http://www.ci.austin.tx.us/housing/downloads/factf_report_08.pdf

Cornell 2006. *NYS Survey of Economic Development and Child Care*, Issue Brief prepared by Cornell University Department of City and Regional Planning: Ithaca, NY.

<http://government.cce.cornell.edu/doc/reports/childcare/research.asp>

Fainstein, Susan S. and Lisa J. Servon ed. (2005). *Gender and Planning: A Reader*.. New Brunswick, NJ: Rutgers University Press. On reserve for CRP 2010 and CRP 5190.

Especially chapters by

Hayden, Dolores. (1981). What Would a Nonsexist City Be Like? Speculations on Housing, Urban Design, and Human Work.

Markusen, Ann R. (1981). City Spatial Structure, Women's Household Work, and National Urban Policy.

Rosenbloom, Sandra (1978). Women's Travel Issues: the Research and Policy Environment.

Wekerle, Gerda R. (1999). Gender Planning in Public Transit: Institutionalizing Feminist Policies, Changing Discourse, and Practices.

Florida, Richard (2002). *The Rise of the Creative Class: And How It's Transforming Work, Leisure, Community and Everyday Life*. New York: Basic Books.

Frey, William and Alan Berube. (2002). *City Families and Suburban Singles: An Emerging Household Story from Census 2000*. The Brookings Institution, Center on Urban and Metropolitan Policy.

<http://www.brookings.edu/reports/2002/02demographics.aspx>

Kochera, Andrew, Audrey Straight, and Thomas Guterbock (2005). *Beyond 50.05, A Report to the Nation on Livable Communities: Creating Environments for Successful Aging*. Washington, DC: AARP.

http://www.aarp.org/research/housing-mobility/indliving/beyond_50_communities.html

Low Income Investment Fund, 2006. *We Care: A Guide for Developing Child Care Facilities with Affordable Housing*, Bridge Housing Corporation, San Francisco, CA.

Primerano, Frank, Michael A. P. Taylor, Ladda Pitaksringkarn, and Peter Tisato (2007). Defining and understanding trip chaining behaviour. *Transportation, Springer* 35(1): 55-72.

Silbaugh, Katharine B. (2007). Women's Place: Urban Planning, Housing Design, and Work-Family Balance. *76 Fordham Law Review* 1797.

Warner, M.E., Adriance, S., Barai, N., Hallas, J., Markeson, B., Morrissey, T., & Soref, W. (2004a). *Economic Development Strategies to Promote Quality Child Care*. Ithaca, NY: Cornell University Department of City and Regional Planning.

<http://government.cce.cornell.edu/doc/pdf/EconDevStrat.pdf>

Expectations

As a workshop, the class must be responsive and flexible. We must complete objectives mutually agreed upon by our clients and ourselves. Leadership and responsibility are shared among students, professor and community partners. Workshops traditionally take more time than other classes. Work quality must be professional, "A" quality work. Lower standards will not be accepted. Hence, expect to do many revisions before work is final.

Research - Research projects will be individual and group in nature. Students will be assessed on the rigor and quality of their research. Students are expected to help collect and analyze data, review and summarize relevant literature, and identify and profile innovative case studies and policy approaches.

Writing - Writing assignments will include research reports as well as shorter, edited and published synopses to be used as public education materials for the project. Students will rewrite formal publications until they meet the satisfaction of the partners and Professor Warner. Web page design will also be a part of this process.

Process Skills - students will work with community partners in organizing meetings. Students will be assessed on the quality of their group/community participation and facilitation skills.

In recognition of the importance of group collaboration skills to project success, 30% percent of each student's grade will be determined by his/her peers. The remaining 70% will be determined by the professor according to performance in research, writing and process skills.

Roles

Professor - guide the process, provide research oversight, review and approve quality of all materials developed, handle larger political/managerial issues, manage budget.

Partners – serve as resource people, review and guide materials development.

Students - manage logistics, conduct research, do writing and editing and preliminary desktop publishing/web page design. Keep Warner and partners informed of all project developments. The following skills need to be covered: logistics (including master calendar), editing, desktop publishing and web design, financial and legal analysis, economic analysis, facilitation and interview skills. I recommend you form teams to work on the key project components outlined above.

Class Meetings

The class will meet on Friday mornings. We will use this time to touch base, check progress and work on group activities. There will be other meeting times during the week in small groups. Students who would like to attend the APA conference in Minneapolis are encouraged to do so.

General Materials on Economic Development, Planning and Child Care

Review all of project web site <http://economicdevelopment.cce.cornell.edu>

Also review web sites for materials developed by the following organizations. We want to supplement but not be redundant to resources already provided by these groups.

National Economic Development and Law Center (planning and zoning)

<http://www.nedlc.org/summary.pdf>

Local Initiatives Support Corporation (finance); <http://www.liscnet.org/>

Coastal Enterprises (economies of scale); <http://www.ceimaine.org/>

Center for Community Self Help (financing and rating); <http://www.self-help.org/aboutus/index.asp>

Annie Casey Foundation (financing and more); <http://www.aecf.org/>

Kaufman Foundation (entrepreneurship); <http://www.emkf.org/>

Local Investment in Child Care www.lince-childcare.com

American Planning Association <http://www.planning.org/>

General Information on Child Care

For background information on child care and a sense of the advocates

National Child Care Information Center has excellent materials and a thorough bibliography and data base; <http://www.nccic.org/>

Children's Defense Fund: <http://www.childrensdefense.org/>
Center for Law and Social Policy; <http://www.clasp.org/>
Child Trends; <http://www.childtrends.com/>
Annie Casey Foundation; <http://www.aecf.org/>

CRP 7201: Research Design

New Room: 261 E Sibley Hall (Fine Arts Library – go all the way to the east end of the Library)

New Time: Tuesdays and Thursdays 10:10-11:25 am Fall 2008

3 Credits

Office Hours: Tues – Thurs 1:00-3:00 pm and by appointment.

Class Web Site: <http://blackboard.cornell.edu/>

Professor Mildred Warner, mew15@cornell.edu, 255-6816, 215 W. Sibley Hall
<http://government.cce.cornell.edu>

This course will help graduate students select appropriate research design and field methods for thesis research. The course provides a comprehensive review of the research design process and will result in each student developing his/her project proposal. The first section of the course focuses on articulating the research objectives, choosing a research paradigm, preparing the literature review, developing a fundraising strategy and ethics. The second section of the course focuses on managing the research process itself and selecting the appropriate data collection strategy. Case studies, interviews, focus groups, surveys and use of census or archival data will be reviewed along with a review of major approaches to quantitative or qualitative analysis. Students will develop a clearer idea of their project focus during this course as all assignments will be geared toward building a complete project proposal.

This course is strongly recommended for PhD students developing their thesis proposals. This course is designed for PhD students as an integrative preparation for researching and writing a dissertation and for building a career as a researcher. It assumes that students will be exposed to specialized literatures and in-depth research methods in other coursework, either before or after this course. The focus is on understanding the PhD as a research degree and the role that a dissertation plays in training you to be an original, creative and relevant researcher. The course exposes you to the process of creative research by sequentially exploring 1) the relationship between researcher and reader/recipient of the results; 2) how to choose researchable topics; 3) moving from question to hypothesis; 4) designing a research project; 5) understanding the strengths and weaknesses of different types of evidence brought to bear on your hypotheses; 6) addressing policy inferences that could be drawn from your results; 6) thinking about audience for your work (funders, professors, future employers, future journal articles)

All required books and articles (except web based publications which can be viewed on line) are on reserve in the Fine Arts Library. You may wish to purchase books which go into detail on methods you expect to be using. We will be reading a lot of Creswell, Miles and Huberman so you may wish to purchase these.

Required or Recommended Books:

Creswell, John W. 2003. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. Thousand Oaks, CA: Sage Publications.

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. 2nd ed. Thousand Oaks, CA: Sage.

Other Recommended readings:

Yin, Robert K. (2003). *Case study research: Design and methods* (Applied social research methods series (v.5). Thousand Oaks, Calif.: Sage Publications. (or 1994 version)

Gaber, John and Gaber, Sharon (2007). *Qualitative Analysis for Planning and Policy: Beyond the Numbers*, Planners Press APA Washington, DC.

Tasshakkori, Abbas, and Teddlie, Charles. 1998. *Mixed Methodology: Combining Qualitative and Quantitative Approaches*. Sage Publications: Thousand Oaks, CA.

Lofland, John, & Lofland, Lyn H. (2006). *Analyzing social settings: A guide to qualitative observation and analysis*. Belmont, CA: Wadsworth/Thomson Learning. Or 1995 version

Denzin, Norman K. and Lincoln, Yvonna S. (1994 and 2005) (eds). *The Sage Handbook of Qualitative Research*. Third Edition. Thousand Oaks: Sage Publications. Or 1994 version.

Axinn, William and Lisa Pearce, (2006) *Mixed Method Data Collection Strategies*, Cambridge, Univ Press, NY, NY

Assignments and Grading

Class participation is critical. Students must be prepared to discuss readings in class. Written summaries of readings will be required. Small writing assignments will be due almost weekly. Article summaries and other written assignments must be posted to class web site 24 hours in advance of discussion so I and other students can review and give you comments in class. Students will be assessed on the quality of their critiques of each other's work.

Weekly assignments and article reviews	30%
Quality of Review of Peer's work	10%
Concept Paper	10%
Literature Review	10%
Methodology Section	10%
Final Proposal	25%
Final Presentation	5%

Syllabus

August 28 Introduction and Overview of Course

Syllabus and work overview.

Writing assignment in class – 1 paragraph description of your research project with conceptual diagram.

Sept 2 Research Paradigms

Guba, Egon. G. and Yvonna S. Lincoln. 1994. Competing Paradigms in Qualitative Research. pp 105-117 in Handbook of Qualitative Research ed. by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage.

Tashakkori, Abbas, and Teddlie, Charles. 1998. Mixed Methodology: Combining Qualitative and Quantitative Approaches. Sage Publications: Thousand Oaks, CA. Chapter 2 Pp. 20-40 “Pragmatism and the Choice of Research Strategy.”

Creswell, John W. 2003. Research Design: Qualitative, Quantitative, and Mixed Methods Approaches. Thousand Oaks, CA: Sage Publications. Chapter 1 “A Framework for Design” pp 1-26

Kuhn, Thomas S. (1996). *The structure of scientific revolutions*. Chicago, IL: University of Chicago Press.

-- Required if have not read before.

Sept 4 Qualitative, Quantitative or Mixed Methods?

Gaber, John and Gaber, Sharon (2007). *Qualitative Analysis for Planning and Policy: Beyond the Numbers*, Planners Press APA Washington, DC. Chapters 1 and 8.

Axinn, William and Lisa Pearce, (2006) *Mixed Method Data Collection Strategies*, Cambridge Univ. Press, NY, NY Chapter 1 “Motivations for Mixed Methods Social Research”

Recommended

Morrow, R.A. with D.D. Brown, 1994. "Deconstructing the Conventional Discourse of Methodology: Quantitative Versus Qualitative Methods," *Critical Theory and Methodology*, Sage Publications: Thousand Oaks, CA, pp. 199-225.

Reason, Peter. 1994 Three Approaches to Participative Inquiry pp 324-229 in *Handbook of Qualitative Research* ed. by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage.

Sept 9 Group Discussion

Assignment due Sept 8 (post to Blackboard): Show how your research topic could be studied under the different knowledge claims, strategies of inquiry and methods discussed. Use Figure 1.2 in Creswell as your guide.

Sept 11 Article Review and Discussion 3-5 pages (Article review due Wednesday Sept 10th)

Read, critique and write a review of a research article from a top journal in your field. Discuss paradigm, method of data collection and analysis and its appropriateness to the research question. Provide a reflection on the strengths and limitations of the approach and how it might inform your own work. Include a discussion of the following elements in your review.

- Framing the problem and purpose
- Situating the study in the literature
- Informed by a conceptual and/or theoretical framework
- Appropriateness of the methods
- Researcher's role in the setting
- Quality of findings
- Ways researcher analyzed and represented the data

Sept 16 - 18 Defining Your Question

Conceptual Framework

Marshall, Catherine and Rossman, Gretchen B. 1999. Chapter 2 “The ‘what’ of the study: Building the conceptual framework” (pp. 21-54).

Creswell, Chapter 7 “Uses of Theory” pp. 119-141

Recommended

Lofland and Lofland 1995 or 2006, Chapter 1

Defining the Research Question

Miller, Delbert C. and Salkind, Neil J. 2002. Handbook of Research Design and Social Measurement (6th edition). Thousand Oaks: Sage Publications. Read Part II “Basic Research Design”, focusing on pp. 13-23.

Miles, M.B. and Huberman, A.M. 1994. Qualitative Data Analysis: An Expanded Sourcebook. 2nd ed. Thousand Oaks, CA: Sage. Chapter 2 "Focusing and Bounding the Collection of Data: The Substantive Start." Pp 16-39

Writing the Concept Paper

Chapters from Creswell, 2003,
Chapter 4 Introduction, pp71-86

Chapter 5 The purpose statement, pp87-104

Chapter 6 Research Questions and Hypotheses, pp105-118

Chapter 8 Definitions, Delimitations, and Significance, pp. 142-152

Sept 23 Situating Your Research: Political Context, Ethical Issues

Assignment: Take Human Subjects Test, List key ethical questions you will face.

Ethics

Miles, M.B. and Huberman, A.M. 1994. Qualitative Data Analysis: An Expanded Sourcebook. 2nd ed. Thousand Oaks, CA: Sage Publications. Chapter 11 "Ethical issues in analysis." Pp. 288-297.

Review Creswell 62-66

Review Planner's Code of Ethics

<http://www.planning.org/ethics/conduct.html> and President Farmer's statement on why code was revised. <http://www.planning.org/ethics/pdf/farmeraddress.pdf>

Review University Committee on Human Subjects Guidelines. Take test

http://www.irb.cornell.edu/training/menu_soc.html

Here is the link to the test:

<http://www.irb.cornell.edu/training/quizsoc/quiz.cfm>

Recommended

Throgmorton, James A. 1996. "Impeaching" Research: Planning as Persuasive and Constitutive Discourse. Pp 345-364 in Explorations in Planning Theory ed by S. J. Mandelbaum, L. Mazza and R. W. Burchell. New Brunswick, NJ:Center for Urban Policy Research. (Skim)

Baum, Howell S. 1996. Practicing Planning Theory in a Political World. Pp 365-382 in Explorations in Planning Theory ed by S. J. Mandelbaum, L. Mazza and R. W. Burchell. New Brunswick, NJ: Center for Urban Policy Research.

Sept 25 Discuss First Drafts of Concept Papers

Assignment: Concept Papers 2-4 pp due Monday Sept 22nd.

Sept 30 Literature Review

(1 page lit review outline due Oct 6th)

Creswell, Chapter 2, Review of the Literature, pp 27-48

Oct 2 Fundraising (Oct 1 funder profile due)

Assignment: Funder profiles – Identify funders for your work. Describe goals and objectives of funders and how your work might fit. Outline proposal format and funding guidelines (limitations) and time lines for each funding source.

Janice Morse, 1994. "Designing Funded Qualitative Research." pp 220-235 in Handbook of Qualitative Research ed. by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage Publications.

Recommended

Miller and Salkind. 2002. Pp.663-760 "Part 8: Research proposal, funding, budgeting, reporting, and career planning." Good list of grant sources.

Bowman, Joel and Bernadine Branchaw. 1992. How to Write Proposals That Produce. Phoenix, AZ: Oryz Press. (On reserve)

(Some Useful websites)

SSRC: <http://programs.ssrc.org/dpdf/>

Fulbright: <http://fulbright.state.gov/root/resources-for/students>

Einaudi Center : <http://www.einaudi.cornell.edu/funding/grad.asp>

Foundations: <http://fdncenter.org>

Government: NSF: <http://nsf.gov/>

Dept of Ed.: <http://ed.gov>

Fedix (Federal funds): <http://www.sciencewise.com/fedix/>

SPIN (international) <http://www.infoed.org/wConnect/wc.dll?spinwww%7Ejumpspin>

IRIS : <http://carousel.lis.uiuc.edu/~iris/search.html>

Oct 7 Class Discussion – Literature Review (Oct 6 1 pg lit review and conceptual map due)

Oct. 9 Choosing Strategy of Inquiry

Strategy of Inquiry: Qualitative or Quantitative

Axinn, William and Lisa Pearce, (2006) *Mixed Method Data Collection Strategies*, Cambridge, Univ Press, NY, NY Chapter 2 "Fitting Data Collection Methods to Research Aims," pp 28-53.

Creswell, Chapter 9 A quantitative method pp 153-178

Chapter 10 A qualitative procedure pp. 179-207

Chapter 11 Combined qualitative and quantitative designs pp. 208-227

Recommended

Tashakkori, Abbas, and Teddlie, Charles. 1998.

Chapter 3 Pp. 40-58 "Research design issues for mixed method and mixed model studies."

Chapter 5 Pp. 95-111 "Data collection strategies and research procedures.

Oct 16 Managing Data, Site Selection and Fieldwork Processes

Summaries Xin (M and H), Javier (M&R), Sung Won (G &G)

Managing Data

Miles and Huberman, Chapter 3, "Focusing and Bounding the Collection of Data: Further Design Issues.", Chapter 4 "Early Steps in Analysis."

Marshall, Catherine & Rossman, Gretchen B. 1999. Pp. 105-146 "Data collection methods."

Recommended

Lofland and Lofland, 1995, Chapter 5, "Logging Data."

Tashakkori, Abbas, and Teddlie, Charles. 1998. Chapters 7-9 Pp. 137-166 "Examples of mixed model designs" and "Extended examples of mixed model designs." – Some examples of research designs.

Marshall, Catherine and Rossman, Gretchen B. 1999. Designing Qualitative Research (3rd edition). Thousand Oaks: Sage Publications. Pp. 167-189 "Chapter 6: Planning time and Resources".

Initial Field Reconnaissance

Gaber and Gaber, Chapter 2 "Field Research"

Sampling

Miller, Delbert C. and Salkind, Neil J. 2002. Handbook of Research Design and Social Measurement (6th edition). Thousand Oaks: Sage Publications. 51-56 ("Sampling").

Recommended

Tashakkori, Abbas and Charles Teddlie. 1998. Pp.61-94 "Sampling, measurement, and quality of inference."

Miller, Delbert C. and Salkind, Neil J. 2002. Handbook of Research Design and Social Measurement (6th edition). Thousand Oaks: Sage Publications. 51-56 ("Sampling").

Bouma, Gary D. and G.B.J. Atkinson, 1995. "Selecting a Sample," A Handbook of Social Science Research, Oxford University Press: New York, pp. 137-163.

Managing Overseas Research (Recommended)

Each student choose a chapter from the following to discuss.

Devereux, Stephen. (1993). *Fieldwork in developing countries*. Boulder, Colo.: L. Rienner.

Recommended

Site Selection

Lofland and Lofland, 1995, Chapter 2 "Evaluating Data Sites." Chapter 3. "Getting In."
Chapter 4. "Getting along."

Oct 21 Group Discussion

Assignment Due Oct 20: Beginning Methodology Section 3 pages

Group 1 Xin, Javier, Sung Won, Ji Won

Group 2 Peter, Doug, Andy, Xiaoling

Group 3 Isabelle, Leslie, Maite, Myriam, Kate

Oct 23 Data Collection Methods - Archives Published Data

Discussion Leaders: Myriam (Hill) Andy (Gaber and Gaber), Peter, Kate

Archival Research

Hill, Michael. 1993. Archival Strategies and Techniques. Thousand Oaks CA: Sage Publications. Browse. Read pages 58 - 63. Strategies for Organizing Archival Data.

Gaber, John and Gaber, Sharon (2007). *Qualitative Analysis for Planning and Policy: Beyond the Numbers*, Planners Press APA Washington, DC.
Chapter 5. "Content Analysis and Meta-Analysis"

Faculty Resource: Pierre Clavel www.crp.cornell.edu/resources/pcnp

Oct 28 Data Collection Methods - Published Data

Assignment: Provide list of sources you will use, how you will obtain access, data definitions relevant to published data

Discussion Leaders: Xin, JiWon, Sung Won, Javier, Xiaoling

Census Data:

Browse: Miller, Delbert C. and Salkind, Neil J. 2002. Handbook of Research Design and Social Measurement. Pp. 204-284. – Journal in social research; excellent information about sources of published data.

Oct 30-31 Assignment Due in Class or in my box – hard copy: Revised Concept Paper and Preliminary Literature Review (6-10 double spaced pages, 10-20 cites). Print this and bring it. Do not load to Blackboard

Oct 30 Data Collection Methods – Interviews

Assignment: Bring in Interview Guide for Review

Discussion Leaders Doug (Patton), Maite (Patton), Isabelle, Lesli, Xiaoling

Interviews:

Patton, Michael 1990. Qualitative Interviewing. pp 277-359 in *Qualitative Evaluation and Research Methods* Sage: London.

Recommended

Yow, Valeire Raleigh. 2005. *Recording Oral History: A Guide for the Humanities and Social Sciences*. Second edition. New York: Altamira Press. Chapter 3 “Preparation for the interviewing project” (pp. 68-91) and Chapter 4 “Interviewing techniques” (pp. 92-120). Also, browse Appendices A – K (pp. 335-381) for samples of interview guides and other tools.

Fontana, Andrea, & Frey, James. 1994. "Interviewing: The Art of Science." Pp361-376 in *Handbook of Qualitative Research* ed. by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage.

Lofland and Lofland. 1995. Chapter 7 “Asking Questions” (pp. 123-148).

Weiss, Robert. 1994. *Learning from Strangers: The Art and Method of Qualitative Interview Guides*. New York: Free Press.

- Chapter 1-2: Overview;
- Chapter 3: Preparing the interview guide;
- Chapter 4-5: Interviewing experience

Rubin, H.J. & Rubin, I.S. (1995). *Qualitative Interviewing: The Art of Hearing Data*. Thousand Oaks, CA: Sage Publications.

Nov 4 Data Collection Methods - Survey

Assignment: Bring in survey instrument for review

Discussion Leaders: Maite, Javier, Xiaoling

Summaries: Xiaoling (Dillman), Online Survey Tools (SungWon), Problems (Kate)

Dillman, D. 2000. *Mail and Internet Surveys: The Tailored Design Method* (2nd edition). NY: John Wiley & Sons. Chapter 1 “Social Exchange Motivation,” Chapter 2 “Nineteen Rules for Question Writing,”

Review: Creswell, John W. 2003. Chapter 9: pp. 153-162.

Check out internet survey sites: zoomerang, <http://info.zoomerang.com/>
surveymonkey <http://www.surveymonkey.com/>

Possible Guest Speaker: Yasamin Miller, Survey Research Facility

Recommended readings

Miller, Delbert C. and Salkind, Neil J. 2002. *Handbook of Research Design and Social Measurement*. Pp. 297-319 – on Guides for construction of questionnaires, selection and uses of personal interview surveys, telephone surveys, and mail questionnaire surveys.

Braverman, Marc T. 1996. "Sources of survey error: Implications for evaluation studies." New directions on Evaluation. 70: 17-28.

Mangione, T. 1998. "Mail surveys." Pp 399-427 in the Handbook of Applied Social Research. Edited by L. Bickman and D. Rog. Thousand Oaks, CA: Sage Publications.

Lavrakas, P. 1998. "Methods for sampling and interviewing in telephone surveys." Pp. 429-472. in the Handbook of Applied Social Research.

Fowler, F. 1998. "Design and evaluation of survey questions." Pp. 343-374 in the Handbook of Applied Social Research.

PAM 604 Syllabus

Dillman, Don A., Roberta L. Sangster, John Tarnai, and Todd Rockwood. 1996. "Understanding Differences in People's Answers to Telephone and Mail Surveys." In Braverman, Marc T. and Jana Kay Slater (eds.), Current Issues in Survey Research, New Directions for Program Evaluation Series, Chapter 4:45-62. Jossey-Bass: San Francisco.

Nov 6 Strategies of Analysis: Qualitative and Quantitative

Guest Speaker: Ann Forsyth on managing a large scale research process

Focus Groups: No discussion of this topic – read on your own if interested

Discussion Leads: Isabel, Lesli

Assignment: Bring in Focus Group Plan for group discussion

Gaber and Gaber, Chapter 4 "Focus Group Research"

or

Morgan, David, L. 1997. Focus Groups as Qualitative Research. Second edition. Qualitative Research Methods Series, Vol 16. Thousand Oaks, CA: Sage Publications.

Recommended

Krueger, Richard A. & Casey, Mary Anne. 2000. Focus Groups: A Practical Guide for Applied Research. Third edition. Thousand Oaks, CA: Sage Publications. – An easy reading on designing and conducting focus groups.

Nov 11 and 13 Data Collection Methods - Case Studies

Discussion Leaders: Everyone.

Assignment: Bring Case Study Research Plan for Group Discussion

Summaries: Yin 1 and 6 Maite, Yin 2 Xin, Yin 3 Ji Won, Yin 4 Peter, Yin 5 SungWon. This is Yin the book, not the article.

Yin, Robert K. "An Abridged Version of Case Study Research" in L. Bickman and D.J. Rog, eds., *Handbook of Applied Social Research Methods*, Thousand Oaks: Sage, 1998: pp. 229-59.

Other Recommended Readings

Yin, Robert K. (2003). *Case study research: Design and methods* (Applied social research methods series (v.5). Thousand Oaks, Calif.: Sage Publications. (or 1994 version)

Stake, Robert E. 2005. "Qualitative case studies." Pp. 443-466. In *The Sage Handbook of Qualitative Research* (third edition). Edited by N. Denzin and Y.S. Lincoln.

Nov 18 Strategies of Analysis: Quantitative

Come with your question outlined so Françoise can help with analysis ideas

Quick Review of Major Alternatives

Statistical Analysis of Quantitative Data: simultaneity, categorical, data reduction, uneven panels, nested data, autocorrelation in space or over time

Guest Speaker: Françoise Vermelyen *Isabelle to bring her over*

Nov 20 Strategies of Analysis: Qualitative

Discussion Leaders: Myriam-coding, Isabelle Q Methodology, Andy Zotero, Lesli Life History Analysis

Summary of M&H Kate

Miles and Huberman. 1994. Read Chapter 10 p 245-287 and Appendix pp 311-317 for software to conduct qualitative analysis.

Guest Speakers: Experienced students to talk about problems managing qualitative data.

Recommended readings

Lofland and Lofland. 1995. Chapter 9 "Developing analysis" (p. 181-203).

Miles and Huberman. 1994. Chapters 5-9 on Techniques for qualitative data analysis. Strongly recommended for those planning to do qualitative data analysis. Also review

Huberman, A. Michael and Matthew Miles. 1994. "Data Management and Analysis Methods." Pp 428-445 in *Handbook of Qualitative Research* ed. by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage.

Denzin, Norman. 1994. "The Art and Politics of Interpretation." Pp. 500-515 in *Handbook of Qualitative Research* ed. by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage.

Tashakkori, Abbas and Charles Teddlie. 1998. "Alternatives to Traditional Data Analytic Strategies" Chapter 6 (pp112-136) in Mixed Methodology: Combining Qualitative and Quantitative Approaches. Thousand Oaks, CA: Sage.

Software for qualitative research, <http://www.audiencedialogue.org/soft-qual.html>

NUD*IST4 is probably the most used software for qualitative research.

<http://www.qsr.com.au/>

CISER supports Atlas-Ti

<http://www.atlasti.com/>

Assignment: Revised Methodology Section Due Nov 24 by 10 am or earlier.

Nov 25 Group Discussion Methodology Plans

Writing - Read on your own

Creswell, Chapter 3 “Writing Strategies” pp 49- 70.

Przeworski, Adam and Frank Salomon, 2004. The Art of Writing Proposals: Some Candid Suggestions for Applicants to Social Science Research Council Competitions. SSRC. http://fellowships.ssrc.org/art_of_writing_proposals/printable.html

Recommended

Miles and Huberman, Chapter 12, "Producing Reports."

Richardson, Laurel. 1994. "Writing: A Method of Inquiry." Pp 516-529 in Handbook of Qualitative Research ed. by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage

Dissertation Proposal Workshop website at Berkeley has some useful information, including timelines for the entire dissertation process!

<http://globetrotter.berkeley.edu/DissPropWorkshop/>

Lofland and Lofland, Chapter 10, "Writing Reports."

Dec 2 and 4 Present Final Proposals

Assignment: Outline of Proposal or ppt – Present 5 minutes, Discussion 5 minutes

Dec 15 Final Proposals Due by noon

Hand in Hard copy to my office or my mail box.

Research Methods and Project Design: Article Summaries

Compiled by Robert Dean

Summaries authored by:

Frederick Addison, Marc Boey, Chih-Hung Chen,
Mei-Wan Huang, Ching-Fei Hsu, Betty Iroku,
Yusuke Matsushita, Naomi Penney, Lynn Ross,
Hallie Salem, Worrasit Tantinipankul, Yizhao Yang

CRP 649: Research Methods and Project Design
May 2000

Professor Mildred Warner
Department of City and Regional Planning

Part 1 – Choosing Your Paradigm

Guba, Egon G. and Yvonna S. Lincoln. 1994. Competing Paradigms in Qualitative Research. Pp. 105-17 in *Handbook of Qualitative Research*, edited by Norman Denzin and Yvonna S. Lincoln. Thousand Oaks, CA: Sage. 1

Reason, Peter. 1994. Three Approaches to Participative Inquiry. Pp. 324-9 in *Handbook of Qualitative Research*, edited by Norman Denzin and Yvonna Lincoln. Thousand Oaks, CA: Sage. 2

Morrow, R.A. with D.D. Brown. 1994. Deconstructing the Conventional Discourse of Methodology: Quantitative versus Qualitative Methods. Pp. 199-225 in *Critical Theory and Methodology*. Thousand Oaks, CA: Sage Publications. 4

Part 2 – Ethics

Miles, M.B. and Huberman, A.M. 1994. *Quantitative Data Analysis: An Expanded Sourcebook*. 2nd ed. Thousand Oaks, CA: Sage. 7
Chapter 11: Ethical Issues in Analysis

Part 3 – Managing the Research Process

Tashakkori, Abbas and Charles Teddlie. 1998. *Mixed Methodology: Combining Qualitative and Quantitative Approaches*. Thousand Oaks, CA: Sage. 10
Pp. 71-6: Sampling Error and Sampling Bias.

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. 2nd ed. Thousand Oaks, CA: Sage. 12
Chapter 4: Early Steps in Analysis.

Part 4 – Methods: Community Collaboration

Russell, Joel S. with Meyers, Andrew. 1995. Planning Charrettes. PAS Memo, Chicago IL: American Planning Association August 1995. 16

Chrislip, David D. and Carl E. Larson. 1994. *Collaborative Leadership: How Citizens and Civic Leaders Can Make a Difference*. San Francisco: Jossey Bass. 20
Pp. 3-14, 52-4.

Martin, Ann and Robert Rich. 1999. Searching and Search Conferences. Mimeo. 22
ILR, Cornell University: Ithaca, NY.

1997. “Building Community and Commitment to the Future: The Search Conference.” CDS Practice, 6: 1-8. 24

Part 5 – Methods: Interviews and Focus Groups

Fontana, Andrea and James Frey. 1994. Interviewing: The Art of Science. Pp. 361- 27
376 in *Handbook of Qualitative Research*. Edited by Norman Denzin and Yvonna
Lincoln. Thousand Oaks: Sage.

Morgan, David L. and Krueger, Richard A. 1993. Pp. 1-24 in *Successful Focus* 31
Groups. Sage Publications: Thousand Oaks, CA

Part 6 – Methods: Surveys

Sheatley, Paul. 1983. Questionnaire Construction and Item Writing. Pp. 181-203 in 35
Handbook of Survey Research. Edited by P.H. Rossi, J.D. Wright, and A.B.
Anderson. Thousand Oaks: Sage.

Bouma, Gary D. and G.B.J. Atkinson. 1995. Selecting a Sample. Pp. 137-63 in A 41
Handbook of Social Science Research. Oxford University Press: New York.

Part 7 – Analysis: Data Reduction, Causal Inference, Theory Building, Verification

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An* 44
Expanded Sourcebook. Thousand Oaks, CA: Sage.
Chapter 9: Matrix Displays: Some Rules of Thumb

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An* 46
Expanded Sourcebook, 2nd Edition, Thousand Oaks, CA: Sage.
Chapter 10: Making Good Sense: Drawing and Verifying Conclusions (part 1)

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An* 49
Expanded Sourcebook. Thousand Oaks, CA: Sage.
Chapter 10: Making Good Sense: Drawing and Verifying Conclusions (part 2)

Lofland, John and Lyn Lofland. 1995. *Analyzing Social Settings: A Guide to* 53
Qualitative Observation and Analysis. Belmont, CA: Wadsworth.
Chapter 7: Asking Questions.

Lofland, John and Lyn Lofland. 1995. *Analyzing Social Settings: A Guide to* 58
Qualitative Observation and Analysis. Belmont, CA: Wadsworth.
Chapter 8: Arousing Interest.

Lofland, John and Lyn Lofland. 1995. *Analyzing Social Settings: A Guide to* 60
Qualitative Observation and Analysis. Belmont, CA: Wadsworth.
Chapter 9: Developing Analysis

Tashakkori, Abbas and Charles Teddlie. 1998. *Mixed Methodology: Combining Qualitative and Quantitative Approaches*. Thousand Oaks, CA: Sage. Pp. 112-36, Alternatives to Traditional Data Analytic Strategies. 63

Part 8 – Writing

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. Thousand Oaks, CA: Sage. Chapter 12: Producing Reports. 66

Morse, Janice M.. 1994. Designing Funded Qualitative Research. Pp. 220-235 in *Handbook of Qualitative Research*. Edited by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage. 69

Part 9 – Evaluation

Hollister, Robinson G. and Jennifer Hill. 1999. Problems in the Evaluation of Community Wide Initiatives. In *New Approaches to Evaluating Community-Wide Initiatives Volume 1: Concepts, Methods, and Contexts*. Edited by James P. Connell, Anne C. Kubisch, Lisbeth B. Schorr, and Carol H. Weiss. 73

Weiss, Carol Hirschon. 1999. Nothing as Practical as Good Theory: Exploring Theory-Based Evaluation for Comprehensive Community Initiatives for Children and Families. In *New Approaches to Evaluating Community-Wide Initiatives Volume 1: Concepts, Methods, and Contexts*. Edited by James P. Connell, Anne C. Kubisch, Lisbeth B. Schorr, and Carol H. Weiss. 81

Guba, Egon G. and Yvonna S. Lincoln. 1994. Competing Paradigms in Qualitative Research. Pp. 105-17 in *Handbook of Qualitative Research*, edited by Norman Denzin and Yvonna S. Lincoln. Thousand Oaks, CA: Sage.
Summarized by Hallie Salem.

Within the article, the authors analyze four paradigms in informing and guiding inquiry, particularly qualitative inquiry, including the column headings in table 6.1, which I have broken down below. We know that qualitative data is helpful, because it can: put data into context, provide insight into people or places, help determine the source of the hypothesis, define the theoretical framework, define facts within a set of values, and develop findings through interaction to see how things really are and work. The table below dissects the four paradigms within a framework of three questions.

Four Paradigms for Guiding Inquiry Three Fundamental Questions	Positivism Denotes the received view. Used to verify hypotheses usually stated as mathematical propositions.	Postpositivism Criticism of positivism. Used to falsify hypotheses.	Critical Theory Denotes several alternative paradigms in which there is a “value-determined” nature of inquiry.	Constructivism A paradigm which assumption (ontological) moves from realism to relativism.
Ontology What is the form and nature of reality?	Naïve realism: the way things are without relation to time and context. Research examines the true state of affairs.	Critical realism: reality is imperfect. In order to understand reality, it must be critically examined.	Historical realism: virtual reality shaped over time by social, political, cultural, economic, ethnic, and gender values	Relativism: realities are socially and experientially based, local and specific in nature
Epistemology What must the posture of the “knower” be to find out what can be known?	Dualist and objectivist: The investigator and investigated are assumed to be independent entities	Modified dualist and objectivist: replicated findings are probably true	Transactional and subjectivist: value mediated findings, challenges that one can be known is dependent on the interaction between the knower and knowee	Transactional and subjectivist: due to link between investigator and subjects, findings are created
Methodology What methods fit the predetermined reality or what must be known?	Experimental and manipulative: in controlled conditions (quantitative)	Modified experimental and manipulative: critical multiplism (?) used in falsifying hypotheses, increased qualitative methods, place based	Dialogic: requires dialogue between investigator and subjects, and dialectical: dialogue within context of historic structures	Hermeneutical and dialectical: individual constructions elicited and defined through investigator and respondent relationship.

Table 6.2 is more readable and requires less interpretation. The table examines practical issues and the paradigms' positions towards them. Some key points are that positivism is qualitative, while postpositivism, critical theory, and constructivism are a combination of both qualitative and quantitative. Values are left out of and ethics are extrinsic to positivism and post, while both are included in critical theory and constructivism.

Question: Which paradigm would best address your research question and why?

Reason, Peter. 1994. Three Approaches to Participative Inquiry. Pp. 324-9 in *Handbook of Qualitative Research*, edited by Norman Denzin and Yvonna Lincoln. Thousand Oaks, CA: Sage.

Summarized by Betty Iroku

Note: Other methods and approaches do exist. However, Peter Reason chooses to focus on the following three:

1. Co-operative inquiry has its roots in humanistic psychology, in the notion that individuals can with help choose how they live their lives liberated from the distress of early conditioning and restrictive social custom. Working together in a group with norms of open genuine communication help facilitate this process.

Can be described as occurring in four phases of action and reflection:

- 1) Propositional knowing
- 2) Practical knowing
- 3) Experiential knowing
- 4) A critical return to propositional knowing

The *validity tool* in this inquiry is “*critical subjectivity*”. It makes it possible to see more clearly and better communicate to others the perspective from which that knowledge is derived and shed light on any distortions that may have occurred.

2. Participatory Action Research (PAR) is significant in that it highlights the political aspects of knowledge production. The whole ideology of “enlightenment and awakening of common peoples” and confronting the manner in which the established and power-holding elements of societies are favored because of their monopoly on the definition and employment of knowledge are of primary concern. The preferred way to communicate the application of PAR would be describing actual cases. Again the *key emphasis* here is on *empowerment* and so community meetings and any events that facilitate the process of participation and dialogue are important.

Two primary objectives of PAR

- 1) Produce knowledge and action directly useful to a group of people through research, adult education and sociopolitical action.
- 2) Empower people at a second and deeper level through the process of constructing and using their own knowledge.

Three starting points

- 1) Concerns for power and powerlessness
- 2) Knowledge and experience of people
- 3) Authentic commitment

3. Action science and action inquiry are methods of inquiry into practice and are primarily concerned with the progression of useful action that may add to the change of organizations and communities toward better efficiency and fairness.

Essentially both practices aim to engage with one’s own action and with others in a self-reflective way making all participants aware of their behaviors and the accompanying underlying theories surrounding those behaviors.

A key skill in this process is to find ways to avoid one's own and others' defensive responses to the painful process of self-reflection.

Four dimensions of conversation:

- 1) Framing
- 2) Advocacy
- 3) Illustration
- 4) Inquiry

Each of these conversational dimension correspond to the four territories of experience:

- 1) Purpose
- 2) Strategy
- 3) Behavior
- 4) Outside world

For Discussion: What might be some future implications for orthodox scientific research in light of the successes of these approaches?

Morrow, R.A. with D.D. Brown. 1994. Deconstructing the Conventional Discourse of Methodology: Quantitative versus Qualitative Methods. Pp. 199-225 in *Critical Theory and Methodology*. Thousand Oaks, CA: Sage Publications.

Summarized by Chih-hung Chen

For sociology, there are various aspects of the contemporary discourse on sociological methods that are not adequate. This article attempts to point out the weaknesses of quantitative and qualitative analysis. It is necessary to make a fundamental distinction between these two in terms of methodological implications. Even so, in this article, the author contends that it is hard to assume that a certain type of theorizing automatically requires a particular type of method.

Quantitative sociologists often tend to view qualitative research as imprecise, biased by researcher subjectivity, and effective for neither prediction nor generalization. At the same time, qualitative sociologists tend to view quantitative research as grounded in a naïve objectivity, ineffective for the interpretation of insider actions, generally unable to describe the social construction of reality. However, with debates for many years, the main conceptual distinction in the methodological discourse displays the positive understanding of quantitative research against the relatively negative understanding of qualitative research. Although quantitative sociology is a more dominant methodology than qualitative, the author is attempting to discuss a critical assessment of the overall discourse itself in which both terms are implicated. In other words, the article is concerned more with how methods are conceptualized in general, rather than with how specific methods are practiced. The following is the summary of characteristics of quantitative and qualitative approaches to social research.

Conventional Quantitative Methods:

1. Aggregation of units. This is the central idea of quantitative approach. We do not study individuals but rather aggregates of individuals. By doing so, such set of individuals would constitute a legitimate aggregate for the purposes of most quantitative analysis in sociology. However, it would not constitute any level of social organization from a theoretical perspective.
2. Measurement of variables. Quantitative research needs to collect data efficiently for statistical analysis in order to analyze the correlation between variables, rather than people. It is necessary to collect information about relationships between various individual attributes (variables). Such information typically is collected in survey research by asking people to respond to a highly structured set of questions. And the questions for asking people during a survey should be standardized and quantified.
3. Statistical-causal analysis. Within quantitative sociology, the search for causality becomes a matter of searching for authenticity (not imitation). In a word, it is important to understand how antecedent condition necessarily leads to a particular outcome. Moreover, it also is understood that cause is revealed in patterns of statistical covariation.

Conventional Qualitative Methods:

1. Case study design. Qualitative research tends to involve a case study design. It simply means that unlike the large aggregate approach, a single case or a limited set of cases is examined during the research.
2. Interpretation of action. The central notion of qualitative research in the conventional discourse is in favor of using natural language instead of the use of formal quantitative representations. Furthermore, it is accepted in qualitative sociology that action and local interpretation are always imbedded within the social world of the actors themselves.
3. Thick description. Qualitative research is based on a case study, which always has a rich complexity of factors. The social context of action and interpretation, along with the emphasis on natural language, leads much qualitative research to be concerned with layers of social reality. Therefore, it requires a depth or thick description of the case at hand (Geertz, 1983).

With the brief summary of each method, the author laid out four arguments.

1. A false dichotomy. If the distinction between qualitative and quantitative methods is just based on the use of formal and natural language modes of representation, the dichotomy is false. It is not necessary for qualitative research to preclude the use of quantitative representations or nonquantitative formal methods. If the analysts want to do an appropriate statistical survey for the subject of the research, there is no doubt that they need to engage in the language in terms of question design. The language of research is not an adequate criterion for a major differentiation of research forms.
2. Specific analytic strategies. Although appearing to reference data language, the qualitative-quantitative opposition in practice actually refers to specific analytic strategies. The practices of qualitative and quantitative do represent quite distinct analytic strategies. The main factor here that needs to be made explicit in this regard is that for the most part quantitative research in sociology is always in the sense of statistical modeling. And studies referring to as “statistical” may be involved a specific form of theoretical analysis. Under this circumstance, it is necessary to make a distinction between statistical modeling and other forms of quantitative analysis in sociology. The former is to model the social world in terms of causal relations between an observed system of variables. The latter, as well qualitative, approaches are to comprehend the relations obtaining between social actors and other forms of social organization.
3. Constructing social phenomena. As mentioned above, these specific analytic strategies are not simply different ways of examining the same social phenomena, but are the ways of making a set of individuals into two different kinds of phenomena. As far as theoretical sociology is concerned, nonstatistical, qualitative or quantitative, research attempts to describe a society by referring to the systemic and social relations that constitute it. On the contrary, statistical research has less relations with theoretical sociology. It does not assume that its analysis of variables is based on a population of subjects who interact with one another through communities. It is assumed, however, that members of the sample used are independent of one another. In summary, statistical analysis constructs a certain kind of subject within

sociological discourse. More theoretically oriented analyses construct the subject as the participant in one form of social organization or another.

4. Theoretical inadequacy. Theoretical sociology relying on statistical analysis is inadequate because statistical analysis is not a sociological method. It is not an approach developed within sociology as a tool for its theoretical inquiries. It is a tool that has been incorporated into the discipline of sociology despite its difference from basic sociological concepts. It can at most say that statistical analyses are statistical theoretical models applying general statistical theory. If the quantitative-qualitative distinction is based on statistical analysis, this assumption would be inadequate and misleading.

Miles, M.B. and Huberman, A.M. 1994. *Quantitative Data Analysis: An Expanded Sourcebook*. 2nd ed. Thousand Oaks, CA: Sage.
Chapter 11: Ethical Issues in Analysis
Summarized by Lynn M. Ross

Ethical Theories

Table 11.1 Ethical Frameworks and Aspects of Research (Flinders, 1992)

	Utilitarian	Deontological	Relational	Ecological
Recruitment	Informed Consent	Reciprocity	Collaboration	Cultural Sensitivity
Fieldwork	Avoidance of Harm	Avoidance of Wrong	Avoidance of Imposition	Avoidance of Detachment
Reporting	Fairness	Fairness	Confirmation	Responsive Communication

Principles to Guide Ethical Choices

- Beneficence-Minimize harm and risk, maximize good outcomes for all involved.
- Mutual Respect- Do not damage self-esteem, show respect for individuals as persons without being condescending.
- Justice- Carefully considered and fairly administered procedures. Equitable distribution of costs and benefits to all parties involved.
- Noncoercion and Nonmanipulation- Do not force others to cooperate against their will.
- Support for Democratic Values and Institutions- Committed to equality and working against oppression.

Specific Ethical Issues

1. Worthiness of the Project

Will my project significantly contribute to the larger body of knowledge?

Do not pursue a project for the sole purpose of your personal advancement. If the work does not have real meaning and significance it is likely to be pursued in a haphazard manner that will produce unreliable data and questionable conclusions. Rival hypotheses should be pursued.

2. Competence Boundaries

Do I have the skills to conduct a quality project?

Acknowledge your areas of weakness early on and seek help from your colleagues.

Unacknowledged incompetence will lead to serious problems in your analysis that could have otherwise been avoided.

3. Informed Consent

Have I fully informed the people I will study and have they freely consented to be studied?

Truly informed consent is difficult in qualitative studies because your actions and work in the field constantly alter the project. It is important to maintain an ongoing dialogue with participants to keep them informed of such changes and ensure their continued cooperation.

4. Benefits, Costs, and Reciprocity

What will each party have to invest in the project and what will they gain?

Study participants rarely benefit from projects in the manner that researchers do. This lack of reciprocity may jeopardize your access and damage the quality of your data. Try to understand the action implications of your project from the participant's point of view.

5. Harm and Risk

How might this project harm those involved?

Consider who is most vulnerable in your study (e.g. the visible, the stigmatized, the powerless, the powerful). Remember that when the participants anticipate harm or risk, the quality of access and data collection may be compromised.

6. Honesty and Trust

What is my relationship with project participants? Do we trust each other?

Dishonesty on the part of the researcher can make the continuation of a specific project and future projects by other researchers on the same subject difficult if not impossible.

7. Privacy, Confidentiality, and Anonymity

How might this project intrude on the people I am studying? How will the information and participants be protected?

Explicit agreements regarding confidentiality increase the trust between researcher and participants. When privacy and anonymity are threatened, be prepared to adjust analytic methods to avoid disclosure of the information.

8. Invention and Advocacy

What should I do when I witness illegal or harmful activities during my research? Should I advocate for anyone's interest other than my own?

Understand that withholding "guilty knowledge" may skew your findings; however, disclosure might jeopardize your access.

9. Research Integrity and Quality

Is my work being conducted correctly in accordance with some reasonable set of standards?

Beware of conducting "poor science": sloppy data recording, misleading findings, inappropriate citation, etc. As researchers we must avoid lying to ourselves by ensuring that our methodology is credible, defensible, and possibly transferable.

10. Ownership of Data and Conclusions

Who owns my work and who will control the diffusion of my findings?

Most researchers consider themselves the "owners" of their data. The researcher then is responsible for the protection and dissemination of the materials. Consider who will have access to the information and how this might affect the confidentiality of participants.

11. Use and Misuse of Results

Am I responsible for making sure my work is used appropriately? What if my work is used inappropriately?

At the start of your project make it clear that you will be involved in the use of your findings. This early commitment will help focus your data collection and analytic strategies.

Conflicts, Dilemmas, and Trade-offs

Addressing ethical issues inevitably involves making difficult choices. Throughout the research process we will have to face a variety of ethical dilemmas: *anonymity versus visibility*, *helping versus confidentiality*, *scientific understanding versus individual rights*, *validity versus avoiding harm*. For this reason it is important to keep ethical issues out there as a topic to be both thought about and discussed.

Advice

- Awareness – Be aware of the ethical issues surrounding your work.
- Anticipation – Preparation pays off. You can avoid problems later by thinking ahead during the early stages of your project.
- Preliminary Agreements – Agreements between the research and participants should be made early in the process, should be clearly stated, and be committed to paper.
- Documentation and Reflection – Don't lose sight of ethical issues during the data collection process.
- Third Parties – Involving a trusted third party can bring objective insights to the project and its ethical issues.
- Regular Checking and Renegotiation – Make clear from the start that any agreement entered into may need to be renegotiated or otherwise modified as the work progresses.

Tashakkori, Abbas and Charles Teddlie. 1998. *Mixed Methodology: Combining Qualitative and Quantitative Approaches*. Thousand Oaks, CA: Sage.
Pp. 71-6: Sampling Error and Sampling Bias.
Summarized by Marc Boey

Synopsis

The assigned section in Tashakkori and Teddlie (1998) focuses on the key problems that are associated with taking samples and the different strategies for designing the sampling frame. Addressing these problems and understanding the benefits and constraints arising from different sampling frames have important repercussions on the validity of our research findings.

Key Problems

Sampling Bias: It is a nonrandom way of selecting a biased sample that results in findings that cannot be considered to be representative of the population i.e. findings become invalid or distorted.

Example: I am testing the following hypothesis - the development of mega infrastructure projects (e.g. airport) is nothing more than a ploy used by the state to promote selfish interests by providing economic opportunities for corrupt and nepotistic practices. I intend to conduct in-depth interviews to verify or debunk this hypothesis. The sample has a high probability of becoming bias if I intentionally select *only* members of opposition political parties to conduct my in-depth interviews. This is because these respondents are more inclined to providing critically biased judgments on the state bureaucracy.

Sampling Error: The random inaccuracies that arises from the process of generalizing the findings from a narrow selected sample frame to a broader general populace.

Example: I am testing the following hypothesis – the urban built environment in Malaysia reflects a distinct national identity. I intend to conduct interviews with 1,000 members of the general public to seek their views on this. Does this 1,000-person sampling frame reflect the views of the entire population in Malaysia? The answer is no because some of the respondents probably possesses characteristics and offer views that are not typical to the general populace (e.g. a religious fanatic who has a very skewed perception of what constitutes the national identity). This discrepancy is the sampling error. Increasing the size of the sampling frame can help reduce the sampling error. If this is not possible, then one can alternatively get more credible results by carefully selecting respondents who are more representative of the general populace.

Strategies for Designing Sampling Frame

These can be classified into two broad categories: “probability” and “nonprobability/purposive”. They are already succinctly summarized in the reading and are thus not reproduced here. The key points that needs to be noted are:

Probability sampling generally involves a more random process of selecting the units for observation. For example, in simple random sampling every individual in a population has an equal and independent chance of being selected for the study. In comparison, purposive sampling involves intentional and directed selection of specific individuals based on purpose of the study, information about these individuals, etc. The sample of the opposition political parties cited above is an example of purposive sampling while the selection of the 1,000 members of the general public is a more of a random sampling.

The techniques are not mutually exclusive to the schools of quantitative and qualitative analyses i.e. they can be employed by either of these approaches. And one can also employ a combination of probability and nonprobability/purposive techniques in a study. For example, I can use a purposive technique of targeting only architects as my sample respondents. But I can then use the probability technique of randomly selecting a sample of architects in the group.

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. 2nd ed. Thousand Oaks, CA: Sage.

Chapter 4: Early Steps in Analysis.

Summarized by Naomi Penney.

These processes help in organizing data for later analysis. M&H strongly recommend early data analysis to help one with finding new areas/strategies to collect data and refinement of your research topics and interests.

This chapter looks at 8 main methods for data analysis. This chapter assumes your information is coming from your field notes whether they be hand/type written or taped. The focus here is on *words* and that they have been “cleaned up” so they are clear to the reader.

The following are arranged from early to later in the data collection process and from simple to more complex.

Contact Summary Sheet

Problem	Description	Illustration	Variations	Advice	Time needed
What were the main concepts, themes, issues and questions that I saw during this contact?	A single sheet that briefly answers the previous questions	What people, events, or situations were involved? What new hypotheses, speculations, or hunches about the field situations were suggested by the contact? What kind of information should be sought with the next contact?	Themes sheet First impression sheet - not recommended	Keep form simple Focus on primary issues and concepts and questions This form is for quick and easy data retrieval—so keep it that way	Approx. 1 ½ hours per interview

The summary sheet should be done fairly soon after the interview.

- Use:
- (1) guide planning for next contact
 - (2) suggest new or revised codes
 - (3) help coordinate if several field workers are involved
 - (4) reorient self when returning to contact
 - (5) help with further data analysis

Codes and Coding

Problem	Description	Illustration	Variations	Advice	Time needed
What is your conceptual framework? What is your research question? What are the themes you are seeing?	Codes are tags or labels for assigning units of meaning to the descriptive or inferential information compiled during a study.	Types of codes -descriptive -interpretive -pattern Codes can be at different levels of analysis Codes can happen at different times during analysis Codes help pull together a lot of material	Acts Activities Meanings Participation Relationships Settings	Make sure all codes fit into a structure Keep codes semantically close to the terms they represent Define codes operationally Do not wait until the end of data gathering to create codes	Depends— it's a rather involved process— count on 1 day/contact

On creating codes: Use your conceptual framework as a guide or your research questions/hypotheses, key variables that you the researcher bring to the study.

A more “grounded “ approach would have you wait until your data has been collected and worked with before coding occurs. For more information on this approach see Glaser and Strauss (1967), Strauss(1987) Corbin (1990) Bogdan and Biklen (1992).

Pattern Coding

Problem	Description	Illustration	Variations	Advice	Time needed
What are the patterns you are seeing in your data?	Pattern codes are explanatory or inferential codes, ones that identify an emergent theme, configuration or explanation.	Generating pattern codes: What are the commonalities/differences in the data? Do there appear to be causal links?	You can also sub-code data	Code regularly Don't be afraid to recode	This is concurrent with other coding and will probably take up only 5-10% of your coding time

Why use pattern coding?

1. It reduces large amounts of data into a smaller number of analytic units
2. It gets the researcher into analysis during data collection, so that later fieldwork can be more focused.
3. It helps the researcher elaborate a cognitive map, an evolving, more integrated schema for understanding local incidents and interactions.
4. For multicase studies, it lays the groundwork for cross-case analysis by surfacing common themes and directional processes.

Memoing

Problem	Description	Illustration	Variations	Advice	Time needed
How do you separate and remember all the nuances of your data?	<p>Memos sort of tie concept together.</p> <p>Use them to help you ponder your data and help you make sense of what you are or are not seeing.</p>	<p>See examples in book:</p> <p>On welcoming structures</p> <p>Comparison process</p> <p>Career patterns</p> <p>Barometric events</p>	<p>What is intensely puzzling or surprising about this case?</p> <p>response to someone else’s memo</p> <p>to propose a specific new pattern code</p> <p>to integrate a set of previous marginal notes or reflective remarks</p> <p>when you are struggling with some question</p> <p>around a general theme or metaphor that pulls together other observations</p>	<p>Always give priority to memoing</p> <p>Start as soon as field data starts coming in</p> <p>Keep memos sortable</p> <p>Keep them about ideas not more notes</p> <p>Do not standardize your memos</p> <p>It’s fun!</p>	Varies

Case Analysis Meeting

Problem	Description	Illustration	Variations	Advice	Time needed
How do you understand quickly and economically what is happening in your research?	The case worker most familiar with the case summarizes where the research it at and where it might be going. Questions are used to guide the meeting.	See Book pg. 76-77	<p>Questions to guide meeting:</p> <p>What is puzzling, strange or unexpected about the recent case?</p> <p>What additional analyses do we need of existing data to understand the case better?</p> <p>What is definitely <i>not</i> true of the case at this point?</p>	<p>Don’t become complacent with the results from the meetings. They can be coded too and used to help guide the process.</p>	Meetings should be no more than 1 ½ hours

Interim Case Study

Problem	Description	Illustration	Variations	Advice	Time needed
<p>How do you know your data is valid?</p> <p>How do you know you are making the right conclusions?</p> <p>Where are the gaps?</p>	10-25 pages that provide a synthesis of what the researcher knows about the case and what still needs to be found out.	See Example on pg. 79	<p>-outlines of case</p> <p>-smaller connected interim studies</p>	Best time to do this is about a third of the way into your data collection	No more than two days—1 for writing 1 for reporting

Vignettes

Problem	Description	Illustration	Variations	Advice	Time needed
How do you explain a sub-set of what is happening clearly and more quickly than a memo or report?	A vignette is a focused description of a series of events taken to be representative, typical or emblematic in the case you are doing.	A description of a typical day in the life of your contacts. See pg. 81-82 for better detail	Profiles: narrative summary using informants own words Narrative scene: composite narrative written at the end of data collection	Be aware of bias in what you have chosen to put into this write-up Vignettes can be helpful when your data seems to lack meaning	2 hours from participants 4 hours from researcher—not including 2 hours of time for transcription

Prestructured Case

Problem	Description	Illustration	Variations	Advice	Time needed
Not enough time. I need to streamline my data collection!!	For when you have a conceptual framework and a firm set of research questions— This is a case outline created <i>before</i> any data is collected	Research questions guide how the data will be collected and what data will be collected. See example pg. 84	Can also be used with fully written up data	Not for the inexperienced researcher. It may put blinders on you or bias you.	After the outline is complete (hours depend on you) expect 2-3 days

This process is iterative and data collection feeds on what it finds until you are no longer seeing new information.

Sequential Analysis

Problem	Description	Illustration	Variations	Advice	Time needed
The need to reorient yourself to your view of the case.	Interim reports and other methods already discussed	See pg. 86 You must keep returning to the data before you go on collecting more and continue until you are “done”—it’s a circle.	Transformations of data: Individual case synopsis Illustrative narrative General condensation General psychological structure	Process will help you look at your data from different angles Do not be afraid to do this	Depends

These methods are helpful for early data collection and analysis.

Russell, Joel S. with Meyers, Andrew. 1995. Planning Charrettes. PAS Memo, Chicago IL: American Planning Association August 1995.

<http://www.e-architect.com/pia/cote/AIA-COTE/edcw/main/index.asp>

Summarized by Marc Boey

Definition of a charrette:

- “a short intense collaborative process for designing projects, planning communities and building consensus”, “a workshop held in a two- to three-day period in which architects and other design professionals, community leaders, public officials and citizens work together to envision alternatives for a local building program, neighborhood or regional community project, with an emphasis upon long-term economic, social and environmental sustainability.”

Different types of charrettes:

Type	Main Objectives	Public Involvement	Professional Involvement	Decision-Making
Professional Design	Product-driven. Promote project and get initial feedback	Restricted and focused. Minimal short meetings with public officials, representatives of use groups, potential financial sources or project neighbors.	Multidisciplinary team including architects, planners, engineers, etc who spend several days studying the site and designing the project	Confined to professionals and key stakeholders e.g. developers
Participatory Design	Product-driven.	Structured opportunities for input from public. Greater involvement compared to professional design. Focused groups as well as general public.	Design team (similar to that above) moves into community for a week and prepares plan under the eye of the public	Agenda and product controlled by the professional design team It is also controlled by the sponsor
Academic/Competitive	Design alternatives (not for implementation) Training students and educating public	Not so dependent on public participation as it is more of a pedagogical technique; public may be just invited to see the product	Professional architect assisted by design students	Designs are sometimes submitted to jury for critique
Professional Planning	Identify overall planning problems in a community	Meetings between public officials and representatives of interests groups and large public meetings	Professionals kept at a neutral distance Mainly advisory and facilitator role	Report only makes recommendations. Implementation is left to local government and organizations
Participatory Planning	Local participation Local political support	Maximum citizen participation focusing on community interaction rather than professional prescription	Mainly facilitator role	The community through consensus

Benefits of charrettes:

- Reduce adversarial tension and gridlock during project review by putting all concerns on the table at the beginning of the process without triggering the opposition typical of conventional planning and zoning proposals e.g. allow stakeholders the ability to influence projects and community plans in a way that satisfies their concern.
- Give citizens a more meaningful role in planning the future of their communities. Charrettes are an effective means to initiate volunteerism and collaboration from all interested parties to jump start community revitalization that can involve those most affected by environmental quality issues and opportunities.
- Cost- and time-effective because it is an intense collaborative process e.g. professional team members are “locked out” the outside world during the charrette process; reduce costly reiterations and coordination problems because all the key players are present at one time and in one place.
- Synergy created because of the involvement of all key players including professionals, community leaders and citizens; can lead to stimulating design and planning solutions. Charrettes encourage discussion that stretches the envelope of possibilities beyond conventional thinking.
- Charrettes are an effective means of understanding the complex yet vital issues planning and the importance of protecting our environmental, economic and cultural resources.

Limitations with charrettes:

- Conflicting interests and factional bickering. A meeting that brings together a diverse set of community representatives, public leaders and outside "experts" is by definition "loaded" with conflicting agendas, diverse personalities and cross-purposes. Meetings that are not well planned and facilitated can set community discussions back due to miscommunication, misunderstanding or misuse of the initial good will that should otherwise prevail.
- Loses “steam” and “high”.
- Poor response/participation e.g. residents who are suspicious of motives. It is important to choose a topic that will engage both positive and substantive community support.

Tips for planning successful charrettes:

- Clarity of purpose. Understand the nature of the group and community and their different reasons for being involved in the project.
- Identifying a significant project. Don't do it unless there is evident local commitment to use the charrette as part of a larger and longer range commitment to take action. It is important to choose a topic that will engage both positive and substantive community support. The initial proposal need not be perfect. It should be open to modification as discussions and planning proceeds. It has to be a project that is inspiring and at the same time feasible, that is, it does not raise false hopes. Community aspiration is too valuable a quality to squander on false starts and dead ends.
- The charrette workshop should be linked to a larger initiative, before and after the event, that builds local community initiative and development. For example, charrette can be used to build upon local networking; link local initiatives (bottom-up) to broad (horizontally linked) networks, such as citywide collaborations.

- Establish Pre-event meetings. Mini pre-charrette meetings in which participants are able to express their needs and priorities in their own terms (rather than to be immediately thrown into an unfamiliar and professional setting).
- Should be planned carefully and well in advanced. A minimum of three months (most typically six months) is needed to prepare for a successful event, with a longer time frame required for more complex events. Requires an organizational structure defined to a sufficient level of detail so that many people can work together, essentially "reading from the same page" to create a smooth running event. Decisions that need to be put into place include a charrette meeting location, sufficient planning time prior to the event, involvement of key stakeholders, and an organizational group or committee.
- "Get stakeholders involved early" and "Don't leave anyone out". If the charrette project involves different groups or communities normally left out of the planning and decision process, organizers may find themselves from the outset dealing with a potentially disruptive situation.
- Follow-up must be adequately planned and budgeted. In the best cases, the charrette workshop is linked to a larger initiative, before and after the event, that builds local community initiative and development. Get early successes but also plan a long-term implementation strategy that affects policy.
- Do not oversell charrette as a solution for all problems. It has to be a project that is inspiring and at the same time feasible, that is, it does not raise false hopes. Community aspiration is too valuable a quality to squander on false starts and dead ends.
- Hire or invite experienced consultants and leaders. Depending on the objectives charrettes usually require the assistance of knowledgeable experts, educators and design professionals. For example, a community that is concerned with energy and resource conservation would require expert advice on ways to reduce energy and resource use and resulting pollution and to use renewable energy sources through optimized building design, materials selection, envelope and windows, lighting and day lighting, utility loads, heating, cooling and ventilation systems.
- Putting a Funding Strategy in Place. Sources of such funds included local foundations, utilities, banks, businesses and chambers of commerce, with "contributions in kind" by restaurants, hotels, newspapers, television stations and art materials suppliers. The average "lowest reasonable cost" per charrette is in the range of \$5,000, to cover costs typical of space rental, food for participants, travel, honoraria and lodging for facilitators and group leaders and printing and publications.
- Establish a News and Communication Plan. In most cases, the local press is easily involved in public communication and coverage, provided that notice is given (ideally, an informative and interesting press release) so that media reporters know about significant meetings and the event itself. Both the kick-off and the final public presentation of the charrette work can be organized to provide media coverage. Local newspapers are often a readily available means by which to publish the results, such as in a special "Sunday Supplement" printed as a community service.
- Logistics: Where to hold the charrette event. There are several recommendations about the charrette workshop location itself. One recommendation is to hold the event at or near the actual project site, or at least to provide easy access so that site conditions can be visited, seen and discussed. An alternative recommendation is to hold the charrette in a publicly visible and accessible location.

- **Evaluating the Event.** Most charrette events go quickly with a great degree of intensity and focus, so that when it is over, people leave quickly to catch up with things left undone for several days. However, without some evaluation process, valuable lessons learned may go unheeded. It is therefore recommended that some form of event evaluation be put in place, allowing time in the concluding session for evaluation forms to be completed before participants leave. This evaluation, whether in questionnaire form or otherwise, should allow for commentary to capture creative insights and suggestions for improvement.

How to be good facilitators:

- Practice active listening by (1) staying engaged, (2) being supportive of the participants whether or not there is agreement, (3) searching for the meaning behind participants' comments, and (4) being nonjudgmental.
- Accept conflict as part of the creative process by (1) focusing on the present and issue-oriented problem-solving, (2) allowing a limited amount of venting, and (3) agreeing to disagree when there is no common ground.
- Art of nondirective facilitation. The ability to initiate a group empowerment and leadership process without creating dependence on the leader, that is, to make oneself unimportant.
- Making a checklist to better prepare for a charrette:
 1. Audit existing conditions. Make sure the room will work and that all necessary materials and support functions are in place.
 2. Discuss expectations with the organizing group in terms of goals and outcomes. Establish ways to measure success and consider an evaluation form to measure participant responses at the end of the event to find out what went well and what needs improvement.
 3. Understand the nature of the group and community. The organizing group may or may not be representative of the community that is most impacted by the project or program being envisioned in the charrette.
 4. Organize around goal statements. At any point in a group discussion, people will disagree on any and all points. Some think of parts while others think of wholes. Both are needed, but the best way to get everyone "reading from the same page" is to list goals and outcomes, and then detail how to get there.
 5. Include all stakeholders. A stakeholder can be defined as anyone whose participation, energy, agreement and volunteerism will contribute to the success of the effort. This creates the "quandary" of trying to get some focus and action while listening to all constituents and stakeholders.
 6. Prepare a schedule that anticipates variations in the discussion sequence. An experienced facilitator learns how to balance a fixed schedule with time and alternatives "built in" for discussions to take their own turn.

Chrislip, David D. and Carl E. Larson. 1994. *Collaborative Leadership: How Citizens and Civic Leaders Can Make a Difference*. San Francisco: Jossey Bass. Pp. 3-14, 52-4.
Summarized by Worrasi Tantinipankul

What is Collaboration?

It is a mutually beneficial relationship between two or more parties who work toward goals by sharing responsibility, authority and accountability to achieve results. The purpose of collaboration is to create a shared vision and joint strategy to address concerns that go beyond the purview of any particular party.

Why?

Because people feel cut out of the process, unheard and unable to see how they can have real impact on public affairs. They want to have their involvement make a difference in the public interests. Government is out of the reach of ordinary citizens and does not respond to the needs of individuals and communities but to the interest groups and power players.

So?

When nothing else works, people begin to collaborate. The collaborative endeavors are engaging people in new ways, providing the role in public life that citizens want, allowing them to have a sense of commitment to their community.

Collaboration in Business

For more than thirty years, major business corporations in U.S.A – IBM, General Motors, Xerox and Kodak – have been losing ground to more efficient, more innovative and more customer-responsive international competitors. Many of those competitors adopted the ideas of W. Edward Deming (Deming, 1986; Walton, 1991) that, instead of relying on hierarchical organizations and detailed production methods to control the workers and products quality, shifted the focus to the process of how employees work together to produce quality products. If workers were trained in working together and trusted each other, they could produce outstanding work.

Collaboration in Education

A major problem in education reform is the complexity of the system: curriculum, how teachers teach, relation of institutes and community, governance and so on. However, the main problem is the failure of implementation and understanding of stakeholders. Ideas cannot be implemented because other reformers and stakeholders block action. The implementation can succeed only if teachers, principals, parents, students, institutions and community members are involved. For example, Boulder Valley School District created school-based community to serve as center for decision making.

Collaboration in Family and Children Services

The loss of economic stability, provision of food and other necessities, and physical safety in families are the current problems in family services. Together We Can, a joint publication of US Department of Education and Department of Health and Human Services, identifies that the system divides the problems of families and children into separate categories and fails to link the solution together. In addition, there is a lack of functional communication among public organizations and private agencies. The key success is a family-centered, comprehensive, integrated and flexible system that tries to solve problems in both children and family system.

Collaboration in Community Health Care

The expert-driven, overly centralized and bureaucratic approach has dominated in the cities' health policy and it is very costly. Collaboration between health-care providers and the private voluntary sectors was minimal and narrow-minded. Health care is not the sole responsibility of providers. The needs of the community have to be revealed and understood. In South Bend, Indiana, Memorial Health System, Mihiana Community and Planned Parenthood of North Central Indiana has worked together as a partnership and has accomplished more than any one of them could working alone.

Collaboration in the “Civic Community”

In the researched comparative study of the twenty government regions of Italy by Robert Putnam, the relative success or failure of each region was not determined by the measures of prosperity but by the degree that civic engagement were woven into the social fabric of the region. Effective civic engagement ensures political equality. A city is defined by Peirce as a region made up of historic center surrounded by cities and towns characterized by social, economic and environmental interdependence. Cities in US need to correct the problem of the inability to create effective systems of coordinated governance, close the gap between poor and rich people and stop the inefficient expansion of wasteful and environmentally damaging suburbs.

Key to successful Collaboration

- Good timing and clear need
- Strong stakeholder groups
- Broad-based involvement
- Credibility and openness of process
- Commitment and/or involvement of high-level, visible leaders
- Support or acquiescence of “established” authorities or powers
- Overcoming mistrust and skepticism
- Strong leadership of the process
- Interim successes and a shift to broader concerns

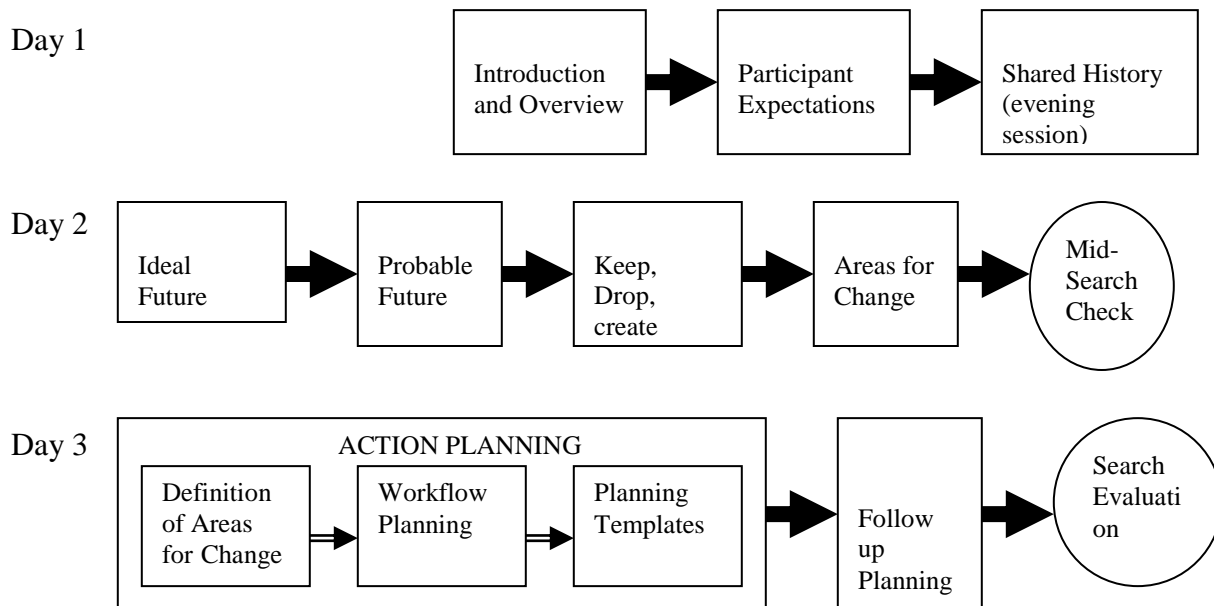
Martin, Ann and Robert Rich. 1999. Searching and Search Conferences. Mimeo. ILR, Cornell University: Ithaca, NY.
Summarized by Frederick Addison

The “search” brings people together to search for a desirable future for their common enterprise. The process uses a structured, systematic framework for a group to find both common and separate ground and, through an iterative series of discussions, discover how to advance their interests toward the desirable common future. The search conference is not an end in itself, but a catalyst for ongoing planning and implementation.

The Process

It proceeds through a series of small and whole group sessions.

Stages of a typical search:



Search Conferences are normally conducted in a socially isolated environment where participants are disconnected from their daily concerns and responsibility. Typically, duration of search conferences are from two and a half days to a week.

Participation

Qualification for participation:

1. Have a genuine interest in advancing the well being of the organization or community on which the search is focused.
2. Be willing to participate in the entire search process.

The conference group should include all of the major functions and interest groups that are important to the planning task. The search is most likely to be successful if people with relevant experience and knowledge, past interest and commitment to improvement, and those with authority and responsibility to act on the outcomes are all represented. It is important that

everyone is given an equal opportunity to participate and contribute since it is assumed that everyone involved has valuable ideas, facts and questions that will help shape the whole.

Conflict and Consensus

The idea of the search is not to resolve conflicts, but rather for people to work together for solutions that will meet their separate interests. The concept of consensus is not an explicit goal, although agreement on certain preferred actions is often an outcome. Discovery of points of collaboration is the real goal of a search.

Outcomes

Outcomes are likely to be general agreement among participants on strategies for meeting the desired future and a preliminary action plan to achieve those strategies.

Preparation

1. Planning group, composed of representatives of community planning search and search managers, meets to clarify search question, set criteria for participation, and to identify all stakeholder groups. Stakeholder groups are asked to select their own representatives to the search
2. Planning group frames question participants will answer when they envision the future.
3. Prior to conference itself, search managers meet with prospective participants to explain the purpose and process of the search and the requirements for participation.

1997. “Building Community and Commitment to the Future: The Search Conference.” CDS Practice, 6: 1-8.
Summarized by Frederick Addison

The search conference is growing in popularity as method for developing community plans and to galvanize action to achieve those plans. It has been used in private industry, government, and communities to produce participative strategic or plans. It is commonly used in large group interventions and is very appropriate for use in community settings.

The structure of search conferences is based on the principles of participative democracy and theory concerning how groups form and work together to accomplish tasks. Four features characterize the search conference:

1. The search for “common ground” regarding the desired future.
2. Focus on the desired future, rather than on solving problems.
3. Group-managed activities including self-management or self-facilitation of small group tasks.
4. Emphasis on action-taking in addition to planning. The intent is for the participants to take responsibility for implementation, even if they personally cannot take all the necessary actions.

Common ground differs from consensus-building. It assumes that there is a shared desired future or some outcomes that a diverse group of people can discover and agree to achieve. Areas of disagreement are not the focus of discussion; they are posted on a “disagree” list. Focus is on elements on which there is virtual unanimity.

Focus on desired future or vision leads to a different dynamic and different actions than does problem-solving. Groups tend to be energized and motivated when they focus on what they want. Actions required to create a desired result are often different from those required to get rid of a problem.

Break-out group discussions are self-managed since it is believed that people are capable of managing themselves and do not need to be guided or managed by others not involved in the content discussion. Conflict may arise, but it is assumed that they are capable of working it out because of the clear focus on a compelling task. This assumption has a practical purpose too: in the future they will not have the luxury of calling in a facilitator whenever they want to have a meeting. It is an opportunity to develop the skill needed and experience the power of the working mode of small groups.

The structure of the search supports the building of a sense of responsibility for the outcomes and commitment. Devoting sufficient time to action planning allows participants to decide what they can do as individuals and as a group to affect the choices they make.

The Process

Criteria to determine whether the search conference is the correct process:

- a. Is the desire of the sponsoring group to develop a stronger sense of community?

- b. Is the desire present that the group or sub-group take responsibility for follow-up, at least on some actions?
- c. Will it be beneficial to have a process that will quickly bring a group to a sense of cohesion and common ground around some key areas?
- d. Is it possible to convene participants for a 2 1/3 to 3 day period?

Preparing for the Search

1. Organize a pre-conference planning group; should include people from various sectors of the community for whom the search is being conducted, not as representatives, but as those who know about the different sectors. Planning group will make decisions regarding the structure of the search, including the focus question itself.
2. Planning group selects whom to invite. There are two schools of thought on how to do this: First – invitees should be people who have knowledge about the search topic and are willing to be responsible for decision making and implementation. Second – when search conference is for a community, it needs to be inclusive, accommodating all who wish to come, including key people with power to influence and implement. An effective approach to identifying the key invitees is a “community referencing system” – asking people in the community or in each sector who should be there. Other approaches include town hall meetings, open forums, etc.
3. Pre-conference planning group tackles logistical questions regarding time allocation, venue, dining arrangements, funds needed and how to obtain them, how to enroll people attending.
4. Identification of conference managers, those who will lead the process. These are usually outsiders because trained people in the community often need and want to be in the search as active participants.

The Search

Generally include the following steps:

- a. Brainstorming (the whole group) about global trends, forces, events; and then working (in small groups before integrating) on agreement about probable and desired futures for the world.
- b. Brainstorming about the “task environment” – those trends, forces, events directly impacting the community or search conference topic.
(a and b above are designed to help people discover they are psychologically similar to other people and develop a “shared psychological field,” both conditions for dialogue.)
- c. History or story telling about personal history in the community. Aimed at bonding people through awareness of their common appreciation of what they liked about their community.
- d. Identifying (in large groups) those elements existing in the community that attendees want to keep, drop and create. The items are recorded on three different sheets.
- e. Work on desirable future of the search topic in break-out groups. Groups are asked to agree to five to seven desired end states that describe what they want in the future.
- f. Integration of the major themes from each group. The themes are clarified and discussed by the entire group before accepted. If agreement is not reached on any theme it is placed on the “disagree list”.
- g. Conduct action planning to develop first steps usually in small groups each working on a theme or element of their greatest interest. All groups develop a vision statement and then identify constraints and strategies to overcome the constraints, then brainstorm and discuss actions to lead to the goal.

- h. All small groups report to the whole search community to discuss next steps, including coordination of activities, follow-up meetings, and how to disseminate the information to those who did not attend.

Potential Benefits and Pitfalls

Benefits

1. Development of a cohesive community that is responsible for and committed to its own future.
2. Encourages or creates space for participative democracy to occur both in the planning and in the implementation.
3. Engenders collective burden of responsibility for the outcomes by avoiding the creation of a bureaucratic form in which committee chairs bear the primary burden of responsibility for the outcomes.

Pitfalls

1. When composition of planning committee does not have the necessary networks to attract the key stakeholders or information sources that need to be there. Only when the appropriate people are in the search can significant action occur afterwards.
2. When the search question does not appeal to the interest or and attract people.
3. The potential of under representation or over representation of certain segments of the community due to lack of diligent effort to broaden the recruitment process.
4. The problem of inclusivity when dealing with very large groups and their associated logistical and management problems.

Fontana, Andrea and James Frey. 1994. Interviewing: The Art of Science. Pp. 361-376 in *Handbook of Qualitative Research*. Edited by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage.

Summarized by Lynn M. Ross

Structured Interviewing

This type of interview involves a trained interviewer asking each respondent the same set of questions in the same sequence. There is little room for variation in response and all information is recorded by the interviewer according to an established coding format. In order to maintain the structure of the interview it is very important that interviewer adhere to the following guidelines:

- Never get involved in long explanations of the study
- Never deviate from the study introduction, sequence of questions, or question wording
- Never let another person interrupt the interview
- Never suggest an answer or agree or disagree with an answer
- Never interpret the meaning of a question
- Never improvise

The interviewer must “stick to the plan” while establishing rapport and engaging in interested listening. When errors do occur, they can typically be traced to three sources:

1. A respondent gives a socially desirable answer to please the interviewer, omitting or hiding other pertinent information.
2. Faulty wording in the questions or inappropriate type of questionnaire.
3. Flawed questioning techniques on the part of the interviewer.

Group Interviews

A group interview is not necessarily a focus group. There are several different types of group interview (see table 22.1). Regardless of the type of group interview selected, the interviewer requires a different set of skills than those employed for individual interviews. A group interviewer must:

- Prevent an individual or small coalition from dominating the larger group
- Encourage quiet group members to contribute
- Elicit full participation to get the best coverage of the topic
- Balance the role of directive interviewer with the role of moderator

Table 22.1 Type of Group Interviews and Dimensions

Type	Setting	Role of Interviewer	Question Format	Purpose
Focus group	Formal-preset	Directive	Structured	Exploratory pretest
Brainstorming	Formal or Informal	Nondirective	Very unstructured	Exploratory
Nominal/Delphi	Formal	Directive	Structured	Pretest exploratory
Field, natural	Informal, spontaneous	Moderately nondirective	Very unstructured	Exploratory phenomenological
Field, formal	Preset, but in field	Somewhat directive	Semistructured	phenomenological

Source: Frey and Fontana (in press)

Unstructured Interviewing

The unstructured interview provides a greater breadth than other interview types because it is qualitative in nature. This type of interviewing differs from the structured approach in that it attempts to understand complex behavior without any preset categorization. The goal is to understand rather than to explain. There are some basic elements of unstructured interviewing.

- *Accessing the Site* varies according to the group under analysis, which means the researcher must be flexible and able to adapt to new and changing situations.
- *Understanding the Language and Culture of the Respondents* is critical to understanding the information one is receiving. Use of an interpreter can be helpful, but may also add a layer of meanings, biases and interpretations that lead to further misunderstanding.
- *Deciding on How to Present Oneself* is very important because it leaves an impression on the respondents and can influence the success or failure of the study.
- *Locating an Informant* can be useful because an insider can help the researcher interpret cultural meanings, jargon, and language thus helping the researcher to avoid mistakes and save time.
- *Gaining Trust* is essential, but fragile. The researcher must always be on guard to avoid any faux pas that might jeopardize or destroy established trust.
- *Establishing Rapport* is key given that the goal of unstructured interviewing is to understand. A close rapport allows for more informed research but may also lead to a loss in objectivity on the part of the researcher.
- *Collecting Empirical Materials* in the field can be difficult, but the researcher should try to following this advice regardless of the circumstance: (a) take notes promptly and regularly, (b) write everything down, (c) try to take notes inconspicuously, and (d) analyze your notes frequently.

Other Types of Unstructured Interviewing

Oral History: Similar methodology with unstructured interview, but different purpose. Used as a way to capture information about groups and individuals that have been ignored, oppressed, and/or forgotten.

Creative Interviewing: Similar to oral history, but the interviewer adapts to ever-changing situations and does not use formal “how-to” rules. These reports go beyond the length of conventional unstructured interviews and may become “life histories” captured during multiple sessions with the respondent.

Postmodern Interviewing: Concerned with minimizing the interviewer’s influence on the methods of collecting data and reporting findings. Methods include:

- Polyphonic: Voices of subjects are recorded with little influence from the researcher. The information is presented as multiple perspectives on a variety of subjects rather than as one collapsed report which glosses over the differences and problems discussed.
- Interpretive: Similar to polyphonic and creative interviewing. Attempts to capture epiphanies- moments in people’s lives that are transformational experiences.

- **Critical ethnography:** Relies on critical theory and accounts for the social, economic, and historical situations. Attempts to broaden the political dimensions of cultural work while undermining the existing oppressive systems.
- **Oralysis:** Traditional interview coupled with visual images captured via video recording.

Gendered Interviews

“Gender filters knowledge”

The traditional interview paradigm (a masculine paradigm) does not account for gender differences, but the sex of the interviewer and of the respondent do make a difference. The hierarchical nature of the interview process places women in a subordinate position and ignores their concerns, personal feeling, and emotions. Traditional problems involving entree and trust are only heightened by the sex of the interviewer. Female interviewers often face the added burden of sexual overtures, covert sexual advances, or are considered low-status strangers.

Addressing the problem

There is a growing reluctance to continue interviewing woman as “objects.” New emphasis on establishing a relationship between interviewer and respondent that minimizes status differences, gets rid of the traditional interview hierarchy, allows for the inclusion of the feelings and emotions of both parties by creating a level of reciprocity. Key principles of this new methodology include:

- Heightened moral concern for subjects/participants
- Attempt to redress the male-female hierarchy
- The paramount importance placed upon membership; effectiveness of men interviewing women largely discredited
- Realization that the “objective, distanced” interview gives us a one-sided, inaccurate picture.

Framing and Interpreting Interviews

Framing involves the types of interview selected, the techniques used, and the ways of recording information. In terms of techniques, consider the following:

- Techniques can and should be varied according to the group being interviewed. The researcher must enter the world of the individuals studied to share their concerns and outlooks.
- The use of language is very important in establishing “sharedness of meaning” and determining the type of question (broad, narrow, leading, instructive, etc.).
- Nonverbal communication (looks, body postures, dress, long silences, etc.) both informs and sets the tone for the interview.

Interpreting Typically readers are presented with the researcher’s cleaned up, streamlined interpretation of the data in a collapsed, rational format. Many studies using unstructured interviews are not reflexive enough about the interpreting process. New emphasis involves a “confessional” style in which researchers reveal the complexities of their work, problematic feelings, and/or sticky situations. Using deconstructionism, the influence of the author is brought under scrutiny. Additionally, the postmodern approach reveals the human side of the interviewer removing the traditional “faceless, invisible researcher” cover.

Ethical Considerations

It might be useful to take another look at our previous readings on ethical issues and consider how they relate to the interview process. Specific issues to consider include: receiving informed consent, the right to privacy, protection from harm, the surreptitious use of tape-recording devices, degree of involvement on the part of the researcher, and the accuracy of the reporting. Many scholars consider most of the traditional in-depth interview techniques to be unethical because they basically amount to manipulating (to different degrees) respondents and treating them as objects.

Concluding Thoughts

An increasing number of researchers are beginning to realize that pitting one type of interviewing against another is counterproductive. A method of triangulation will achieve broader and often better results. Finally, we must remember that to learn about people we must treat them as people.

Morgan, David L. and Krueger, Richard A. 1993. Pp. 1-24 in *Successful Focus Groups*. Sage Publications: Thousand Oaks, CA.
Summarized by Yusuke Matsushita

Some Myths About Focus Groups

1. Focus Groups Are Cheap and Quick

- Focus groups often *appear* to be done cheaply because the research team donates a large amount of labor.
- Although the group itself may last 1 or 2 hours, it takes time to create an effective set of questions, locate the appropriate participants, and make sense of data they provide.
- The reality is that focus groups require planning, effort, and resources.

2. Focus Groups Require Moderators With Highly Developed Professional Skills

- The first-order goals should be to define what the purposes of the project are and who the participants in the groups should be.
- The moderator is the instrument in a focus group interview.
- The key is to find someone who has experience working with groups and who is also capable of working with both the research teams and the participants in the particular project.

3. Focus Groups Must Consist of Strangers

- If making groups composed of strangers, it becomes difficult to conduct focus groups in organizations, communities, and other ongoing social settings.
- To deal with this problem, we should rely on a skilled moderator to meet the challenges posed by such groups.
- We can also minimize the problem by selecting and ordering the questions in the interview guide.

4. People Will Not Talk About Sensitive Topics in Focus Groups

- According to the author's experience, people readily talk about a wide range of personal and emotional topics.
- The overdisclosure of sensitive information is also a problem.
- The researchers must make plans both encourage appropriate self-disclosures and discourage disclosures that go beyond the legitimate aims of the research.

5. Focus Groups Tend to Produce Conformity

- The goals of focus groups are not to make decisions or reach consensus but to find out about participants' experiences and feelings on a given topic.
- A good moderator will try to create an open and permissive atmosphere in which each person feels free to share his/her point of view.
- If the researchers are genuinely interested in learning as much as possible about their participants' experiences and feelings, conformity is seldom a problem.

6. Focus Groups Are a Natural Means of Collecting Data

- The goal of focus groups is to collect concentrated discussions on topics of interest to the researcher, but the discussion of these topics may or may not feel natural to the participants.
- In assessing the naturalness of a set of focus groups, the match between the researchers' topics of interest and the participants' topics of ordinary conversation is often more important than the characteristics of the research setting.

7. Focus Groups Should Not Be Used for Decision Making

- To determine whether focus groups are adequate for making a decision, the researcher should begin by asking how difficult it would be to obtain "better" information.
- We need to consider the consequences of a wrong decision.
- We need to replace a knee-jerk rejection of focus groups as a basis for decision making with a careful specification of when they can provide useful information in a cost-effective manner.

8. Focus Groups Must Be Validated by Other Methods

- If the goal of the research is specification rather than generalization, focus groups and other qualitative methods are likely to be preferred over quantitative methods.
- If the goal is to generate theories or explanations, focus groups and other qualitative methods are appropriate tools.

When Not to Use Focus Groups

1. When the Primary Intent Is Something Other Than Research

- The primary purpose of projects that rely on focus groups is to collect qualitative data to answer research questions.
- Given the purpose, the fact that they are groups means that they may also serve other purposes as secondary functions.
- The researcher must make the secondary purpose clear from the beginning.

2. When a Group Discussion Is Not an Appropriate Forum

- Composing groups that make some participants unwilling to express themselves defeats the purpose of the research.
- Research concerning sensitive topics must be extremely careful in regard to ethical issues, and insufficient attention to these issues is a sure way to dampen the open discussion that is at the very heart of focus groups.
- The protection of confidentiality from other members within the group is important.

3. When the Topic Is Not Appropriate for the Participants

- The match between the researchers' topics of interest and the participants' ability to discuss those topics is essential for successful focus groups.
- A mismatch with the researchers' interest occurs most often when participants have too little involvement in the topic.
- A mismatch also occurs when the participants' involvement with the topic is too high.

- Another problem with inappropriate topic occurs when we assemble the appropriate groups, but then ask inappropriate questions.
- The best match between researchers' and participants' interests happens when they each share the same goals. (working with a variety of question within each groups; working with a variety of different groups)

4. When Statistical Data Are Required

- Focus group samples are usually both unrepresentative and dangerously small.
- The statistical projections should not be made based solely on focus group results.
- Some kind of counting may occasionally be useful in either conducting or analyzing focus groups, but one must always keep the fundamentally qualitative purposes of focus groups firmly in mind.

The Advantages of Focus Groups

1. When There Is a Power Differential Between Participants and Decision Makers

- The interaction that focus groups bring is useful when normal channels between those who hold positions of power and those with no power are sometimes not available, because the interaction allows groups of peers to express their perspective.
- Focus group interviews are especially useful when working with categories of people who have historically had limited power and influence.

2. When There Is a Gap Between Professionals and Their Target Audiences

- Because of the interactions in focus groups, they are a powerful means of exposing professionals to the reality of the customer, student, or client.
- Because the professionals work with the research team to set the questions for the discussions, they can get immediate and vivid feedback about how others respond to their ideas.

3. When Investigating Complex Behavior and Motivations

- When the goal is to modify behavior that depends on complex information flow or a mix of attitudes, knowledge, and past experiences, the focus groups can provide the researcher with a tool that is uniquely suited to the task.
- The interaction in focus groups often creates a cuing phenomenon that has the potential for extracting more information than other methods.

4. To Learn More About the Degree of Consensus on a Topic

- Focus groups have a strong advantage to learn more about the range of opinions or experiences that people have because the interaction in the group can provide an explicit basis for exploring this issue.
- The advantage of focus groups is that the exchanges among the participants help them to clarify for themselves just what it is that their opinion or behavior depends on.

5. When You Need a Friendly Research Method That Is Respectful and Not Condescending to Your Target Audience

- The friendliness of focus groups extends to both participants and to the end users of the research.
- From the researchers' point of view, a successful focus groups project can help to forge a human connection between those who commission a project and those who serve as the subjects of their investigations.

Sheatley, Paul. 1983. Questionnaire Construction and Item Writing. Pp. 181-203 in *Handbook of Survey Research*. Edited by P.H. Rossi, J.D. Wright, and A.B. Anderson. Thousand Oaks: Sage.
Summarized by Mei-Wen Huang

It is important to realize that the questionnaire is simply an *instrument*, a *tool*, to be employed in the study of a research problem. It *may* or *may not* be the most suitable instrument for the task.

Other methods than the questionnaire in survey research are as follows:

- Direct observation / measurement: “counting traffic” / “the Nielsen television ratings”
- Field experiments: the investigator devises a scenario and then records people’s responses to the contrived situation
- Content analysis of newspaper / magazine articles and advertisements

Of course, all these methods have their own weaknesses as does using questionnaires; we should not automatically assume that a brand new questionnaire is the only way to provide the answer to the research problem.

Before deciding to use a questionnaire, we should consider two problems:

- Asking ourselves: “do people have the information?” - A questionnaire can bring out only what is in the mind of the respondent, and this is task enough.
- The willingness or readiness of the respondent to reply - Especially on some topics: drinking, drugs, sexual behavior, income, cancer ...

Standardized questionnaires

A formal questionnaire may not be required when the collected data are not to be handled statistically. *For example:* in interviewing community leaders about some topic of local concern, standardized questionnaire may inappropriately narrow the discussion and prevent a full exploration of each respondent’s views.

On the contrary, if the researcher requires a large sample, if the services of many interviewers will be employed or if the data will be subject to statistical analysis, the task of designing a standardized instrument cannot be avoided.

In this kind of questionnaire, we should notice:

- There must be a *prescribed wording* for each question, so that each respondent receives the same stimulus.
- There must be a *prescribed order* for asking the questions / for the same reasons.
- There must be *prescribed definitions or explanations* to ensure that the questions are handled consistently.

There are some obvious disadvantages:

- People understand the questions differently
- Respondents are forced into what may seem to them an unnatural reply
- Respondents have no opportunity to qualify their answers or to explain their opinions more precisely

- Respondents may feel they have already answered the question when the interviewer asks other prescribed questions on the same topic.

An important consequence of the use of a standardized questionnaire is that, once it is printed, the researcher *is committed to it and can do little or nothing to improve it*. For example: when we conduct a standardized questionnaire, administered by dozens of interviewers working simultaneously in many different locations, the researchers may not even be aware of any problem with the instrument until the field work is largely completed. If they suddenly have some great new thought and now see that an important question has been omitted, they cannot suddenly stop 50 or 100 interviewers and tell them to add the item.

Mode of administration

Many issues of questionnaire design hinge upon the mode of its administration. There are two basic modes: self-administration by the respondent and administration by an interviewer who asks the questions. Each of these can be subdivided or combined in various ways.

Features \ Modes	Self-administration	Administration by an interviewer
Example	Mail survey	Telephone interview
Interviewer	no interviewer is present	Interviewers present
Advantages	Its low cost Collecting data from very specialized and highly motivated groups (ex: opera-goers; members of a professional organization)	A high completion rate Interviewers can be used to reassure respondents, to answer their questions and even to edit their completed questionnaires
Disadvantages	Response rates are generally low with resultant large biases Less-educated persons may have trouble following the instructions Inadequate answers cannot be probed for a more specific or relevant response If respondents are puzzled by an item, there is no interviewer to explain it to them Question order biases may also occur because the respondent can study the whole questionnaire before answering the first question	Cost are high There is also potential bias Such samples are usually inefficient for large-scale research because members of the groups are not independently selected
One obvious distinction	An <i>untrained</i> respondent will fill out the questionnaire; thus, the questions should be kept as simple, short and self-explanatory as possible / the instructions should be brief and clear.	The interviewer will be a <i>trained</i> individual or can use the survey it proficiently under all circumstances.

Type of sample to be interviewed

A second major variable affecting questionnaire design is the type of sample from which data are to be sought. It might be noted that because questionnaires are usually written by educated persons who have a special interest in and understanding of the topic of their inquiries, it is much more common for questionnaires to be overwritten, overcomplicated,

and too demanding of the respondent than they are to be simpleminded, superficial, and not demanding enough.

Qualities of a good questionnaire

A well-designed questionnaire should: (a) meet the objectives of the research; (b) obtain the most complete and accurate information possible; and (c) do this within the limits of available time and resources.

Deciding on content

The following five steps are generally applicable:

- (1) Decide what information is required.
- (2) Draft some questions to elicit that information.
- (3) Put them into a meaningful order and format.
- (4) Pretest the result.
- (5) Go back to 1.

Note that one does not start by writing down questions. The first task, and the hardest, is *to figure out which factors are relevant to the problem*. Most research begins with at least a vague notion of the kinds of information required.

A checklist of variables: Researchers have long sought to codify the various dimensions of public opinion that should normally be covered in survey research. One of the earliest of these was Gallup's "quintamensional" technique.

- (1) the respondent's knowledge or awareness of the issue
- (2) the respondent's interest in the problem or concern about it
- (3) respondents' attitudes toward the issue, the direction of their opinions
- (4) why do respondents feel the way they do? (what are the reasons?)
- (5) how strongly is the opinion held? (what is the intensity of the attitude?)

These five dimensions may seem most applicable to Gallup-type inquiries. Most experts have agreed on these five, but have suggested various others that may also be important in particular cases, such as "respondents' readiness to act" and "perception of others' beliefs." Also, demographic variables such as age, race, or length of residence may be important.

Writing the questions

The *accuracy* and *validity* of our data depend entirely on *the questions we ask* and *the ways in which our respondents perceive and respond to them*.

Open versus closed questions

Survey questions can be classified broadly into two forms: open and closed. Sometimes, researchers make efforts to combine the open and closed forms of question, but this is rarely successful.

Features \ Forms	Open Questions (Open Ended)	Closed Questions (Multiple Choice)
Difference	Ask for a reply in the respondent's own words	Ask respondents to choose one of two or more categories that have been suggested to them
Advantages	allow respondents to answer in their own frames of reference, entirely uninfluenced by any specific alternatives suggested by the interviewer respondents can attach qualifications to their answers or emphasize the strength of their opinions	take less time and cost less money makes coding afterwards easier
Disadvantages	open questions inevitable elicit a great deal of repetitious, irrelevant material respondents will often miss the point of the question the interviewer must then do some sensitive probing to bring respondents back to the subject, to clarify their answers, or encourage them to elaborate takes more time and costs more money	they suggest answers that respondents may not have thought of before they force respondents into what may be an unnatural frame of reference they do not permit respondents to express the exact shade of their meaning
Be usually employed in such cases:	when there are too many categories to be listed or foreseen when one wants the respondent's spontaneous, uninfluenced reply to build rapport during the interview, (following a long series of closed questions that may make respondents feel they have no chance to express themselves) in exploratory interviewing and pretesting, (when the researcher wants to get some idea of the parameters of an issue, with a view to closing up the questions later)	(others than left cases)

Response Categories: closed questions permit researchers to specify the answer categories most suitable to their purposes. Many questions form natural dichotomies and often the researcher will just want to sort the sample into two groups: those who *approve* versus those who *disapprove*, or those who *have knowledge* of a particular issue versus those who *are ignorant of it*. But this provides a poor response distribution. It is worth noting some common response categories that appear on professional surveys ~

- (1) *excellent – good – fair – poor*: useful for state of health / housing / transportation
- (2) *approve – disapprove; favor – oppose; are you for or against; good idea – bad idea*: opinion
- (3) *agree – disagree*: used with a wide variety of statements or propositions
- (4) *too many – not enough – about right; too much – too little – about right amount*: for measuring people's satisfaction with amounts
- (5) *better – worse – about the same*: for comparisons with past or expectations for future
- (6) *very – fairly – not at all*
- (7) *regularly – often – seldom – never*: frequency of many kinds of activity
- (8) *always – most of the time – some of the time – rarely or never*: another measure of frequency

(9) *more likely – less likely – no difference*: A measure of probability of the respondent's action

Some common errors in question writing:

- | | |
|-------------------------------|------------------------------|
| (1) Double-barreled questions | (2) The false premise |
| (3) Vague, ambiguous words | (4) Overlapping alternatives |
| (5) Double negatives | (6) Intentions to act |

Some principles of question writing: “Keep it simple” is the most important. Also, be sure to include demographic questions, and make questions comparable to data available in census and other surveys

Question order and format

After deciding on the content of the questionnaire – the variables to be measured – and after drafting specific items designed to elicit that content, the researcher's next task is to group these questions into some reasonable order and put them into questionnaire format. The first part is an “introduction” explaining the purpose of the survey and requesting an appointment for an interview. (If the introduction prepared by the researcher leads 30 or 40% of the respondents to refuse, it is a bad survey, no matter how well designed the questionnaire is.) Two important facts should be revealed in a standardized introduction: (a) who the survey is for; and (b) what it is about.

- Ordering the question:
- Length of the questionnaire:
- Questionnaire format:

Pretesting

The fourth stage of questionnaire design is to try out the questionnaire on a pretest sample. It is recommended that researchers themselves conduct two or more pretest interviews, and not with their colleagues or family, but *with strangers*, because the best way to learn how to write a good questionnaire is to interview with a poor one.

Pretesting reveals the major difficulties and weaknesses in a questionnaire. Usually 12-25 cases will reveal weaknesses.

Back to the drawing board

After the pretest, the researcher can return to Stage 1 of the questionnaire design process and think through again the kind of information necessary to answer the problem that the survey is intended to illuminate. The researcher can then look at the wording, order, and format of the questions used on the pretest. Timely consideration will enable the researcher to sharpen and refine the instrument to make it ever more efficient in fulfilling its task. (If the survey is using many new questions or techniques invented solely for this purpose, a second pretest is strongly recommended.)

Data-base considerations

At this point, it is essential that one give some attention to the management of the data base that the questionnaire will produce. A set of completed interview schedules is, after all, not the end-product of the survey; those completed schedules have to be coded, keypunched, and rendered into computer-analyzable form.

Other types of instruments and materials

Data collection instruments do not necessarily take the form of questionnaires. Sometimes they are report forms, record sheets, or rating forms that may not ask any specific questions but that provide categories for either the interviewer or the respondent to fill by entering a code, a number, or a written response. *For example:* miles traveled, purpose of trip, expenses (parking, tolls, gasoline, etc.) ...

All such forms and materials require the same careful design as the questionnaire: consideration of the kind of information needed, clarity and brevity in the wording of the various categories or items and in the instructions for their use, logical ordering of the items, an easy format to follow, and actual testing before they are put into final use.

Bouma, Gary D. and G.B.J. Atkinson. 1995. Selecting a Sample. Pp. 137-63 in *A Handbook of Social Science Research*. Oxford University Press: New York.
Summarized by Ching-Fei Hsu

How to Select A Sample

Given that it is impossible to know everything about everyone or all groups, selections must be made.

1. Decide what you want to know. Form a hypothesis Focus it Make it operational
2. Whom do you want to know? What is it you want to know? Identify the population about which you want to know something. (See example in p.140)

Types of Sampling Procedure

Non-random Sampling Procedure

If a non-random sampling procedure is used, one can only hope that those selected for study bear some likeness to the larger group. The conclusions drawn from a study of a non-random sample are limited to that sample and cannot be used for further generalizations.

1. Accidental Sampling

Using what is immediately available.

Advantages: accidental samples are handy, and require little effort; particularly useful for pre-testing.

Disadvantages: The findings of a study are strictly limited to those studied, and the researcher does not know in what ways the sample is biased. There is no way of checking this without doing a study of everyone, or a study of a properly drawn random sample.

2. Accidental Quota Sampling

It partially overcomes the difficulty of an accidental sampling that it is uncertain which aspects of the total population are included and which are not. In an accidental quota sampling, the researcher selects individuals or groups on the basis of set criteria.

Advantages: it is useful when a particular group or characteristic is relatively rare in the population. By setting a quota, and selecting people until the quota is filled, the group or characteristics you want in the sample are there. Also, it is often used due to the pressures of time and budget.

Disadvantages: Although the researcher is assured of the presence of certain categories in the sample, the representativeness of the sample is still not ensured. It is due to that the individuals, or groups, are not selected randomly.

3. Purposive Sampling

Researchers use their own judgement or intuition to select the best people or groups to be studied. Carefully qualify any tentative conclusions you might wish to draw on the basis of a study of a purposive sample.

4. Systematic Matching Sampling

When a researcher wants to compare two groups of very different sizes.

Example: a study comparing female and male headteachers of secondary schools in an area in terms of career satisfaction. There are few female secondary heads in the area, so the researcher would study the entire population. However, the researcher might *select* a sample of male heads who matched a female head in certain features deemed to be important to the consideration of career satisfaction. Disadvantages: representativeness is weak.

Random Sampling Procedure

A random sampling procedure provides the greatest assurance that those selected are a representative sample of the larger group.

1. Simple Random Sampling

Ideal method of drawing a sample; however, very difficult to do. It guarantees that each element (person, group, class, school, etc.) in the population has an equal chance of being selected and that every possible combination of the specified number of elements has an equal chance of selection.

To do this, identify the population from which the sample is to be drawn. Then enumerate and list each element (pr persons, households, car owners, etc.) in the population. Finally, devise a method of selection which ensures that each element has the same probability of selection and that each combination of the total number of elements has the same probability of selection.

Acceptable Compromise: given the virtual impossibility of meeting all these criteria, a number of acceptable compromises have been devised.

Example: you want to study a simple random sample of the 250 first-year English students in a particular university. First, identify the population (i.e. the 250 first-year English students in a particular university). Then, identify and enumerate each element in the population. Finally, select the sample.

The most acceptable form of selecting a sample from an enumerated population involves the use of a *table of random numbers*. Another acceptable form of selection is to put all the names or numbers in a hat and draw out the number required.

2. Systematic Sampling

The selection of every n^{th} case in a list.

Example: you have a list of 400 students in a school and you want a sample of 80. Select the starting-point, then select each fifth element.

Advantages: it provides an acceptable approximation of the ideals of the simple random sampling procedure.

3. Stratified Random Sampling

Identify and enumerate each sub-section or stratum of the population to be studied and draw elements from it by a random sampling procedure. (divide a large group into smaller more finely defined groups)

Criteria used to stratify populations: age, stage in the life cycle, gender, occupation, location (rural vs. urban), size (large school vs. small school). The criterion for stratification will be suggested by your hypothesis.

4. Cluster Sampling

It is developed to deal with large and scattered populations (national samples). First, divide the population into segments. Then, randomly select elements within each segment following identification and enumeration (only the elements in the selected segment need to be identified and enumerated).

Conclusion

Selecting a procedure for your research depends largely on the population about which you wish to draw conclusions. *Example:* if you are happy to limit your conclusion to the students in your class, that accidental sample will do perfectly well.

Random sampling procedures are particularly important in research which aims to assess the attitudes, values, or beliefs of a population.

Determining Sample Size

Several basic issues need to be considered in determining sample size.

1. If statistics are going to be used in the analysis and interpretation of data, there are usually requirements for sample size.
2. The more accurately the data must reflect the total population, the larger will be the sample.
3. The more questions asked, the more controls introduced, the greater the detail of the analysis of the data, the larger the sample will have to be in order to provide sufficient data for the analysis.

Suggestions for student projects.

1. Thirty individuals are required in order to provide a pool large enough for even the simple kinds of analyses.
2. You need a sample large enough to ensure that it is theoretically possible for each cell in your analytical table to have five cases fall in it.

Example: student snack selections (see p.153)

*A dummy table is a table prepared before the collection of data to help to focus the issues of the research, to guide data collection, and to help determine sample size.

Sweet	Fruit	Other

Figure 7.2 A dummy table for the categorization of student snack selection

The minimum sample size would be $3 \times 5 = 15$; but it would still be preferable to have 30 because of the first basic rule.

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. Thousand Oaks, CA: Sage.
Chapter 9: Matrix Displays: Some Rules of Thumb
Summarized by Worrasi Tantinipankul

Matrices and networks are systems for using data. Matrices essentially involve the crossing of two or more main dimensions or variables to see how they interact. They lend themselves to a variable-oriented analysis style and can be expanded to more case-oriented styles. Networks involve a series of nodes connected by links. They lend themselves to a case-oriented, syntagmatic approach that re-creates the “plot” of events over time, as well as showing the complex interaction of variables.

Matrix Elements

We can construct a matrix by considering the character of data to lay out in two dimensions.

1. Descriptive v. explanatory intent. There are two purposes of data. The first one is data to describe what’s there and the second is data to explain why it’s there. The second may be more complex in form of ordering.
2. Partially ordered v. well-ordered. We should look at the order of data in each row and column to see the continuity and relationship of data in the same group.
3. Time-ordered v. not time ordered. Ordering matrix by time can help for analysis of flow, sequences and chronology and create cause and effects.
4. Categories of variables. How you categorize the data. For instance, in groups of doctors, are we sorting doctors by specialty or status? For patients, by age or by symptom?
5. Two-way, three-way. We can subdivide data in each column or row to have clearer display in detail of data.
6. Cell entries.
7. Single-case v. multiple case data. The single case explaining phenomena in an individual or group may be need only a simple row and column arrangement, but in multiple cases, row and column need to serve the cases to provide more data in matrix display.

Entering Matrix Data

The quality of conclusions derived from a matrix cannot be better than the quality of data. A complete matrix cannot be good even though it looks good, if the data were collected poorly.

Rules of Thumb for Data Entry

1. Be clear about the level of data. Higher density and more categories of data make the data display more useful.
2. Remain aware of what you have done. There is always a great deal of selection condensation from the mass of field notes.
3. Use code to locate material. It is important to know where the data came from.
4. Keep an explicit record of the decision rules that we can follow in selection of data.

5. The decision rule must display clearly its association with the matrix.
6. Show the data in matrix even if some are missing.
7. The basic strength of qualitative matrices is the inclusion of the text.

Drawing Conclusions from Matrix data

The matrix can help the analyst understand the data better in situation of research.

1. The matrix is helpful for a quick scan of data, and the researcher can notice what is jumping out from the rows and columns.
2. The matrix can help to draw the first conclusion by noting patterns, themes, contrasts and comparison.
3. Make sure the conclusion is explicit.
4. Check back with the matrix to make sure that conclusions are not oversimplified.
5. First conclusion needs to check back to the written-up field notes.
6. The matrix is useful when we can seek confirmation through the feedback from informants.
7. Researchers need to understand a single case before they go through the cross-cased pattern.
8. In writing conclusions, look for genuinely representative examples of the conclusions.
9. Clarify the conceptual import of the conclusion that may tie into other theories of social behavior.
10. Document conclusion-drawing procedure and ask for an occasional review from colleagues.
11. Be careful about the data that readers will read along with the text

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook, 2nd Edition*, Thousand Oaks, CA: Sage.
Chapter 10: Making Good Sense: Drawing and Verifying Conclusions.
Summarized by Marc Boey

I am covering two sections in my review:

Tactics for generating meaning: These are the strategies for sifting, ordering and organizing ‘chaotic’ data so that they make sense to us. These tactics help us arrange raw data to facilitate better analysis and interpretation.

Tactics for testing or confirming findings: These are the strategies that can verify whether your findings are correct or wrong.

A. Tactics for generating meaning

Miles and Huberman listed 13 specific tactics for sifting, ordering and organizing of data.

No	Tactic	Explanation
1	Noting Patterns	Identifying themes from a seemingly senseless/abstract collection of empirical data. E.g. Noting that many of the MSC buildings uses wood for interior decoration, has <i>ikat</i> or <i>batik</i> prints for decoration, has dome-like structures for their roofs, arches in their structural forms, engages foreign architects, composed of glass and steel, have high-tech gadgets, etc.
2	Seeing Plausibility	Taking leads or pointers that can help you organize your data more effectively. It is a preliminary and exploratory method and needs to be verified by the other tactics listed below. E.g. is there a connection between buildings, which uses lots of wood with those that use has <i>ikat</i> , or <i>batik</i> prints for decoration.
3	Clustering	Grouping and conceptualizing the data; bundling the variables or themes which you have identified earlier. E.g. buildings that uses wood for interior decoration, has <i>ikat</i> or <i>batik</i> prints for decoration can be grouped together because they bear strong local architectural characteristics; those with domes and arches can be grouped separately because they are very similar to those in the Middle East or India; those of glass and steel and with high-tech gadgets in another group.
4	Making Metaphors	Labeling the different clusters of data in meaningful ways that can better integrate the clusters. E.g. traditional architecture; Islamic architecture; modern architecture.
5	Counting	Simply quantifying the data that have been collated above. It is a good way of testing for possible bias, and seeing how robust our insights are. E.g. How many building in the MSC uses dome structures?
6	Making Contrasts/ Comparisons	It is a technique that provides yet another layer of meaning to the data. E.g. Comparing and contrasting buildings designed by local and foreign architects. Are they similar or different?

7	Partitioning Variables	It is another way of clustering data and can occur in the early stages of the process. It depends on your needs. E.g. traditional architecture can be further broken down into Traditional-local such as <i>ikat</i> and <i>batik</i> art forms or tradition-foreign such as Islamic architectural forms.
8	Subsuming Particulars into the General	A more sophisticated level of clustering that entails a deeper analysis or investigation into the often intuitive clustering that occurred earlier on. It is often a theoretical and conceptual activity. E.g. I can take two broad groups of architectural traits - traditional and power (eg mammoth size of buildings) architecture – and regroup them under hegemonic architectural forms. In this case size of buildings and their forms seem to be unconnected at an intuitive level. But deeper analysis finds that they are connected in that both attempt to exert a form of hegemonic control.
9	Factoring	Finding communalities in clusters of data. Almost similar to Tactic No.8.
10	Noting Relations Between Variables	Trying to decipher the relationship between different variables. E.g. Does a foreign architect increases the level of modernity in a building? Does traditional building forms necessary mean traditional building materials?
11	Finding Intervening Variables	Similar to Tactic No.8.
12	Building a Logical Chain of Evidence	This tactic essentially involves linking up the earlier ordered groups of data to reach some supposition. The causal links must make sense in order for them to be viable. E.g. use of wood is a local architectural trait; it is affiliated with Malay cultural tradition rather than those of the other ethnic group; the projects that utilizes wood are government-linked; the government is dominated by Malays; the dominance in the use of wood in the MSC projects is used by the government to assert cultural hegemony over the other ethnic groups.
13	Making Conceptual/Theoretical Coherence	Building theory by connecting the organized data with theoretical constructs from sources outside the primary research. The theories may be from your literature review and may conflict as well as support the findings from your data. E.g. Existing theories of architectural hegemony suggest that ‘size does matter’ and gargantuan structures are symbols of hegemonic control (e.g. the architecture in Nazi Germany).

B. Tactics for testing or confirming findings

Miles and Huberman also listed 13 specific tactics for increasing our confidence in the data.

No	Tactic	Explanation
1	Checking for Representativeness	To take a broad enough sample that can accurately portray a trend. This can be done by increasing the number of case studies, looking for contrasting cases (discussed below), and careful selection of the sampling frame.
2	Checking for Researcher Effects	Two different types of effects: the distorting effect an ‘outsider’ interviewer has on the ‘insider’ interviewee; and the distorting effect an ‘insider’ interviewee has on the ‘outsider’ interviewer.

3	Triangulating	Different type of triangulation: by data source (Which can include places, times, persons, etc); by method (observation, interview document) by researcher (different investigators), by data type (qualitative and quantitative). Using more than one source helps to verify the findings. The aim is to pick triangulation sources that have different biases, different strengths, so they can complement each other.
4	Weighting the Evidence	Understanding that different some data sources are stronger or weaker than others. The objective is to maximize the use of the strong ones and minimize reliance on those that are weak. E.g. data collected later and after repeated contact is stronger than those collected early during entry. The strategy is to keep a good log of data quality issues.
5	Checking the Meaning of Outliers	Investigating deeper into outliers. These cases usually provide evidence that strengthens an original conclusion.
6	Using Extreme Cases	Questioning informants that may have a strong bias. E.g. Soliciting opposition political parties for their views on the MSC landscape. Or policy-makers involved directly in the MSC projects. If the latter criticizes the project then the answer may be very persuasive because you would not expect this administrator to make such a statement at all.
7	Following-Up Surprises	Findings that deviate from your suppositions but offer new perspectives on your research. These ‘surprises’ should be followed up by looking at how they could lead to a new theory or a revised theory. E.g. My initial supposition is that MSC landscape is used to promote culture hegemony. But an informant may reveal information that suggests that the MSC landscape also sustains economic hegemony.
8	Looking for Negative Evidence	Looking for data that opposes your conclusions.
9	Making If-Then Tests	Trying to draw causal relationship between findings and suppositions (?).
10	Ruling out Spurious Relations	Reevaluate and reexamine seemingly causal relationships to verify if it is spurious. E.g. Intuitive assumption that traditional architecture is for preserving national identity. But a deeper investigation may reveal that promoting national identity is not the main goal; promoting cultural hegemony is the real objective.
11	Replicating a Finding	Testing out the findings at other sites/with other case studies. E.g. Are the reasons for the hybrid landscape in Malaysia similar to those in Singapore, Hong Kong, and Jakarta? Will conducting a similar study in these other cities replicate the findings?
12	Checking Out Rival Explanations	Comparing rival explanations on the same subject matter. This helps to eliminate biases if any. E.g. The hybrid MSC landscape results from meeting the conflicting needs of hegemony and economic development. Are there any other explanations for hybrid landscapes?
13	Getting Feedback from Informants	Feeding back findings to informants for verification. This allows informants to confirm the accuracy of the information that is being collected/recorded. May be carried out at the end or during the data collection process itself. E.g. sending a interview summary to the informant.

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. Thousand Oaks, CA: Sage.
Chapter 10: Making Good Sense: Drawing and Verifying Conclusions
Summarized by Worrasi Tantinipankul

C. Standard for the quality of Conclusions

This section is about the question of the liability of conclusions mostly in qualitative method. How can we know that the final findings are good? The basic question of the goodness can be approached from a “Justificatory” point of view. However, many researchers have pointed out that the problem of quality in qualitative studies needs to be understood in its own terms not the justification devices. Many interpretivist researchers suggest that it is not really possible to specify criteria for good qualitative work. Moreover, the effort to do was viewed as expert-centered and exclusionary, and not responsive to contingent, contextual interpretative nature of any case study.

The view of Miles and Huberman is that quantitative studies take place in a real social world and can have real consequences in people’s lives; that is reasonable view of “ what happened” in particular situation. The researchers should not consider the work is unjustifiable. The authors suggest the five main criteria for goodness.

1. objectivity/ confirmability of qualitative work
2. reliability/dependability/auditability
3. internal validity/credibility/authenticity
4. external validity/ transferability/fittingness
5. utilization/application/action orientation

Objectivity/ Confirmability

The basic issues are relevant queries of neutrality and unbiased conclusion

1. Do we feel that we have a complete picture including “backstage” information?
2. Can we follow the process that transforms data to specific conclusion drawn?
3. Are the conclusions linked with the exhibit data?
4. Is there a record of study methods and procedures, detailed enough to be followed as an “audit trail”?
5. Has the researcher been explicit and as self-aware as possible about personal assumptions, values and biases?
6. Were competing hypotheses or rival conclusions really considered? At what point of study?
7. Are study data available for reanalysis by another researcher?

Reliability/Dependability/Auditability

The issues are the consistency, reasonability and stability of the study process and method over the time.

1. Are research questions clear, and are the features of the study design congruent with

them?

2. Is the researcher's role and status within the site explicitly described?
3. Do findings show meaningful parallelism across data sources?
4. Are basic paradigms and analytic constructs clearly specified?
5. Were data collected across the full range of appropriate settings, times, respondents, and so on suggested by the research questions?
6. If multiple field-workers are involved, do they have comparable data collection protocols?
7. Were coding checks made, and did they show adequate agreement?
8. Were data quality checks made (for bias or deceit)?
9. Do multiple observers' accounts converge, in instances, settings or times when they might be expected to?
10. Were any forms of peer or colleague review in place?

Internal Validity/Credibility/Authenticity

Do the findings make sense and provide the real picture of story?

1. How context-rich and meaningful are the descriptions?
2. Does the account "ring true," make sense, seem convincing or plausible, enable a "vicarious presence" for the reader?
3. Does the account render a comprehensive arrangement of local context?
4. Did triangulation among complementary methods and data produce generally converging conclusions?
5. Are the presented data well linked to the categories of prior or emerging theory?
6. Are the findings internally coherent?
7. Were rules used for confirmation of propositions, hypotheses?
8. Are areas of uncertainty identified?
9. Was negative evidence sought for?
10. Have rival explanations been actively considered?
11. Have findings been replicated in other parts of the database than the one they arose from?
12. Were the conclusions considered to be accurate by original informants?
13. Were any predictions made in the study, and how accurate were they?

External Validity/ Transferability

The issue is the transferability of conclusion of a study. Can it be applied to other contexts?

1. Are the descriptions of sample data displayed fully enough to compare with other samples?
2. Does the report examine possible threats to generalizability? What is the limitation that affects sample selection?
3. Is sampling theoretically diverse enough to encourage broader applicability?
4. Does the researcher define the scope and boundaries of reasonable generalization from the study?
5. Do findings include enough "thick description" for readers to assess the potential

- transferability, appropriateness for their own settings?
6. Does a range of readers report the findings to be consistent with their own experience?
 7. Are the finding congruent with, connected to or confirmatory of prior theory?
 8. Are the processes and outcomes described in conclusions generic enough to be applicable in other settings?
 9. Is the transferable theory study explicit?
 10. Have narrative sequences been preserved unobscured?
 11. Does the report suggest settings where the findings could fruitfully be tested further?
 12. Have the findings been replicated in other studies to assess their robustness?

Utilization/Application/Action Orientation

The study needs to provide its goodness to researchers and participants as well as consumers. Are there ethical issues that researchers should consider about consequence of the study? Real people will be affected from research. Who will benefit from the research, and who may be harmed?

1. Are the findings intellectually and physically accessible to potential users?
2. Do the findings stimulate “working hypotheses” on the part of the reader as guidance for future action?
3. What is the level of usable knowledge offered?
4. Do the finding have a catalyzing effect leading to specific actions?
5. Do the actions taken actually help solve the local problem?
6. Have users of the findings experienced any sense of empowerment, of increase control over their lives?
7. Have users of findings learned, or developed new capacities?
8. Are value-based or ethical concerns raised explicitly in the report?

D. Documentation

The problem

This issue is about the report of qualitative research. The researchers in qualitative research should have audiences for process of their research. There are three steps in this.

1. The first audience is researchers to keep track what they had done along the way.
2. The second is the people who are the readers of the report and need to know the result of report. They need to know the reason of analysis.
3. The third is other researchers who may interested in doing a subsequent analysis of data.

Why do we need the report and documentation of qualitative research? Lofland argued that qualitative research seem to lack a public, shared and codified conception of how what they is done and how they report should be formulated. Qualitative studies are rich in description of settling, people, events and processes but often indicate little about the way to get information and almost nothing about how conclusion were drawn. It is difficult to verify that the information is correct. The researchers need to verify their

methodology by the report. Presently, many journals require authors of empirical studies to report their procedures so researchers and readers can track down and use the research data for other analysis.

Suggestion

Lofland and Lofland suggest the explaining the study inception, relation with informants, private feeling and data gathering, data focusing and analysis.

Illustration

The documentation form that Miles and Huberman developed is focused on a single research question issue in first item and asks for the explanation of analysis design to and complete description of procedure as follow.

Qualitative Analysis Documentation Form

In this analysis task, what, specifically, were you aiming to do? (Give context and a short rationale; say whether focus is exploratory or confirmatory; make the connection with earlier analyses.)

Description of procedures. Work sequentially, keeping a log or diary of steps as you go through the analysis. Use a second sheet if needed. If the analysis task changes substantially, use a new form, redoing items 1 and 2 above.

Specific data set in use	Procedural Steps(number each one, explain what was done, and exactly how it was done)	Analysis Operations (enter codes)			Conclusions Drawn From these specific analysis operations; give substance in brief.	Research Comments reflections, remarks on any of the preceding.
		Readying data for analysis	Drawing conclusion	Confirming conclusions		

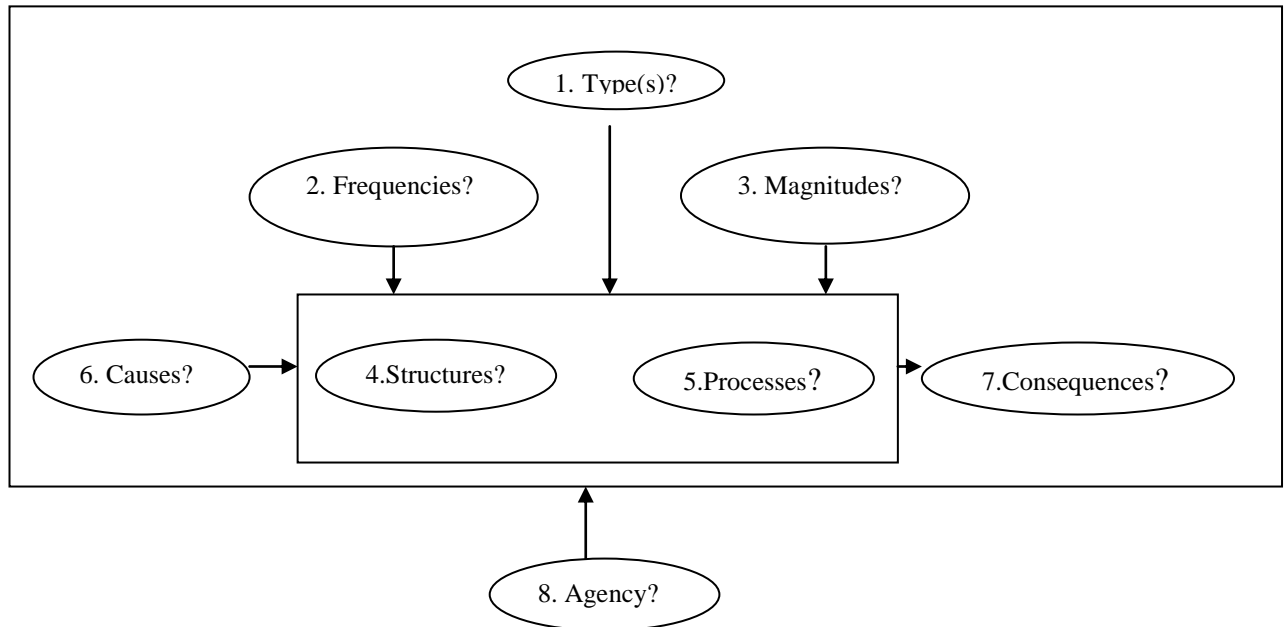
The procedure includes the data sets which analysis was conducted, procedural steps , the decision rule used to manage data, the analysis operations involved, the primary conclusions to which the analysis led, and any concluding comments.

Advice

1. Be clear what is our objective in doing documentation: for study steering and revision, for personal learning, for getting feedback, for actual credit.
2. Remember that audits always have a political dimension.
3. Documentation detail depends on different study focus.

Lofland, John and Lyn Lofland. 1995. *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis*. Belmont, CA: Wadsworth.
Chapter 7: Asking Questions.
Summarized by Frederick Addison

Social analysts commonly pose eight basic questions about social topics. The following figure summarizes the eight types of questions and their relationships:



What are the topic's types?

The Loflands see the definition of the case under study as fundamental and important in any social study. That is, “What is this thing (or things) I see before me?” or “What type of some already identified unit or aspect is it?” Topic types can be Single or Multiple.

Single Types: Social analysis based on, for instance, a single type of practice, relationship, meaning, hierarchy, etc.

Multiple Types: Where for instance one is observing more than one concrete setting, or multi-dimensional case. Example, types of cliques in organizations, associations in a community etc.

Rules of Typing: two basic rules of procedure and outcome guide classification or type schemes.

1. Rule of mutual exclusiveness of categories. Each case must fall in only one category.
2. Rule of exhaustiveness. Classification should allow for categorization of all relevant cases. (Make room for a mixed or other classification)

Typologizing: Where topics under study possess some complex but systematic

interrelation, one can discover what that interrelation is by specifying a small number of relevant variables whose conjoint variations accurately incorporate the patterns you have already discerned (and point out others you have not). This process is called typologizing, dimensionalizing, cross-classifying, or substructuring.

What are the topic's frequencies?

That is counting how often something occurs.

What are the topic's magnitudes?

That is the strength, intensity, or size of instances of an occurrence.

What are the topic's structures?

The question of structures can be viewed as a more elaborated and detailed version of the question of types. That is, what are its more intricate and precise characteristics? Of what more complicated and exhaustive properties and traits is it comprised? Ideal typing is both a prominent procedure for answering and a form of answer to the question of structures. Ideal typing involves the analyst's identification of the components of the structure of the case and some logical structural patterns then using that partial construct to define a potential "pure" or "ideal" type or types. The units and aspects under study present themselves as an incoherent aggregation of infinite aspects and the task of the analyst is to "disaggregate" them to achieve a coherent identification and ordering. For example see Fig. 7.3, page 130.

What are the topic's processes?

Researchers seek to observe and analyze three basic forms of processes:

1. Cycles: "recurrent sequence of events which occur in such order that the last precedes the recurrence of the first in a new series." "Course of operations or events returning upon itself and restoring the original state." Or "A series of changes leading back to the starting point." Social settings tend to be organized in terms of cycles based on the calendar: seasons, months, days and so forth. In addition, there are revolving regularities of a less planned, recognized, and scheduled nature.
2. Spirals: "Continuously spreading and accelerating increase or decrease." Some processes do not show the degree of relative stability seen in cycles, they display a spiral pattern. E.g., tension or conflict between social units that are hostile to one another.
3. Sequences: The most common rendering of process is as a time-ordered series of steps or phases, which is different from cycles or spirals. In sequences the first and last steps are not connected as in cycles, nor is there an accelerated movement to a "stronger" or "weaker" level of operation as in spirals. Investigators tend to trace sequence processes from one of three different starting points.
 - Tracing Back: Perhaps the most common starting point is an outcome. E.g., a person has embezzled money, used a drug; an organization has disbanded. In a tracing-back analysis, the researcher attempts to discern any typical stages through which the actors or action pass in a process that culminates (or does not culminate) in a particular outcome.
 - Tracing Forward: Concern with what happens after a decisive event, e.g. veterans

returning from war, newlyweds adapting to marriage, or communities being hit by a disaster.

- Tracing through: Starting point is to consider the history of the process as a whole. Advantageous in situations lacking a dramatic episode from which to trace forward or backward, e.g. stages of development in adulthood.

What are the topic's causes?

“What are the causes of X?” is perhaps the most frequently asked question in social science. Very elaborate procedures, though often quite difficult to implement in field situations, have been developed to meet the requirements of establishing causality.

Requirements of Causal Inference

Five things are required to say “A causes B” with any reasonable degree of confidence:

1. For whatever you want to find the causes of, you must have instances not only of its occurrence but also of its nonoccurrence (or absence or attenuation). That is, you must begin with a variation in the “dependent variable”, even if not a strong variation.
2. You must have some reliable and consistent way to determine or measure presence or absence, stronger versus weaker, over a set of units that display the variation.
3. You must consider this measured variation in the dependent variable conjointly with some other measured variation that you provisionally think causes it in some sense.
4. The presumed cause precedes the effect in time.
5. The question of whether despite covariation and proper time order, you can ever be really certain a particular independent variable is the cause (or among the causes) of the dependent variable. That is, the problem of “correlation not proving causation.”

The Moral

The techniques and technology of qualitative studies are not the same as those of quantitative studies. Using qualitative guide alone, you will not acquire measured and controlled variations in dependent and independent variables and will therefore not have the systematic data necessary to determine causation. A combination of both qualitative and quantitative procedures is desirable to produce a better causal analysis.

Causation and Conjecture

Given the difficulty in ascertaining causal relations, it is important to recognize that whatever account or explanation you devise is conjecture (hypothesis or theory). It is therefore important to phrase such conjectures in a qualified way. E.g. “It is possible that.....” “It seems to be the case that....” Etc.

The Importance of Auxiliary Causal Accounts

Three reasons why Auxiliary conjectures are not only permissible but also play important and indispensable roles in social science:

1. Quantitative researchers and theorists rely on the conjectures raised by the variations and patterns recorded as a foundation for quantitative research.
2. Members of social settings also make variations and puzzle over their causes. They develop their own hypotheses or theories to account for variations. Researchers who do not comprehend participants’ own causal theories are likely to make profound

errors not only in ascribing causes but also in characterization.

3. Under many circumstances of limited time, money, and topic importance, the causal theories that the qualitative analyst presents may be sufficient to the task. Elaborate quantitative research may contribute only marginal precision.

Forms of Causal Accounts

1. **Single Cause:** A single factor or cause as explaining some variation, which is hardly the case.
2. **List of Causes:** Greater accuracy achieved by developing a series of independent variables that account for a variation.
3. **Cumulating Causes:** Attempt to specify the manner in which factors must accumulate through time and in what certain sequence in order to cause a particular variation. The concern is with successions of dependencies through time or ways in which prior conditions may or may not develop into succeeding conditions of a given outcome.

Situational vs. Dispositional Causes

To a social analyst, the appropriate content of variables to stress in a causal account is situational or social organizational. That is, the social researcher seeks the explanation of variations in behavior in situations and social organization rather than in physics, biology, psychology, or other nonsocial realms. E.g. “Disoriented behavior and heavy drinking, rather than being precipitants of homelessness, are responses to homelessness.”

What are the Topic’s Consequences?

Consequences can be seen as the second half of the causal question. Here the dependent variable becomes an independent variable and we attempt to look at its dependent variable consequences.

Requirements of Inferring Consequences

Similar to requirements of causal inference: (1) a variation that you can (2) measure (3) in covariation with another relevant variable, and in (4) the appropriate time order, and (5) you must control for spurious associations.

Consequences of What, for What?

Consequential accounts typically depict relationships between a given central topic and one or several affected topics. A procedure for tracing consequences is to decide on a specific topic and then survey other topics (units and aspects) in terms of the effects the central topic has on them. However, your actual analysis of consequences must take into account such constraints as the amount of relevant data you have and how interesting the things you have to say about them are.

Consequences and Systems Needs: Functionalism

One special form of consequential analysis assumes that the unit of analysis is a social system, an integral whole that is striving to maintain itself in its current state. Analysts, therefore, look for the contribution that various parts of the system make to maintaining the larger whole. However, analyses can be done without positing the existence of a social system with functional needs. Moreover, consequences analysis need not focus

only on effects that maintain a social arrangement. It could focus on consequences that bring change in the arrangement.

Consequences Distinguished from Intentions

Consequences and functions of social activity are not necessarily direct results of intentions of participants.

What is Human Agency?

Passivist vs. Activist Images

The seven foregoing questions illustrate the passivist conception of humans and social life. In this view humans are treated as more or less neutral media through which social forces operate and out of which social forms and organizations are composed. In the activist view, the focus is on how people construct their actions in various situations, on how their activity is pieced together, thought about, tried out, and worked out.

Activist Questions

Once you understand this activist-passivist contrast, the procedural question for doing actual research then becomes how to develop an analysis that implements the activist image. In the activist approach the central question used to focus data is “What is human agency?” or “What are people’s strategies?” This can be divided into two questions, namely

1. What is the situation being dealt with?
2. What strategies are being employed in dealing with that situation?

People do not just act blindly, they often construct their actions to deal with situations. The activist analyst is therefore concerned with deciphering and depicting exactly what sort of situation the participants are facing. Reports answering the agency question tend to be organized into two sections, one of which analyzes the situation and the other the strategies.

Humans devise strategic social arrangements but then lose sight of that fact over time because the “structure” presents itself as an “object” (objectivation). The human agency question is one way to “deobjectify” social arrangements. In deobjectivation we come to realize that no social arrangement simply “is.” Rather, arrangements are incessantly fabricated and this can be seen by decomposing them into their strategic components. By asking the “strategy question” you can achieve a better causal understanding of many social events.

Lofland, John and Lyn Lofland. 1995. *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis*. Belmont, CA: Wadsworth.
Chapter 8: Arousing Interest.
Summarized by Hallie Salem

Chapter 8 examines features of a report that make it more interesting. There are three classic features of a report that arouse interest:

- the report is true or accurate,
- the report is new, and
- the report is important.

Social Science Framing

- A. True: the report must give the reader confidence that the material is accurate
Three validating criteria:
1. Theoretical Candor – candid exposition of when and why the author came to employ the particular form of analysis that organizes the facts
 2. The Ethnographer’s Path – the author reports with whom he or she interacted, in what sequence, and how
 3. Fieldnote Evidence – the author reports procedures for assembling and processing data and the practices of presenting the data
- B. New: the author does not waste the readers time by repeating already established ideas
1. Relating to Existing Work – the approach differs in some way from existing work
 2. First Report – the report documents a new formation or practice
 3. Unusual Setting – the social situation or setting is different, strange, etc.
- C. Important: there are five framing practices that tend to prompt the response “that’s important”
1. Questioning Mindset – There is no final word, there is nothing that should not be doubted, and everything must be examined...
 2. Propositional Framing – The purpose of asking questions about topics is to develop social science answers or propositions
 3. Generic Concepts – seeks to specify abstract propositions of which the historical particulars are instances (rather than reported as chronological activities). The historical uniqueness of the context is not denied, but other patterns are emphasized. To develop generic conceptualizations, authors may use metaphors, irony, or new forms:
 - a. metaphor – ex. The Catholic Church is the General Motors of religion.
 - b. irony – a state of affairs or events that is the reverse of what was or was to be expected: a result opposite to and as if in mockery of the appropriate result
 - c. new forms – new variations on established types of social units or aspects, but don’t rediscover what is already well understood.
 4. Developed Treatment – developed along three dimensions
 - a. conceptual elaboration – the author presents evidence of having given

detailed thought to one or more propositions used to structure and analyze the data. One must be sure not to underelaborate or overelaborate

- b. balance between conceptual theme and presentation of data – suggestion: somewhat more than half of the pages of an article should consist of qualitative data, and less than one half of the pages of analysis
 - c. interpenetration – the continuing and intimate alternation of data and analysis within the text. It is the logical consequence of a thorough working through of the data in analytic terms
5. Resonating Content – the degree to which the content reverberates with and evokes existential concerns. The audience asks: does it strike a responsive cord? Does it inform understanding of events and experiences within our world? Consider: is it important to you? Is it more than a fad?

Social Science Value Commitments – the social science approach embraces a number of moral and value positions:

- A. Humanism and Liberal Science are the value perspectives in which social science is rooted
- B. New Perception – strengthens our ability to recognize general patterns. The process of inquiry is never final
- C. Demystification and Reform – “unshrouds” the special knowledge and powers of social scientists, and widens people’s perceptions
- D. Human and Moral Complexity – appreciates human complexity rather than designating people as the good guy or bad guy based on their situation.
- E. Larger, Dispassionate Understanding – tries to be reasonably dispassionate or judicious and calm in examining and reexamining all data and concepts patiently and carefully. Field studies and their appearance in generic consolidations can enlarge and deepen how larger audiences understand their experiences and those of others.

Other Framings:

- A. Mainstream Improving – Large, mainstream audience – policy research, posed by authorities
- B. Radical Liberating – the researchers adopt a vantage point of the disadvantaged or oppressed, as in participatory research
- C. Villain Pillorying – utilize public records (mainly) to identify and harm a reprehensible person or group
- D. Expressive Voicing – tries to give a voice to those being studied

Lofland, John and Lyn Lofland. 1995. *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis*. Belmont, CA: Wadsworth.
Chapter 9: Developing Analysis
Summarized by Lynn Ross

Analysis is viewed as an inductive and emergent process. That is, the researcher is the central agent guided by data, topics, and questions to an analysis that answers questions by ordering the data. Chapter 9 presents six overall categories of strategies aimed at helping the researcher achieve analysis. The authors stress that there is no single way to achieve analysis, and therefore any approach taken should be flexible.

Strategy One: Social Science Framing

The researcher should have the goal of presenting their data within a social science framework, that is devising an analysis that is empirically true. Propositions can be used to “sum up and provide order” to the data. There are eight formal kinds of propositions (detailed in Chapters 7 and 8): type, frequencies, magnitudes, structures, processes, causes, consequences, and agency.

In keeping within a social science framework, the researcher should remember when writing that they are not preparing a traditional term paper. A term paper focuses on a “review-summary” approach, whereas a fieldwork report is based on an “analysis-report” approach.

Finally, the research must decide how many propositions to develop during the course of the project. This decision depends on several factors:

- (1) how long one is in the field and how much data one collects;
- (2) the stage of the project we are talking about; and
- (3) the number and the scale of the reports one plans and completes.

Strategy Two: Socializing Anxiety

“Formulating potential major propositions from your data is an emergently inductive activity.” The open-ended nature of this activity is likely to produce some amount of anxiety or frustration in the researcher. There are, however, ways to manage this anxiety. First, accept that this type of work is neither mechanical nor easy to do. Second, persistently work at data collection. “The sheer accumulation of information is itself anxiety-reducing because it ensures that you will, at minimum be able to say *something*.” Finally, have faith that you will be able to generate a proposition to answer one or more of your research questions. Participating in a seminar of peers can aid in this process.

Strategy Three: Coding

The word (or short set of words) you apply to an item of data in answering questions is a code. “Coding and memoing (discussed in the next section) are the core physical activities of developing analysis.” The point is to group the raw data items into “packages of items that are related to one another.”

Physical Methods

1. **Filing:** Prior to the use of computers, the researcher employed an expanding set of file folders with code names to analyze data.
2. **PC Databasing:** Uses the same logic as file folders, but increases the speed and efficiency with which data can be coded. The authors warn that the technology does not necessarily lead to better analysis.

Types of Coding

1. **Housekeeping:** this type of coding supports the analytic process by recording the facts necessary for later analysis. Although somewhat mundane, this type of coding is critical in locating information, maintaining chronology, and providing the basis for further analysis.
2. **Analytic:** this is the central coding task. The goal is to generate as many separate codes and files as one is prompted to which may include multiple codes for a single item. This process involves engaging regularly in the activity of coding. The sheer number of codes may lead to category saturation (a code requiring no further analysis) or subdivision (further elaboration of a code).
3. **Fieldwork and Analysis:** this type of coding documents the process of the fieldwork itself because the final report should contain an “account of the pertinent aspects” of the field experience.
4. **Maintaining a Chronological Record:** a chronological set of materials is useful for locating information not readily available in another file, providing historical context, and providing a stimulus to thinking about larger patterns and units of analysis.

Stages of Analytic Coding

1. **Initial Coding:** the researcher determines what can be defined and discovered from the data. These observations are numerous and varied.
2. **Focused Coding:** in this process, less productive codes are weeded out in order to focus on the most useful codes. The selected codes are then applied to an increasing array of data. The weeding out and refocusing process is repeated until some codes become overarching ideas or propositions that will be central to the analysis.

Strategy Four: Memoing

Memos are the written “explanations and elaborations of the coding categories.” The eventual goal of memoing is to aid the researcher in developing a coherent analysis. There are three kinds of memos that aid in achieving this goal:

1. **Elemental:** a detailed, but succinct, analysis of a very specific subject matter. A researcher may write one to several dozen memos of this type.
2. **Sorting:** analyzes several or all of the elemental memos to achieve a higher level of “abstraction or generalization.”
3. **Integrating:** used to explain the connections between the sorting memos. There may be several possible modes of integration, however it may not be feasible to develop and write up more than a few of them.

Strategy Five: Diagramming

“The word diagram is both a noun and a verb. A diagram is an object or a product *of* analysis and *to* diagram is an activity or process *in* analysis.” The diagram should be a succinct visual display of the relationship between concepts. There are four techniques that may be used to accomplish this:

1. Typologizing: the central feature is the cross-classification of two or more ideas, concepts, or variables. Typologies can be tools of production as well as a product or end result.
2. Matrix Making: detailed in Chapter 6, a matrix is a more complicated typology or cross-classification.
3. Concept Charting: although these charts often do not appear in the final report, this charting strategy can be useful for visualizing relationships between concepts. This technique can be accomplished on a single sheet of paper, by using classroom blackboards, or even by tacking notes to the wall.
4. Flow Charting: same basic features of concept charting, but illustrate an “order of elements through time or in a process.”

Strategy Six: Thinking Flexibly

The computer can be an excellent resource for data collection and storage, but is generally not appropriate for data analysis. Data analysis involves a level of flexibility and creativity not allowed for in computer applications. The authors suggest several devices that may help the researcher to “think flexibly.”

- Rephrase your question using synonyms and antonyms.
- Change your diagram design.
- Constantly compare the items under analysis.
- Think in extremes and opposites to make better comparisons.
- Talk *and* listen to your peers.
- Remember to draw back and look at the big picture.
- Withhold judgment about the final shape of the analysis for as long as possible.

Tashakkori, Abbas and Charles Teddlie. 1998. *Mixed Methodology: Combining Qualitative and Quantitative Approaches*. Thousand Oaks, CA: Sage.
Pp. 112-36, Alternatives to Traditional Data Analytic Strategies.
Summarized by Chih-hung Chen

This chapter has discussed three types of data analysis: traditional quantitative data analysis, traditional qualitative data analysis, and strategies for mixed QUAL-QUAN.

Traditional quantitative data analysis

Descriptive methods: the most commonly used methods of descriptive data analysis and presentation are

- Measures of central tendency
- Measures of relative standing
- Measures of association/relationship between variables

Inferential method is to estimate the degree of variation. In addition, the methods of data analysis provide information regarding the magnitude of the effect, or the relationship. A brief summary of this method is as follows.

- Testing differences between group means:
 - (a) comparing the mean of a sample with the mean of a population: z-test
 - (b) comparing the means of two samples: t-test
 - (c) comparing the means of two or more samples or comparing means in factorial designs: analysis of variance (ANOVA)
 - (d) comparing the means of two or more samples while controlling for the variation due to an extraneous variable: analysis of covariance (ANCOVA)
- Determining if correlation coefficients are truly different from zero:
 - (a) t-test for the significance of Pearson r from zero
 - (b) F-test for the significance of multiple correlation
 - (c) t- or F-test for the significance of slopes in multiple regression analysis.

Traditional qualitative data analysis

A priori themes analyses. Three examples of a priori themes analyses: simple variance analysis, manifest content analysis, and the effects matrices of Miles and Huberman.

Simple variance analysis: the researchers used a coding scheme in which two raters analyzed a sample of the responses and coded each response into three predetermined categories.

Manifest content analysis: a research technique for the objective, systematic, and quantitative description of the manifest content of communication. Examples include the analysis and comparison of textbooks, popular magazines and newspapers, writings of the classic authors, and political speeches. Once the content has been selected using appropriate sampling techniques, a coding or classification system needs to be developed for analyzing the content.

The effects matrices of Miles and Huberman: Miles and Huberman (1994) presented qualitative data analysis as having three parts.

- Data reduction, or taking the raw data and simplifying and transforming them using the aforementioned codes.
- Data display, which is displaying the data in an organized assembly of information that permits the drawing of conclusions.
- Conclusion drawing and verification, or deciding what everything means and determining the validity of those conclusions.

An emerging themes analysis

Three examples of emerging themes analyses: latent content analysis, constant comparative analysis, and the developmental research sequence.

Latent content analysis: the latent content of a text is determined by a subjective evaluation of the overall content of the narrative.

Constant comparative analysis: this analytical scheme involves two general processes. (a) unitizing, or breaking the text into units of information that will serve as the basis for defining categories, and (b) categorizing, or bringing together into provisional categories those units that relate to the same content, devising rules that describe category properties, and rendering each category set internally consistent and the entire set mutually exclusive.

The developmental research sequence: there are three stages of data gathering and three stages of data analysis.

1. Broad descriptive questions are asked.
2. Data based on responses to these descriptive questions are analyzed using domain analysis.
3. Structural questions are then asked.
4. Data based on responses to structural questions are analyzed using taxonomic analysis, which shows the relationships among all included terms in a domain.
5. Contrast questions allow the ethnographer to discover the dimensions of meaning that informants employ to distinguish events and objects in their world.
6. Data based on responses to these contrast questions are analyzed using componential analysis, which involves the systematic search for the attributes or components of meaning associated with cultural scenes.

Strategies for mixed QUAL-QUAN data analysis

Summary of mixed data analysis strategies:

1. Data transformation: the conversion or transformation of one data type into another so that both can be analyzed together.
2. Typology development: the analysis of one data type yields a typology that is then used as a framework applied in analyzing the contrasting data type.

3. Extreme case analysis: extreme cases identified from the analysis of one data type and pursued via analysis of data of the other type, with the intent of testing and refining the initial explanation for the extreme cases.
4. Data consolidation/emerging: the joint review of both data types to create new or consolidated variables or data sets, which can be expressed in either quantitative or qualitative form. These consolidated variables or data sets are then typically used in further analysis.

Summary of alternative mixed method data analysis strategies:

1. Concurrent mixed analysis: simultaneous analysis of QUAL and QUAN data.
 - (a) Concurrent analysis of different data: parallel mixed analysis
 - (b) Concurrent analysis of the same data: quantitizing
 - (c) Concurrent analysis of the same data: qualitizing
2. Sequential QUAL-QUAN analysis: Qualitative data analysis followed by confirmatory quantitative data collection and analysis.
 - (a) Forming groups of people/settings on the basis of qualitative data, comparing the groups on QUAN data.
 - (b) Forming groups of attributes/themes through QUAL analysis, followed by confirmatory QUAN analysis.
 - (c) Establishing a theoretical order of relationship/causality through exploratory QUAL analysis, confirming the obtained sequence through QUAN data and analysis.
3. Sequential QUAN-QUAL analysis: Quantitative data analysis followed by qualitative data collection and analysis.
 - (a) Forming groups of people/settings on the basis of QUAN data, comparing the groups on QUAL data.
 - (b) Forming groups of attributes/themes through exploratory QUAN analysis, confirming with available/new QUAL data and analysis.
 - (c) Establishing a theoretical order of relationship/causality through exploratory QUAN analysis, confirming the obtained sequence through QUAL data and analysis

Miles, M.B. and Huberman, A.M. 1994. *Qualitative Data Analysis: An Expanded Sourcebook*. Thousand Oaks, CA: Sage.
Chapter 12: Producing Reports.
Summarized by Worrasiit Tantinipankul

Form of reporting

The conventional formats of quantitative research such as those displayed below are too structurally constraining.

- Statement of the problem
- Conceptual framework
- Research questions
- Methodology
- Data Analysis
- Conclusions
- Discussion

Many researchers may not follow the format above and may reorganize these items to match the research character. We cannot have a fixed set of reports but may provide choices for reporting.

- The qualitative studies do not report data but rather describe scenes.
- The reports are not the compilation of accurate data but rather outline forms of analysis of the materials.
- The reports may deal with the form of analytical processes and the results because the data analysis includes selecting, condensing and transforming data.

Audiences and Effects

The responses of a specific audience group can be a part of report process because they observe the original setting, see the evidence, weigh the writer's interpretation and note the way they change. So by this way we can separate the types of reader as below.

- Local respondents who give data
- Program operators who evaluate and run the study
- Practitioners who have the same type of work but different settings
- Other researchers who are in committee or academic field
- Policy makers
- General readers who purchase the trade book
- Mass readers who see the article in magazine

Effects will differ depending on type of readers: Aesthetic, Scientific, Moral, and Activist. What effect the researchers intend for which type of readers must be considered. For dissertation committee, the stance will be effects of the theoretical and methodological advancement. For policy makers and readers, the moral clarification and illumination may be better.

Voices, Genres, and Stances (Perspective toward reader)

We can detect the tone and standpoint of research that defines the relationship between writer and reader. The data is the same but the report will describe the story in a different tone. It is your choice to report.

- Realist: portray the fact
- Confessional: write from field worker's view point with personalized authority
- Impressionist: personalized aiming to link reality and the field-worker to reliving the experience.

Style – Formats and Structures

Analytic mix. Good qualitative research needs to be a mixture of two interactive views

- Analytical view: matrix form
- Synthetic view : network display

Conventional data analysis can be viewed in these two ways

- Propositional thinking: formal and theoretical interpretation.
- Figural thinking: holistic reasoning

The structure of qualitative research is composed by two thoughts and depends on their composition to make the research interesting

- Descriptive idea: story setting, events, scene and episode.
- Analysis idea: conceptual framework, determination of the factors that construct themes

Structure outline: each researcher must use a specific structure that fits into the local and intellectual context of particular study such as choosing climax first or last. However, the basic is the following:

- What? Introduction, background
For my project, it is Preservation Planning for Rattankosin island, the inner historic District of Bangkok.
- Why? Rational, concept, framework, core and theme of the report
For my project, it is a question that why preservation effort did not work successfully in this area? or What happen in the past make preservation of national identity is so weak in Thailand? or What is the social factor that makes it weak? What is the current condition of the place? How can preservation be fit in the context of Thai culture and Buddhism in modernity?
- How? Methodology
For my project, it is a question that how can I know all information of Thai political and social history? How can I know the attitude of governmental agencies, Buddhist monks, local communities toward historic preservation and national identity? Who I must interview and what will the case studies take place? What is the attitude of monk for preservation of temple and the modern use of temples in community? Do they agree to preserve the old building or build the new one instead? Why? If they don't. What are the attitudes of the major supporters of temple for the role of monks in their everyday lives? both local and non-local. What is the attitude of different governmental agencies in practice of preservation?
- Analysis

My analysis will determine what is the factor that shape historic place and affect the historic preservation in Buddhist culture? What is the mechanism that can facilitate historic preservation planning in present time and what the attitude in all parties in preservation should be? What is the proper attitude for preservation and national identity that should be considered?

- **Meaning, conclusion**
The historic preservation planning of Buddhist heritage in Rattanakosin Island that sustainable and suitable for promoting national identity in modern society.

Advice to guide report structure is as follows:

- The report should describe what the research is about
- The report should communicate a clear context of setting and data
- The report should tell history of inquiry and key concept that emerge from the inquiry
- The report should provide the data in focused form
- The report should describe the conclusions clearly and show the broader idea that conclusion can apply and affect

Using Reports

The report should be effective to the real audiences at various levels of consciousness and should vary with different kind of audiences.

Level of diffusion	Innovator with special interest	Key players or leader of opinion	Majority of audience	Everyone who might be affected
Awareness				
Reception of message				
understanding				
acceptance				
adoption				
utilization				
integration				
routinization				

Morse, Janice M. 1994. Designing Funded Qualitative Research. Pp. 220-235 in *Handbook of Qualitative Research*. Edited by Norman Denzin and Yvonna Lincoln. Thousand Oaks: Sage.
Summarized by Yizhao Yang

In this chapter, Morse identifies and describes some major design issues in the process of qualitative research, including six stages, from identifying a research topic to the write-up of final reports. Some techniques and advice are provided in a sequence that one would use when planning to conduct a qualitative project, and they are summarized as follows:

The stage of reflection

Identifying the topic

The key to selecting a qualitative research topic is to identify something that will hold one's interest over time. The research questions (topics) can be a) real personal interests, b) problems noted in the course of practice or experience in every day life, c) research topics suggested at the end of a published article, as well as d) those derived from literature reading.

What should the researcher do at this stage -- Having identifying a topic, the researcher's next step is to go to the library to read in the general area of the research topic. The researchers should let him/herself become familiar with the literature, with what has been done generally in the area and with the "state of the art". Some advice provided in this Chapter includes a) it is inappropriate to spend too much time in the library at this point, b) it is wise to avoid chasing obscure references.

Identifying Paradigmatic Perspective

Three "postures" underlying qualitative research: theory-driven, concept-driven, and "reform-focused" or "problem-focused".

"Theory-driven" or "concept-driven" should be understood in the light that the theory is used to focus the inquiry and give it boundaries for comparison in facilitating the development of the theoretical or conceptual outcomes, rather than to guide data collection and analysis. "Reform-focused" or "problem-focused" ideas are typical in critical theory research, in which the underlying purpose of the research is political, with predetermined goals.

What should the researcher do at this stage – Examine the research questions in light of the expected results, considering the potential audience and aims of the research. Place the study in the broader picture, which will help refine the question and the focus of data collection and analysis, and guide the style of presentation of the final report.

The stage of planning

Work at this stage involves many elements, including selection of a site and a research strategy, the investigator's preparation, creation and refinement of the research question, the writing of the proposal, and if necessary, obtaining clearance from an institutional review.

Selecting a site

When selecting a site, the researcher should consider the tolerance from administrators on the site, the possible participation of the staff, the amount of time needed for negotiation for entry, as well as the availability of resources. Selecting of more than one site is suggested for purpose of comparison. One warning is provided in this chapter that it is not wise for an investigator to conduct a qualitative study in a setting in which he or she is already employed and has a work role.

Selecting a strategy

The research strategy is determined by the nature of the research question. Morse has tabulated five major qualitative research methods (p224); each of them offers a particular and unique perspective that illuminates certain aspects of reality and produces a type of results suited for certain applications.

Methodological Triangulation

To use more than one method within a project is preferred because by doing so the researcher can gain a more holistic view of the setting. The triangulation in methodologies can be the simultaneous or sequential use of two or more qualitative methods, as well as the incorporation of quantitative methods into qualitative research.

Investigator preparation

The competence of an investigator determines the quality of the result of a qualitative study. Traits that make a good researcher include (a) flexibility and patience in obtaining trust from informants on the site, (b) versatility in research methods, data collection and analysis, (c) sensitivity in finding clues and interpreting data, as well as (d) good working habits. To build up the wisdom, patience and skills needed for the success of a qualitative research requires practice and experience.

Creating and refining the research questions

The wording of the research question determines the focus and scope of the study. The researcher should make the question as broad as possible rather than prematurely delimit the study with a narrow question. Sometimes it is necessary to refine or even discard original questions when the researcher gets to know the setting and becomes to realize that there is a poor fit between the original questions and the real situation.

Writing the proposal

The proposal should be clear, interesting to read, technically neat, and professional in appearance. Writing a good proposal requires a skill to balance persuasiveness and realism. Before starting to write, one should, with an interesting topic in mind, mentally go through all the steps listed above, including site selection, strategy selection, methodology design, refinement of research questions, and etc. The actual writing of the proposal can begin as soon as decisions regarding the research design and the setting have been made. Morse summarizes basic components of a qualitative proposal (p228). Special attention and suggestion is given to the description of qualitative research methods and budgeting.

The stage of entry

The stage begins after the funding is received. At the beginning, data collection is necessarily unfocused. Researchers need to give themselves some time to get used to and familiar with the setting.

Sampling

Technique that can be employed at this stage to help researchers identify appropriate informants:

1. Primary selection by the criteria that a good informant is one who has the knowledge and experience the researcher requires, has the ability to reflect, is articulate, has the time to be interviewed, and willing to participate in the study.
2. Secondary selection taking place when the primary selection failed and participants are obtained by some other means.

Guidelines for sampling (Patton, 1990, quoted)

The logic and power behind purposeful selection of informants is that the sample should be information rich. The selection methods include extreme or deviant case sampling (participants exemplifying the characteristics of interest are selected), intensity sampling (experts or authorities about a particular experience are selected), maximum variety sampling (a heterogeneous group are selected, and then the commonalties in their experience are observed), and critical case sampling (examples that are significant for the identification of critical incidents are selected).

Bottom-line of all these methods is that the situation of the sample is determined according to the needs of the study not according to external criteria, such as random selection.

Interview techniques

The researchers should start with broad interviews, letting the participants tell their stories, and then use subsequent interviews to get more targeted information.

The stage of productive data collection

This stage begins when the researcher no longer feels uncomfortable in the setting and can relax and focus on what is happening, instead of on him- or herself. This is the stage when the pieces of puzzles are connected and patterns of relationships are uncovered.

Data collection and analysis should be conducted concurrently in order to allow the analysis to guide data collection. Data management methods and tools are necessary during this stage to assure the efficiency of the research. The reliability and validity of data analysis need to be checked. Methods that can be used to ensure rigor in qualitative work include:

1. Criteria of adequacy and appropriateness of data (adequacy refers to the amount of data, appropriateness refers to selection of information according to the theoretical needs of the study),
2. The audit trail (six type of documentation that leave an adequate amount of evidence that can help reconstruct the research process),

3. Verification of the study with secondary informants (confirmation of the findings by informants), and
4. Multiple raters (asking a secondary investigator or someone else to check the validity of a category. This is not recommended by the author*.)

The stage of withdrawal

When the time that the researcher becomes part of the setting comes, the researcher has reached the point of withdrawal. During this stage, the data collection is saturated while data analysis is intense. The model or theory should become more refined.

The stage of writing

The qualitative report must be a convincing argument systematically presenting data to support the researcher's case and to refute alternative explanations. Two main approaches to qualitative articles:

1. To write the article as though the reader is solving the puzzle with the researcher
2. To present a summary of the major findings and then present the findings that supports the conclusion.

When writing, the researcher should consider issues of privacy (revealing identity) and honesty (editing quotations). And finally, the researcher should show some reciprocal gesture to the participants and organizations involved in the research by presenting the results, preparing a summary of the study, or providing a copy of the completed study and final report to relevant agents.

Hollister, Robinson G. and Jennifer Hill. 1999. Problems in the Evaluation of Community Wide Initiatives. In *New Approaches to Evaluating Community-Wide Initiatives Volume 1: Concepts, Methods, and Contexts*. Edited by James P. Connell, Anne C. Kubisch, Lisbeth B. Schorr, and Carol H. Weiss.
Online at <http://www.aspenroundtable.org/vol1/hollister.htm>
Summarized by Mei-Wen Huang and Yusuke Matshushita

The authors outline the types of problems that can arise when an attempt is made to evaluate the effects of community-wide programs, or comprehensive community initiatives (CCIs).

Key Problems in the Evaluation of Community-Wide Initiatives

The Counterfactual

The basic question an evaluation seeks to address is whether the activities generated a change in the outcomes of interest. The problem in this case is to establish what would have happened in the absence of the program initiative. This is often referred to as the *counterfactual*. Indeed, most of our discussion turns around a review of alternative methods used to establish a counterfactual for a given type of program intervention. To those who have not steeped themselves in this type of evaluation, it often appears that this is a trivial problem, and simple solutions are usually proposed. However, these simple solutions are not adequate to the problem – primarily because individuals and communities are changing all the time with respect to the measured outcome even in the absence of any intentional intervention. Therefore, measures of the situation before the initiative or with comparison communities are not secure counterfactuals – they may not represent well what the community would have looked like in the absence of the program.

The Unit of Analysis

For most of the programs that have been rigorously analyzed by quantitative methods to date, the principal subject of program intervention has been the individual. When we turn to community-wide initiatives, however, the target of the program and the unit of analysis usually shift away from just individuals to one of several possible alternatives.

1. Still the individual, but individuals within geographically bounded areas – a defining factor that remains important.
2. The family: many of the recent community-wide interventions seem to have this type of focus.
3. The institutions: e.g. the schools, the police, or the health providers.

The unit of analysis becomes critical because, when using statistical theory, the ability to make statements about the effects of interventions will depend on the size of the samples.

The Problem of Boundaries

For the purposes of evaluation, these boundary problems introduce a number of complex issues:

1. Where the evaluation uses a before-and-after design – that is, a counterfactual based on measures of the outcome variables in a community in a period before the

intervention is compared with such measures in the same area after the intervention – the problem of changes in boundaries may arise. Such changes could occur either because some major change in the physical landscape takes place or because the data collection method is based on boundaries that are shifted. Similar problems would arise where a comparison community design is used for the evaluation, and boundary changes occur either in the treatment community or the comparison community.

2. An evaluation must account for inflow and outflow of people across the boundaries of the community.
3. The limited availability of regularly collected small-area data causes serious problems for evaluations of community-wide initiatives.

Problems with Outcome Measures

In many past evaluations in the social policy arena, the major outcome variables have been relatively straightforward and agreed-upon. *EX*: the level of employment, the rate of earnings. For community-wide initiatives, these traditional types of outcomes may not be the primary outcomes sought, or, even if they are, they may not show detectable effects in the short term.

Therefore, we need to (1) distinguish intermediate outcomes and final outcomes. (2) In addition, there may be types of outcome measures that have not been used traditionally but are regarded as outcomes of sufficient interest in and of themselves, regardless of whether they eventually link to more traditional outcome measures. That might be particularly relevant where the object of the community initiative is a change in institutional behavior. (3) Finally, we would want to make a careful distinction among input measures, process measures, and outcome measures.

The criteria for determining the important outcomes to be measured and evaluated are likely to vary with the audience.

Another dimension of this problem is the degree to which the audience is concerned with the outcomes for individuals versus the outcomes for place.

Establishing the Counterfactual Using Comparison Groups: Selection Bias and Other Problems

Random Assignment as the Standard for Judgment

For quantitative evaluators random assignment designs are a bit like the nectar of the gods. The key benefit of a random assignment design is that, as soon as the number of subjects gets reasonably large, there is a very low probability that any given characteristic of the subjects will be more concentrated in the treatment group than in the control group. Most important, this holds for unmeasured characteristics as well as measured characteristics.

Experiences with Creating Comparison Groups: We now turn to assessing the utility of more feasible alternatives for establishing comparison groups. We compare impact results from studies in which random assignment of individuals was used to create comparison groups with impact results when alternative methods were used to create the comparison groups. (Experiences: 1~11)

1. Constructed Groups of Individuals. Constructed comparison groups of individuals were the most-often used method of evaluation prior to the use of random assignment in large-scale social policy studies and other programs in the 1970s and 1980s.
 - The earliest type of constructed group was a before-and-after, or "pre–post," design. Measurements were made on the individuals before they entered the treatment, during the treatment, and following the conclusion of the treatment. Impacts were measured as the change from before program to after program. This strategy for establishing counterfactuals is recognized as highly vulnerable to naturally occurring changes in individuals.
 - Another strategy for constructing comparison groups is to compare non-participants with participants in a program. This type of design is recognized as producing bias due to selection on unobserved variables. Usually there is a reason why an individual does participate or does not participate in the program—for example, an individual's motivation, or subtle selection procedures followed by the program administrators.
 - A third strategy for creating comparison groups is to use existing survey data to sample individuals for the comparison group. The most commonly used source of information is the U.S. Census Bureau's Current Population Survey (CPS), which has large national samples of individuals.

2. Constructed Comparisons: Institutions. In a few cases, where the primary unit of intervention and analysis has been an institution, attempts have been made to construct comparison groups of institutions. Those procedures come closer to the problems encountered in community-wide initiative evaluations.

3. Comparison Communities. In most cases, the treatment site has been selected before the constructed comparison site is selected. The most common method for selecting comparison communities is to attempt to match areas on the basis of selected characteristics that are believed, or have been shown, to affect the outcome variables of interest. Usually, a mixture of statistical weighting and judgmental elements enters into the selection.
 - Often a first criterion is geographic proximity – same city, same metropolitan area, same state, and same region – on the grounds that this will minimize differences in economic or social structures and changes in area-wide exogenous forces.
 - Sometimes an attempt is made to match communities based on service structure components in the pre-treatment period.
 - Most important is the statistical matching on demographic characteristics. (e.g. the decennial Census, because this provides characteristic information) Of course, the further the time period of the intervention from the year in which the Census was taken, the weaker this matching information will be.

4. Treatment and Comparison Sites Randomly Assigned. There is an example where the treatment sites were not predetermined but rather were selected simultaneously with the comparison sites.

Example: The largest such evaluation is that of the State of Washington's Family Independence Program (FIP), an evaluation of a major change in the welfare system of the State. The evaluators created east/west and urban/rural stratification within the state

in order to obtain a geographically representative sample. Within five of these subgroups, pairs of welfare offices, matched on local labor market and welfare caseload characteristics, were chosen and randomly allocated to either treatment (FIP) or control (AFDC) status. This project's initial results surprised the researchers: utilization of welfare increased and employment decreased, whereas the intent of the reform was to reduce welfare use and increase employment. The researchers do not attribute these counterintuitive findings to flaws in the comparison site method, but that possibility exists. Again, it is doubtful that random assignment of just five matched pairs is sufficient to assure a balance between the treatment group office and comparison office in unmeasured variables affecting outcomes, even though the pairs were matched on several characteristics.

5. Pre-Post Design, Using Communities. Contrasting measurements before and after exposure to the treatment has often been advocated. The attraction of this approach is that the structural and historical conditions that might affect the outcome variables that are unique to this location are controlled for directly.

Often a pre-post design simply compares a single pre-period measurement with the post-treatment measure of the same variables. However, multiple measures of the outcome variable (especially in the pre-treatment period) allow for more reliable estimates of change in the variable. This procedure is often referred to as an "interrupted time-series," with the treatment taken to be the cause of the interruption.

The better the researcher's ability to model the process of change in a given community over time, the stronger is this approach.

6. Problems of Spillovers, Crossovers, and In- and Out-migration. Where comparison communities are used, potential problems arise because of the community's geographic location relative to the treatment site and/or the movement of individuals in and out of the treatment sites and comparison sites.

- Often investigators have chosen communities in close physical proximity to the treatment community on the grounds that it helps to equalize regional influences. However, proximity can cause problems. (1) Economic, political, and social forces often create specialized functions within a region. (2) Spillover of services and people can occur from the treatment community to the comparison community, so the comparison community is "contaminated" either positively or negatively.
- In-migration and out-migration of individuals occur constantly in communities. At the treatment site, these migrations might be considered "dilutions of the treatment." Focusing data collection only on those who stay in the community creates a selection bias arising from both migration processes. Also, it is not clear whether the program treatment itself influenced the extent and character of in- and out-migration.

7. Dose-response Models of Treatment versus Comparison Communities. Sites can vary in the types and/or intensity of treatment, and this variation in dosage can be examined as part of the evaluation. (e.g. teen pregnancy prevention program – three different treatment groups. The absolute changes in numbers in these three treatment groups seem to confirm the "dosage" effect.)

A type of selection bias. Most important, this procedure does not get around the

underlying problem of comparison communities – the questionable validity of the assumption that once matched on a set of characteristics, the communities would have evolved over time in essentially the same fashion with respect to the outcome variables of interest. If this assumption does not hold, then the "dose of treatment" will be confounded in unknown ways with underlying differences among the communities.

8. The Magnitude of Problems with Comparison Communities Methods:

A Case Study: This recent study allows us to get a fix on the magnitude of bias that can arise when comparison community designs of the several types just reviewed are used.

- Data: from the Manpower Demonstration Research Corporation's (MDRC) Work/Welfare studies in several states.
- Comparison communities: In this case, the investigators used the treatment group from the Work/Welfare experiments and constructed comparison groups by using control groups from other program locations or other time periods to construct alternative comparison groups.
- Importance of this study: The study showed substantial differences between the estimated impacts from the true experimental results and the constructed comparison groups. It clarifies the problem of bias arising when comparison groups are constructed by methods other than random assignment, and it points to the severity of the problem. It shows that statistical controls using measured characteristics are in most cases inadequate to overcome this problem.

It has long been recognized that counterfactuals obtained by using constructed comparison groups may yield biased estimates of the true impact of a program. What is important about this study is that it demonstrates that various types of constructed comparison groups yield substantially biased estimates. These real-life experiments demonstrate that investigators could have been seriously misled in their conclusions about the effectiveness of these programs had they used methods other than random assignment to construct their comparison groups. Moreover, we must keep in mind that these studies created comparison groups after the fact, with the luxury of making adjustments to potential comparison groups using all the data from the study.

9. Statistical Modeling of Community-Level Outcomes. Another approach to creating counterfactuals for the evaluation of community-level interventions is statistical modeling. This approach develops a statistical model of what would have happened to a particular outcome or set of outcomes at the community level had an intervention not been instituted. The predictions from the model are then used as the counterfactual and are compared with what happens in the community following the intervention. The difference is the estimated impact of the intervention.

10. Time-series Modeling. Time-series models of community-level outcomes have long been advocated as a means of assessing the effects of program innovations or reforms. In the simplest form, the time-series on the past values of the outcome variable for the community is linearly extrapolated to provide a predicted value for the outcome during and after the period of the program intervention (e.g. the pre–post designs). It has been recognized for a long time that the simple extrapolation design is quite vulnerable to error because community variables rarely evolve in a simple linear fashion.

11. Multivariate Statistical Modeling. These multivariate models would attempt to specify, measure, and estimate the effects of the variables that determine the community-level outcome that are not themselves affected by the treatment. Then, with these variables "controlled," the effect of treatment would be estimated. Most analysts consider the results of these models to be unreliable for program evaluation purposes. Statistical modeling at the community level also runs up against the persistent lack of small-area data, particularly data available on a consistent basis, over several periods of time or across different communities. Such data are necessary both to estimate the statistical model of the community-level outcome and to project the counterfactual value of the outcome for the program period.

Research Questions to Address in the Context of Community-Wide Initiatives

This section discusses the types of research questions which are particularly relevant to community-wide initiatives. Especially, this section focuses on several types of multiple effects, which help explain how the participants' characteristics might influence treatment outcomes, how various dimensions of one treatment or multiple types of treatments may interactively affect treatment outcomes, and how different configurations of participant or institutional characteristics may produce different outcomes.

Networks and Group Learning

The importance of associational networks has been increasingly emphasized in the literature on communities and families. Group learning about the intervention is likely to be faster and greater than learning by isolated individuals. The evaluation problems will differ depending on how the associational and institutional networks are considered.

Effects of Formal and Informal Institutions

Most interventions take the form of an attempt to alter some type of formal institution that affects individuals (e.g., a day care center, a welfare payment, an education course). Most of those concerned with community-wide initiatives appear to be more interested in either the way the formal institutional structure in a given community conditions the individuals' responses or with the behavior of the formal institutions themselves as outcomes of the intervention. Informal institutions (e.g., associational contacts) are also subjects of interest.

Interactions with External Conditions

Some attempts have been made to see how changes in conditions external to an intervention have conditioned the response to the treatment.

Example: In a study which investigated whether the response to the treatment (supported work) varied systematically with the level of local unemployment, there were no statistically significant differences in response, but researchers felt it may well have been due to the weakness of statistics on the city-by-city unemployment rate.

Dynamics

An intriguing and largely unaddressed question for evaluation of community-wide initiatives is how to represent the dynamics of interventions as they change over time--in

response to lessons learned from implementation and where the alterations are largely idiosyncratic. Although some evaluators of programs might prefer to delay their initial measures of outcomes until the program has stabilized and matured, many community-level initiatives are not expected to achieve a "steady state" but rather to evolve constantly in response to incoming results.

Steps in the Development of Better Methods

Following steps might improve our understanding of how communities evolve over time and help us create methods of evaluation that are less vulnerable to the types of bias.

Improve small-area data.

Detailed small-area demographic data are very hard to get except at the time of the decennial census. But increasingly records data are being developed by a wide variety of entities that can be tied to specific geographic areas (geo-coded data). One type of work that might be fruitfully pursued would combine various types of agency records data with data taken from two or more censuses.

Enhance community capability to do systematic data collection.

It is possible to pull together records data to create community data bases that could be continuously maintained and updated. These data would provide communities with some means to keep monitoring.

Going a step beyond this aggregation of records, attempts could be made to enhance the capability of communities to gather new data of their own.

e.g., simple surveys of physical structures based on externally observed characteristics

Create a panel study of communities.

In the absence of common formats to put together local records data, it might be possible to imitate the several nationally representative panel studies of individuals, which have been created and maintained in some cases since the late 1960s. They would provide us with important information on what the cross-section and time-series frequency distributions of community level variables look like--important ingredients for an evaluation sample design effort with communities as units of observation.

Model community-level variables.

Statistical modeling might provide the basis for generating more reliable counterfactuals for community initiatives. A good model would generate predicted values for endogenous outcome variables for a given community in the absence of the intervention by using an historical time-series for that community and such contemporaneous variables as are judged to be exogenous to the intervention.

Develop better measures of social networks and formal and informal community institutions.

Considerably more information on and experience with various measures of associational networks are needed, given their central role in most theories relating to community-wide processes.

Tighten relationships between short-term (intermediate) outcome measures and long term outcome measures.

The inability or unwillingness to wait for the measurement of long-term outcomes is a problem that many studies (esp. children and youth) face. Systematic compilations of information about short-term and long-term correlations for outcome variables would be very helpful and could set an agenda for more data-gathering on these relationships where necessary.

Conduct more studies to determine the reliability of constructed comparison group designs.

It should be possible to find more situations in which a type of study (that uses random assignment data as a base and then constructed comparison groups to test the degree of error in the comparison group estimates) could be carried out. First, the replication of such studies should look at variables other than employment or earnings as outcomes to determine whether any difference in degrees of vulnerability exist according to the type of outcome variable and/or a different type of intervention. Second, more studies of this type would give us a far better sense of whether the degree of vulnerability of the nonexperimental methods is persistent and widely found in a variety of data sets and settings.

Weiss, Carol Hirschon. 1999. Nothing as Practical as Good Theory: Exploring Theory-Based Evaluation for Comprehensive Community Initiatives for Children and Families. In *New Approaches to Evaluating Community-Wide Initiatives Volume 1: Concepts, Methods, and Contexts*. Edited by James P. Connell, Anne C. Kubisch, Lisbeth B. Schorr, and Carol H. Weiss.

Online at <http://www.aspenroundtable.org/vol1/weiss.htm>

Summarized by Yizhao Yang

In this paper Weiss suggested an alternative mode of evaluation, theory-based evaluation, as in contrast to those using appropriate outcome measures (quantitative indicators) to measure the degree of success--or at least progress--in attaining desirable results.

Weiss began by describing this evaluative approach and discussing its advantages. As proposed by Weiss, the theory-based evaluation starts by examining the theories underlying the program, which are important assumptions or hypotheses implied in a series of “micro-steps” of the program. (Weiss gave an example in this paper). By examining and testing the theories or hypotheses (assumptions), problematic linkages between those steps can be identified. There are four advantages of taking this theory-based evaluative approach:

1. It concentrates evaluation attention and resources on key aspects of the program.
2. It facilitates aggregation of evaluation results into a broader base of theoretical and program knowledge.
3. It asks program practitioners to make their assumptions explicit and to reach consensus with their colleagues about what they are trying to do and why.
4. Evaluations that address the theoretical assumptions embedded in programs may have more influence on both policy and popular opinion.

Weiss also made a preliminary attempt to elucidate the theories, or assumptions, on which current initiatives are based. The case she used is community-based comprehensive cross-sector Initiatives for children, youth, and families. The purpose of giving this example is to suggest the kinds of questions that evaluation might address in the current case. Weiss identified seven assumptions that are implied in the rationality of the Initiatives, and discussed each assumption in detail by breaking them into further specific hypotheses.

After the creation of this hypothesis list, the next step of the theory-based evaluation is to test those theories. Weiss specified that by “test” she means asking questions that bear on the viability of the hypotheses in the particular cases, through whatever methods of inquiry are chosen. The resources that can help test theories include evidence from previous research and evaluation, as well as experience, which can be either supportive or contradictory. It is important to subject those theories or assumptions to the test of available evidence and have practitioners and residents engaged in the initiatives think through the implicit hypotheses as they go about their practice.

Not restricting herself to the simple presentation of this theory-based approach, Weiss also compared this approach with the one based on outcome indicators. She suggested that examination of theories underlying the program or initiatives provide a variegated and detailed accounting of the why's and how's of obtaining the outcomes that are observed. Hence program theories serve as guidance for collecting appropriate data to measure (evaluate) the expected outcome of the program in a coherent and logical way. Several shortcomings of only relying on indicator data make this exclusively indicator-based approach problematic.

Finally, she discussed some problems existing in implementation of this approach, which include problems of theorizing, measurement, testing, and interpretation.

Weiss explained each of these problems in detail.

1. Problems of theorizing result from a) the inherent complexity of the effort, b) the difficulty to reach agreement among participants about the theory of the whole initiatives, c) the potential political risks incurred when making the assumptions explicit to the public, and d) political barriers.
2. Problems of measurement result from a) some of the theories of change may not lend themselves to quantitative measurement and b) whether exclusively quantitative measurement is desirable is not yet clear.
3. Problems of testing theories result from a) the possibility that theories of change are too general and loosely constructed to allow for clear-cut testing and b) data collected may be susceptible to alternative interpretations.
4. Problems of interpretation result from the generalizability of the theories to explain the success of particular initiatives in particular places.

Government Policy Workshop: Economic Development and Child Care

CRP 418/618, ARME 434/634, FGSS 420/620 4 credit hours

Wednesday and Friday 10:10 am -12:00 pm

301 W. Sibley

Class web site: <http://blackboard.cornell.edu>

Other important material can be found at <http://economicdevelopment.cce.cornell.edu>

Prof. Mildred Warner, City and Regional Planning

mew15@cornell.edu 255-6816, 204 W. Sibley

Office Hours: generally 2:00-4:00 Wednesdays and Fridays

Course Description:

Economic development has traditionally been thought of in terms of industrial recruitment and physical infrastructure investment. Recently, economic development theorists have been looking at the importance of quality of life and social infrastructure investments to promote and sustain economic growth. Feminist economists are pointing to a *crisis of care* as women's formal labor market participation increases and government support for social welfare contracts. This crisis is due in part to our traditional failure to adequately value care work in economic development terms. This workshop will help address that gap by working with teams at the state and local levels to promote new economic development approaches to child care policy.

State and local governments now bear increased responsibility to provide job training and day care to enable poor women to enter the labor force. Employers feel the crunch of family-work conflicts and respond with work/life policies. Economic developers now recognize child care is part of the social infrastructure for economic development. But parents are still left with the primary burden. Quality child care is costly and scarce. This workshop will help teams identify economic development policies to address these problems.

Students will work with representatives from counties in New York State that have conducted economic impact analyses of the child care sector and experienced community economic development practitioners to identify new economic development approaches to child care policy. Students will learn skills in economic and social policy analysis, multi-party collaboration and program design, and the process of policy change.

Students will develop a workshop for child care and economic development leaders from around the state, and then work in small groups with several county teams to help them move their reports to action.

Client: NYS Child Care Coordinating Council

Executive Director Carol Saginaw will help us identify county teams ready to work with student teams on issue identification and project design. We will help her with design of an economic development workshop, to be held in Albany with economic development partners in April.

Possible issues to cover include:

- a. “Traditional” economic development issues such as: tax abatements, tax credits, impact fees, business mgmt. training, revolving loan funds, public infrastructures, land use planning, industrial recruitment, etc. and how these can be applied to child care.
- b. “Contemporary” strategies: unionization, workforce development, business retention and expansion (small business visitations, business training), public private economic development partnerships, market research, workforce development, work/life policies and how these can be applied to child care.
- c. “Innovative” economic development policies such as: sectoral strategies, clusters (cooperative competition), economic renewal, capacity development, quality of life initiatives and how these can be applied to child care

Some of the issues which may be desired by county teams include:

Assessing Market Demand – Providing Critical Social Infrastructure

- Understanding your customer base.
- Address affordability (program design and outreach to parents)
- Strategies to match supply and demand
- Link changes in labor force demands of broader economy to child care – projecting social infrastructure requirements.
- Improving consumer information in the market place.

Improving Child Care Business Management and Retention

- Cooperative management from other fields characterized by many small providers.
- Strategies to address provider and labor turnover.
- Strategies to improve wages and provider quality.
- Finance for cash flow and infrastructure.
- Policy design and outreach to providers.

Linking Quality to Economic Development

- Policy design: subsidies, grants, loans, tax credits - to meet multiple (conflicting policy goals)
- Improving parent and provider information

Building Business Sector Interest and Support

- Promoting family friendly workplace policies,
- Projecting labor demand and child care requirements
- Showing parent labor productivity or labor mobilization results from quality child care

Expectations

As a workshop, the class must be responsive and flexible. We must complete objectives mutually agreed upon by our clients and ourselves. Leadership and responsibility are shared among students, professor and community partners. Workshops traditionally take more time

than other classes. Work quality must be professional, “A” quality work. Lower standards will not be accepted. Hence, expect to do many revisions before work is final.

Research - Research projects will be individual and group in nature. Students will be assessed on the rigor and quality of their research. Students are expected to help collect and analyze data, review and summarize relevant literature, and identify and profile innovative case studies and policy approaches.

Writing - Writing assignments will include research reports as well as shorter, edited and published synopses to be used as public education materials for the project. Students will rewrite formal publications until they meet the satisfaction of the partners and Professor Warner. Web page design will also be a part of this process.

Process Skills - students will work with community partners in organizing meetings. Students will be assessed on the quality of their group/community participation and facilitation skills.

In recognition of the importance of group collaboration skills to project success, 30% percent of each student’s grade will be determined by his/her peers. The remaining 70% will be determined by the professor according to performance in research, writing and process skills.

Roles

Professor - guide the process, provide research oversight, review and approve quality of all materials developed, handle larger political/managerial issues, manage budget.

Partners – serve as resource people, review and guide materials development.

Students - manage logistics, conduct research, do writing and editing and preliminary desktop publishing/web page design. Keep Warner and partners informed of all project developments. The following skills need to be covered: logistics (including master calendar), editing, desktop publishing and web design, financial and legal analysis, economic analysis, facilitation and interview skills. I recommend you form teams to work on the key project components outlined above.

Class Meetings

The class will meet on Wednesday and Friday mornings. We will use this time to touch base, check progress and work on group activities. There will be many other meeting times during the week in small groups and with community leaders. Expect out of town travel as well.

Schedule

The course is divided into three sections. In the first section of the course (3 weeks) we will do background theoretical and policy readings to get everyone focused. During this time we will finalize teams and work plans.

In the second section of the course (1 week) you will develop a thorough work plan proposal and form subgroups.

In the third section of the course you will conduct research with your client teams– literature searches as well as case studies, interviews etc. and develop annotated bibliographies, case studies, and implementation strategies and organize the Albany workshop. All materials developed will go through an extensive editorial review and revision process with external clients.

Jan 25-Feb 15

Review theoretical background on care work, child care policy and economic development policy.

Feb 15 - 24 Outline work plan, determine project components, create subgroups.

March – Begin work with teams, conduct research, First drafts due March 17

April – Revisions and review with project partners, conduct additional research to fill holes, prepare final materials, web site and presentation to partners. Extensive revisions. Hold Albany workshop

Detailed Schedule

Wed. Jan 25 Course Overview, Projects, Roles, Expectations

Review Linking Economic Development and Child Care Project web site

<http://economicdevelopment.cce.cornell.edu>

Fri Jan 27 Background on the Child Care Sector

Helburn, Suzanne and Barbara Bergmann, (2002). *America's Childcare Problem: The Way Out*. New York: Palgrave, St. Martin's Press.

Recommended

Harrington, Mona. 1999. *Care and Equality: Inventing a New Family Politics*, Knopf: New York.

Wednesday Feb 1 -3 A New Economic Development Frame for Child Care

Read Ribeiro, Rose and Mildred Warner 2004. *Measuring the Economic Importance of the Child Care Sector: The Cornell Methodology Guide*. Available at

<http://economicdevelopment.cce.cornell.edu>

Warner, M., Adriance, S., Barai, N., Hallas, J., Markeson, B. & Soref, W. 2005. *Economic Development Strategies to Promote Quality Child Care*, Ithaca, NY: Cornell University Department of City and Regional Planning.

<http://government.cce.cornell.edu/doc/pdf/EconDevStrat.pdf>

Shellenback, K. 2004. *Child Care and Parent Productivity: Making the Business Case*, Ithaca, NY: Cornell University Department of City and Regional Planning.
<http://government.cce.cornell.edu/doc/pdf/ChildCareParentProductivity.pdf>

Warner, M. E. *Child Care and Economic Development: The Role for Planners*, PAS Memo, American Planning Association. Jan/Feb 2006.
<http://government.cce.cornell.edu/doc/pdf/pasmemo0106.pdf>

Stoney, L. 2005. *Beyond the Comfort Zone: New Ideas for the Early Care and Education Industry*. Ithaca, NY and Raleigh, NC : Cornell Univ. Dept of City and Regional Planning and National Smart Start Technical Assistance Center.
<HTTP://GOVERNMENT.CCE.CORNELL.EDU/DOC/PDF/BEYONDTHECOMFORTZONE.PDF>

Recommended

Stoney, Louise. 1998. LOOKING INTO NEW MIRRORS: Lessons for Early Childhood Finance and System-Building, Horizons Initiative:
<http://nccic.org/pubs/mirrors.html>

Smith and Ribiero, 2002. Changing the Terms of the Debate: Child Care as a Public Concern
On the web at <http://www.cce.cornell.edu/restructuring/doc/reports/childcare/>

Mitchell, Anne, Louise Stoney, Harriet Dichter. 2001. *Financing Child Care in the United States: An Expanded Catalog of Current Strategies*, 2001 Edition E.M. Kaufman Foundation: Kansas City. Available at:
http://www.emkf.org/youth_development/childcare2001/index.cfm

Friday Feb 10 Understanding Standard Economic Development Policy

Bartik, Timothy J. 2003. Local economic development policies Kalamazoo, MI : W.E. Upjohn Institute for Employment Research.

Lynch, Robert G. 2004 Rethinking growth strategies : how state and local taxes and services affect economic development / Robert G. Lynch. Published: Washington, D.C. : Economic Policy Institute.

Philip Langdon. "The coming of the creative class" *Planning*. Chicago: Jul 2002. Vol. 68, Iss. 7; p. 10

Porter, Michael 1995 "The Competitive Advantage of the Inner City." *Harvard Business Review*.55-71.

Merrill Goozner. 1998 "The Porter prescription," *The American Prospect*. Princeton: May/Jun 1998. p. 56-65

Recommended

LeRoy, Greg. The great American jobs scam : corporate tax dodging and the myth of job creation San Francisco, CA : Berrett-Koehler, c2005.

LeRoy, Greg. 1997 *No More Candy Store: States and Cities Making Job Subsidies Accountable*, Inst. On Taxation and Economic Policy: Washington, DC.

*Florida, Richard L. 2002. *The rise of the creative class : and how it's transforming work, leisure, community and everyday life* New York, NY : Basic Books. Check out his web site for critiques and his responses at <http://www.creativeclass.org/>

Interesting critique articles of Florida

Ben Walker. Open door to a creative economy. *Regeneration & Renewal*. London: May 23, 2003. pg. 15

Chris Lehmann. "Class acts" *Raritan*. New Brunswick: Spring 2003. Vol. 22, Iss. 4; p. 147

Interesting Critique Articles of Porter

Porter, Michael E. "An economic strategy for America's inner cities: Addressing the controversy" *Review of Black Political Economy*. New Brunswick: Fall 1995/Winter 1996. Vol. 24, Iss. 2/3; p. 303

Harrison, Bennett. "Why business alone won't fix the cities," *Technology Review*. Cambridge: Oct 1995. Vol. 98, Iss. 7; p. 71

Wednesday Feb 15 Review Progress of County Teams

Read studies from NYS teams:

New York City	New York	December, 2004	http://www.childcareinc.org
Chemung County	New York	November, 2004	http://www.chemchildcare.com
Long Island	New York	Spring 2004	http://www.childcaresuffolk.org/pdf/news90.pdf
State of	New York	July, 2003	http://www.nyscccc.org/FinalReport4-22-2004.pdf
Tompkins County	New York	Spring 2000	http://government.cce.cornell.edu/doc/viewpage_e.asp?ID=Tompkins_County
Monroe Co	New York	Summer, 2005	www.racf.org

Feb 17-22 Develop Work Plan Proposal including plans for Conference in Albany

Fri Feb 24 Present Detailed Work Plan Proposal

Month of March

Work in project Teams

March 17 First drafts of materials due
Present work to Prof Warner and county teams for review.

March 22 and 24 Spring Break

March 29
Discuss reviews with Warner, begin additional research and revisions

March 31 Special Debriefing with Caren Grown, Bard College (if desired)

Month of April
Additional Research, Revision, Revision and Publication and Conference Preparation

April 24-26 Child Care Bureau Research Conference in Washington, DC (Warner out of town)

April 19 Second Draft of Reports Due - Circulate to External Reviewers

May 5 (last class) Third Draft of Reports due

Final Exam Date All Final Materials Due, Web Site Developed, Final Presentation

Present final reports in paper and on CD rom to Professor Warner and conduct a group evaluation.

Additional Resources

Completed Economic Impact Studies

See matrix of completed studies on project web site. <http://economicdevelopment.cce.cornell.edu>
Read several to get an idea of the focus and themes for each state. These state teams are the audience for the Economic Development primer.

General Materials on Economic Development and Child Care

Review all of project web site <http://economicdevelopment.cce.cornell.edu>

Also review web sites for materials developed by the following organizations. We want to supplement but not be redundant to resources already provided by these groups.

National Economic Development and Law Center (planning and zoning)

<http://www.nedlc.org/summary.pdf>

Local Initiatives Support Corporation (finance); <http://www.liscnet.org/>

Coastal Enterprises (economies of scale); <http://www.ceimaine.org/>

Center for Community Self Help (financing and rating); <http://www.self-help.org/aboutus/index.asp>

Annie Casey Foundation (financing and more); <http://www.aecf.org/>

Kaufman Foundation (entrepreneurship); <http://www.emkf.org/>

General Materials on Economic Development

Review web sites for economic development groups get a flavor for their style, interests.

Chamber of Commerce; <http://www.uschamber.com/default>

Committee for Economic Development; <http://www.ced.org/>

Corporation for Enterprise Development; <http://www.cfed.org/>

National Congress of Community Development Corporations; <http://www.ncced.org/>

General Information on Child Care

For background information on child care and a sense of the advocates

National Child Care Information Center has excellent materials and a thorough bibliography and data base; <http://www.nccic.org/>

Children's Defense Fund; <http://www.childrensdefense.org/>

Center for Law and Social Policy; <http://www.clasp.org/>

Child Trends; <http://www.childtrends.com/>

Annie Casey Foundation; <http://www.aecf.org/>

Seminar: Devolution, Privatization, and the New Public Management
CRP 4120/6120, AEM 4330/6330, FGSS 4110/6110
Fall 2009, 4 credit hours

Class meeting location: 211 W. Sibley Hall, Wednesday/Friday 10:10 am – 11:40 am

Professor: Mildred Warner, 215 W. Sibley Hall, 5-6816, mew15@cornell.edu

Office hours: Wednesday 2:30 – 4:30 and Friday 2:00 – 3:00 or by appointment

Teaching Assistant: Chris List, list.chris@gmail.com

Class Website: <http://blackboard.cornell.edu>

Restructuring Local Government Website: <http://government.cce.cornell.edu/>

Course Description

Devolution, decentralization and privatization of government services are international trends. This seminar will review these trends in a national and international context and focus on the local public sector response, primarily in the United States. Concerns for efficiency as well as changing notions of the appropriate role for the public sector drive these shifts. Privatization is perhaps the most controversial form of restructuring. We will review the theoretical rationale for privatization and the legal, political and practical concerns that have arisen with its implementation. Special attention will be given to the implications of these shifts for citizenship, governance and accountability.

Decentralization and devolution reflect efforts to promote government responsiveness to citizens – by bringing decisions closer to the community, and to promote economic competitiveness by encouraging developmental over redistributive investments. We will explore the potential and challenges of decentralization in both developing countries and the United States. While decentralization of service delivery is presented as a means to enhance citizen access and involvement, it also helps justify the shrinking of the social welfare state. Current policies promote network governance involving coalitions of government, private and non profit sector actors. Planners are often key architects of these initiatives and need to be aware of their potential and their limitations. Many cities face deteriorating infrastructure, and as commitment to social welfare erodes, cities are left with increasing responsibilities. New solutions, discussed in this course, will be critical for planners to help cities address the challenge of linking investments in infrastructure, economic and human development with more participatory forms of governance.

Assignments

As a discussion based seminar, class participation is essential. Students will have read materials prior to class and be prepared to discuss them. In addition, students will be

expected to prepare short written summaries of readings during the semester. These must be posted to the class website 24 hours before class or students will be docked a letter grade. Some of these summaries may be selected later for editing and posting to the Restructuring Local Government Website. Discussion between classes will occur on the class website discussion board. Students will be evaluated on the basis of their participation (both questions raised and insights offered).

All students will write three papers for the course.

First Paper: Theory Paper Due October 7 – Select a theoretical issue and discuss its implications based on the readings in the first third of the course (5 pages).

Second Paper: Group Paper Due November 13 (topic due October 9) – Practical policy analysis. Work in groups and develop a short 10-15 page summary (suitable for a professional practitioner audience on the web) of the pros and cons of contracting or new mixed public/private management techniques in public works or infrastructure provision (water, roads, etc). Identify the key issues and discuss them in depth. Bring in practical case material. Conduct original research (secondary and primary sources). Develop a presentation for the class (presentations Nov 11 and 13).

Third Paper (for Undergraduates): Synthesis Paper Due December 7 – Analyze one of the following themes – decentralization/devolution, regionalism, citizenship – from the last third of the course. Give particular emphasis to discussing the implications for governance and citizenship (5-7 pages). Presentations will occur the last two class periods (December 2 and 4).

Third Paper (for Graduates): Original Research Paper Due December 11 (topic due November 20) – Graduate students will complete a major research paper (maximum 15 pages) on a topic of their own choosing. A research proposal with a preliminary bibliography is due by November 20 or sooner. Presentations will occur during last week of class December 2-4. Students can use these presentations to get feedback on their ideas before finalizing the papers. Presentation (including visual aids) will form part of the grade.

There will be no incompletes.

Grading

All Students

Class Participation 30%

Discussion in Class and on Website 15%

Article Summaries 15%

Undergraduates

Theory Paper

20% Due October 7

Case Study

30% Due November 13 (topic due October 9)

Final Synthesis Paper

20% Due December 7

Graduate Students

Theory Paper	20%	Due October 7
Case Study	20%	Due November 13 (topic due October 9)
Final Research Paper	30%	Due December 11 (proposal and preliminary bibliography due November 20)

For the group project paper, include a list of each team member and what they contributed. Peer grading will form half the group paper grade.

Ethics

Collaborative learning is the goal of this class. Group projects and class discussion depend on full participation of all students. Thus, failure to deliver your component of the work on time undermines the learning experience of others and therefore constitutes an ethics violation of the class code (and will result in a grade reduction). If you find that you cannot complete an assignment for which you volunteered, then post a request to switch with someone to the class list and most likely someone will pick up for you. If not, you are still responsible. Grades for class participation and peer grading for the group project reflect this collaborative learning framework.

Individual work also forms part of the grade and students caught plagiarizing will be given an F. Citation of sources is fundamental to the academy – when in doubt, cite. Each student in this course is expected to abide by the Cornell University Code of Academic Integrity.

Note: In compliance with the Cornell University policy and equal access laws, I am available to discuss appropriate academic accommodations that may be required for students with disabilities. Requests for academic accommodations are to be made during the first three weeks of the semester, except for unusual circumstances, so arrangements can be made.

Readings

Most of the readings for class are articles available on line through the Cornell Library System. We will use several books. These are available at the Campus Store and on reserve in the Fine Arts Library.

Webster, Christopher J. and Lawrence Wai-Chung Lai. 2003. *Property Rights, Planning and Markets: Managing Spontaneous Cities*. Cheltenham, UK; Northampton, MA: Edward Elgar. The full class will discuss and everyone should try to purchase

The following readings will be selected – each by a portion of the class. So only one of these books needs to be purchased.

Frug, Gerald E. and David Barron 2008. *City Bound: How States Stifle Urban Innovation*. Cornell Univ Press. Ithaca NY.

Frug, Gerald E. 1999. *City Making: Building Communities without Building Walls*. Princeton, NJ: Princeton University Press. (Purchase Book)

Pastor, Manuel, Chris Benner and Martha Matsuoka 2009. *This could be the start of something big: How social movements for regional equity are reshaping metropolitan America*, Cornell University Press: Ithaca, NY.

Davis, Michael 2006. *Planet of slums*, New York: Verso.

All readings are on reserve in the Fine Arts Library.

Aug. 28 Introduction: Overview of Course

Sept. 2 Privatization Trends

Ramesh, M. 2008 Introduction: Reasserting the state in public services, *Policy and Society* 27: 99–101.

<http://dx.doi.org/10.1016/j.polsoc.2008.09.006>

Warner, Mildred E. 2008. Reversing privatization, rebalancing government reform: Markets, deliberation and planning, *Policy and Society* 27: 163–174.

<http://dx.doi.org/10.1016/j.polsoc.2008.09.001>

Sept 4. Infrastructure Challenges: Energy, Transit, Water and Waste

Clark, Woodrow W. and Ted Bradshaw. 2004. *Agile energy systems : global lessons from the California energy crisis*. San Diego: Elsevier. CHAPTER 14, Conclusions: implementing Agile Energy Infrastructures pp 443-460

Barter, Paul A. 2008. Public planning with business delivery of excellent urban public transport, *Policy and Society* 27: 103–114

<http://dx.doi.org/10.1016/j.polsoc.2008.09.007>

Warner, Mildred E. 2009. Local Government Infrastructure – and the False Promise of Privatization. A Century Foundation Report. New York: Century Foundation.

<http://www.tcf.org/Publications/mediapolitics/warner.pdf>

Theoretical Underpinnings of Privatization and Decentralization

Sept. 9 Public Choice Theory and Bargaining Solutions

Tiebout, Charles M. 1956. "A Pure Theory of Local Expenditures," *The Journal of Political Economy*, 64(5): 416-424.

<http://www.jstor.org/stable/1826343>

Warner, Mildred E. and Amir Hefetz. 2002. "Applying Market Solutions to Public Services: An Assessment of Efficiency, Equity, and Voice," *Urban Affairs Review*, 38(1): 70-89. <http://uar.sagepub.com/cgi/content/abstract/38/1/70>

Coase, R.H. 1960. "The Problem of Social Cost," *Journal of Law and Economics*, 3: 1-44. <http://www.jstor.org/stable/724810>

Warner, Mildred E. "Regulatory Takings and Free Trade Agreements: Implications for Planners," forthcoming, *Urban Lawyer*, 41(3). (Posted on Blackboard)

Recommended

Williamson, O.E. (1999). Public and Private Bureaucracies: A Transaction Cost Economics Perspective. *Journal of Law, Economics, & Organization*, 15 (1), 306-342. <http://proquest.umi.com/pqdweb?index=8&did=373969291&SrchMode=3&sid=1&Fmt=10&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1250872401&clientId=8424&aid=1>

Boyne, George A. 1998. "Bureaucratic Theory Meets Reality: Public Choice and Service Contracting in U.S. Local Government," *Public Administration Review*, 58(6): 474-483. <http://proquest.umi.com/pqdweb?index=5&did=36339483&SrchMode=3&sid=2&Fmt=2&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1187197458&clientId=8424&aid=3>

Lowery, David. 2000. "A Transactions Costs Model of Metropolitan Governance: Allocation versus Redistribution in Urban America," *Journal of Public Administration Research and Theory*, 10(1): 49-78. <http://proquest.umi.com/pqdweb?index=3&did=52634951&SrchMode=3&sid=1&Fmt=2&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1187197098&clientId=8424&aid=1>

Gerbasi, Jennifer and Mildred E. Warner. 2007. "Privatization, Public Goods, and the Ironic Challenge of Free Trade Agreements," *Administration & Society*, 39(2): 127-149. <http://aas.sagepub.com/cgi/content/abstract/39/2/127>

Sept. 11 Theoretical Critiques

Lowery, David. 1998. "Consumer Sovereignty and Quasi-Market Failure," *Journal of Public Administration Research and Theory*, 8(2): 137-172. <http://proquest.umi.com/pqdweb?index=2&did=29426160&SrchMode=3&sid=4&Fmt=2&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1187198853&clientId=8424&aid=5>

Feigenbaum, Harvey B. and Jeffrey R. Henig. 1994. "The Political Underpinnings of Privatization: A Typology," *World Politics*, 46(2): 185-208.

<http://www.jstor.org/stable/2950672>

DeLeon, Linda and Robert B. Denhardt. 2000. "The Political Theory of Reinvention," *Public Administration Review*, 60(2): 89-97.

<http://proquest.umi.com/pqdweb?index=11&did=55241197&SrchMode=3&sid=6&Fmt=2&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1187200363&clientId=8424&aid=7>

Schick, Alan. 1998. "Why Most Developing Countries Should Not Try New Zealand's Reforms," *The World Bank Research Observer*, 13(1): 123-131.

<http://proquest.umi.com/pqdweb?index=10&did=28582440&SrchMode=3&sid=7&Fmt=2&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1187200472&clientId=8424&aid=8>

Recommended

Moe, Ronald C. 1994. "The 'Reinventing Government' Exercise: Misinterpreting the Problem, Misjudging the Consequences," *Public Administration Review*, 54(2): 111-122.

<http://proquest.umi.com/pqdweb?index=37&did=709222&SrchMode=3&sid=8&Fmt=2&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1187200565&clientId=8424&aid=9>

Blanchard, Lloyd A., Charles C. Hinnant and Wilson Wong. 1998. "Market-Based Reforms in Government: Toward a Social Subcontract?" *Administration & Society*, 30(5): 483-512.

<http://proquest.umi.com/pqdweb?index=5&did=35514668&SrchMode=3&sid=1&Fmt=2&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1187213135&clientId=8424&aid=1>

Rosenbloom, David H. and Suzanne J. Piotrowski. 2005. "Outsourcing the Constitution and Administrative Law Norms," *The American Review of Public Administration*, 35(2): 103-121. <http://arp.sagepub.com/cgi/content/abstract/35/2/103>

Schamis, Hector E. 2002. *Re-forming the State: The Politics of Privatization in Latin America and Europe*. Ann Arbor, MI: University of Michigan Press.

Sept. 16 and 18 Markets and Property Rights or Planning?

Webster, Christopher J. and Lawrence Wai-Chung Lai. 2003. *Property Rights, Planning and Markets: Managing Spontaneous Cities*. Cheltenham, UK; Northampton, MA: Edward Elgar. (Purchase book)

Sept 23 Practical Applications of Market Based Approaches: CIDs, BIDs, TDRs
Nelson, Robert H. 2004. "The Private Neighborhood," *Regulation*, Summer 2004, 40-46.
<http://www.cato.org/pubs/regulation/regv27n2/v27n2-5.pdf>

Fischel, William A. 2004. "Revolution or Evolution?" *Regulation*, Summer 2004, 48-53.
<http://www.cato.org/pubs/regulation/regv27n2/v27n2-6.pdf>

Staley, Samuel and Lynn Scarlett. 1997. "Market Oriented Planning: Principles and Tools," Working Paper. Los Angeles, CA: The Reason Foundation.
<http://www.reason.org/ps236.html>

Mitchell, J. (1999), *Business Improvement Districts and Innovative Service Delivery*, Grant Report for the PriceWaterhouse Coopers Endowment for Government
<http://www.businessofgovernment.org/pdfs/Mitchell.pdf>. Focus on pp 6-13.

Transfer of Development Rights Programs: Using the Market for Compensation and Preservation
<http://government.cce.cornell.edu/doc/html/Transfer%20of%20Development%20Rights%20Programs.htm>

Recommended

Ben-Joseph, Eran. 2003. "Subdivision Regulations: Practices & Attitudes, A Survey of Public Officials and Developers in the Nation's Fastest Growing Single Family Housing Markets," Working Paper. Cambridge, MA: Lincoln Institute of Land Policy. <http://www.lincolninst.edu/pubs/PubDetail.aspx?pubid=846>

Business Improvement Districts: Issues in Alternative Local Public Service Provision
<http://government.cce.cornell.edu/doc/reports/econdev/bids.asp>

Sept 25 International Approaches and Critiques

Graham, Carol. 1998. *Private Markets for Public Goods: Raising the Stakes in Economic Reform*. Washington, DC: The Brookings Institution Press. Chapter 1 (Book on Reserve).

Miraftab, Faranak. 2004. "Neoliberalism and Casualization of Public Sector Services: The Case of Waste Collection Services in Cape Town, South Africa," *International Journal of Urban and Regional Research*, 28(4): 874-892.
<http://www3.interscience.wiley.com/journal/118779134/abstract?CRETRY=1&SRETRY=0>

Ramamurti, Ravi. 1999. "Why Haven't Developing Countries Privatized Deeper and Faster?" *World Development*, 27(1): 137-155.
[http://dx.doi.org/10.1016/S0305-750X\(98\)00131-4](http://dx.doi.org/10.1016/S0305-750X(98)00131-4)

Sept 30 The Promise and Challenge of Network Governance

Salamon, Lester. 2002. "The New Governance and the Tools of Public Action: An Introduction" pp 1-47 in *The Tools of Government: A Guide to the New Governance*. Oxford; New York: Oxford University Press. (Book on Reserve)

Benjamin, Solomon. 2005. Analogue to Digital: Re-Living Big Business's Nightmare in New Hydras. In *World-Information Special IP CITY EDITION*. Tunis. Open Access: <http://world-information.org/wio/wsis/2005/texts/1154317929>

Khanolkar, Prasad 2009. Towards a New Urban Governance: The Contested Domain of Waste Management, Mumbai, Unpublished Masters Thesis City and Regional Planning, Cornell University. Abstract and Literature Review. Posted to Blackboard

Recommended

Miraftab, Faranak. 2004. "Public-Private Partnerships: The Trojan Horse of Neoliberal Development?" *Journal of Planning Education and Research*, 24(1): 89-101. <http://jpe.sagepub.com/cgi/content/abstract/24/1/89>

Rhodes, R.A. W. 1996. "New Governance: Governing Without Government," *Political Studies* XLIV:652-667.

Oct. 2 Guest Lecture – John Foote, Senior Fellow, Harvard Kennedy School

Mossavar-Rahmani Center for Business and Government

Roads, Transit, Parking - Public Goods or Financial Assets" including a case study on the privatization of the Pittsburgh (PA) Parking Authority

See blackboard for the following documents:

Lecture Notes

Penn Turnpike Case Study

Pittsburgh Parking Authority Case

Recommended

Foote, John H. 2006 Analysis of the Public Policy Aspects of the Chicago Skyway Concession, Harvard Univ. Kennedy School Working Paper – posted to Blackboard

Williams, Trefor P. 2003. "Moving to Public-Private Partnerships: Learning from Experience around the World," Washington, DC: The Center for the Business of Government. <http://www.businessofgovernment.org/pdfs/WilliamsReport.pdf>

Oct. 7 Group Working Session

This year's focus is on infrastructure – water, roads, and new mixed techniques for management or private interest neighborhoods as an alternative to zoning and public infrastructure.

Work with teams on project ideas. Review examples of previous class projects posted to website:

Transfer of Development Rights Programs: Using the Market for Compensation and Preservation

<http://government.cce.cornell.edu/doc/html/Transfer%20of%20Development%20Rights%20Programs.htm>

Business Improvement Districts: Issues in Alternative Local Public Service Provision

<http://government.cce.cornell.edu/doc/reports/econdev/bids.asp>

Mitigating Corruption in New Public Management

<http://government.cce.cornell.edu/doc/html/MitigatingCorruption.htm>

Prisons, Privatization, and Public Values

<http://government.cce.cornell.edu/doc/html/PrisonsPrivatization.htm>

Oct. 7 Theory Paper Due

Oct. 9 Group Topic and Plan Due

October 9 Decentralization and Devolution (International) Guest Lecture- Ben Kohl

Kohl, Benjamin. 2004. "Privatization Bolivian Style: A Cautionary Tale," *International Journal of Urban and Regional Research*, 28(4): 893-908.

<http://www.blackwell-synergy.com/doi/abs/10.1111/j.0309-1317.2004.00558.x>

Recommended

Kohl, Benjamin and Linda Farthing, 2009. Less Than "Fully Satisfactory Development Outcomes": International Financial Institutions and Social Unrest in Bolivia
LATIN AMERICAN PERSPECTIVES, Issue 166, Vol. 36 No. 3, May 2009 59-78

Oct. 14-16 Decentralization, Devolution and Deconcentration

Developing Countries

Litvak, Jennie, Junaid Ahmad and Richard M. Bird. 1998. "Rethinking Decentralization in Developing Countries," Washington, DC: The World Bank.

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2001/01/06/000094946_00121605341030/Rendered/PDF/multi_page.pdf

Tendler, Judith. 1997. *Good Government in the Tropics*. Baltimore, MD: Johns Hopkins University Press. Chapter 1 "Introduction" pp 1-20. (Book on Reserve)

Prud homme, Remy. 1995. "The Dangers of Decentralization," *The World Bank Research Observer*, 10(2): 201-220.
<http://proquest.umi.com/pqdweb?index=5&sid=1&srchmode=3&vinst=PROD&fmt=2&startpage=-1&clientid=8424&vname=PQD&RQT=309&did=6866262&scaling=FULL&ts=1187207071&vtype=PQD&aid=3&rqt=309&TS=1187207134&clientId=8424>

Developed Countries

Brenner, Neil. 2004. "Urban Governance and the Production of New State Spaces in Western Europe, 1960-2000," *Review of International Political Economy*, 11(3): 447-488.

<http://www.ingentaconnect.com/content/routledg/rrip/2004/00000011/00000003/art00001;jsessionid=4if2odd5i7t6.victoria>

Katz, Michael B. 2001. *The Price of Citizenship: Redefining America's Welfare State*. New York, NY: Metropolitan Books. Read Introduction and Chapters 1, 2, pp 1-56. (Book on Reserve)

Rodríguez -Pose, A. and Bwire, A. 2004. "The economic (in)efficiency of devolution." *Environment and Planning A*, 36, 11, 1907-1928.

<http://www.envplan.com/abstract.cgi?id=a36228>

Recommended

Shah, Anwar and Theresa Thompson. 2004. "Implementing Decentralized Local Governance: A Treacherous Road with Potholes, Detours, and Road Closures," World Bank Policy Research Working Paper 3353, Washington, DC: The World Bank.

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/07/29/000090341_20040729134144/Rendered/PDF/wps3353.pdf

Warner, Mildred E. and James E. Pratt. 2005. "Spatial Diversity in Local Government Revenue Effort Under Decentralization: A Neural-Network Approach," *Environment and Planning C: Government and Policy*, 23(5): 657-677.

<http://www.envplan.com/abstract.cgi?id=c16r>

Oct. 21 Regionalism - Guest Lecturer: Susan Christopherson

Wheeler, Stephen M., 2002, "The New Regionalism - Key Characteristics of an Emerging Movement" *Journal of the American Planning Association*, 68 (3): 267-278

<http://proquest.umi.com/pqdlink?Ver=1&Exp=08-20-2014&FMT=7&DID=128776231&RQT=309>

Imbroscio, David L. 2006. Shaming the Inside Game: A Critique of the Liberal Expansionist Approach to Addressing Urban Problems, *Urban Affairs Review* 42: 224-248.

<http://uar.sagepub.com/cgi/content/abstract/42/2/224>

Clark, Jennifer and Susan Christopherson, 2009. Integrating Investment and Equity: A Critical Regionalist Agenda for a Progressive Regionalism, *Journal of Planning Education and Research* 28:341-354

<http://jpe.sagepub.com/cgi/content/abstract/28/3/341>

Recommended

Bollens, Scott. 2003. In through the back door: Social Equity and Regional Governance. *Housing Policy Debate* 13 (4): 631–57.

http://www.mi.vt.edu/data/files/hpd%2013%284%29/hpd%2013%284%29_bollens.pdf

Swanstrom, Todd. 2006. Regionalism, Equality, and Democracy, *Urban Affairs Review* 42: 249-257.

<http://uar.sagepub.com/cgi/reprint/42/2/249.pdf>

Orfield, Myron. 2002. *American Metropolitcs: The New Suburban Reality*. Washington, DC: Brookings Institution Press.

Rusk, David. 1999. *Inside Game/Outside Game: Winning Strategies for Saving Urban America*. Washington, DC: Brookings Institution Press.

Oct. 23 Guest Lectures: Health Care Reform & Metropolitan Service Segregation

Health Care Reform

US Experience: Taryn Morrissey, SRCD/AAAS Congressional Fellow

Italian Experience: Gabriella D'Amore Visiting Scholar, Italy

Recommended

Health Reform Proposals before Congress. Kaiser Family Foundation

http://www.kff.org/healthreform/upload/healthreform_tri_full.pdf

Gawande, Atul, 2009. The Cost Conundrum: What a Texas town can teach us about health care, *The New Yorker*, June 1 2009.

http://www.newyorker.com/reporting/2009/06/01/090601fa_fact_gawande?currentPage=all

Ramesh, M. 2008. Reasserting the role of the state in the healthcare sector: Lessons from Asia, *Policy and Society*, 27:129–136

<http://dx.doi.org/10.1016/j.polsoc.2008.09.004>

Oct 23. 12:30 pm Colloquium Speaker : Ann Joyner Moss

Metropolitan Service Segregation: Ann Moss Joyner, Colloquium Speaker

Oct 28, 30 and Nov 4 Regionalism: Constraints and Prospects

Class divides into groups and each reads one book and leads class discussion. Everyone try to read indicated chapters

Frug, Gerald E. and David Barron 2008. *City Bound: How States Stifle Urban Innovation*. Cornell Univ Press. Ithaca NY. Esp Introduction and Chapters 1 and 2

Frug, Gerald E. 1999. *City Making: Building Communities without Building Walls*. Princeton, NJ: Princeton University Press. See article summaries on website

Pastor, Manuel, Chris Benner and Martha Matsuoka 2009. *This could be the start of something big: How social movements for regional equity are reshaping metropolitan America*, Cornell University Press: Ithaca, NY. Esp. Chapter 2.

Davis, Michael 2006. *Planet of slums*, New York: Verso. Esp Chapters 3, 4, 8
Or article version

Davis, Michael 2004. *Planet of slums*, *New Left Review* 26, March-April 2004 pp 5-34
<http://www.newleftreview.org/?page=article&view=2496>

Nov. 6 Group Work Session

Nov. 11 and 13 Presentation of Group Projects

Nov 13 Group Project Papers Due

Nov 13 12:30 pm Colloquium Speaker: Nik Theodore

Nov. 18 Privatization and Citizen Participation

Abers, Rebecca. 1998. "From Clientelism to Cooperation: Local Government, Participatory Policy, and Civic Organizing in Porto Alegre, Brazil," *Politics and Society*, 26(4): 511-537. <http://pas.sagepub.com/content/vol26/issue4/>

Miraftab, Faranak and Shana Wills. 2005. "Insurgency and Spaces of Active Citizenship: The Story of Western Cape Anti-Eviction Campaign in South Africa," *Journal of Planning Education and Research*, 25(2): 200-217.
<http://jpe.sagepub.com/cgi/content/abstract/25/2/200>

Mohan, Giles. 2002. The disappointments of civil society: the politics of NGO intervention in northern Ghana. *Political Geography* 21 (1): 125-154.
[http://dx.doi.org/10.1016/S0962-6298\(01\)00072-5](http://dx.doi.org/10.1016/S0962-6298(01)00072-5)

Recommended

Moore, Henry and Deborah Puntenney. 1999. "Leading by Stepping Back: A Guide for City Officials on Building Neighborhood Capacity," Evanston, IL: Asset-Based Community Development Institute. (Not electronic)
<http://www.northwestern.edu/ipr/publications/community/stepback.html>

Lukensmeyer, Carolyn J. and Lars Hasselblad Torres. 2006. "Public Deliberation: A Manager's Guide to Citizen Engagement," Washington, DC: The Center for the Business of Government.
<http://www.businessofgovernment.org/pdfs/LukensmeyerReport.pdf>

Bresette, Patrick and Marcia Kinsey. 2006. "Public Structures: A Constructive Model for Government," Public Briefing No. 6. New York, NY: Dēmos: A Network for Ideas and Action.
<http://www.demos.org/publication.cfm?currentpublicationID=0E23549B-3FF4-6C82-521EE468A7FE57E0>

Nov 20 Outlines for Final Paper Due (Graduate Students)

Nov. 20 and 23 (note shift to Monday) Citizenship and the State
(Nov. 25 No Class – Thanksgiving)

Katz, Michael B. 2001. "Work, Democracy and Citizenship" pp 341-360 in *The Price of Citizenship: Redefining America's Welfare State*. New York, NY: Metropolitan Books. (Book on Reserve)

Marshall, T.H. 1950. "Citizenship and Social Class" in *The Citizenship Debates: A Reader*, ed by Gershon Shafir, 1998, Minneapolis, MN: University of Minnesota Press. (Book on Reserve)

Purcell, Mark (2003). Citizenship and the Right to the Global City: Reimagining the Capitalist World Order, *International Journal of Urban and Regional Research*, 27(3): 564-90.
<http://faculty.washington.edu/mpurcell/ijurr.pdf>

Holston, James and Arjun Appadurai. 1999. "Introduction" in *Cities and Citizenship*, ed by James Holston, Durham, NC: Duke University Press. (Book on Reserve)

Recommended

Turner, Bryan S. 1990. "Outline of a Theory of Citizenship," *Sociology*, 24(2): 189-217.

Cerny, Philip. 1999. Globalization and the Erosion of Democracy, *European Journal of Political Research* 36: 1-26.
<http://www.springerlink.com/content/b5a3tp910w9n8d6j/>

Harvey, David 2005. A Brief History of Neoliberalism, Oxford, UK: Oxford University Press. (for more on concept of accumulation by dispossession).

Dec. 2 and 4 Class Presentations – Final Paper Outlines

Short presentations of your paper outline for group review and critique

Dec. 7 Final Papers Due at Noon (Undergraduates)

Dec. 11 Final Papers Due at Noon (Graduates)

Restructuring Local Government

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National Trends

The International City County Management Association conducts a survey of Alternative Service Delivery by local governments every five years. The comprehensive nature of restructuring options studied and the broad range of services covered make this the best source for tracking changes in local government service delivery. The data cover the period 1982-1997.

Privatization and the Market Structuring Role of Local Government

Mildred Warner and Amir Hefetz

[Read Paper \(PDF\)](#)

Abstract:

National data on local government service delivery (collected by the International City County Management Association) shows privatization has not increased dramatically since 1982. This paper seeks to understand why there has been so little growth in privatization. Theory offers two possible answers: government failure or quasi-market failure. While government failure (bureaucratic concerns over loss of control by local officials and employee resistance) may explain the failure to privatize more, our data provide limited support for this view. We argue that failure in contract markets themselves may explain the continued primacy of publicly provided public services.

Using longitudinal data from 1982 to 1997, we show that the local decision to provide public services is complex and dynamic. Local governments use a range of service restructuring alternatives including privatization, mixed public/private provision and cooperation between governments. Service delivery is a dynamic process reflecting changing citizen demand for services and new privatization. The data also show significant instability in contracts, including contracting in - the reverting back to public provision of previously privatized services. This "reverse privatization" may reflect problems with the contracting process itself, limited efficiency gains, erosion in service quality or concern over the loss of broader community values associated with public service delivery.

Privatization does not imply a retreat of government but rather a more active engagement with the market. Whether as regulator, contractor or direct service provider, local governments manage markets to create competition and ensure service quality and stability. This pragmatic market structuring role is critical to ensure that both efficiency and the broader public benefits of service delivery are achieved.

Presentation to the Economic Policy Institute's Conference on Privatization: Trends, Issues and Alternatives, January 11, 2001

[View Overhead Slides](#) | [Listen to Presentation](#) (requires RealNetworks' free [RealPlayer](#) software)

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Book Summary

Savas, E. S. 1987. *Privatization: The Key to Better Government*. Chatham, NJ: Chatham House.

Savas is a proponent of privatization and this book provides a theoretical basis and a positive review of strategies to achieve privatization. Savas views privatization as a strategy to bring about lasting improvements in the management and performance of government. The nature of public goods and services limits the ability to privatize delivery, but Savas provides evidence of when this is possible ([Chapter 3](#)).

The author then reviews alternative service arrangements for providing goods and services. Distinctive attributes of goods and of the market of potential service providers are used to demonstrate conditions under which each privatization alternative works best ([Chapter 4, 5](#)).

In the second half of the book, Savas provides an extensive literature review (as of 1987) of empirical studies that compare different service delivery arrangements and describe particularly interesting or thought-provoking examples of privatization ([Chapter 6, 7](#)). For a conscientious public official, four broad strategies are suggested to implement privatization; load shedding, adopting arrangements that have minimal government involvement, instituting user charges, and introducing competition ([Chapter 8, 9, 10](#)).

The book is divided into four parts; the background, theory, and practice of privatization, and steps toward successful privatization. The problems with privatization are not given major attention since Savas is an advocate.

Part One: The Background for Privatization

[Chapter 1: Introduction](#)

This chapter defines privatization and discusses several major forces leading to privatization

[Chapter 2: The Growth of Government](#)

The size and growth of government in the U.S. are discussed in this chapter along with reasons why governments grow.

Part Two: The Theory of Privatization

[Chapter 3: Basic Characteristics of Goods and Services](#)

Good and services can be classified by two important concepts, exclusion (exclusion or nonexclusion) and consumption (joint or individual). Understanding the type of good (private, toll, common-pool, collective goods) helps to determine the proper roles of government and private sector. While private and toll goods can be supplied by the market, common-pool and collective goods require collective action more appropriate to the public sector.

[Chapter 4: Alternative Arrangements for Providing Goods and Services](#)

Ten different arrangements of service delivery are analyzed; direct government provision, intergovernmental provision, franchising, contracting, vouchers, grants, self-service, marketplace, government vending.

[Chapter 5: An Analysis and Comparison of Alternative Arrangements](#)

Advantages and disadvantages of each arrangement are pointed out, and the question of which arrangement to use when there is a choice is decreased.

Part Three: Privatization in Practice

[Chapter 6: Applications in Physical and Commercial Services](#)

Privatized arrangements like contracts are more efficient in solid waste collection, transportation, and street services, as these are private or toll goods. Water supply, communication, or state owned property, even though historically public goods, may be provided efficiently through private provision.

Chapter 7: Applications in Protective and Human Services

Although government is interested in the fundamental safety of citizens, privatization has been successfully applied to protective and human services, such as public safety, national defense, health care, education, and social services. Vouchers, market arrangements, and contracting have been used. Contracting is the most common.

Part Four: Toward Successful Privatization

[Chapter 8: How to Privatize](#)

Four broad strategies are introduced to implement privatization: load shedding, adopting arrangements that have minimal government involvement, instituting user charges, and introducing competition.

[Chapter 9: Problems with Privatization](#)

Each privatized arrangement requires certain conditions in order to be successful and fully effective. Many of the problems reported for human service contracts result from the difficulty of specifying the desired results of the services and from faulty implementation. Political, bureaucratic, and employee resistance must be overcome. There may be legal impediments to novel arrangements and problems with long term contracts.

Chapter 10: Conclusion

Restructuring Local Government

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Book Summary

Sclar, Elliot, 2000. *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press.

Today, nearly all public services – schools, hospitals, prisons, fire departments, sanitation – are considered fair game for privatization. Proponents of privatization argue that private firms will respond to competitive market pressures and provide better service at lower cost. While this assertion has caused much controversy, the debate between both sides has consisted mainly of impassioned defenses of entrenched positions.

In *You Don't Always Get What You Pay For*, Elliot D. Sclar offers a balanced look at the pitfalls and promises of public sector privatization in the United States. By describing the underlying economic dynamics of how public agencies and private organizations actually work together, he provides a rigorous analysis of the assumptions behind the case for privatization.

The competitive-market model may seem appealing, but Sclar warns that it does not address the complex reality of contracting for government services. Using specific examples, such as mail service and urban transportation, he shows that privatization ironically does not shrink government – the broader goal of many of its own champions. He also demonstrates that there is more to consider in providing public services than trying to achieve efficiency; there are issues of equity that cannot be ignored.

Sclar believes that public officials and voters will soon realize the limitations of “contracting out” just as private corporations have come to understand the drawbacks of outsourcing. After examining the effectiveness of alternatives to privatization, he offers suggestions for improving public sector performance – advice he hopes will be heeded before it is too late.

Chapter 1: [The Urge to Privatize:](#) Sclar gives us a comprehensive overview of the history of privatization, the standard market model and the connections between competition and privatization.

Chapter 2: [What is the Public Buying? Identifying the Contracted Public Good:](#) Sclar addresses the fundamental choice between the public supply of private goods versus the private supply of public goods.

Chapter 3: [Public vs. Private Production: Is One Better and How Would You Know?](#)

This chapter analyzes the cost structure of public and private production using empirical data from Canada, California and Ohio to dispell the myth that private production is more efficient and cost-effective than public production.

Chapter 4: [What's Competition Got to Do With It? Market Structures and Public Contracting:](#) Sclar illustrates aspects of the real-world play of markets and politics that confront efforts to privatize services with examples that show the complexity of the marketplace in which privatization contracts must be written.

Chapter 5: [All in the System: Organizational Theories and Public Contracting:](#)

Sclar addresses three key topics: transaction-cost economics, the new institutional economics and contract

theory and practice to suggest a more robust and practical approach to contracting.

[Chapter 6: Restructuring Work: The Relational Contract](#): Sclar uses the Indianapolis Fleet Service example to demonstrate that a clearer understanding of the problems of public work can lead to reform strategies other than privatization.

[Chapter 7: The Privatization of Public Service: Economic Limits of the Contract State](#): Sclar brings all of his points together in an attempt to summarize all of the problems with privatization.

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Article Summary

Tiebout, Charles 1956. "A Pure Theory of Local Expenditures," *Journal of Political Economy* 64:416-424.

Public goods are non-rival and non-exclusive. Therefore, determining the optimal amount of expenditure on public goods presents an interesting problem. In this article, Charles Tiebout employs the theory of public choice. He argues that residents of localities are similar to consumers, because they are essentially "shopping" between different municipalities to find the one that has the right mix of taxes and public services. Their ability to choose leads towns to compete against one another, and that competition means that the towns are better able to discover and serve the needs of their citizens. This theory ensures that municipalities do not overproduce public goods, thereby wasting valuable local resources.

Tiebout assumes that there are n local public goods and there are m communities. Each community would go to the national market and bid for appropriate units of each public good. The demand for each public good would then be the sum of demands of all the m communities for each of the n goods. This total demand is the revealed preference of the community.

The model also assumes that there is an optimal level of population for each community, depending on some fixed resource, the beach space for example. Beyond this optimum number, an individual would have to look for the next best community that fits his or her preferences. Economic forces would automatically push people out of a city that has exceeded its optimum size and pull people in when the optimum population has not been reached. Hence spatial mobility provides a way to determine the level of public goods.

In his explanation of how potential residents choose communities, Tiebout assumes there are no restrictions on job locations, and all residents have full mobility and access to information about services in all communities. In order to provide a perfectly competitive market, each town would have a fixed revenue scheme and the number of towns would be limitless in order to provide a full range of choice for all desired combinations of taxes and public goods.

Tiebout also makes several suggestions for policy implication at the end of the article. He suggests that integration of municipal services between neighboring metropolitan areas is justified under certain conditions: if services are not reduced and costs remain the same. In addition, he advocates policies that increase knowledge of residents and encourage their mobility.

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Article Summary

Boyne, George A. 1996. "Competition and Local Government: A Public Choice Perspective." *Urban Studies* 33 (4-5): 703-721.

Three types of competition can be recognized in local government:

- 1) Traditional: between local authorities for power and resources.
- 2) New: between a council and other organizations for service production.
- 3) Neglected: between councils themselves.

Traditional competition involves interparty competition. It is often ineffective at the local level because:

- 1) Local parties enjoy large majorities and thus have no reason to compete.
- 2) Local parties lack incentive to compete because they are controlled by national political issues.
- 3) Local politicians lack the freedom to compete.

Boyne gives the example of the Conservatives in the UK government establishing the compulsory competitive tendering (CCT) program. They forced councils to request tenders from outside private suppliers (ex. construction, maintenance of highways). CCT was ineffective because it potentially decreased quality of service and reduced variety, and though it led to greater technical efficiency, it did not attain greater allocative efficiency, for it was concerned with production rather than provision.

Competition between councils (defined as new competition) competes on a geographic as well as on a tier-level basis. Three major variables which affect competition between councils are:

- 1) Structure
 - There are two types of structure: consolidated, where all services are provided by a single unit serving a large area; or fragmented, where local government is divided into tiers based on services.
 - Public choice espouses the use of fragmented structure to allow for choice in different neighborhoods (Tiebout model) and take advantage of scale economies.
 - The Tiebout model is said to only apply to a handful of metropolitan areas in the UK.
 - The advantages of a fragmented structure are:
 1. It allows competition for a finite local tax base, improving services.
 2. It leads to more flexibility in switching services and creating new ones.
 3. Horizontal fragmentation leads to new household and business tax base, and vertical fragmentation leads to a more efficient rather than prodigal tier of local government
- 2) Autonomy
 - Local governments should have flexibility to innovate, experiment, and create needs-driven distinctive policies.
 - This will lead to competition which will encourage individuals to move into clusters and develop homogeneous communities around preferences for public policy.

3) Finance

- There exists an inverse relationship between central funding and local competition; as central funding increases, local competition decreases.
- Every community will emphasize a redistribution in their favor and de-emphasize any resulting inefficiencies because the gain of more funds will offset any inefficiencies in the grand scheme of things.
- The higher the level of central funding, the lower the incentive for fiscal movement between areas; fiscal migration will increase only as horizontal equity (people with same taxes receive same services) increases.
- Some central funding is necessary for equalization grants to neutralize variations between income discrepancies in different areas.
- Other public choice theory posits that grants lead to collusion rather than political competition, as local bureaucrats form cartels in order to limit price variation.

UK example

- Structurally, all-purpose authorities were created as the Greater London Council and six Metropolitan Counties were abolished.
- This has contradictory effects: it removes vertical competition as upper-tier councils are abolished and remaining tiers have monopoly control on the tax base, but it introduces horizontal fragmentation in to former upper-tier services which are now more geographically fragmented.
- Local autonomy has declined because councils have created more compulsory obligations and less discretionary power.
- Central funding has risen because of policy changes and political fiasco relating to a poll tax.
- As a result, competition has been reduced in local government in the UK over the past decade.

Restructuring Local Government

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Article Summary

Bennett, Robert. 1990. "Decentralization, Intergovernmental Relations and Markets: Towards a Post-Welfare Agenda?" Pp. 1-26 in *Decentralization, Local Government and Markets: Towards a Post-Welfare Agenda*, ed. Robert Bennett. Oxford: Clarendon Press.

In this Introduction to his edited volume, Bennett describes briefly the worldwide movement from "welfarist" policy to "post-welfare" policy. During the post-World War II era, a system of entitlements was developed in many Western nations and the state became a major provider of education, health services, land-use planning, and housing. In recent years, however, there has been a shift in thinking, and in the U.S., the idea of "new federalism" has gained great currency. New federalist philosophy advocates more state and local power, and less intrusion and regulation by the federal government. Enormous global economic changes have also prompted a critical examination in many countries of how the government provides services and its ability to respond to the needs, demands, and preferences of citizens. Bennett discusses two main types of decentralization: intergovernmental decentralization, the shifting of power and responsibility for certain government activities from one level to another (for example, from federal to state, or state to local), and decentralization from government to the market or nongovernmental organizations. In the U.S., two forces are at work: intergovernmental decentralization from the federal government to the states, and market decentralization at the state and local levels. According to Bennett, the U.S. has been a leader in innovation within the post-welfare era in our use of market approaches to service delivery. Bennett identifies six perceptions motivating the shift to the new post-welfare paradigm. He sums them up as follows: 1) government programs are political pork barrels; 2) government administrators and politicians are poor service providers; 3) government intervention encourages dependency; 4) federal government control suppresses local initiative; 5) costs for services have and will continue to escalate out of control; and 6) public support for government programs is low. The shift itself consists of radical changes in thinking about service delivery, including a move to thinking of citizens as "customers" to be served based on their needs and preferences but also with a consideration of the costs involved. Within this framework, services can be provided by the private, voluntary, and nonprofit sectors, and people do not necessarily receive services "as of right." Managerial accountability, flexibility, and cost-efficiency are stressed, and resource allocation is made more efficient through funding mechanisms such as user fees, which will lessen the need for large-scale, progressive taxation. Bennett acknowledges that these transformations may have implications for equity and for the role of private sector businesses.

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Article Summary

David Lowery, 1998. "Consumer Sovereignty and Quasi-Market Failure" *Journal of Public Administration Research and Theory*, pp.137-172.

Contract or quasi-markets bring market like forces into the provision of public goods. These quasi-markets may be more efficient and responsive to the preferences of citizens/consumers. However, Lowery argues that we should also consider opportunities for market failure. The standard of evaluation, used by Lowery, to determine success or failure, is by the concept of **consumer sovereignty**. A central assumption of the market is that consumers will generate changes in supply and demand by their preferences. It follows that the performance of a market should be evaluated by how well the wants and needs of consumers are met. Lowery outlines three areas of potential quasi-market failure.

Failure in Market Formation:

The main reason quasi markets fail to form is due to their monopolistic nature. For consumer sovereignty to exist, there must be competition, and that is what quasi-markets should provide. But evidence points to little real competition in quasi-markets, especially contracted services. Often contracts are not competitively bid and once created they tend to get routinely renewed because of political clout and lack of new competitors. Also, there is evidence that contracting does not net significant reduction in spending, which undermines the presumed efficiency of contract production.

The second area of failure in market formation is the creation of barriers to entry which may exclude competitive suppliers or the full range of consumers (especially those who are more expensive and harder to serve).

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Chapter Summary

Sclar, Elliot, 2000. "What's Competition Got to Do with It? Market Structures and Public Contracting," Chapter 4 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press.

In the fourth chapter, Sclar examines three case studies to explore the misconception of competition in the privatization of public services. Fundamental to the argument for the privatization of public services is the belief that the competitive pressures of the market forces private service providers to behave more efficiently. Public contracting, however, the author notes, usually takes place in monopolistic or oligopolistic economies, characterized by little to no competition. Private contracting can shift a competitive market to a monopolistic or oligopolistic market through long-term contracts. Public officials should be aware of the significance not only of how the market for a particular service is structured prior to privatization, but also of how privatization may shape the state and the dynamics of that market in the future.

First Sclar examines contracting in a monopoly market, analyzing the case of fire fighting in Scottsdale, Arizona. Sclar chooses this example because "nearly every important study advocating . . . privatization of municipal services refers to Scottsdale, but few have followed its example" (72). Since its incorporation in 1951, Scottsdale has contracted its fire services to Rural/Metro. The contract is renewed annually on a cost plus profit basis; it is not open for public bidding. Sclar points out that while Rural/Metro may be as efficient as other providers – it is not the competitive nature of the private market that stimulates that efficiency. Not only is it a closed contract, there are no alternative suppliers and there are legitimate barriers to entry as a result of Scottsdale's long term relationship with Rural/Metro. Furthermore, Rural/Metro relied on labor cost savings, such as volunteer and on-call firefighters, to keep down costs. Compared to equivalent public fire service providers, Sclar notes, Rural/Metro has lower cost but also lower quality. Sclar foreshadows that Rural/Metro will not be able to maintain its competitive edge as population density increases because its cost savings strategy would become infeasible. Sclar also suggests that existing publicly provided services could achieve the same levels of efficiency if they restructure.

Sclar explores the following two examples of contracting in an oligopoly market:

1. In the first example, Denver policy makers attempted to keep the contracting of existing public transit competitive by privatizing in phases and limiting the market share of individual providers to fifty percent. Three national bus companies won the contracts by offering exceedingly low prices for the first contract term and then rapidly inflating charges to the actual costs after being awarded the contract. Quickly the five providers who were not awarded contracts were squeezed out of the market, and future competition foreclosed. The Regional Transit Authority was distracted by the debate over privatizing the remaining portions of the public transit and therefore unable to devote time to internal restructuring.
2. The second oligopoly example examines school busing in New York City. The nature of the business of transporting children requires consistent reliable service. In the name of consistency the private contracts are awarded to the same companies every year; there is no competition. While Mayor Guillian tried to reform this market and instill competition, the size and complexity of the business and the public value of ensuring safe reliable transportation to school aged children, eliminated the entry of new competitors. Sclar notes that

one way to insert competition into this market might be for the public sector to develop its own fleet of school buses that could compete with the private contractors.

Sclar concludes that benefits derived from competition in the contracting of public services are often imagined ones rather than real ones. Public decision makers must shoulder two costly burdens: costs associated with establishing an ongoing competitive market and costs associated with being participants and guarantors of that market. Sclar concludes that public decision makers should not work towards privatization in the name of competition when they could be considering restructuring or reorganizing their own management. As the three case studies illustrate the market solution has limited practical applications; competition does not always result from privatization.

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Article Summary

Kodras, Janet. 1997. "Restructuring the State: Devolution, Privatization, and the Geographic Redistribution of Power and Capacity in Governance." Pp. 79-96 in *State Devolution in America: Implications for a Diverse Society*. Ed. Lynn Staeheli, Janet Kodras, and Colin Flint. Urban Affairs Annual Reviews 48. Thousand Oaks, CA: Sage.

Kodras addresses the three ways in which government can change public service provision: 1) privatization, 2) dismantling, and 3) devolution. Pulling from the topical literature, Kodras summarizes arguments and counter-arguments for a change in service provision responsibility. From the larger quantity of arguments against, I surmise that Kodras is concerned about the impacts of government service provision change.

The major thread running through the arguments against change in government services is the inadequate capacity of local and state governments, not-for-profit institutions, and individuals to provide goods and services. The national government has access to fiscal resources that other entities do not, as well as to technical expertise that may not be available to a small community in upstate New York.

- **Privatization - transfers the functions of government to commercial firms and nonprofit organizations**

Pro: Market competition increases efficiency and service quality.

Con: Competition in service provision is often absent, resulting in monopoly rather than greater efficiency.

- **Dismantling - eliminates government responsibility for the goods or services**

Pro: Nonprofit organizations are more highly attuned to community needs than is government, and instill a sense of civic pride.

Con: Nonprofit organizations are generally very localized and geographically fragmented. They are an insufficient substitute for the local state in terms of both capacity and scope. Responsibility for services no longer provided by government often falls to individuals without the resources to provide them.

- **Devolution - transfers responsibility from higher to lower levels of government**

Pro: Government closer to the people is more flexible.

Con: Creates inequities in service provision due to geographic differences in expertise, material and financial resources, infrastructure, and political will. State or local governments often do not have the capacity to provide services that a higher level of government does.

Local governments are less capable of competing in the world market than is a national government which can provide uniform standards and regulations, and fiscal redistribution for inequities created by competition.

Devolution creates competition between state and local governments which, in the case of basic government

services and economic development, sometimes promotes efficiency. To a certain extent, devolution allows for the most locally applicable provision of certain services, and the best locations for industry and retail economic development. But local governments compete for manufacturing with tax abatement incentives, free land, cheap labor, and infrastructure investment that can end up costing local government more per job than is yielded by the investment, and is a zero sum game for the state and nation.

In the case of social welfare services competition can spur a race to the bottom. When social services are not uniform across space, citizens perceive that recipients move to the areas with the highest benefits. Citizens in areas with relatively high benefits do not wish to subsidize outsiders, and urge government to reduce benefits.

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Chapter Summary

Warner, M.E., 2003. "Competition, Cooperation and Local Governance," chapter 19 pp 252-262 in *Challenges for Rural America in the Twenty First Century*, edited by David Brown and Louis Swanson, University Park, PA: Penn State University Press.

Privatization, decentralization and civic participation are common themes characterizing the changing structure and organization of local governments. Privatization and decentralization are based on the positive power of competition to ensure governmental efficiency and responsiveness to citizen voice.

These trends represent important innovations but they also bring new challenges. Successful decentralization requires administrative and financial capacity and effective citizen participation, but many rural governments lack an adequate revenue base or sufficient professional management capacity. Rural residents have relied more on private markets than government for many services; however, rural areas have also suffered from under development due in part to uneven markets.

As we move into the 21st century, government innovation based on competition may give way to innovations based on cooperation. Cooperation between levels of government and with private sector and civil society actors may offer greater potential for efficiency and equity than competitive markets. However, cooperation will also bring challenges. The governance of cooperative networks will require new mechanisms for accountability and voice. Ensuring equity and participation in these new governance structures will be especially important for rural communities.

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Article Summary

Webster, Christopher J., (1998). "Public Choice, Pigouvian and Coasian Planning Theory," *Urban Studies* 35(1):53-75

This article suggests there may be market solutions to problem of public goods in the form of local collective action outside of government. However, these solutions are likely to work only in settings where there are a small number of participants and high liquidity of property rights. Webster illustrates this by comparing Pigouvian and Coasian economic theory using an example based on land use planning and pollution.

Pigouvian theory begins with the assumption that without any sort of intervention, land and property markets fail in a number of ways because the market will not regulate itself. Therefore, if the *social* costs of economic activities are not taken into account by suppliers of goods, negative externalities (such as pollution) will be overproduced. Pigouvian theorists propose the internalization of the externalities. Pigouvian analysis calls for intervention, arguing that only government has the authority to force a firm to restrict output, by forcing producers to recognize the social costs of production.

Webster uses the Coasian argument to question the presuppositions of Pigouvian economics and to raise the idea that government intervention may not be the only solutions to the externality problem. The foundation of Coasian economics lies on the belief that voluntary solutions can be found by means of voluntary market agreements.

- The polluter can pay the polluted. In this case, the polluter will pay the polluted up till the point at which the revenue she will make is equal to the social cost of pollution.
- The polluted can pay the polluter to reduce polluting. The polluter will accept payment as long as the amount offered is less than the (potential) revenue earned.
- Externalities are technically eliminated or internalized through a pricing mechanism. Payment from one party to another ensures the socially optimal amount of pollution.
- It does not matter who holds property rights (polluter/polluted), the socially optimal outcome will always ensue. Practically, this means that government intervention cannot produce a more efficient allocation of resources than is provided for by voluntary, unrestricted market agreements, regardless of who has rights over land use.

There are a number of assumptions Webster glosses over in his example. A number of assumptions of classical economics need to hold if this voluntary market agreement is going to work, most notably perfect information and zero transaction costs. What Webster terms 'fungibility', or the liquidity of property rights, becomes important in that property rights may not be that easily transferred. His example assumes that both the source and the effects of the pollution are localized, which may not be the case. Although the outcomes, regardless of who retains property rights, may be quantitatively equivalent, there are qualitative differences that arise. Webster does allow that 'with the exception of usual circumstances more likely to be found in small settlements, Coasian and public choice analyses of developmental control retain the Pigouvian

proposition that government is generally in the best position to organize and deliver collective goods.' (16). Government, however, should not act as an agent analogous to the market, as Webster contends. Rather the state (ideally) should act in a way that allows the market to operate freely and produce a socially optimal result.

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Article Summary

Staley, Samuel and Lynn Scarlett. 1997. "Market Oriented Planning: Principles and Tools." Los Angeles: Reason Public Policy Institute. <http://www.rppi.org/ps236.html>
The Reason Public Policy Institute promotes market solutions over government regulation.

In this article, Staley and Scarlett propose a system of market-oriented planning that would be more conducive to rapid land development and would use a common law, nuisance-based standard in those instances in which regulation was needed. They argue that traditional land-use planning slows down the land development process with unnecessary bureaucratic delays, that it favors special interests, and is incapable of adapting sufficiently rapidly to society's changing land use needs.

Current planning and zoning practices include the present the following obstacles:

- Development approval processes often involve some combination of bargaining, legislative action, appeals, and litigation, and can be time-consuming, inefficient, and costly both for the private developer and for the municipality.
- Planning processes sometimes result precisely in those conditions planners had hoped to avoid, such as unaffordable housing and traffic congestion.
- Problems often extend beyond jurisdictional boundaries, making it difficult to find comprehensive solutions.
- Planners' visions of future land use needs have, in the past, proven woefully incorrect; (e.g. planners did not anticipate societal changes that have spatial effects, two-income households, the digital revolution and just-in-time inventory strategies)
- Politicization of land use decision-making impinges on private property rights and nuisance protections through the power of legislatures and special interest groups.

Staley and Scarlett offer the following prescriptions for local land use policy.

- Land use decisions should be made at the local level and should be protected from state or federal interference.
- Development should not be impeded unless the government or an individual directly and tangibly affected requests a hearing based on potential negative impacts, which must be tangible and measurable.
- The government should be given a time limit within which to take action or to review an application.
- Site plan review should be rapid and efficient, and should have clearly defined criteria.
- Zoning districts should be mixed-use or should have broadly defined use categories to give greater latitude to developers.
- The developer should pay for all infrastructure associated with the development, but should be able to choose what type of infrastructure is appropriate.
- Land use planning should not attempt to achieve a substantive end goal, but rather should establish an

efficient process to guide market development.

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Article Summary

Zerbe, Richard O. and Howard E. McCurdy. 1999. "The Failure of Market Failure," *Journal of Policy Analysis and Management* 18(4):558-578.

This article addresses the limitations of the market failure approach to discussions of public goods. The authors' argument draws specifically from transaction cost economics, which they feel contributes to a better understanding of issue for/against government intervention in the market. Zerbe and McCurdy argue that the case for eliminating market failure through the internalization of externalities is flawed, and that governments should intervene in the marketplace only when they have the ability to lower transaction costs.

Zerbe and McCurdy begin by giving a brief history of the market failure concept, from the traditions of Pigou and Samuelson. Included in this summary is a working definition of market failure from a welfare economics position that is: 'a circumstance where the pursuit of private interest does not lead to an efficient use of society's resources or a fair distribution of society's goods' (p.559). This definition refers to the free market's inability to supply a sufficient amount of public goods, which then necessitates government-led solutions. Accordingly, market failures represent a necessary, but not sufficient condition for government intervention.

Zerbe and McCurdy then explain why market failure analysis is conceptually flawed. The failure of market failure is in fact both the inability of the concept of market failure to address transaction costs and the reliance on consumer preference as an explanatory mechanism. The authors attribute the causes of 'market failures' to externalities, which arise entirely from transaction cost, or the cost of choosing, organizing, negotiating, and entering into contracts. Moreover, 'since unpriced transaction costs are ubiquitous, this gives rise to a situation in which externalities and hence market failures can be found wherever transactions occur' (p. 563). Hence, eliminating transaction cost, in their mind, should be the goal of policy analysts. The transaction cost associated with internalizing the cost of negative externalities 'will never be lower than the net monetary impact of the externality' (p 562). That is, the transaction cost associated with the reduction of a producer's supply will always be greater than the social/environmental cost of the offending externality and therefore such a remedy would not be efficient. Secondly, Zerbe and McCurdy address the difficulty welfare economics has in revealing consumer preference. "The market failure concept is not inherently empirical and as such cannot provide answers to empirical questions" (p. 571). The article then goes on to describe several examples when markets can successfully handle potential externality problems. These examples include lighthouse; land tenancy; bees and crops; and common property.

So when should government intervene in the market place? Efficient and optimal government intervention in the marketplace must begin by examining transaction costs and net benefits, not market failures per se. Since externalities are ubiquitous, using externalities as a basis for intervention can at best be arbitrary- and is in no way guaranteed to be an efficient means of addressing the externality. 'Anytime government can reduce private transaction costs or its own cost of provision, it should do so regardless of whether or not an externality exists. It need not wait for an appearance of an externality to effect a justification' (p. 565). The approach Zerbe and McCurdy take aims to provide solutions for traditional market failures and takes advantage of government's ability to lower transaction costs, usually through its power of coercion.

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Chapter Summary

Sclar, Elliot 2000. "All in the System: Organizational Theories and Public Contracting," Chapter 5 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press.

In the fifth chapter, Elliot Sclar argues that given the ideological and political pressures to privatize, we must examine under what conditions contracting and in what form contracting might be successful. Sclar begins with a critique of the standard economic model, which assumes that actors have equal access to information regarding the contract, a static documented agreement. Sclar argues for a form of relational contracting as an alternative. Sclar bases his arguments in the following theoretical assumptions: 1) a notion of bounded rationality, which concedes the inability of actors to have access to all relevant information, and 2) and the notion that context matters, a concept derived from new institutional economics, which incorporates the institutional constraints of ideology and politics, as well as economic rationality.

Sclar dismisses as unrealistic the classic or complete contract form because it assumes that the terms of the contract can "captur[e] all present and future rights and obligations between the parties." Sclar also critiques incomplete contracts, which are more common to public service contracting. He argues that it is nearly impossible to specify all future situations and contingencies in a contract. Furthermore, the notion of incomplete contracts is still rooted in the theoretical assumption of market competition. Incomplete contracting, he demonstrates, produces the following three problems: 1) principal-agent problems; 2) adverse selection; and 3) moral hazards.

Principal-agent problems typically occur when one party (the principal) hires another (the agent) to carry out an assignment, but the agent serves its own interest at the expense of the principal because of information asymmetry (a situation in which existing information is not uniformly distributed therefore those with access to superior information act opportunistically and at the expense of the others). To offset information asymmetry, public agencies or private firms that find themselves less privileged in incomplete contracting situations often hire third-party consultants. This, however, adds extra costs.

Adverse selection refers to a situation in which one party, in this case the public sector, chooses a seemingly attractive provider based on criteria such as the best price. But, because the public administrator does not have complete information regarding the competing bidders the choice results in a mistake. The contractor may turn out to be less qualified and risk-tolerant, to have chronic cash-flow problems and/or high rates of labor turnover. In all of these cases, the price signaled a choice that over the long-term may be more costly than if the administrator had been aware of these other factors and criteria.

The problem of **moral hazards** in public contracting may arise when there is a discrepancy between the public objectives and the incentives of the private provider to meet those objectives.

Sclar argues that in practice any instance of privatization typically includes manifestations of all three problems.

As a way to overcome the pitfalls of traditional contracting situations (i.e., complete and incomplete

contracting forms), Sclar suggests relational contracting, which he notes is already practiced in the human services where the government has established long-term relationships with often non-profit third sector providers. Relational contracting is not market-based competition but in inter-organizational trust aimed at building long-term relationships and capacity. Sclar invokes terms, such as bilateral governance, networked governance and hybrid organizations (123). In relational contracting, the formal contract or agreement is less critical than the quality of trust that develops between the parties.

Sclar further argues that relational contracting offers a basis for improving both the internal workings of public agencies and their external relationships. This contracting form, in the author's view, also avoids high transaction costs (time and resources spent obtaining the information necessary to chose among competitors and to ensure that terms of the contract are comprehensive), by supplanting them with trust and cooperative long-term relationship (i.e. a stable network). Such cooperative long-term relationships, Sclar, are both constrained and supported by the formal and informal social, political and economic rules in which they are embedded.

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Article Summary

Feigenbaum, Harvey and Jeffrey Henig. 1994. "The Political Underpinnings of Privatization: A Typology". *World Politics* 46 (Jan. 1994): 185-208.

Privatization is traditionally seen through the lens of Administrative analysis, which views the process as a series of choices available to public officials that would allow them to make government work more efficiently, or Economic analysis, which presents privatization as the result of modern tendencies to restrict the role of government intervention in the market. The authors introduce a political perspective to this process and emphasize pragmatic privatization as a means of cost-cutting, tactical privatization as a way of rewarding allies, and systemic privatization to change institutional structures and societal ideologies. Systemic privatization is the primary focus of the three.

There are three limitations to the administrative and economic views of privatization. First, these theories have differing views of the public sector. The administrative view sees the government as "good" with a desire to provide proper services to its citizens while the economic view sees government as an economic player and motivated by self-interest. Second, "The choice of a particular form of privatization can be less significant than how privatization is actually formulated and implemented"(189). What this means is that the goal of the privatization effort is what should be important and will be affected by implementation. In some cases it may be to create a greater organizational structure, or to shed expenses from the budget. Each case will require a different process to achieve the stated goals once a form of privatization is chosen,. Third, both views pay little attention to the political dimensions present and the different interests of particular groups or classes in society. There will always be differing opinions on the shifts of power created by privatization.

Administrative

Economic

Political

	Administrative	Economic	Political
Emphasized Goal	Achievement of socially defined goals	Maximization of individual's utilities	Redistribution of power and control
Unit of Analysis	Discrete societal problem	Individual/firm	Group/class
Concept of Privatization	Tool box	Preferred mechanism	Weapon

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The argument of Feigenbaum and Henig "is that the broad privatization movement is, in many of its manifestations, better understood as a political phenomenon"(190). First is pragmatic privatization which is a short-term solution to immediate problems. Many times this involves contracting out public services in order to save money. Second is tactical privatization which is aimed at short term political interests. The goal is to attract allies and reward supporters. This method is a form of political opportunism.

The final type of privatization is Systemic and is aimed at reshaping entire societal expectations of what government should do and should be responsible for. Pursuing systemic privatization is often contrary to political rationality because outcomes are long-term and difficult to foresee. The hope is that individuals

will have to seek a new means of problem solving outside of the public sector. The best example of this would be in Eastern Europe where changes in government structure have created changes in social ideologies. Many goods and services that were once considered public have been shifted to the private sector and perspectives of the role of government are changing significantly.

Pragmatic

Tactical

Systemic

Key Motives	Public sector "triage", Reduction of budget drain, Adjust to changing circumstance	Short-term shift in party or interest group clout, Attract voters, Reward supporters	Long-term shift in balance of power, Lower expectations of government, Reduce government capacity, Transform political stakes,
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p. 203

Systemic privatization may take three forms. First, there could be a change in the way that organized interests would pursue their goals. A withdrawal of government would cause groups to interact with each other rather than with government and change the political features of the lobbying process. An example may be contracting out a previously public service and undermining the strength of labor unions. This creates a "power shift"(200) and may apply to many other groups. The second form is to change the values and culture of society by changing their expectations of what the public sector would be responsible for providing. This form deals strictly with perceptions of what government should be expected to provide and to cultivate an understanding of what should be private or public. It is not a concrete shift in responsibilities, but rather of mindsets. Eastern Europe has seen this form of "perceptual shift"(201) while governments continue to sell previously public enterprises in an attempt to create markets and shift reliance to the private sector. The third form is an "institutional shift"(201) which would move legal, political, and economic responsibilities into the private sector. It is meant to shift social control from bureaucracies and politicians to the market. The goal is to find market solutions for previously public matters.



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Article Summary

Henig, Jeffrey 1989-90. "Privatization in the United States: Theory and Practice." *Political Science Quarterly*. 104(4):649-670.

Henig's article is an analysis of how privatization has become part of current public policy debates. He begins by discussing the theory of privatization, then moves to development and legitimation of the idea. He discusses how theory appropriates practice, and then how the practice became a partisan program. Finally, the article discusses a possible backlash to privatization and looks to the future.

- **Theory and Practice** A theory of privatization, with its origins possibly as far back as Adam Smith, has played a key role in the emergence of it into current political debate. He points out that the privatization theory has indirectly helped the cause, but has not been married with actual implementation. Henig explains that the privatization movement has pointed to many local and state level measures, undertaken as managerial responses to fiscal constraints rather than pro-privatization experiments. The theory, as opposed to the practical implementation through government measures, has helped to both revive economic, laissez faire principles to explain government behavior, and to redefine preexisting local government practices.
- **Establishing the theoretical infrastructure** Henig explains that privatization remained a fringe idea until recent decades because Americans had come to accept the welfare state and the necessity of government to protect groups such as the elderly, handicapped, orphans, and to protect the rights of racial minorities. Economist Milton Friedman helped push the idea that the government is a part of the economy (acting like a private monopoly) rather than a separate entity. He characterized government regulation as anti-consumer and helped create the distinction between government responsibility and government provision. Public-choice theorists helped to solidify the theory.
- **Becoming a Partisan Issue** One of the results of the emergence of privatization theory to classify preexisting efforts by local governments to privatize was a new partisan nature to the issue. "As privatization was brought to the national agenda in the 1980's, it was invested with a partisan content that undermined the atmosphere of pragmatic adjustment in which the practice initially took root".
- **Deregulation and Privatization** The middle to late 1970's brought a deregulation movement that foreshadowed the privatization policies of the Reagan Administration. The decade was also a time that "the strain of pragmatic skepticism at the core of American culture had to be assuaged." Studies by Savas and Roger Ahlbrandt tried to prove that privatization really works. Reagan turned "privatization as economic theory into privatization as political strategy."
- **Reagan's Agenda** Reagan's election allowed privatization advocates to get support at the

national level:

- 1) Aggressive proposals for the sale of a wide range of government assets (federally owned parks, National Weather Service satellites, Conrail and Amtrak.)
- 2) Adoption of the term *privatization* and its definition as “allowing the government to provide services without producing them”.
- 3) Helped define the role of privatization by identifying contracting out, grants and subsidies, tax incentives, deregulation, vouchers, franchises and divestitures as elements of privatization that had already been used successfully at the state and local level.

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Chapter Summary

Frug, Gerald E. "Alternative Conceptions of City Services," in *City Making: Building Communities without Building Walls*. Princeton: Princeton University Press, 1999.

Frug begins his examination of city service provision by reviewing recent attempts to modify Charles Tiebout's (1956) public choice model into a more realistic version. He also discusses the problems inherent in this model. Frug first describes Hamilton's conservation of Tiebout's basic "vote with your feet" model, appended with the caveat that the rich will move to escape the poor, while the poor will follow the rich to reap the benefits of a stronger tax base. Buchanan's alternate modification permits bribery (in the form of better services) of wealthy residents in order to keep them as local residents and underwriters of services for the local poor. However, as Frug points out, Tiebout's model leads to cities which resemble self-segregated voluntary associations of consumers who want privatized services. These consumers view services as "objects of consumption" for those who can afford to pay.

Frug illustrates his concerns over privatization with two models of cities. The **voluntary association model** discussed above reduces citizens' involvement and investment to that of consumers, with no principles of democratic equality and no collective civic collaboration or responsibility. "Freedom of choice" in the voluntary association model is defined in terms of choices to consume, but neglects the reality that without sufficient resources to exercise preferences, choices to consume are severely limited. A second model of cities which also minimizes group interactivity and defines choice in terms of consumption is the **public choice model**. This model depicts cities as merely the sum of the individual residents and promotes fragmented services as offering more choice to consumers. In both cases, the individual consumer focus promotes exclusivity and erosion of consideration for others.

As an alternative to these individualistic and consumer-oriented models, Frug promotes the **fortuitous association model** as his vision for the future of cities. This model likens a city to a group of individuals who happen to live together and must learn to tolerate as well as work with each other. In addition, it expands the concept of freedom of choice, which Tiebout conceived as ability to move, to encompass freedom to stay in a neighborhood. Building community by working together empowers residents to use this interconnection and social capital to address problems and make the neighborhood a place residents want to call home. The fortuitous association model views residents as citizens instead of consumers. Frug sees this model as a modern and more respectful reincarnation of the early American city services, which served the poor in part to control them and socialize them to act more like middle-income people, but also because those in power realized that providing basic city services to all, including the poor, increased all residents' quality of life.

Through the interdependent relationships and community-building inherent in the fortuitous association model, Frug hopes to fundamentally reform the current idea of the autonomy of cities. His vision would move funding and eligibility for services to a regional level, promoting equity by, in effect, legislating that all citizens have to consider the welfare of a greater number and diversity of people when making decisions about community services. The modern city in Frug's vision would celebrate and socialize respect for diversity.

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Article Summary

Starr, Paul. 1987. "The Limits of Privatization." Washington, D.C.: Economic Policy Institute.

In this article, Starr responds to those who would claim that privatization is the answer to all of our nation's problems. He first notes that private markets are not natural creations; rather they are legally and politically structured. Because these public functions are present even in the private sphere, it is not an "either-or" question of public or private, but rather what form of public-private partnership is "best"; a determination not based simply what is the cheapest or most efficient, but one that should include concerns about justice, security, and citizenship.

Starr points out that ideally privatization opens up public monopolies to competition from a number of private firms, but often it merely transforms public monopolies into private ones. It is difficult to sustain competition within the private sector, as successful contractors build local knowledge that gives them an advantage over other bidders. Also, many public services are performed by nonprofit organizations, which are less competitive by nature. However, it is possible to introduce competition into the public sector.

Starr believes that some exponents of privatization, while they talk about vouchers and contracting, have the ulterior motive of gaining support for wholesale government disengagement from providing many services. These advocates tend to view the economy in zero-sum terms, where more government spending means less economic growth in the private sector. This picture is not accurate, however. Many Western countries that have high government spending have also had high growth rates. In addition, public spending often represents investment in human capital and other intangible capital that is not quantified in any budget. As much as private markets are touted, we still rely on government for economic stability and for intervention when necessary.

While a strong argument for privatization comes in the form of promoting "public choice," Starr believes that this economic theory inappropriately envisions the public arena as a political marketplace in which everyone's goal is to maximize his or her benefit. Privatization advocates claim that support for expansive government spending is based on politicians' collaboration with narrow special-interest groups. Actually, the general public has supported most programs and services that government provides.

Starr disputes the notion that contracting services out to private producers will lead to cost savings. In fact, he states, it will merely create new groups with a strong interest in seeing government spending rise. He cites defense production, construction projects, and health care as three areas that have historically been produced privately for government but at tremendous costs. A greater level of private contracting is likely to change the nature of public-private relationships, as private firms come to depend on government dollars. The public will also require a greater level of accountability from private firms if they are receiving tax dollars, so they will be subjected to more regulation and oversight, making them resemble the public institutions they are replacing.

While he acknowledges that government services often provide little choice, Starr does not believe, as privatization advocates claim, that providing more choices through market mechanisms will lead to greater equity. Political participation allows democratic choice, where each person gets one vote, while in the

marketplace, those with more money essentially have more say. The political arena creates space for debate, not just the impersonal registering of preferences. Through privatization, decisions are moved from one realm to another, where there are different rules, less disclosure, and very likely less access than in the public sphere. In some areas, such as the provision of public TV and radio, government actually expands choice.

Another conservative complaint is that broad (and therefore expensive) government programs benefit many who are not necessarily in need of assistance. Even public education falls into this category for some privatization advocates. Starr points out that targeting services narrowly to certain groups would be much worse, creating resentment between classes of citizens and stigmatizing poorer groups.

Finally, the symbolic effect of privatization is not to be overlooked. The government is the steward of many of our important national legacies, such as parks and monuments, that have meaning to us as a nation. To privatize these things would deny our citizens a common ownership of them.

Starr believes there is a role for privatization, but its various forms must be carefully considered, as there is no single remedy for government's problems. We face not a choice between public or private, but an extensive variety of options in organizational forms and modes of ownership, control, and finance.

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Chapter Summary

Folbre, Nancy 2001. " Measuring Success," in *The Invisible Heart*. New York: The New Press. Pp 53-82.

Folbre's central point in this article is that economic pressure can reduce quality and we need to re-evaluate, and substantially revise, the ways we use to measure and reward success in the economy. Singular reliance on dollars as a measure and financial profit as a motive can undermine intrinsic motives like civic responsibility – an unforeseen long-term cost.

Discussing issues of quality in 'care industries' – health, child care, elder care, education and social services - she illustrates that competitive pressures can have perverse effects, particularly in areas of the economy that have to do with intangibles. Since personal and emotional inputs are difficult to measure and monitor –and therefore add to a bill - they are usually left out when there are incentives to minimize costs. But they are important components of the service that add to, or even define, quality. The ways in which these care industries are structured under competitive pressures to reduce costs therefore have significant implications for the welfare of those being cared for, and obviously, for the women workers who constitute a significantly larger proportion of workers in these sectors.

Cheapening Care

Costs of health care have risen sharply and need to be brought down, but privatization may not be the answer. The notion of competition in care industries is problematic as non-profit/public providers often have to play by different rules (e.g., private hospitals must provide emergency care to indigents, provide learning opportunities for interns and residents; public schools cannot refuse admission to any student, etc). A study found that several indicators of care quality are significantly lower in for-profits than non-profit HMOs. The pressure to cut costs has

- in hospitals, squeezed out empathy, emotional support and a personal relationship with the health-care provider, which have significant therapeutic effects. Reduced hospital stays shifts costs to family and friends (without pay) with potential negative health impact.
- In health management organizations (HMOs), negative incentives have been created - limited amount of treatment for mental illness, encouragement for doctors to reduce diagnostic procedures and hospitalization, exclusion of unhealthy people from membership, elimination of coverage for seniors on Medicare, less time spent on clinical examination and patient education.

Elder and Child Care

Private nursing homes and child-care institutions also provide cause for anxiety about quality –

- Nursing-home residents – almost two-thirds are indigent and rely on Medicaid to pay expenses – have no choice about where or how they will be cared for; their complaints about abusive behavior are often ignored. About 40% of nursing homes repeatedly fail to pass the most basic health and safety inspections. In the cost-cutting effort, wages of workers are low, working conditions difficult with understaffing, there are high turnover rates, high rates of injuries and high levels of stress and burnout.

Regulation of staffing ratios exists in only eighteen states. - Child care is somewhat better – though wages are very low, workers relatively unskilled (few states require training qualifications) and turnover rates high. High quality care can improve children's development, but 'physical and emotional environments in many child care centers remains inadequate' due to poor regulation.

Doug and Dow Jones

We need to rethink what 'the economy' really means. The Dow Jones index reveals little of the fluctuations in wages, unemployment or costs of essential services for the ordinary people. An overall average of what people are earning – she suggests naming it the Doug Jones index- would better serve the purpose of describing what was happening to ordinary people.

The Gross Domestic Product (GDP) – supposed to represent the market value of all goods and services bought and sold within a country – is seriously distorted.

- Doesn't take depreciation of buildings and equipment into account
- 'Imputes' values when some services do not fit into the accounting framework used, e.g., owner-occupied housing for which no rent is paid.
- It is too low as no attempt is made to include even the imputed value of domestic work – preparing meals, washing dishes or caring for children. The usual reasons proffered for not including these are that its just too difficult to estimate their value, or putting a price on such would demean its essential character, they are a 'moral responsibility rather than a calculated exchange. Without advocating that everything should be reduced to a dollar value, Folbre says its important to have even a lower-bound estimate for this, as it represents socially important activities; and constitutes much of the work that takes place outside the labor market- this amounts to about half of all work. By imputing values, some estimate that non-market work amount to between 30-60% of the value of all goods and services sold.
- It is therefore not only too low, but inaccurately reflects changes in the economy over time. For e.g., as married women moved into market work, they reduced the time spent on not-counted work – making economic growth seem more rapid than was what it actually has been. The proportion of time spent by men and women in different kinds of work over time, their shifts from and into the market. Folbre suggests systematic time-use data would help reflect this (and can be used to calculate the Dolly Jones index!).

GDP vs. MEWs

There is also the need to reevaluate the meaning of all these measures. The GDP is cannot effectively show up relative development across countries as it does not include the value of the natural resources, so no account is taken of their loss or depreciation due to pollution. The value of timber logged is included, but no deduction is made for loss of natural capital and the value of all other species ecologically dependent on the trees. More accurate measures – measures of economic welfare (MEWs) - are necessary. The success story of Indonesia's 7% GDP growth in the 1970s looks different when depreciation of 'natural' stock is factored in – closer to 4%. The picture of our rising standards of living also look very different if we consider Sustainable Economic Welfare (SEW), which adds the value of non-market services and subtracts the costs of pollution, resource depletion, and long-term environmental damage – it turns out per capita SEW was lower in 1990 than 1966.

Investing in Human Capital

Though human capital – defined in terms of levels of education and experience – is considered an important factor of production, the GDP calculations take no account of how and where it is produced and nurtured – in families and communities. Contributions both to the quantity and quality of human stock are ignored. Though emotional skills have been shown to have a significant impact on economic success, contributions of families and communities in maintenance and development of emotional skills are ignored.

Also, investments in health and education as counted as 'expenditure' rather than 'investments'. Even though such investments have been acknowledged to have a high rate of return, increased spending on health and education often is viewed as slowing down growth ! Better ways of measuring the hidden time and effort of families and communities in nurturing and developing human capabilities are necessary, in addition to changing the ways that economists include them in the calculations.

The Human Development Index

However, there are limits to thinking in terms of costs and benefits – economic development is only valuable to the extent it helps us pursue human development. A list of 'conditions for happiness' could include 'to receive from birth the best cultivation of our natural powers – physical, mental, moral and practical – and to know how to give this training and education to others.' Rise in incomes is often argued to be a reasonable indicator of our ability to develop our capabilities, but health, education, etc can be very unevenly distributed. (E.g., life expectancy of black men in Harlem, NYC, is lower than that of inhabitants of Kerala, India.) The HDI is an average of life expectancy at birth, child enrollment ratios and adult literacy rates and is adjusted to per capita income. Comparison of countries over time using this indicator reveals that higher GDP does not necessarily imply a better performance in other aspects of human development, especially for developing countries. Other indices, which measure quality of life, are the Gender Development Index, Gender Empowerment Index and Human Poverty Index.

Social Concern

The **social context** in which markets operate is also important, as the way that individuals work together can make a group more or less than the sum of its parts. Love, trust and reciprocity are important variables in this, and pursuit of short-term self-interest can lead to opportunistic behavior that undermines long-term relationships. These aspects of our social and moral environment, which contribute to positive economic outcomes, need to be measured. Efforts have been made to measure the degree of 'civic participation', for example – but more research is required. . The term **social capital** is often used to refer to the productive elements of a social environment, but Folbre finds the term misleading, as different people use it differently – to denote extent of social networks, 'good' cultural values or other aspects. Also, it is rarely defined to include feelings or emotions, though feelings like empathy and concern for others are critical to developing trust, cooperation and a fund of goodwill.

The Dow of Wa

Whatever it is called, this feeling is important to productivity particularly where work is difficult or expensive to monitor such as in care-giving. The Japanese notion of Total Quality Management based on a culture of cooperation, which has enabled global dominance in some industries, is similar to their traditional cultural emphasis on '*wa*' or harmony – *wa* builds on *amae*, a familial affection between associates. Though recent Japanese economic problems have been much discussed, it is important to remember that if we redefine our conventional notions of success, the picture changes – crime rates in Japan are only about 1/4th that in the US. The concept of **social concern**, similar to old-fashioned notions of **solidarity** may be a more representative term.

Folbre concludes with a reiteration that we can't continue to visualise the economy in terms of things that can be easily counted and weighed – we need to devise measures for the kinds of things and successes we really care about. Without this there will be no reward for the behaviors we value most and which are important for a better life and economic success.

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Article Summary

Kabeer, Nalia. "'Rational Fools' or 'Cultural Dopes'?: Stories of structure and agency in the social sciences.". Chapter 2 pp16 – 48 in *The Power to Chose; Bangladeshi Women and Labor Market Decisions in London & Dhaka*, New York: Verso, 2000.

Kabeer reviews two prevailing 'pure' models used to describe decision-making behavior in women, primarily within the family. The two models are mainstream neo-classical economics and a sociological model, each emphasizes fundamentally different motives for decision-making behavior. However, through her interviews with women, Kabeer sees these two pure models as over deterministic, poor predictors of individual behavior, and do not permit the construction of researchable hypotheses. What she concludes is that both models represent end-points of a behavioral spectrum. For women (and the world at-large), actual decision making rules exist in a middle ground where each end-point informs and modifies the other. Kabeer continues by remarking that the methodological choices proposed by each model predispose the research towards static, non-transformative accounts of individual behavior. A more rigorous method must involve directly the researcher and the subject.

At one end is the 'rational fool.' The neo-classical model of decision-making views individual 'rational choice' within the family unit as a composite of utility between paid labor, unpaid domestic work, and leisure. The problem with this view is two-fold: first, it assumes every individual in the family derives the same utility from one family choice; second, the complexity of making a completely informed decision is impossible. Interviews show that individual choice is distorted from the neo-classical ideal by individual identity, household identity, and larger collective identities. Individual identity is presumed to be more 'value-laden,' therefore making choice more resistant to market shifts. At the household level, individual choices are defined by an 'implicit contract,' a contract crafted for unequal, gender based roles with the family. In such arrangements the range of choices typically favor the male, while the compliant wife secures her own self-interest. The field of choice is constrained further when viewed in the context of society. Though inequitable, options are spelled out according to cultural rankings such as gender, race, and class. Trade unions, feminist organizations, and political parties also contribute to the possible range of individual choice.

At the other end is the 'cultural dope.' In this framework, individual choice is merely an automatic re-enactment of cultural norms, allowing no freedom for individual choice. This framework evolved largely out of two bodies of research. The first is the visible and empirical association of female inequality in Islamic societies where 'Purdah' values severely circumscribe possible choices. The second is the role of the 'detached' social scientist generally permitting two sweeping interpretations for individual choice: choices constrained by cultural norms or choice as an expression of independence (appealing to expatriate researchers). Though, neither option "acknowledged the wisdom, the tongue-in-cheek sarcasm of village women." A more sophisticated approach to understanding choice is grounded, again, in the idea of the 'implicit contract.' While family role may be culturally defined, there are rights and responsibilities that permit the negotiation of some choices within the family unit. The work of Bourdieu creates an even greater range of choice with his idea of

'habitus.' Here, cultural norms create space for choice by delineating the possible actions from the impossible, and allows the individual to strategically use available resources to improve their own self-interest within those bounds. Here, agency is not the 'mechanical execution' of culture; rather it is the 'creative interpretation of rules.'

In the end, Kabeer builds out the idea of the middle-ground, a place where choices are less determined and that provides a theoretical basis for considering the 'transformative potential' of human choice. She suggests this potential for women (and other oppressed classes) can be realized in two levels. First, the availability of paid employment for women so that they can better negotiate their positions within the family. Second, the development of a 'more finely grained knowledge' that provides an accurate portrayal of individual choice. This requires a methodology that is sensitive to the pitfalls of personal testimonials and forces the researcher into a more involved role with the participants.

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Article Summary

Warner, M.E. and Amir Hefetz 2004. "Pragmatism over Politics: Alternative Service Delivery in Local Government, 1992-2002," chapter in *The Municipal Year Book 2004*. Washington, DC: International City County Management Association.

In response to increased interest in privatization, ICMA has been tracking local governments' use of alternative service delivery approaches since 1982. What is interesting about the trends is how little they have changed over these years. Almost all governments responding to the ICMA surveys use at least one form of alternative service delivery. However, despite strong political support for privatization and a reduction in opposition, direct public delivery is still the most common form of service delivery. For profit privatization and inter-governmental contracting are the most common alternatives and their usage has ranged from 15-20 percent of services over the period with a slight drop from 1997 to 2002. Use of non-profit contracting has been stable at less than half the rate of for profit privatization. What has risen most dramatically over the 1992-2002 time period is the use of mixed public/private provision. These data suggest local governments are mature and experienced in their use of alternative service delivery. The 2002 survey results show lack of competitive markets and problems with contractor performance as explanations for the relative flatness of the trends.

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Article Summary

Warner, M.E. and Amir Hefetz, 2001. "Privatization and the Market Role of Government," Briefing Paper, Economic Policy Institute, Washington, DC. Available at epinet.org.

Using longitudinal data from 1982 to 1997, we show that the local decision to provide public services is complex and dynamic. Local governments use a range of service restructuring alternatives including privatization, mixed public/private provision and cooperation between governments. Service delivery is a dynamic process reflecting changing citizen demand for services and new privatization. The data also show significant instability in contracts, including contracting in - the reverting back to public provision of previously privatized services. This "reverse privatization" may reflect problems with the contracting process itself, limited efficiency gains, erosion in service quality or concern over the loss of broader community values associated with public service delivery. Privatization does not imply a retreat of government but rather a more active engagement with the market. Whether as regulator, contractor or direct service provider, local governments manage markets to create competition and ensure service quality and stability. This pragmatic market structuring role is critical to ensure that both efficiency and the broader public benefits of service delivery are achieved.

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Article Summary

Greene, Jeffrey D. 1996. "How Much Privatization: A Research Note Examining the Use of Privatization by Cities in 1982 and 1992." *Policy Studies Journal* 24 (Winter): 632-640.

Greene's article relates to an inquiry done by the International City Management Association for 596 cities, between 1982 and 1992, that gauged how much municipalities had privatized and their reasons for privatization. The ICMA surveys recorded the incidence of privatization in 59 municipal services across five broad functional areas. The study used two indicators of privatization, privatization levels and privatization diversity. Privatization levels represent the breadth of privatization among services. Privatization diversity levels represent the amount of privatization a city uses within services. The findings suggest privatization increased significantly in this ten-year period, mainly as a remedy for fiscal pressures. It is believed that private firms have lower costs attributed to better efficiency.

Overall privatization is occurring in all regions of the country, but some regions faster than others. Between 1982 and 1992, Southern cities experienced the highest increase of proportional growth at 158%. Midwestern cities were second with 131% proportional growth. Western cities had the highest levels of privatization in 1992 (29.9% of ICMA - surveyed services) and experienced the third largest increase at 102% of proportional growth. Finally, Northern cities had the lowest increase at 64% proportional growth.

Between 1982 and 1992, average privatization diversity levels for all cities increased proportionally by 40% (from 13.9% to 19.4%). The South's proportional increase was highest (56%) of privatization within services. The Midwest was second with 52%. The West came in third with 26% of privatization within services. Finally, Northern cities were last with 6% of privatization within services.

The leading area where privatization occurs most was in support functions with an average increase of 508%. Public safety functions were second with an average increase of 355%. Public works had an average increase of 218% coming in third. Finally, Parks and Rec. was fourth with an average increase of 218%.

Privatization appears to be increasing dramatically in all sectors throughout the nation. It appears that private firms are able to do jobs better at lower costs, which is most likely due to competition forcing innovations among the various industries.

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Article Summary

Boyne, George A. (1998). "Bureaucratic Theory Meets Reality: Public Choice and Service Contracting in U.S. Local Government." *Public Administration Review*. 58(6): 474-483.

Boyne posits that statistical methods used in studies cited by public choice theorists lack critical control variables and a reliable measure of competition and therefore lead to invalid conclusions. Boyne aims to reevaluate the empirical evidence on the effects of service contracting by United States local governments. Despite the deficiencies in the statistical methods of these studies, Boyne notes that public choice supporters have tremendous confidence in their results. Boyne's critique begins by identifying three public choice hypotheses regarding the impact of service contracting on efficiency and cost:

Hypothesis 1: *Service contracting is associated with lower spending on those services that are produced by an external agency.*

The crux of this hypothesis rests on the notion that if monopolies tend to render higher costs, then the consequence of competition should be a lower level of expenditure. Boyne cites an analysis by Niskanen who implied that because monopolies produce twice the level of service required, expenditure under competition would be reduced.

✓ Boyne's rebuttal to these notions is that service contracting does not necessarily entail a decline in the level of service output, thus reduced expenditures cannot be assumed. In fact many service contracts explicitly require external agencies to provide the same level of output. Cost savings are proportional to improvements in technical efficiencies.

Hypothesis 2: *Competitive tendering is associated with an improvement in the technical efficiency of service production.*

Under service contracting, rival agencies submit bids for a specific service. Given a feasible proposal, the lowest bid is likely to win. The cost per unit of a service is expected to fall. In short, the bidding process itself generates alternative unit costs.

✓ Boyne notes that although service contracting may improve technical efficiency, it has no necessary impact on "allocative efficiency." Decision-making for the type of services to be provided and their distribution rest with politicians and other officials. Service contracting thus may not enhance the power of taxpayers, consumers, or the public.

Hypothesis 3: *A substantial part of any "efficiency gain" from service contracting will be retained by local government.*

Some part of the money saved by service contracting is likely to be returned to the taxpayers—lower taxes or high services.

✓ Boyne questions how much of the savings from contracting is returned to local government budgets. One

hypothesis is that the retention rate for efficiency savings will be at least as great as for "grants-in-aid." Another hypothesis is that if expenditure on services that are contracted out decreases, expenditure on the remaining local government responsibilities will increase, thus the locally supplied services may be oversupplied to the point where they become less efficient. It is possible the service contracting does not eliminate inefficiency; rather, it relocates the inefficiency in local service production.

Boyne then presents an examination of empirical evidence used by public choice theorists. He notes that in some studies authors draw conclusions that are a) not substantiated by their own evidence, b) weakened by the failure to control for quality, local preferences, and competition levels. He does not blame the theory but notes that some of the empirical evidence it leans on is weakened by its own findings.

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Article Summary

Boyne, George A (1998). "The Determinants of Variations in Local Service Contracting: Garbage in Garbage Out?" *Urban Affairs Review*, Vol. 34, No. 1, pg. 150-163.

Boyne offers an overview of various empirical studies that focus on the determinants that encourage some local governments to transfer the production of municipal services to external agencies. Boyne stated aim is to answer two questions: 1) To what extent do empirical studies provide an explanation of variations in service contracting? 2) Does the evidence improve our understanding of why different local governments adopt different policies? Boyne limits his examination to those studies examine the following four factors in local government decisions to contract out services: 1) Fiscal Stress, 2) Scale and Market Structure, 3) Public Preferences and 4) Power of Public Employees.

Brief Summary of Boyne's Findings

Boyne points out that only three predictor variables used by the studies he examined show any statistically significant singular (positive or negative) impact on the decision to contract out services:

- **Tax Limits** - positive impact on privatization
- **Income of Population** - positive impact on privatization
- **Public Employees Per Capita** - negative impact on privatization

In many other cases variables are shown to have contradictory positive and negative (i.e. tax burden, grants, and population size). Furthermore, R^2 results for the models are extremely low, usually below .20 and sometimes as low as .05. This creates additional suspicion of a causal effect of these variables on the likelihood of contracting services.

Boyne notes two general problems with these studies:

- These variables are not independent from one another and their combined effect should be examined.
- Rather than simply looking whether a service is currently provided by a local government or by a private contractor, it may be more worthwhile to examine whether there has been a recent decision to switch from one to the other. By looking at service provision in a historical context where conscious decisions have obviously been made, a better understanding of the impetus for that decision might be derived.

Summaries of the Studies Boyne Examined

Firstly, Boyne examines ten studies that attempt to determine whether municipalities who are experiencing severe **financial** pressures are more likely to contract out services. He uses four measures to

assess this: 1) Ratio of Local Taxes to Local Incomes because high tax rates are often thought to spur outsourcing to relieve the tax burden; 2) Limits on Local Tax Levels by State Governments because these constraints are thought to force municipalities to better use existing resources; 3) Share of Local Spending funded by Intergovernmental Revenues because increased funding might lessen overall financial pressures, thereby reducing outsourcing. Boyne concludes there is little support for the view that financial stress impacts the decision to contract out services.

Secondly, Boyne examines twelve studies that attempt to determine whether local governments privatize to reap potential benefits of **economies of scale** and/or by their ability to create a **competitive market**. They use the following measures: 1) Citizen Population of Municipality a larger cities may have greater purchasing power when negotiating contracts with external vendors, 2) Metropolitan Status as the potential for the development of a competitive service market may be different for a local government inside a metropolitan area versus one that is outside. Boyne sees little in the way of a direct effect on the propensity to contract out services coming from either of these two measures and argues that the measures themselves are flawed.

Thirdly, Boyne looks at ten studies that examine the connection between the **population characteristics** and the levels of contracting out. The variables are: 1) Average Income based on the assumption that high-income groups support contracting out, 2) Percentage of the population that is poor, black, or elderly as these demographic groups are assumed to pressure local governments to maintain direct municipal production of services. There is support for the link between income level and poverty level and the likelihood to outsource services. However, no such connection exists between the proportion of black and elderly populations and the likelihood of outsourcing. Boyne warns that the measure may not necessarily reflect public preference, but simply the ability to pay. He points out flaws in the measures, arguing, that socioeconomic characteristics are not a valid substitute for personal preference.

Lastly, Boyne looks at twelve studies that attempt to link the **self-interests of local government** managers and their workforces with the likelihood of contracting out services. The hypothesis here is that public employees resist outsourcing in order to protect their positions within the community at the expense of the public's best interests. The variables examine include 1) Ratio of Public Staff to Local Population, 2) Level of Unionization, 3) Level of Wages and 4) Structure of Municipal Government - some believe that whether a municipal government is council-manager or mayor-council plays a role in whether services are contracted out. There is some evidence that a large public employee base will in fact reduce contracting of services. Results for local unionization effects are mixed but that too may have a negative effect. High labor cost is seen as potentially having a positive effect on outsourcing, while mayor-council governments are shown to embrace privatization over council-manager structures. Boyne remains skeptical of these results due to what he sees as possibly erroneous interpretation of the causal effects of the variables used. Once again, he points out that additional extraneous effects of other variables associated with the predictor variables used in the studies may lead to false conclusions.

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Article Summary

Hefetz, Amir and M. Warner, 2004. "Privatization and Its Reverse: Explaining the Dynamics of the Government Contracting Process" *Journal of Public Administration, Research and Theory*, 14(2):171-190. Available at <http://jpart.oupjournals.org/cgi/content/abstract/14/2/171?ijkey=156SEfUPE3BE2&keytype=ref>

Empirical evidence shows local government contracting is a dynamic process that includes movements from public delivery to markets, and from market contracts back to in-house delivery. This "reverse contracting" reflects the complexity of public service provision in a world where market alternatives are used along with public delivery. We develop a methodology to link responses to national surveys and create a longitudinal data set that captures the dynamics of the contracting process. We present a framework that incorporates principal agent problems, government management, monitoring and citizen concerns, and market structure. Our statistical analysis finds government management, monitoring and principal agent problems to be most important in explaining both new contracting out and contracting back-in. Professional managers recognize the importance of monitoring and the need for public engagement in the service delivery process. The results support the new public service that argues public managers do more than steer a market process, they balance technical and political concerns to secure public value.

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Chapter Summary

Warner, M.E. with Mike Ballard and Amir Hefetz 2003. "Contracting Back In – When Privatization Fails," chapter 4 pp 30-36 in *The Municipal Year Book 2003*. Washington, DC: International City County Management Association.

Between 1992 and 1997, the most common forms of alternative service delivery (privatization to for profits and non profits and inter-municipal cooperation) increased only slightly. Service delivery by public employees remained dominant. The stability in these trends belies a more dynamic process of contracting out and back in which reflects the key market structuring role played by local governments. During this period, 96% of responding governments newly contracted out at least one service and 88% brought at least one contracted-out service back in house. The reasons for contracting back in include lack of a competitive market of alternative suppliers, difficulties with contract specification, and the high costs of monitoring.

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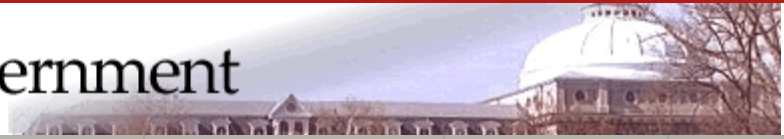
Article Summary

Warner, M.E. and A. Hefetz. 2002 "Applying Market Solutions to Public Services: An Assessment of Efficiency, Equity and Voice," *Urban Affairs Review*, 38(1): 70-89.

Political fragmentation in metropolitan regions makes equitable and efficient delivery of public services difficult. Regionalism, although promoted as more equitable and rational, has found limited political support. Public choice theory argues, against regionalism, that political fragmentation can promote competition and efficiency by creating markets for public services. We assess the efficacy of market solutions for metropolitan public service provision by comparing privatization with inter-municipal cooperation and evaluating each on efficiency, equity and democracy grounds. Using probit regression analysis of a national survey of local government service delivery from 1992 and 1997, we find both alternatives promote efficiency, but equity and voice are more associated with inter-municipal cooperation than privatization.



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Article Summary

Ballard, Michael J. and M.E. Warner 2000. "Taking the High Road: Local Government Restructuring and the Quest for Quality." Pp 6/1 - 6/53 in *Power Tools for Fighting Privatization*, American Federation of State, County and Municipal Employees: Washington DC. Available at <http://government.cce.cornell.edu/doc/reports/highroad/>

All local governments face challenges to improve service delivery. This report outlines two alternative strategies—the "high road" which uses new management innovations to increase internal productivity, and the "low road" which focuses on downsizing and contracting out. While other studies have focused on contracting out, this study provides a longitudinal look at contracting and presents detailed case studies of municipalities, which have brought back in house previously privatized services. These case studies provide empirical evidence on the problems associated with contracting and the potential for internal restructuring as an alternative.

Taking the High Road

Local Government Restructuring and the Quest for Quality

Michael J. Ballard
Mildred E. Warner

Department of City and Regional Planning
West Sibley Hall
Cornell University
Ithaca, New York 14853

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Executive Summary

All local governments face challenges to improve service delivery. This report outlines two alternative strategies—the "high road" which uses new management innovations to increase internal productivity, and the "low road" which focuses on downsizing and contracting out. While other studies have focused on contracting out, this study provides a longitudinal look at contracting and presents detailed case studies of municipalities, which have brought back in house previously privatized services. These case studies provide empirical evidence on the problems associated with contracting and the potential for internal restructuring as an alternative.

Contracting is costly. Research on problems with contracting out in the for-profit sector is shown to have parallels in governmental contracting. Difficulty of contract specification (especially for complex services), the cost and difficulty of monitoring contract performance, and limited cost savings are some of the problems that cause

governments to bring previously privatized work back in house. Broader public values—responsiveness to changing citizen demands, maintaining high standards of public service delivery among the workforce—also can be compromised with privatization.

While competitive bidding is associated with some cases of contracting back in, for many governments' dissatisfaction with privatization was so strong that no effort was made to rebid the contract. In many of these cases new patterns of labor management cooperation within the public sector resulted in improved efficiency and service quality at lower costs than private contracts. Taking the "high road" of restructuring through improved labor management cooperation can provide better quality service with fewer risks and greater social rewards. For those public officials who truly wish to "reinvent government" internal management reforms deserve a closer look.

Taking the High Road: Local Government Restructuring and the Quest for Quality

Rapid changes in the economy on the one hand and the unrelenting demand for public services on the other have placed new pressures on all levels of government to "banish bureaucracy" and "reinvent" the public sector. Reinventing government is a noble and desirable goal, but many reform efforts have failed by focusing too heavily on downsizing the public workforce through the privatization of government services. While privatization can take many forms, the most common practice is for governments to "contract out" services to private organizations. In these situations the government continues to use public funds to pay for services, but the responsibility for production of the service is shifted to a private firm.

In some instances, privatization through contracting out is part of a larger ideological crusade to reduce the absolute size of government.^[i] In other cases, contracting out is driven by management fads imported from the private sector, where the practice is commonly used but remains poorly understood.^[ii] A third influence is the general shift in American society towards greater mistrust of government coupled with a renewed faith in the textbook model of free markets.^[iii] When combined with advice from popular management books and magazines to become more "businesslike" in their operations, many public managers find the lure of contracting out to be irresistible.

Are the proponents of contracting out right? To what extent have the economic and organizational benefits actually followed? This study attempts to answer these questions by looking at local governments' experiences with contracting in the United States. The report begins with a review of several academic studies that assess the impact of contracting out on individuals, organizations, and communities. Unfortunately, many of these studies show disappointing results with contracting out in both the public and private sectors. To better understand why contracting out often has not lived up to its promise, this report looks at several case studies from across the country where public officials have chosen to bring work back in house following a period of privately produced service. Finally, the report looks at one important but underutilized alternative to privatization, namely, the refashioning of labor-management relations through innovative "partnership" programs. These programs demonstrate that the efficiency of public services can be improved significantly through the use of internal management reforms. Given the risks involved in privatization, labor-management partnerships should be given priority over contracting out when public managers see the need to restructure local government services.

Contracting out imposes high costs on individuals

Proponents of contracting out argue that both public and private organizations need to "cut the fat" and get "lean and mean" in order to survive.^[iv] Given that most government services are labor-intensive, contracting out services provides government with an indirect method of reducing the number of individuals it employs directly. When hiring decisions are no longer in public hands, privatization allows contractors to use lower priced labor without having to adhere to civil service wage scales. Government-by-contract also permits greater flexibility in determining employment levels, work rules, and health and safety standards since private firms are often subject to less restrictive regulations than public entities.^[v]

Increased flexibility, however, comes at a price. To begin with, contracting out imposes high costs on individual workers. The overwhelming majority of government employees are individuals who have performed well

and played by the rules, but often pay dearly in the form of increased job insecurity and lower wages and benefits when work is contracted out to the lowest bidder.^[vi] Furthermore, because of the specialized nature of many private contractors, workers' opportunities for advancement and training may decline as well. The janitor who works for local government may, over time, work her way up in the system via a series of vertical and horizontal moves through different departments. In organizations that specialize in just one service, however, those ladders of opportunity disappear for all but the most skilled employees.

Contracting out has society-wide consequences

Contracting out also imposes high costs on society. It is no secret that America's urban areas suffer from a host of serious social and economic problems, ranging from crime and unemployment to racial segregation and increasing class inequality. In a provocative and insightful essay published in the *Boston Review*, Daniel Luria, Vice President of the Michigan Manufacturing Technology Center, and Professor Joel Rogers of the University of Wisconsin contend that these unfortunate outcomes are the direct result of public policy choices that favor "low road" development strategies in response to new competitive pressures.^[vii] Low road employers compete by keeping costs, and therefore wages, as low as possible. When low road strategies dominate the local economy, economic insecurity, rising inequality, and poisonous labor relations often follow.

In contrast, "high road" organizations rely on better quality products and superior service to stay ahead of the competition. Management experts contend that emphasizing quality and service requires a well-trained and highly committed workforce in order to be successful. These organizational demands, in turn, translate into higher wages, cooperative labor relations, and more innovative and productive workplaces. In addition, high road employers attract superior quality workers and typically serve as better corporate citizens in the communities in which they operate.

While Luria and Rogers' research primarily looks at the business strategies of private companies, the same lessons apply to public sector employers as well. Governments, like private firms, also consciously choose to follow the high road or the low road when making employment and contracting decisions. Local governments can walk down either path, but the potential benefits to both the city and the community are vastly greater on the high road. Public officials who choose to follow the high

road not only benefit directly from the efficiency gains that flow from high-performance workplaces, but they also benefit indirectly from the important social benefits that such a strategy produces. In general, high-road strategies are strongly associated with healthy and stable local communities. Strong communities, in turn, help to attract and keep the brightest people and the most dynamic businesses in the region.

Examples of how high road and low road strategies play out at the local level are presented in Boxes 1 and 2. In these cases, both New Orleans and Portland saved money by restructuring traditional service delivery methods. Portland's high road strategy, however, accomplished much more than simple cost savings. Building upon Portland's success in constructing a new baseball stadium, the city and its unionized workforce have been able to create a new level of trust and cooperation across a wide range of public services. In

Box 1. Taking the Low Road: Privatized Trash Collection in New Orleans

In the mid-1980s, the City of New Orleans, Louisiana paid sanitation workers about \$9 an hour and provided health insurance and other benefits. Ten years later, after privatization, those same workers are hired on a daily basis, paid the minimum wage, and have no benefits.

Waste Management, Inc., the firm responsible for trash collection in New Orleans, uses a subcontractor to fill its daily need for "hoppers," sanitation workers that dump trash into the back of garbage trucks. Hoppers receive no training from the company, and are responsible for providing their own safety equipment such as lifting belts, face masks, and safety vests.

Some hoppers meet their drivers in the truck yard, but most are picked up under a nearby freeway each day at six o'clock in the morning. A full day's pay is not guaranteed, and a truck breakdown can leave a hopper stranded and unpaid.

Waste management's treatment of its employees had gotten so bad that in one month the company missed pickups at 8,800 locations because it didn't have enough hoppers to collect the trash. In response, the city threatened to fine Waste Management \$280,000 for the uncollected garbage.

addition to reducing expenses, the introduction of innovative management reforms has produced major service improvements, has strengthened both management and the union, and has resulted in a far less adversarial bargaining relationship than had existed previously. In contrast, the New Orleans case vividly illustrates the dark side of low road management strategies. While New Orleans' strategy may have saved the city money, the negative impact of such a strategy on residents' quality of life far outweighs any cost savings that resulted from privatization.

The hoppers' performance has come under strong criticism as well. According to city officials, it is not uncommon for hoppers to demand tips or beer in exchange for picking up a resident's trash. Even the city's sanitation chief says she and her family were threatened after refusing a hopper's demand for cash.

Source: "Two-Edged Sword: More Public Workers Lose Well-Paying Jobs as Outsourcing Grows", *The Wall Street Journal*. August 6, 1996. p. A1.

The benefits of contracting out have not materialized

As the preceding discussion makes clear, the individual and social costs of contracting out can only be justified if such efforts lead to better quality and lower priced government services. Yet evidence from a broad range of studies suggests that public services do not substantively improve after contracting out^[viii]. In an extensive review of empirical studies of privatization in the United States, for example, Professor George Boyne of Cardiff University finds that "only around half" of all studies are associated with lower spending and greater efficiency.^[ix] Furthermore, Dr. Boyne finds that "many of the studies contain specific methodological flaws that cast doubt on the validity of the evidence on the impact of service contracts, and in some studies, the authors draw conclusions that are not substantiated by their own evidence."^[x]

Box 2. Taking the High Road: Investing in Employees in Portland, Maine

In 1992 public officials in Portland, Maine succeeded in attracting a minor league baseball team to the city. At the time, however, the city faced a major league problem: it had no adequate facility for the new team to play, and lacked the funds necessary to hire a private contractor to do the job.

In response to this opportunity, the City Manager's office and union leaders jointly developed an innovative plan to construct the new stadium using Public Works employees and equipment. The plan involved 10-hour work days and an incentive program that rewarded employees based on productivity levels. Similar agreements were negotiated for employees not assigned to work on the new stadium since they were now required to provide the same level of service with fewer employees during the seven months it took to construct Hadlock Field.

The Hadlock Field construction project was so successful that the city created its own in-house construction company. The construction company is guided by the same principles that made the stadium so successful: teamwork, cross-training, labor-management cooperation, flexible work schedules, and employee bonuses for meeting project cost and quality objectives.

Projects tackled by the construction company

Professor Boyne's claims are substantiated by Professor Janet Rothenberg Pack of the Wharton School of Business at the University of Pennsylvania.^[xi] In her research on fifteen cities and counties that had experimented with contracting out, about half of the places she studied had encountered "disruptive experiences" which included quality problems, attempts by firms to renegotiate or renege on contracts, and costly monitoring activities. Equally important, only half of the public officials she interviewed could continue to claim any cost savings from contracting out after just four years of privately provided service.

Researchers at Washington State University draw similar conclusions in their 1998 study of privatization by Oregon county governments.^[xii] Looking at county governments' experiences with road maintenance and construction contractors, Professors Brent Steel and Carolyn Long find that 42 percent of counties experienced contracting problems. The most commonly cited problem in their study was the failure of contractors to perform work in a timely manner (100 percent of cases), followed by work not performed to specifications (50 percent), contractors' failure to communicate effectively with affected citizens (36 percent), change order problems (36 percent), and work area security and safety problems (29 percent). In addition to the

included rebuilding sidewalks, street construction and maintenance, and sewers. The city is in the process of expanding the range of work projects tackled by city crews, and expects to take on more projects each season in the future.

Source: Patricia Peightal, et al., "Labor-Management Cooperation—City of Portland, Maine". *Public Personnel Management* 27(1) Spring 1998. pp. 85-91.

problems associated with contracting out, the authors estimate that the cost of contract administration was in the 10 to 15 percent range, and that "savings, if any, from contracting out may be partially or fully offset by substantial agency costs associated with the contracting process, including the expense of preparing plans and specifications to a greater level of detail, the cost of advertising and processing bids, and the cost of monitoring, inspecting, and conflict resolution."[\[xiii\]](#)

Private firms also disappointed with contracting results

A common defense of privatization is that errors in implementation, not the concept itself, are to blame for failed privatization programs.[\[xiv\]](#) These kinds of arguments make it easy to claim that the blame for failed contracts still rests with government, and that the solution lies with increasing, not decreasing, the role of the private sector in government service provision. Has the private sector's experience with contracting out been any better? Because private firms also rely on outside contractors for a wide range of goods and services, their experience with contracting out deserves a closer look by public officials than it has received.

Large-scale studies of the private sector's experience with contracting out are rare, in part because private firms are not subject to the same disclosure requirements as public entities. A recent survey of over one thousand senior business executives conducted by the global consulting group PA Consulting, however, is telling: In that survey, only five percent of firms reported "high" levels of benefit from contracting out while suffering "low" drawbacks. The most common response, representing thirty-nine percent of the cases, had been 'mediocre'.[\[xv\]](#)

Academic studies of organizational performance provide some clues as to why contracting out in the business world has failed to live up to its promises. Because contracting out is a form of restructuring that often leads to reductions in personnel, its impact on organizations is similar to downsizing. Few would disagree with the proposition that both contracting out and downsizing result in shattered careers, broken friendships, and significant losses in investments in employee training and development. For these reasons and others, academic studies of downsizing hold valuable lessons for public sector managers considering contracting out.

The strong negative effect that downsizing through contracting out has on the morale of employees should not be underestimated. In a recent study published by *The Academy of Management Review*, Professor Wayne Cascio of the University of Colorado reviewed over five hundred articles on downsizing and interviewed twenty-five senior executives from business about their experiences.[\[xvi\]](#) A principal finding from this research, says Professor Cascio, is that "study after study shows that following a downsizing surviving employees become narrow-minded, self-absorbed, and risk averse. Morale sinks, productivity drops, and survivors distrust management. In fact, this constellation of symptoms is so common that it has taken on a name of its own: *survivors' syndrome*."[\[xvii\]](#) Given the impact of downsizing on employee morale, it should be expected that performance rarely meets the company's expectations. According to 1998 survey results from the American Management Association, only 41 percent of downsizing companies reported productivity increases, and only 37 percent have realized any long-term gains in shareholder value.[\[xviii\]](#)

According to Professors Susan Reynolds Fisher and Margaret White, such disappointing results can be explained by the damage caused to an organization's "learning capacity" when an individual leaves the firm.[\[xix\]](#) Fisher and White believe that an organization's capacity for innovation and development is derived from the day-to-day interaction between employees working on common problems. The contribution of these informal networks to the health and vitality of the organization is significantly greater than that implied by a simple head count, the authors warn, and hence managers should be wary of any restructuring effort, including contracting out, that threatens these crucial networks.

This issue is well illustrated by recent research by Dr. Chris Lonsdale and Professor Andrew Cox of the Center for Strategy and Procurement Management at the University of Birmingham, England.^[xx] Lonsdale and Cox believe that contracting out invariably leads to a loss of cross-functional contact between departments. "When a contract company is operating away from the firm's site there can be a loss of profitable contact between that function and others which relate to it," they argue. "While this can be addressed, many firms report that contract employees are rarely as prepared as in-house colleagues to go beyond their immediate remit and take the time to work out ideas which may be of benefit to the firm as a whole."

A further issue that Lonsdale and Cox raise is the effect that the limitations of a manager's own knowledge and competence can have on an outsourcing deal. For example, when a service is provided in-house certain aspects frequently are provided by employees in other parts of the organization, and consequently often are not recognized explicitly in the contract agreement. This oversight commonly leads to a host of additional charges not built into the original cost estimates. In one example, the authors tell the tale of a petroleum firm that was charged nearly \$500,000 in excess fees in the first month of its information technology contract because the company had wrongly assumed that these services were included in the original contract price.^[xxi] Stories such as these should not be surprising, the authors caution, because contracting is the core competency of many of the vendors that organizations must deal with. Since contracting is a primary focus of their business, these companies have learned to write contracts that shift most of the risk onto the purchaser of the service.

In summary, contracting out government services imposes high costs on individuals, local governments, and communities. In spite of these high social costs, the efficiency gains from contracting materialize only about half of the time. Furthermore, the private sector's poor record with contracting suggests that such lackluster results are unlikely to improve as public managers gain experience with administering private contracts.

In contrast, using high road strategies to reform public bureaucracies often results in improved governmental efficiency, but does so without the negative consequences that result from contracting out. Across the country, high road strategies are becoming more common as public bureaucracies borrow from new management models such as Total Quality Management (TQM) and labor-management cooperation programs in order to improve organizational performance. According to *Working Together for Public Service*, a major report published by the U.S. Department of Labor, labor-management cooperation programs typically result in higher quality service, greater cost effectiveness, better quality of work life for employees, and improved relations between workers and management.^[xxii] Similar positive results have been reported by the International City/County Management Association (ICMA) in its study of TQM programs in local government. In that study, the overwhelming majority of governments surveyed reported strong positive results from quality improvement programs, as Table 1 shows.^[xxiii]

Table 1. Impact of Quality Improvement Efforts on Municipal Performance

Performance Indicator	% reporting positive experiences
Quality of service	89%
Productivity	85%
Customer satisfaction	83%
Amount of service to customer	82%
Timeliness	79%
Cost reduction	75%
Increased communication	84%
Improved group decision making	78%
Stimulated high-quality performance	61%
Ability to improve in spite of constraints on resources	70%
Improved decision making due to availability of information	70%
Improved timeliness of internal processes	63%
Movement of decision making to lower level	68%
Commitment to stakeholders	72%
Morale	70%

Goal assessment	57%
New performance measures	72%

**Sample size varies from 168-191 cities and counties.*

Source: Jonathan West et al, "Total Quality Management in Local Government", *The Municipal Yearbook* 1994. Washington, DC: International City/County Management Association. p. 24.

"Contracting back in" an important trend in public service provision

New survey evidence shows that public officials are starting to learn that privatization has its limits. While contracting out continues to be widely used by many local governments, the practice of "contracting back in"—where governments choose to resume in-house production following a period of privately produced service—is becoming increasingly common.

The most complete source of data on contracting arrangements of local governments is provided by the International City/County Management Association (ICMA). Every five years, the ICMA surveys all counties with more than 25,000 residents and all cities with populations greater than 10,000. In addition a sample is drawn from one in eight cities and counties with fewer than 10,000 residents. On average, 1,500 municipalities respond to the survey. This survey provides a very comprehensive view of the complex mix of services offered by local governments, with questions asked for sixty-four different public services.

By matching responses from different survey years, our research team has been able to determine the degree to which local governments both contract out services to private providers as well as the frequency of contracting back in.^[xxiv] Using ICMA data we found that on average across all responding municipalities, eight services were newly contracted out between 1992 and 1997. The more interesting finding, however, was that on average five services were brought back in house during this same period. Hence while these data show that contracting out is still a common practice across the country, dissatisfaction with contracting out is widespread and causes local governments to bring services back in house.

Why do local governments choose to bring work back in house?

That so many local governments bring work back in house implies that contracting out as a model of public service provision has its own set of problems that its proponents have either underestimated or ignored. Yet the survey data alone do not tell us why governments choose to resume public production of services. To better understand the nature of contracting back in and the factors associated with it, a series of telephone interviews was conducted with public officials from across the country between June and August 1999. The case studies from those interviews are reprinted here as Appendix A.

Methodology

Using the ICMA data as a guide, local governments were selected for interviews based on a population of greater than 30,000 residents, six or more cases of contracting back in, and at least one case of contracting back in for service areas where union membership is strong. A small number of additional cases were chosen based on leads from union members or newspaper clippings.

Most of the interviews were with the city or county manager for that municipality. On several occasions follow-up interviews were conducted with department heads or directors of specific programs in order to develop a more detailed understanding of a particular program or service. Local union officials also were interviewed in a handful of cases. Interview times varied from ten minutes to about one hour.

In total, public officials from fifty-eight places were interviewed. Those interviews produced twenty-six cases of contracting back in from twenty-two different places (see Table 2). While these cases do not provide a large enough data set to generalize the findings to the larger population, the cases can help us to understand the rationale

behind contracting back in, as well as provide clues on the efficacy of privatization as an alternative form of public service delivery.

The bulk of the cases of reverse privatization represent the typical kinds of blue-collar work most often cited as good candidates for contracting out. With the exception of public works, wastewater treatment, and fire services, the remaining cases consist of the types of services for which private sources of production are relatively common. In most areas these services can easily pass the "yellow pages" test in which a number of local private firms can be found that offer similar services.^[xxv] It should not be surprising that the cases here represent services that are typically thought of as prime targets for privatization. Since these are the kinds of services that are most often contracted out, it follows that they have a higher probability of being brought back in as well.

A useful way of classifying the cases is to divide them according to the process by which local government resumed public service production. In nine cases contracting back in was the result of public employees submitting the winning proposal in a competitive bidding process. On twenty occasions work was brought back in house due to problems with the private contractor. Often the two categories overlap. For example, it is not uncommon for public agencies to win competitive service contracts following a failed privatization attempt. The more typical scenario, however, is for government officials to take over the service without initiating a new round of competitive bidding. In fourteen cases, it was clear to local government managers that the service could be produced more efficiently in house, thereby making competitive bidding unnecessary.

Place	Service(s)	Competitive Bidding	Failed Contract
Akron, Ohio	Road Repairs	n/a	n/a
Ardmore, Oklahoma	Waste Water Treatment Plant		X
Campbell, California	Buildings and Grounds Maintenance		X
Charlotte, North Carolina	Paratransit Service	X	X
Cincinnati, Ohio	Yard Waste	X	
Columbus, Ohio	School Grounds Maintenance		X
Fort Collins, Colorado	Paratransit Service		X
Fort Lauderdale, Florida	Infrastructure Pipe Installation	X	
Independence, Iowa	Grass Mowing,	X	X
	Laundry Services		X
Irvine, California	Seniors' Meal Program,	X	X
	Seniors' Care Management	X	X
Lakewood, Colorado	Winter Street Sweeping		X
Lubbock, Texas	Residential Trash Collection	X	X
Marshalltown, Iowa	Veterans' Home Food Service		X
Moore, Oklahoma	Public Works		X
Northbrook, Illinois	Water Meter Reading		X
Pinellas County, Florida	Grounds Maintenance		X
Rialto, California	Water Meter Reading,		X
	Grounds Maintenance	n/a	n/a
Sanford, Florida	Ambulance Service,		X
	Utility Meter Reading		X
Savannah, Georgia	Fire Services		X
Sioux City, Iowa	Residential Trash Collection	X	
Warwick, Rhode Island	Residential Trash Collection	X	
Whittier, California	Public Bus Service		X
N = 22	N = 26	S = 9	S = 20

Contracting Back in Due to Failed Privatization

In the cases presented here, failed privatization was the most important reason for contracting back in. In these instances the work is brought back in house due to problems associated with the service provider or with the contracting process. Rather than return to the market and initiate a new round of competitive bidding, public managers caught in these situations feel that problems with service delivery are rooted in the contracting process itself. Because these kinds of problems can not be solved by private means, public officials choose to rule out privatization as a viable alternative and resume public production of the service.

Every case that chose to bring the service back in house without resorting to competitive bidding reported significant contracting problems. Yet even for those places where competitive bidding was used (and the contract awarded to public employees) problems with private contracts still played a role in five of nine cases. While it is difficult to generalize from such a small sample, there appear to be serious problems with contracting out. The analysis below looks at a number of the case studies to better understand how and why contract problems arise and, more importantly, why public production is chosen over competitive bidding for specific services.

Contracting Issues

Private sector models of contracting out provide a useful framework for understanding governments' decisions to produce services in house. For businesses, the choice of whether to produce in house or to contract out is often referred to as the "make or buy" decision. While cost minimization is important, this approach also recognizes that cost estimates include more than just the monetary value placed on a good or service. In particular, this model employs the notion of "asset specificity" to incorporate the many non-tangibles that go into the decision to contract in or out.^[xxvi] Asset specificity refers to the degree to which the investments associated with production are unique to the parties involved in the transaction. Investments with a high degree of asset specificity are highly specialized and normally have few alternative uses. Examples include "hard" goods such as complex machine parts or custom-made computer programs, but "soft" goods like industry-specific knowledge and relationships with customers and clients fall into this category as well.

A high level of asset specificity decreases the probability that an external supplier will be able to produce a particular good or service in a cost-effective manner. Because of the inability of both the buyer and the seller to accurately specify what, when, and how certain functions are to be carried out, costs associated with monitoring quality often outweigh any savings that accrue from external production.

These problems are magnified in the public sector because of the multiple purposes and goals associated with public services. While it is relatively easy for a buyer to recognize a high quality pencil or machine part, judging quality becomes much more subjective when complex services are involved. Even for the cases presented in this study, where most of the services are simple, ubiquitous, and relatively easy to specify, numerous examples exist where conflicts arose because of the difficulties associated with specifying the service.

While evidence from some of the cases suggests outright abuse by the private contractor—such as the Iowa laundry service that charged its public sector customer based on the weight of the laundry when it was wet, not dry—other cases highlight the importance of clearly defined contracts. In Lubbock, Texas, for example, a private trash hauler attempted to renegotiate its contract because the weight of the trash it collected was greater than the company anticipated. Heavier loads meant that the company had to pay higher than expected landfill fees, and the firm attempted (unsuccessfully) to shift those costs to local government.

The care management program for the Senior Services Department of Irvine, California serves as a more complex example of the difficulties involved in specifying contracts. In Irvine, public officials attempted to privatize its care management program in 1995. With about one hundred active cases at any given time, the city offers assistance to seniors in need of help with health care, transportation, housing, and other social services. In spite of a competitive bidding process, the request for proposals attracted only one bidder that the city felt was sufficiently

qualified to run the complex program. After reviewing the technical responsibilities contained in the contract, however, the lone qualified bidder chose to withdraw from the competition. The perception was that many of the contract services were hard to measure, difficult to administer, and that performance would be judged largely on community perceptions rather than tangible results. This created a sense that the cost to administer the program would grow far beyond the ability of the contractor to manage the program within the available budget. Unable to attract qualified contractors, department administrators instead chose to keep the service in house.

A related problem is that the contract language may be over-specified. Under these circumstances, contract language may be too specific to allow government to satisfy the changing needs of citizens. When Moore, Oklahoma contracted out its public works department in 1993, it made sure that minimum service levels were included in the contract. When citizens began demanding more than the minimum from their government in the mid 1990s, however, the city was unable to accommodate citizens' preferences because it was still bound by the strict terms of the contract it had signed three years earlier.

Another issue that is well illustrated by the Moore, Oklahoma case is the problems that occur when a single contractor is responsible for a complex basket of services. In Moore, one company was responsible for streets, drains, parks, cemeteries, building maintenance, sanitation, fleet maintenance, animal control, wastewater treatment, water and sewer line maintenance, and water meter reading. The sheer size of this contract made it exceedingly difficult for public officials to monitor service levels and quality.

Given the complexity involved in specifying contract arrangements it should not be surprising that the costs associated with monitoring contracts has been shown to be quite high.^[xxvii] The more typical scenario, however, is for governments not to do any monitoring at all. In our research team's analysis of ICMA survey data on the subject, we found that more than half of the governments that contract out do not have any formal procedures for monitoring contract arrangements.^[xxviii] Not monitoring contracts significantly increases the chances that either costs increase or quality suffers—or in some cases, both problems may surface. On the other hand, places that do take monitoring seriously may find that the cost of monitoring contracts equals or surpasses any anticipated savings from private service delivery.

More than one respondent from the case studies indicated that in house production was resumed because of the high costs of monitoring private contracts. In Pinellas County, Florida, for example, the county terminated its contract for grass mowing at 360 water pumping stations because of its inability to control service quality. "Servicing so many remote locations made it very difficult to monitor service quality, says the County Administrator, "so for this service it made more sense for the county to do the job."

City officials in Campbell, California report similar problems. In Campbell, the city contracted out its park maintenance functions in the early 1990s as a way to cut costs. After two years with the private contractor, however, the city chose to bring the work back in house following numerous complaints from city residents about service quality. Having residents complain to the city rather than the contractor resulted in significant time and resources being wasted by city employees. Not only were city employees required to handle residents' complaints, they then had to visit the park in question to check up on the contractor's work, contact the contractor to inform him of the problem, and finally revisit the park to ensure that the work had been re-done properly. Given that the number of complaints was significantly higher than when public employees did the job, city supervisors quickly grew tired of the extra burden created by the contracting process and brought the work back in house.

Park maintenance has remained a publicly provided service in Campbell since 1996. According to City Manager Bernie Strojny, city workers provide better service because they possess a sense of ownership that is unique to public employees. "City employees invest more," he says, "because they genuinely care about the place they work at." In contrast, city properties are just one of many locations that the private contractor serves, which Strojny believes contributes to the contractor having less of an interest in service quality.

In both Pinellas County and the City of Campbell monitoring costs were high because public officials found themselves constantly "putting out fires" that had been "lit" by the contractor. Both places were lucky, however, in that the service in question was relatively easy to monitor by area residents. In these cases, citizens are able to serve as

reasonable substitutes for direct monitoring by government. The public sector is not so fortunate, however, when service quality cannot be observed directly and citizens are unable to play the watchdog role. This was the case in Savannah, Georgia, where fire services had traditionally been provided by both the City of Savannah and South Side Fire Protection, Inc., a non-profit fire department that provided firefighting services to about one third of the city.

South Side Fire consisted of a mix of volunteer and professional staff and had served Savannah's southern neighborhoods for decades. When the city annexed South Side Fire's service area in the 1970s, the company continued to provide fire services to this part of the city. As Savannah continued to grow, concerns were raised about the differences in service quality between the City of Savannah Fire Department and South Side Fire. Whereas previously the South Side consisted mainly of single family housing, over the years the South Side grew to include a number of large retail and office complexes. Responding effectively to these types of calls required a different method of firefighting than what South Side could offer. The number of city firefighters responding to calls was always the same, for example, whereas the number of South Side volunteers that responded to calls varied at each event. Over time the city increasingly became concerned with service quality and response times on the South Side. Tellingly, one of the most vocal proponents for change was the city council representative from the South Side, who argued that the quality of service was inferior to that offered by the city.

Conflicts over what should be considered quality service were only half of the problem. Just as important, the cost of the service had risen significantly over time. The city found itself paying for equipment and stations "over and over again," and the company would increase its charges to the city on a yearly basis. The extent to which South Side fire was overpriced relative to the city was made clear when City Council decided to bring the service in house in early 1998. In a last-ditch effort to save its business, the company offered to provide the service at a significantly lower price than what it was currently charging. This sudden drop in price only angered city officials, who wondered how much, and for how long, this "non-profit" organization was overcharging them.

In sum, the Savannah case makes clear the difficulties associated with contract arrangements where service quality is hard to monitor and the true costs of the service are difficult to quantify. But even in other service areas where quality and price considerations are easier to measure, the time and resources spent on monitoring can still be significant. The degree to which these additional costs outweigh the potential efficiency gains of private production is an empirical question that can only be answered on a case-by-case basis. The evidence presented here, however, suggests that these costs are often considerably higher than most governments anticipate.

Economic and Market Issues

Much of the preceding analysis presumes that, contracting costs aside, privately produced services are cheaper. Indeed, lower costs were the primary reason most governments in this study choose to contract out in the first place. Lower costs, however, usually resulted in lower quality services as well. Research by Harvard University Professor John Donahue suggests that much of the cost savings from privatization come from local governments choosing to follow low road economic strategies that rely on the lower priced labor of private firms^[xxix]. If we make the reasonable assumption that lower priced inputs result in lower quality outputs, then it should not be surprising that service quality was a major problem in a majority of the case studies.

In both Charlotte, North Carolina and Fort Collins, Colorado local governments ended private contracts for paratransit service for the elderly and disabled because of service quality problems. In Charlotte, the taxi company responsible for the service was not accustomed to working with disabled clients, and drivers viewed city charges as less desirable passengers compared to other customers. The program was plagued by similar problems in Fort Collins, where users of the service often complained about the lack of courtesy on the part of drivers. Additionally, the private contractor had numerous problems attracting and retaining quality employees, resulting in unreliable service.

The City of Whittier, California, attempted to privatize its public bus service in the early 1990s. At the end of the five-year contract, however, the city chose in house production over a new round of competitive bidding, citing poor service quality as the primary reason for the switch. The city received numerous complaints about dirty buses and unqualified drivers. Equally important, the expected cost savings from privatization quickly disappeared because of significantly higher accident rates and greater than expected costs for vehicle repairs.

The above examples of privatized transit service all relied on lower priced labor to minimize costs. Yet, in every case the low cost option proved to be unsustainable over the long run. Either quality levels slipped to such unacceptable levels that the service was no longer a benefit to citizens, or else the problems resulting from low cost provision (e.g., higher accident rates and increased liability claims) effectively erased any financial benefits from private service delivery.

An important related issue is the degree to which local governments can accurately judge when private service delivery is cheaper. Anecdotal evidence from the case studies suggests that pricing contracts is more art than science. This should not be surprising given the uncertainty that surrounds contracting, but what is surprising is the degree to which contract bids vary. In Charlotte, North Carolina, for example, bids on paratransit service ranged from \$12.60 to \$20.49 per trip. In Lubbock, Texas, bids for a portion of the city's residential trash routes varied from \$3.6 million to \$7.3 million—a difference of nearly 103 percent.

Figures like these suggest three things. First, sufficient competition is critical to cost savings when competitive bidding is used. Second, it is imperative that local governments who use competitive bidding allow public departments to participate in the bidding process so that costs can be properly benchmarked. Finally, if a public service is privately provided, it is crucial that public officials pay close attention to monitoring the price, quality, and quantity of the contractor's work throughout the term of the contract. The following section examines more closely the cases that involved competitive bidding.

Contracting Back in Due to Successful Competitive Bidding

A key variable for explaining the likelihood of contracting back in is whether or not public employees are allowed to bid against private providers. Quantitative analysis of US Census data from 1987-1992 shows that the presence of unionized employees increases the probability of contracting back in [\[xxx\]](#). This finding suggests that unionized workplaces are more likely to have the right to submit contract proposals, but bidding rights for public employees are increasingly common in non-unionized settings as well. [\[xxxii\]](#)

The rules governing the public sector's ability to bid on contracts vary considerably from place to place. In Pinellas County, Florida, for example, public employees are allowed to compete with private providers when a service is first put out to bid. Once that contract is "lost" to the private sector, however, only private firms have the opportunity to bid on future contracts. The county sees the start up costs associated with bringing a service back in as too expensive to be worth the effort. Not only would the county have to hire new employees to provide the service, but new equipment and buildings may be required as well.

Other places view the bidding process differently. In Charlotte, North Carolina, it is the norm for public employees to bid on contracts, and the city expects its departments to be competitive in the bidding process. Making city departments competitive means providing them with the resources necessary to assemble quality bids. In many cases, this includes allowing managers to hire outside consultants to help develop the department's proposal. Cases where services are kept in house are viewed as "victories" for the city, and are a source of pride for public employees.

A third example of how the bidding process works can be found in Lubbock, Texas. In Lubbock residential trash collection is subject to competitive bidding, and public employees are encouraged to bid for the service. What makes Lubbock different than most places, however, is that only one third of the service is put out to bid at any given time, and the City would never choose to privatize the whole service. "We would always keep at least one third of the service in house," says Mildred Cox, the Director of Public Works. "This way we never lose the ability to keep the private firms on their toes. Just as important, having competitive bids provides the city with important information about what constitutes efficient service."

Taking the High Road Through Public Sector Innovation

The fact that government departments often win competitive contracts highlights the ability of the public sector to improve efficiency through the use of high road management practices. There is ample room for increased efficiency in public provision so long as employees are empowered to make decisions on how the service should be delivered. By drawing on the expertise of front line workers, innovation in the design of work leads to significant cost

savings. Theories of organization development concur that line employees often know how to do their jobs best, and will excel at what they do if given the chance by management.^[xxxii] For public employees dealing with complex services and the need to keep a wide array of constituents satisfied, this is even truer.

Many of the cases of contracting back in were tied to process improvements in public management. As such, they demonstrate public innovation is a viable alternative to private provision. Often small changes can lead to significant savings. In Warwick, Rhode Island, for example, management and the union worked together to redesign the way residential trash is collected, resulting in savings of over \$1.1 million over five years. In Akron, Ohio, city workers developed a plan to combine water and sewer line repairs with road repairs. "Why do the same work twice?" asks union president Leo Armstrong. "If we're already there repairing the hole, we might as well finish the job. Not only can we get the job done faster, but it saves the city money, too."

In other cases, efficiency gains were the result of specific management practices being brought in from the private sector. In Charlotte, North Carolina, managers of the city's paratransit service instituted a gainsharing program for its employees that resulted in savings of over \$160,000 in 1998. Half of this money will be divided equally among the department's employees, which amounts to an annual bonus of \$1,600 per employee, or about seven percent of an employee's total pay.

Labor-management cooperation programs can have a significant impact on improving efficiency in unionized settings. In Fort Lauderdale, Florida, "partnership" programs between labor and management have resulted in a number of competitive bids being awarded to public employees. Fort Lauderdale's partnership programs are a product of the Cooperative Association of Labor and Management (CALM), an innovative program that employs the concepts of total quality management to increase productivity and promote cooperation and understanding between the union and city administrators.

One example of CALM's impact comes from the city's attempt to privatize infrastructure pipe construction in early 1997. When the Request for Proposals was issued, a labor-management committee quickly formed to prepare its bid for the competition. The committee was co-chaired by the union president and the director of labor relations for the city, who together co-chair all partnership committees. Having these two established veterans on the committee "helps to create a safe environment for our people," says union president Cathy Dunn. This way we can establish trust among all parties early on, and get to the real work of developing our proposal." In addition to the co-chairs, the committee consisted of a supervisor, division manager, and four crew members. Each committee member is encouraged to participate fully in the development of the proposal, and any member has the right to veto elements of the plan that they don't like. "All it takes is one 'no' vote and the project stops," says Dunn.

The CALM committee won the contract by submitting the lowest cost bid. Public employees were able to beat the competition by restructuring how the service was delivered. Work schedules were changed to reduce travel and set up time, and the size of the pipe crews doubled, following the example of successful private firms that do the same work. The results of these changes have been dramatic: In the first year alone, city crews laid over three and a half miles of pipe, compared to an average of just one mile of pipe for privately-run crews.

The above examples clearly demonstrate that the public sector can be as effective if not more effective than firms in the private sector doing similar work. In every case, the key to public sector success is empowerment. When workers are provided the tools and the resources necessary to bring about change, innovative policies and programs often follow. Privatization and empowerment, however, are rarely compatible. When employees are mistrustful of management, when job security is uncertain, and when departments see their colleagues' jobs sold to the lowest bidder, convincing workers to "buy in" to *any* new program is a daunting task.

Conclusion

The evidence presented here indicates that the contracting process is rarely as smooth as its proponents claim. Often poor results were due to the inability of either governments or private contractors to clearly communicate their expectations to each other. On other occasions, disappointing results were the outcome of one party or the other underestimating costs or overestimating savings from privatization. For a third group of cases, contracting back in was

not the result of failure on the part of private firms, but rather successful innovation by public employees.

The latter findings suggest that taking the high road, in the form of TQM or labor-management cooperation, can provide equal or better quality service as the best private firms, but do so with fewer risks and greater social rewards. For those public officials that truly wish to “reinvent government,” internal management reforms deserve a closer look than they have been getting.

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Article Summary

Sclar, Elliott. 1997. "The Privatization of Public Service: Lessons from Case Studies." Washington, D.C.: Economic Policy Institute.

This article presents arguments against privatization and the contracting of public services. Three case studies are used to portray the deficiencies of contracting along with a discussion of some general economic principles that support case findings. Sclar concludes that monitoring and contract transaction costs more than outweigh the benefits of privatization in the cases he examined.

Spot vs. Contract Markets

For Sclar, contracting government services is likely to result in cost savings when the price of the service is determined in a "spot market." A spot market is similar to the economic abstraction of a perfectly competitive market: the price of a good or service is kept low because there are many producers of the same or similar products. Thus, competition maintains downward pressure on prices.

Contract markets are different because there are generally few producers of the good or service. This not only leads to difficulties in determining prices but the product itself is not easily quantified. In this market a decision to contract involves:

- specification of the product
- negotiation of prices
- close monitoring of quality
- anticipation of contingencies
- an assessment of the typical production costs
- a determination of the transaction costs of contract design and monitoring

Transaction costs are often underestimated or neglected all together. Governments ignore the transaction and monitoring costs when they treat the goods and services that have contract market characteristics as if they were suitable for purchase in the spot market.

Moral Hazard

In terms of private goods, consumers have an economic incentive to protect their investments. Sclar suggests that this is not the case when considering public goods, especially those with contract market characteristics. Public contracting, by contrast, always involves "moral hazard," which arises in any situation in which the best economic interest of at least one of the parties to a transaction can be better served by dereliction of duty or outright dishonesty.

In order to establish accountability, governments need to create bureaucracies and audit systems for their contracts. These are the transaction and monitoring costs that are often ignored.

Three Case Studies

These cases were selected based on two criteria. First, each case had to have been in existence long enough to rule out problems associated with startup difficulties. Second, a significant amount of material in the form of public documents, newspaper accounts, and interviews could be gathered to provide an adequate reflection of the cases being examined. These cases were considered good candidates for privatization because the "blue collar" nature of the work involved made it easy to administer via private contractor. In addition, the services being conducted are typical of those found in spot markets.

The Albany Department of Public Works

The Albany case study reveals the impact of transaction costs in a privatization contract. The entire vehicle maintenance operation of the Department of Public Works was contracted out in January of 1992. The premise was to replace the salaried public employees with hourly work at outside garages. The City would then pay only for the time that the vehicles were actually being serviced which was expected to result in between \$100,000 and \$200,000 in savings. Indeed, in 1995 the City of Albany reported in their budget that they had reduced their costs by 18% during 1994. However, the comptroller's office pointed out that this "savings had occurred because of the aggressive supervision of contractor's bills" which resulted in an increase in contract spending. In addition to the discussion of monitoring costs, Sclar cites testimonials that highlight the extent to which contractors had over billed.

MassHighway

In Massachusetts, highway maintenance was one of the first public services to be contracted out as part of an aggressive campaign to privatize government services. MassHighway distributed its highway maintenance on a 50-50 basis; 50 percent to its own public employees and the remaining 50 percent to outside contractors. In this arrangement, the contractors had an incentive to perform only the work that was most profitable to them because the State obligated the contractors to keep the maintenance costs below the contract price. In addition, much of the work was either done poorly or not at all upon inspection.

Sclar indicates that the public sector employees consistently provided a better service at a lower cost. However, the State of Massachusetts has made it clear that over time and through attrition the unionized employees will be replaced by contract workers.

Indianapolis Fleet Services

The Indianapolis example differs from the two studies above in that it is a case study where privatization did not take place. The decision to privatize Indianapolis' vehicle maintenance operations was successfully challenged by the facility's unionized employees. Instead of contracting out the fleet services, the operations were restructured through collaborative labor/management relations with the effect of reducing costs by eight percent. The restructuring has also led to an improved work environment, fewer employees, and continued service quality.

Lessons from Experience

The case studies discussed above are neither typical nor representative of the entire experience with privatization. They do, however, point out several pitfalls for governments seeking to contract with the private sector. Sclar's point here is that each case must be examined carefully and governments should be wary of adopting privatization as "routine and widespread policy". Below, six of these pitfalls are summarized:

1. Governments should avoid making a decision to privatize based on the experience in the private sector with service delivery. Personal car repair is vastly different from maintaining a fleet of vehicles.
2. Governments should investigate the manner and extent of the bureaucracy required to monitor contracts.
3. A careful assessment of costs and savings should be undertaken. This endeavor is more difficult than it seems and governments should be wary of simplified 'bottomline' comparisons.

4. Some attention should be paid to the nature of the service being considered for privatization. Some services are best provided by the public sector and privatization represents a solution to problems that may be better addressed from within the public sector. Labor and management collaboration is just one example of this point.
5. Again, the nature of the service being privatized is an important consideration. Contracting out services to providers that require highly specialized equipment leaves governments at the mercy of the contractor in future negotiations. This is mainly due to the difficulty a government has in procuring the 'critical assets' necessary to provide the service themselves.
6. Once a contract has been awarded, despite the fact that the process may have been competitive, the market structure for that service may undergo a transformation. The act of bestowing a contract may change the market into a bilateral negotiation between government and the winning bidder, creating an arrangement similar to a monopoly.

Guidelines for Public Contracting

Four factors emerge from the privatization debate that "are crucial in determining whether contracting can provide an economic alternative to improving internal organization". First, the importance of the task to the mission of the agency. The routine nature of the service does not necessarily imply that it will be easy to privatize. Second, the frequency with which transactions occur is not an indication of the ability of the service to be privatized. Third, the more complex the task and the more uncertain the environment the more likely it is that privatization will not produce cost-effective results. Lastly, highly specialized equipment requires highly skilled laborers who will perform their duties regardless of who pays them. Introducing a third-party arrangement creates a layer of management that weakens the ability of governments to control the output.

Conclusion

The Sclar paper details some of the shortcomings of privatization and contracting government services. The three case studies support his contention that contracting results in serious contract abuses and increased costs associated with monitoring and accountability; costs that are often ignored in the privatization negotiations.

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Article Summary

Lehmann, Scott. *Privatizing Public Lands*. 1995. New York: Oxford University Press.

In 1983, officials in the Reagan Administration proposed privatizing federal public lands. In this one act, the federal lands could be put to their "highest" and "best use," consistent with consumer demands expressed through the market, or so argued these officials. While quickly scuttled at the time as politically unpopular, similar proposals are likely to resurface. In this book, Lehmann begins by anticipating such free marketeers' arguments in favor of privatizing public lands.

Culling from many sources, Lehmann assembles what might be a "case for privatization". He finds inherent contradictions and circularity in marketeers' arguments that the market is the best mechanism for ensuring "productivity" and greater "social welfare". Finding many potential instances of spillovers from one set of "consumers" to another, he finds any land privatization would need to establish a system of covenants and easements to "contain spillovers". He argues that the regulated use of public lands, the status quo, approximates exactly this kind of complex of covenants, and in so doing, ensures long-term multiple uses of land. While federal land managers do not appear to manage lands on the principle of maximizing profit from resource-release, these officials do make accessible *all* land resources to a variety of users, from hikers to sheep-herders.

In the last several chapters, he builds a critique of marketization. He contrasts a privatist marketplace with its ideal of consumer sovereignty with experiences of nature that would create a different *ethic*. While in the marketplace, decision-making bows to the "universal pander" of ability and willingness to pay, in the realm of the public, Lehmann finds participation to be a critical mechanism for preserving cultural and natural values. Resources on which we depend cannot be treated as commodities without jeopardy of cultural values, argues Lehmann. Finally, public lands, in making possible different relationships to the land and its uses than the market themselves, are vital spaces for exploring an alternative ethic.

In sum, while the first sections of the book likely appeal to academics in the dogged exploration and critique of claims made by free-marketeters, local government officials will find a strong articulation of why some resources might best be managed by the public sector.

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Article Summary

Miranda, Rowan and Allan Lerner. (1995). "Bureaucracy, Organizational Redundancy and the Privatization of Public Services." *Public Administration Review* 55(2): 193-200.

In this article Miranda and Lerner draw on redundancy theory and empirical evidence to further the debate on privatization of public services. The authors discuss the possible advantages of an intermediate form of privatization, which they refer to as "benchmarking," where "controlled competition" is used to minimize the "dysfunction of monopoly bureaucracy" (194).

The introduction of redundancy in public service delivery allows for the same service to be provided by more than one organization. The article presents several ways of introducing redundancy 1) intra-government redundancy, 2) private/ private redundancy, and 3) a mixture of public and private provision where the government would contract portions of the service to outside providers. Redundancy helps establish competition and allows for measurements of comparative benefits between different providers of the same service. In this case benchmarking "represents an informed pragmatism in the search for improved organizational forms for the delivery of public services" (194).

This article expands on the current theoretical framework for privatization of public services and provides a possible alternative that would enhance competition. Miranda and Lerner delineate evidence from past studies to suggest that privatization alone does not lead to better quality or cost reduction in public service delivery. Without competition, service delivery moves from public to private monopolies. They argue that "organizational redundancies in service delivery are perhaps a means for averting monopoly outcomes" (p. 197).

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Article Summary

Sclar, Elliot D., K. H. Schaeffer, and Robert Brandwein. 1989. "The Emperor's New Clothes: Transit Privatization and Public Policy." Washington, D.C.: Economic Policy Institute.

Sclar, Schaeffer and Brandwein's paper is an examination of the impact of the five-year-old effort of the Urban Mass Transportation Administration (UMTA) to mandate state and local transit authorities to privatize their operations. Traditionally, transportation policy was regarded by the government as an integral part of economic development policy; in other words, public subsidy of infrastructure represents an investment in the overall productivity of the American Economy. However, political officials have begun to evaluate transportation policy and operations in terms of cost only instead of program outcome. The primary purpose of public transportation is to ensure the quick, safe, and efficient movement of people and goods around metropolitan areas, while promoting industry standards that take into account widespread traffic congestion, environmental quality, energy conservation, infrastructure investment and equal access to transportation for all citizens. A system which meets these criteria can only be achieved through comprehensive planning, design and operation -- not through disjointed operation by many private suppliers.

Until the 1950's auto and truck transportation federal policy was aimed primarily at rural areas. Not until the 1940's did transportation policy begin to include urban roads and bridges. As the population in cities grew, so did the complication of safely and efficiently ensuring the continuous motion of people, goods and services. Federal policy mandated greater coordination and planning of transportation systems in cities. Transit operations were badly undercapitalized and barely able to remain in business. The Urban Mass Transportation Act of 1964 mandated the creation of Metropolitan Planning Organizations (MPO) which led to the creation of public transportation planning authorities across the nation. Federal funding was directed toward the capital needs of transportation, and the taking over of aged and failing private local providers. Substantial funding to improve and set up better public transportation infrastructure continued through the 1970's.

With the election of Ronald Reagan in 1981, federal transportation policy took a different direction -- toward that of privatization. Two main goals were placed at the top of the transportation policy agenda: to reduce federal spending on transportation programs, and to establish a more central role in public transport for the private sector. Congress, however, disagreed completely with these objectives and the mandating of state and local sectors to privatize. In 1987 it passed a bill that extended federal subsidization of the transportation systems for another four years. This deadlock over transportation policy between Congress and the Administration continues.

Theory says that competition will force prices closer to the actual level of production cost under conditions of efficient operation. However, an examination of studies done for UMTA shows that the data does not support this theory. The authors cite two firms, which carelessly ignored complex conceptual and measurement problems in their studies. UMTA, then selectively used this research to support their pro-privatization programs.

Other problems with contracting that are identified are:

- Lack of competition stability over the long-run: competition assumes that there will be a steady stream of

many suppliers competing to provide service. However, sellers are always looking for ways to eliminate their competition, and in reality they often succeed. Eventually, one or two major players will dominate the market, and the industry will be back to a monopoly situation where the provider has greater leverage in charging a higher price. Westchester County serves as an example of this situation.

- Politics does often interfere with the competitive bidding process: i.e. the contract does not always go to the lowest bidder.
- Can little fish EVER eat big fish? Contrary to the intentions of privatization advocates, the majority of successful players winning transit contracts are large national multi-product firms, as opposed to small, efficient, entrepreneurial operators.
- Contractors work for the transit agency, not the rider: The claim that service quality will increase with privatization because private providers will be more responsive to riders is not necessarily true. Vendors do not necessarily see their long-term interests tied to the rider's well-being as much as public transit agencies do. Private operators feel insulated from the direct contact with and responsibility to the rider.
- The relationship between the public agency and contractor can often be adversarial and difficult to manage: The need to monitor and make decisions about sometimes necessary expansion of services in an area where service is contracted is challenging and can cause tension between the two entities.

The way in which cost is measured in the bidding process gives advantage to private sector contractors. When evaluating the cost of service provided by public sector or non-profit bidders, public agencies use the method of fully allocated cost, which includes the direct costs of service plus overhead for administration, facilities, etc. However, for private sector bidders, any legitimate bid (showing only incremental costs) is taken as a fair basis for comparison. Therefore, public providers are at a disadvantage in the bidding process. Additionally, private contractors are able to cover a loss through cash flow from other operations until they are able to obtain more power in the market and then raise their costs.

Lower labor costs is one of the most dominant arguments used by privatization advocates. They allege that transportation drivers and mechanics are overcompensated for jobs that require little skill. However, driving a bus should not be considered a low-skill job that has little effect on people's lives. If bus drivers fail to report to work, riders do not get to work, to the store, or to the doctor. Sporadically provided bus routing hurts the economy and people's quality of life.

Additionally, when examining the increase in costs in the transit industry, it can be shown that only 43% of the increase in costs is due to increase in wages and productivity. Further examination of these causes shows that there have been no technological advances in the transit industry since the 1920s. Additionally, another reason for the decrease in labor productivity can be attributed to the fact that peak ridership has increased and therefore the number of transit workers increase by more than the number of transit miles.

Urban transport policy with the goal of fast, safe and efficient movement of people and goods must incorporate three elements: the importance of local OPTION in contracting, the need for subsidy, and the breadth of proper transportation policy goals.

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Article Summary

Moulder, Evelina. 1994. "Privatization: involving citizens and local government employees." *Baseline Data Report* 26 (1): 1-7.

This article summarizes the results of a survey conducted by the International City/County Management Association (ICMA) in 1992 on local area alternative service delivery. The survey was mailed nationwide to chief administrative officers in all cities with populations of 10,000 or more, and to counties with populations of 25,000 or more.¹

According to the results of this survey, whether or not local governments do actually privatize, 69.5% have gone so far as to conduct a feasibility study on the subject. Privatization usually occurs because a local government or its citizens believe services can be provided more efficiently and at a lower cost when contracted out. Also, many localities are privatizing in response to an increase in population size (with the exception of jurisdictions that have a population of 1,000,000 or greater). This study showed that privatization efforts were initiated more often from within the government sector (90.3% of the time) as opposed to by the citizens.

Manager and department heads are most often involved in evaluating the feasibility of private service delivery, followed, in descending order, by elected officials, assistant managers, and finally, line employees.

Moulder suggests that involving line employees in the feasibility study from the beginning would be beneficial to the process. Line employees have critical insight into the methods of service delivery and they would feel respected as participants. For employees, it would also be an opportunity to voice concerns and might serve as an exercise for them to explore how they can improve efficiency and operations in general. It has been shown that larger jurisdictions are more likely to involve line employees in the feasibility study, as are areas on the Pacific coast and in the Mountain division. Other outside groups, such as citizen advisory committees, were also reported by localities to be involved in the feasibility study process.

Obstacles to implementation of private service delivery can come from employees and consumers (citizens). Of the respondents to the survey that reported obstacles to privatization, 31% identified citizens as the source of opposition. Even though service evaluation can serve to bolster citizen confidence and is important to efficiency, only 47% of the jurisdictions reported the use of systematic evaluation of service delivery.

Fifty four percent of the opposition to privatization experienced was reported as coming from line employees. Of those jurisdictions that do privatize and experience opposition from line employees, less than half had involved line employees in the feasibility study. Even fewer allowed public employees to compete for the contracted service, or made an effort to develop programs to mitigate effects on public employees displaced by privatization. Larger jurisdictions with a population of 100,000 or greater did show more of a tendency to allow public sector employees to compete for providing services.

Privatization of public service delivery impacts both public sector employees and consumers. Both groups should be an integral part of the decisionmaking process over changes, such as privatization, that effect the quality of life in their community.

Notes:

1. One thousand five hundred and four responses were received, accounting for an overall response rate of 31%.

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Article Summary

Pack, Janet Rothenberg. 1989. "Privatization and Cost Reduction." *Policy Sciences* 22: 1-25.

Pack evaluates the success and sustainability of service cost reduction from the perspective of the economic model of cost minimization through competitive bidding. In brief, the model asserts that costs will be minimized when bidding is competitive. Wrapped into the concept of competitive bidding are two additional assumptions required for competitive bids: 1) that government can clearly define and describe output requirements and has enough understanding of the good's cost and value that the level of output chosen maximizes the value to cost ratio, and 2) that firms know production costs.

Using information published in a 1984 publication of the International City Management Association and gathered in 1987 follow-up interviews, Pack examines the experiences of fifteen municipalities which contracted for service provision. She emphasizes that from this small and not-randomly-selected sample we cannot infer anything about the overall frequency of success or failure of contract privatization or the applicability of the model. Instead, she uses the information as qualitative case study data to examine the common factors of success and failure of contract privatization.

Pack identifies evaluative standards for contract privatization: 1) was the bidding competitive, and did the government agency actively encourage competitive bidding?; 2) was the initial cost reduction sustained and what are the common factors of the cases in which it was?; and 3) was the contract disrupted due to unexpected costs; and 4) was the mechanism for contract monitoring a formalized structure or constant interaction between the government agency and the provider?

In the case studies, cost reduction was generally greater when the contracts were competitively bid, and cost reduction was sustained when contracts, when expired, were re-bid rather than renegotiated. Further, agencies that actively encouraged competitive bidding received more bids, and more substantially reduced service costs than those which did not encourage competitive bidding. The article gives three methods utilized by governments to encourage bidding: advertising and widely distributed requests for proposal (RFPs), dividing the contract into smaller pieces to enable small providers to compete, and incentive provisions (contract clauses dividing the financial risk between government and the service provider).

The type of service provided also appeared important to cost reduction and sustainability. Among these cases, competitively bid labor intensive services were likely to achieve great initial savings and to sustain reduced costs. More capital intensive production processes were less able to sustain cost savings.

Contract disruption generally occurs when a firm does not know production costs at the time of the bid and costs exceed those estimated. When costs are much higher than those estimated, the firm can absorb the cost, renegotiate the contract, or renege entirely. When the private firm reneges on a contract, the government agency remains responsible for providing the service by either returning to direct government provision or by re-letting the contract. Contract disruption can incur large, unanticipated financial and political costs, and is a risk of private contracting not often calculated into the privatization decision. In the cases where contract disruption occurred, Pack finds that the majority of them used relatively expensive formal monitoring systems which discerned the problem after it was serious. Agreements of constant interaction

between government and service provider appeared to be a more successful monitoring tool.



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Article Summary

Warner, M.E. and A. Hefetz. 2003. "Rural-Urban Differences in Privatization: Limits to the Competitive State," *Environment and Planning C: Government and Policy* 21(5): 703-718.

Despite two decades of experience with privatization, U.S. local government use of contracting in public service delivery remains relatively flat. Market approaches to public goods provision emphasize the competitive state, and attribute limited privatization to bureaucratic resistance. Rural development theory emphasizes the uneven impact of market solutions in rural communities. Using national data on U.S. local government service delivery from 1992 and 1997, the authors analyze differences in local government service delivery patterns by metropolitan status. Discriminant analysis shows that structural features of markets are more important than managerial capacity of government leaders in explaining lower rates of privatization among rural governments. These structural constraints limit the applicability of competitive approaches to local government service delivery. Warner and Hefetz' results suggest cooperation, as an alternative to privatization at the local level and as a source of redistributive aid at the state level, may provide a more equitable alternative for disadvantaged rural communities.



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Article Summary

Warner, M.E. and A. Hefetz. 2002. "The Uneven Distribution of Market Solutions for Public Goods," *Journal of Urban Affairs*, 24(4): 445-459.

Using national data on local government service delivery from 1992 and 1997, this article assesses the distribution of privatization and inter-municipal cooperation across localities in the metropolitan region and finds them most common among suburbs. Coasian economics argues market solutions may offer an alternative to regional government in the fragmented metropolitan area. However, our discriminate analysis shows the use of market solutions is highest in suburban communities that also exhibit high income and low poverty. Thus, market solutions appear to reflect the inequality among municipalities in the metropolitan region. Some system of regional market governance is still needed to internalize the costs arising from regional inequality in public service delivery.

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Article Summary

Warner, M.E. and Robert Hebdon. 2001 "Local Government Restructuring: Privatization and Its Alternatives," *Journal of Policy Analysis and Management* 20(2):315-336.

Local government restructuring should no longer be viewed as a simple dichotomy between private and public provision. A 1997 survey of chief elected township and county officials in New York shows local governments use both private and public sector mechanisms to structure the market, create competition and attain economies of scale. In addition to privatization and inter-municipal cooperation, two alternative forms of service delivery not previously researched, reverse privatization and governmental entrepreneurship, are analyzed. Logistic regression on the 201 responding governments differentiates the decision to restructure from the level and complexity of restructuring. Results confirm that local governments are guided primarily by pragmatic concerns with information, monitoring and service quality. Political factors are not significant in the restructuring process and unionization is only significant in cases of simple restructuring (privatization or cooperation used alone). Fiscal stress is not a primary motivator, but debt limits do encourage more complex forms of restructuring. Restructuring service delivery requires capacity to take risks and is more common among experienced local officials in larger, higher income communities. Restructuring should be viewed as a complex, pragmatic process where governments combine public and private provision with an active role as service provider and market player.

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Article Summary

Warner, M.E. 2000. "Structuring the Market for Service Delivery: A New Role for Local Government." pp 85-104 in *Local Government Innovation: Issues and Trends in Privatization and Managed Competition*, Robin Johnson and Norman Walzer eds. Westport, CT: Quorum Books.

Case study analysis of reverse privatization among New York State towns and counties shows how governments engage the market to ensure competition, control and attention to community values. The nature and relative importance of three alternatives to privatization – inter-municipal cooperation, reverse privatization and governmental entrepreneurship are described.

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Article Summary

Warner, M.E. and R. Hebdon "[Local Government Restructuring in New York State: Summary of Survey Results](#)"

Surveys on restructuring of service delivery were distributed to the chief elected officials in all town (932) and upstate county (57) governments in New York State from November 1996 to March 1997. A total of 26 counties and 196 towns responded for an overall response rate of 22%. This research, undertaken in collaboration with the County Legislators and Supervisors Association (now the New York State Association of Counties) in 1996 and 1997, found that half of responding governments had implemented some form of restructuring since 1990.

Restructuring in New York State primarily involves public sector innovation rather than privatization. Intermunicipal cooperation was the predominant form of restructuring, while privatization was the second most common form of restructuring. Significant levels of reverse privatization and governmental entrepreneurship were also found. Incidence of restructuring was highest among counties, and in the following service areas: public works, public safety, and general governmental support functions.

Impact on local budget and economic efficiency were the most important factors in the decision to restructure services. Concerns with service quality and community values were also important. Labor and management concerns were also significant but unionization was not considered a major factor. Legal and political concerns, availability of information and experience with past restructuring were also important. Local governments in New York State critically assess their restructuring options to enhance efficiency while maintaining service quality and reflecting community values. Economies of scale and competition are keys to efficiency, not privatization per se. Thus, local governments employ a variety of restructuring options. They achieve economies of scale by cooperating with other governments, and they promote competition by encouraging public sector units to compete with private sector providers.

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Article Summary

Hebdon, Robert, and Hazel Dayton Gunn. 1995. "The Costs and Benefits of Privatization at the Local Level in New York State." Community Development Report. Ithaca, NY: Community and Rural Development Institute, Cornell University

(http://www.cardi.cornell.edu/local_government/community_governance/000244.php)

Local governments seeking to reduce costs are giving serious consideration to privatization. By subjecting service provision to the rigors of market competition proponents believe efficiency will be increased. Opponents are concerned that service quality, social equity and labor conditions may be diminished. With privatization the role of government shifts to contractor rather than direct provider. Special care must be taken to ensure adequate oversight as government remains ultimately responsible for service delivery.

Privatization is a worldwide phenomenon. In recent years Eastern European countries have been turning to privatization as a way to dispose of state-owned, out-of-date, and inefficient firms as well as to provide an influx of foreign capital. In the United States arguments for and against public sector provision of goods and services reflect current political ideology on the role of government and the role of markets. Because no comprehensive studies on the costs and benefits of privatization have been carried out, the debate continues based on largely untested assumptions.

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Book Summary

Savas, E. S., ed. 1992. *Privatization for New York: Competing for a Better Future*. The Lauder Report; A report of the NYS Senate Advisory Commission on Privatization. New York.

The report provides a review of privatization experience in New York State, from a proponent's perspective. The report argues privatization leads to greater productivity that enables governments to provide the same level of services at lower cost, or to improve services without raising taxes. The report addresses the biggest budget services in NYS including New York City. It also introduces the experience of other states and cities, and the special experiences gained in Britain. The report has an excellent executive summary.

[Chapter 1: Introduction](#) (E. S. Savas)

Privatization is a proven, successful approach being adopted throughout the world. However, New York is lagging badly. Forms of privatization are discussed, evidence presented, and recommendations drawn.

[Chapter 2: What Other States are Doing](#) (Keon S. Chi)

More and more states are privatizing their services; health, human services, prison, transportation, etc. NYS has a lot of legal and administrative impediments to privatization.

[Chapter 3: Medicaid](#) (Edwin S. Rubenstein)

Medicaid is NY's premier "budget buster." Less regulation, co-payment, competitive contracting, and prevention of fraud, are recommended.

[Chapter 4: Airports](#) (Robert W. Poole, Jr)

Airports are undervalued assets of state and local governments. Passengers and taxpayers would benefit from privatization.

[Chapter 5: Education](#) (John E. Chubb and Terry M. Moe)

Despite high education expenditure, NY's public schools are performing poorly. The authors recommend school choice.

[Chapter 6: Bus Services](#) (Wendell Cox and Jean Love)

The cost of local public bus services in NY has been increasing. Mandatory competitive contracting is recommended costs savings.

[Chapter 7: Infrastructure](#) (Steve Steckler and Lavinia Payson)

Privatization in infrastructure is appealing because it provides new capital, can be built more rapidly and efficiently, and brings in new sources of tax revenue.

[Chapter 8: Solid Waste Management](#) (Barbara J. Stevens)

Compared with other communities, NY uses contracts or franchises much less in solid waste collection. Competitive bidding is necessary to ensure gains from privatization.

[Chapter 9: Housing in New York City](#) (Jack Richman)

New Yorkers are suffering from a shortage of decent, affordable housing. Housing vouchers are recommended

as the most cost-effective form of housing subsidy.

Chapter 10: Off-Track Betting in New York City (Ann E. Kaplan)

NY is the only state with government-operated betting parlors. It is best handled by private business. Off-track betting should be sold at auction to the highest bidder.

[Chapter 11: The Privatization Experience in Britain](#) (Peter Young)

Mandatory competitive bidding for local services in Britain went into effect in 1988, even though the political and ideological climate was hostile. Bus service, airport, and infrastructure were privatized to save costs.

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Article Summary

Chandler, Timothy, and Peter Feuille. 1994. "Cities , Unions, and the Privatization of Sanitation Services." *Journal of Labor Research* 15 (1): 53-71.

Using extensive municipal survey data, Chandler and Feuille analyze the relationship between unionization and government decisions to contract for sanitation services within the conceptual framework of industrial relations. The authors conclude that the existence of a union neither increases nor decreases the probability of privatization with any statistical certainty.

Chandler and Feuille bring three theoretical assumptions to their study: 1) that political and economic environmental forces lead to choices by management, labor, and government which affect the industrial relations system; 2) that management must lead in the effort to change the system because unions and government have been slow to respond to economic and political changes; 3) that the values and beliefs of key decision-makers play a crucial role in determining decisions.

The authors are particularly interested in discerning the impact of privatization on votes, which are of course a primary concern to politicians and a constraint in municipal decision-making. They assume that the decision to contract sanitation services is directly related to gains or losses in votes, and develop a function which relates votes with changes in the cost to consumers (C), political rents received by various interest groups, such as political patronage jobs (P), and the change in the quality or effectiveness of government services (E). The authors conclude that the existence of a union neither increases nor decreases the probability of privatization. However, the nature of the relationship between municipal management and any union has a great impact on the decision-making process regarding privatization.

Chandler and Feuille theorize that the municipality will decide to contract the service if the political support for contracting exceeds that for retaining public production. They further separate the decision making process into two steps: 1) considering the impact on votes of contracting the service, and 2) making the decision to contract the service. City officials may wish to publicly contemplate privatization to indicate to voters a desire to cut costs, but the decision may be more driven by interest groups such as public sanitation unions or private sanitation contractors. The authors thus separate the decision-making process to evaluate the determinants of privatization of the service reaching the public agenda versus the determinants of the policy decision to privatize. Chandler and Feuille develop two additional functions for these two steps. Consideration of the option (CONSIDER) is a function of the perceived political popularity as measured by votes, whereas deciding to contract (CONTOUT) is a separate function of considering the option in relation to C, P, and E.

The authors use this model to test the impacts on taxpayer and voter support of privatization in light of three hypotheses drawn from the literature regarding the impacts of privatization on costs, labor, and quality. First, contracting results in cost savings (Savas, Stevens). Second, contracting is perceived to adversely impact public employees. Third, there is no evidence that contracting either increases or decreases the quality of service (Morley, Stevens). The authors model municipal fiscal health and union/management relations into the CONSIDER and CONTOUT functions by introducing additional variables such as per capita municipal debt, local tax revenues, the maximum hourly wage of public sanitation workers minus the local average wage in

manufacturing, and a measure of the nature of the relationship between the sanitation union and public management.

To test this model, Chandler and Feuille have reduced their data sample size to 740 municipalities from the 1,541 respondents to their 1989 survey analyzed in their article "Municipal Unions and Privatization" published in the January/February 1991 issue of the *Public Administration Review*. It appears that they have drawn this sample of 740 from the larger data group to better reflect regional and city size categories of the population.

The data thus modeled indicate that municipal officials respond to both financial pressures and the interests of unions when making privatization decisions. Cities experiencing financial stress are more likely to contract for the service, since there is more voter political support of that decision in those cases. Unions alone do not increase or decrease the likelihood that a service will be contracted to a private firm. Rather, the relations between the union and management are the significant factor in the decision-making process. Cities in which there is a cooperative relationship are less likely to implement privatization than are non-union cities. However, cities with an adversarial relationship with the union are more likely to privatize sanitation service. The data do not indicate that municipal decisions to contract are simply a managerial response to difficult union relationships, but are the result of a number of complex political and fiscal variables.

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Article Summary

Chandler, Timothy, and Peter Feuille. 1991. "Municipal Unions and Privatization." *Public Administration Review* 51 (1): 15-22.

This article examines the effect of municipal unions on cities' decision to privatize a particular service. The authors surveyed public works directors around the country to understand city decisions to privatize sanitation collection. Sanitation services typify government services most often privatized: they are prosaic, not uniquely public, delivered through low-skilled jobs and have easily monitored outputs.

The primary rationale for privatization appears to be cost savings (average 29-37% savings for sanitation collection.) Unionization has traditionally has led to increased labor costs.

Privatization displaces these employees, which has been a major rallying point for union opposition, especially among women and minorities who benefit significantly from public sector employment. Unions possess an organizational advantage in opposing privatization, since they may be able to overcome individual interests in tax savings.

Authors surveyed 1,256 cities for the union status of their sanitation employees. They found that cities which had seriously considered contracting out services were more likely to have adversarial relations with the sanitation union or had experienced a strike. Employee opposition to contracting was significantly higher in unionized cities than non-unionized. The presence of a sanitation union significantly reduced the likelihood of a final decision to contract out, even when no language in the union contract forbid doing so. Most cities that privatized contracted out the entire service (as opposed to just portions of it). Almost one-third of the private sanitation employees were reported to be unionized (as opposed to an average of 40% for municipal sanitation workers). A significant number of these cities also experienced strikes by the private union, and a small percentage of these actually reverted to public service provision.

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Article Summary

Hebdon, Robert. 1995. "Contracting Out in New York State: The Story the Lauder Report Chose Not to Tell." *Labor Studies Journal* (Spring): 3-29.

The article analyzes critically the claimed benefits of contracting out as detailed in the Lauder Report on privatization in New York State. According to the Lauder Report, privatization not only contributes to efficiency, effectiveness, and equity, but also lessens the threat of strikes. However, the Lauder Report has serious flaws, described below:

- Flaws in scientific research
 - The report's analysis of solid waste management, which is important because it provides the grounds on which privatization is deemed superior to public sector in terms of efficiency, is flawed. For each of the services, the sample size is too small to produce reliable statistical results.
 - It is not clear that the ten cities analyzed were selected by random sampling.
 - Savas's review, which was conducted from 1965 to 1977, is also not statistically significant based on accepted standards. Accordingly, the study's results cannot be trusted, and do not provide empirical evidence that privatization is more efficient than public sector.
- Overlooking privatization failures
 - The report overlooked effects on employees: it did not look at pay, benefits, or working conditions of those producing good or service.
 - It ignored the fundamental difference between the public sector and private sector: the public sector is based on public law while the private sector is motivated by economics and behavior theory.
 - It overlooked the impact of privatization on the employment of women and minorities and the possibility of corruption.
- Implications of contracting out for unions and collective bargaining
 - The Taylor Law prescribes strong penalties against public workers for all strikes and requires a formal bargaining process including union recognition and certification. It contributes to low numbers of strikes, social stability, and economic progress.
 - Contracting out is treated as mandatory subject of bargaining by the Taylor Law. After contracting out, there may be more strikes and social unrest because unionized employees of private contractors will acquire the right to strike.

In conclusion, the author believes that privatization is not a panacea. Rather, it may prove to be a disruptive, socially destabilizing, and ultimately harmful method of cost saving. The practical answer can be found in public sector reform through dialogue, discussion, and negotiation. The productivity improvements that government needs can be acquired by workplace innovations that combine substantial employees participation

in decision making with the sharing of economic gains.

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Article Summary

Pendleton, Andrew. 1997. "What Impact Has Privatization Had on Pay and Employment: A Review of the UK Experience." *Industrial Relations* 52 (3): 554-579.

Since 1979, the United Kingdom has reduced employment in public sector from 7.3 million to 5.3 million, by transferring public services to private ownership and contracting out and competitive bidding. The former, the transfer of public ownership to private ownership, was achieved at the state level by the sale of public corporations and utilities such as British Telecom and British Gas and Water Supply Company. The latter, contracting out and competitive bidding, was accomplished in local governments and parts of central government.

The objectives of the privatization in UK are as below:

- An ideological concern: to reduce the role of the state and to promote consumer choice.
- A set of economic reasons: embracing a change in the structure of the economy, and promoting efficiency and enterprise.
- Managerial concern: rationalizing the internal structures of state-owned organizations.
- Financial benefit.

There have been two steps in privatization in the UK:

- Phase 1(1979-1984): The sale of firms already operating in competitive market and ancillary firms of nationalized industry. This was propelled by ideological hostility to the public sector.
- Phase 2 (1984-present): The sale by public flotation of utilities and other key nationalized industries. The characteristic of this phase is securing wide public participation in the share offers rather than promoting competition and maximizing receipts. Phase 2 was driven by questions of political advantage aimed at the increasing the proportion of the electorate likely to vote conservative rather than promoting economic efficiency.

Expected impact of privatization on industrial relationships

- Privatization could be expected to make pay determinations more responsive to markets and performance than to political factors through elimination of public sector trade unions, which had immense power in pay determination. Therefore pay and benefits would be harmed.
- Economists argued that the pursuit of profits would lead to internal efficiencies. From the viewpoint of agency theory, privatization would reduce the difficulty in monitoring due to asymmetric information between firms and government, and would provide incentives to improve firm performance. Accordingly, privatization would modify traditional patterns of labor, management, and industrial relationships.
- In contrast to monopolies, which can secure higher levels of profitability by adjustments to prices rather than costs, competition between firms would result in lower labor costs and improved productivity.

In summary, a convergence of pay trends between privatized firms and other private firms and reduction of

employment were expected as a result of privatization.

Realized impact of privatization on industrial relationship

The actual experience in the UK provides little clear-cut evidence in favor of the arguments above:

- Pay
 - Haskel and Szymansky's study compared 14 public sector firms and the economy as whole, and found that change of ownership did not affect pay levels. That is, there were no clear differences between the privatized and public sector firms.
 - Contracting out and competitive bidding resulted in reducing cost. However, there were little reduction of pay and benefits. That is, the reduction in the cost may be secured primarily by improvements in labor productivity and reductions in employment rather than adjustments to pay and benefits.
- Employment
 - There is evidence of a fall in employment around the time of privatization in some firms, but also there is counter-evidence of increases in employment in others. However, in local authority service, most organizations securing contract reformed work practices and reduced employment levels.
 - Lack of reduction in employment levels can be attributed to monopolies (where competition is limited, pressure for greater profitability may well be secured by raising price rather than reducing cost), governmental control on the quality of service (resulting in difficulty in reducing staffing), or low tolerance of private firms for adverse public reactions to staffing reductions.

Conclusion

- Deregulation and exposure to product market competition have a more powerful impact on firm behavior than transfer of ownership; the clearest indication of the power of competition comes from the local authority sector, where employment levels have fallen among both private and public sector service providers.
- Continuity in pay and employment among some monopoly privatized utilities with industry-specific technology could be partly explained by the lack of an alternative source of labor supply.
- Some of the most dramatic changes in labor management in privatized firms was due to deregulation of labor market rather than privatization.
- Therefore, the impact of privatization on labor relationship depends on labor market, product market competition, and transfers of ownership.

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Article Summary

Donovan, Ronald, and Marsha J. Orr. 1982. "Subcontracting in the Public Sector: The New York State Experience." Ithaca, NY: Cornell University.

According to Donovan and Orr, subcontracting brings into conflict two fundamental rights or interests:

- The employer's right to manage the enterprise, to determine what services shall be rendered to the public, and to decide how those services can be rendered most effectively and efficiently.
- The employee's right to share in the determination of the terms and conditions of employment.

Orr and Donovan review several case studies of privatization of school transportation services. During recent years, intensified contracting has occurred in New York State due to a 1981 state law which created a subsidization formula for the industry that made it more cost-effective to contract. Additional reasons cited for contracting included many of those regularly identified in other industries, including economic savings, greater efficiency fueled by the profit incentive, and the reduced need to negotiate with employees. Opposition to contracting of school transportation services comes from employees who feel threatened by loss of benefits (especially those who have been within the system for a long period of time) and unions. Instances of involuntary layoff were actually reported to be infrequent.

The response of unions to subcontracting varies in intensity and the methods used -- from running an emotional campaign against it, to treating it as a negotiating problem in trying to secure a delay to better organize. The authors feel unions risk a loss of power if they lose the battle, and that ironically, they may be better off dealing with a private contractor.

Although there has been general satisfaction in the three school districts utilizing subcontracting, it still remains unknown whether or not economic returns have been achieved. However, the authors conclude that the structure of the state aid formula is reason enough to conclude that districts do save money at least in the short run. What happens financially in the long run depends upon the state aid formula and whether a high level of competition can be maintained within the industry.

The Taylor Law categorizes subjects of negotiation between employer and labor as mandatory, non-mandatory, or prohibited. A mandatory term or condition of employment is one that, if raised by either party, must be negotiated in good faith even to the point of deadlock. A non-mandatory subject may not be pressed to impasse except by mutual agreement. Although the Taylor Law states that private sector labor law shall not be regarded as a binding or controlling precedent, the Public Employees Relations Board (PERB) and New York State Courts are still watching closely what the National Labor Relations Board (NLRB) says and does. The NLRB regards subcontracting as a non-mandatory subject of negotiations if it meets the following criteria:

- it is motivated by economic considerations
- the activity comports with the employer's customary business operations

- the activity does not vary significantly in kind or degree from past practice
- the subcontracting has no adverse effects on employees in the unit subcontracting follows an opportunity by the union to bargain about changes in existing subcontracting practices at previous general bargaining sessions

In general, there must be a clear link of causation between subcontracting and a substantial adverse, immediate adverse, or significant detrimental effect on employees, and this is difficult to formulate.

There are many different forums in the public sector for challenging decisions by public entities to subcontract. The variety of ways in which people have challenged these decisions, and the rulings on the cases have shown that subcontracting is an extremely complex issue.

The Taylor Law poses a problem of interpretation in determining whether a subject of negotiation is a term or condition of employment, or one which directly affects the terms and conditions of employment. The Saratoga Springs case serves as an example where an employer wanted to subcontract and, in the process, did not plan to change the nature or amount of service, and was to retain ownership over capital and management of employees. Therefore, the only effect of subcontracting was on the employees themselves. In this case, subcontracting was ruled as a mandatory subject of negotiation. In another case in New Rochelle, the employer was actually changing the amount of service to be provided and therefore subcontracting was ruled a non-mandatory subject of negotiation.

If the public employer's only objective in subcontracting is to save costs while not changing the nature or amount of service, subcontracting is ruled as a mandatory subject of negotiations. Assignment of work to non-unit employees, provided it does not have an effect on or alter the terms of employment, and is considered a redetermination of job qualifications, is deemed a non-mandatory subject of negotiation. Finally, if there exists evidence that subcontracting would result in a departure from past practices, then it is considered a mandatory subject.

The duty to bargain can be waived by employers if there exists either explicit language in the contract giving the employer the right to bargain, or if the employees fail to request a negotiation. Employers also have the right to act unilaterally in a time of compelling urgency. Donovan and Orr believe that identifying a time of urgency poses interpretive problems. The Triborough Doctrine states that negotiating parties are obliged to maintain the status quo during the hiatus between the expiration of the old agreement and the negotiation of its successor.

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Article Summary

Moe, Ronald C. 1987. "Exploring the Limits of Privatization." *Public Administration Review* 47 (Nov/Dec): 453-460.

This article speaks to the much-ignored subject of legality and privatization. Moe's essay suggests the passivity of public administration in raising critical questions, respecting the limits of privatization, originated in the reality that public administration has largely forsaken its intellectual roots which are embedded in public law, not economics or the social sciences.

Moe argues that privatization proponents see public and private sectors as being alike. They are concerned with which sector can do the work most efficiently and don't bother with legal or organizational structure questions. Public and private sectors are alike in the nonessentials, but differ in the essentials. A line must be drawn between public and private and public law provides that line.

In 1819 the Supreme Court's decision on *McCulloch v. Maryland* taught us that a sovereign cannot be taxed by a subordinate unit since to do so would permit another body to determine the fate of the sovereign. The court reasoned if the government owned any part of an entity, the entire body became an instrumentality of the government. This ruling is significant because political actors, both executive and legislative, are assigning functions with a public character largely without criteria and with consequences that are expensive to both the public and private sectors. Such was the case with the Federal Assets Disposition Association who seeks to be private in its direction and interests but public in its rights and privileges.

The most important characteristic that separates public and private is sovereignty. Sovereign attributes include:

- Legitimate right to use coercion to enforce its will.
- Legitimate right to go to war with another sovereign.
- Sovereigns are immune from suit except by their permission.
- Sovereigns are indivisible.
- Sovereign state may disavow debts but can't go bankrupt.
- Sovereigns have the right to establish rules for protection and transference of property, both public and private (eminent domain).

This issue of sovereignty is important, because private firms that contracted by the government may fall into a legal limbo. Many questions arise, for example:

- If "private" can a corporation declare bankruptcy if providing a public good or service?
- Are employees, offices, and records protected by the privacy rulings based on the 4th amendment or are they considered "public."

There are additional factors to be considered. Issue of accountability, public safety, national security, and corruption in privatization need to be discussed.

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Article Summary

Sullivan, Harold J. 1987. "Privatization of Public Services: A Growing Threat to Constitutional Rights." *Public Administration Review* 47 (Nov/Dec): 461-467.

According to Harold Sullivan, the U.S. Constitution provides many protections to citizens against arbitrary action of the government that may infringe upon their rights and privileges, however, the Constitution does not provide these same types of protections to individuals against actions of the private sector. This article reviews the judicial decisions concerning the scope and applicability of national constitutional protections on privatization. It also examines and identifies a number of arrangements between the government and private service providers that immunize both the government and private entities from constitutional restraints. In Sullivan's opinion, privatization threatens constitutional rights.

Sullivan identifies the distinction between privatization of service provision (deciding whether a service will be provided at all, and if so, who shall have it and how much of it), and privatization of production (operating, running, doing, selling, delivering and administering). If production were the only service privatized, the main issue of concern would be loss of jobs. However, the distinction between provision and production is often blurred. Sullivan believes that the determination of the merits of privatization must be informed by a real understanding of the different legal positions of the public and private sectors.

The State Action Doctrine mandates that protection afforded by the Constitution can only be invoked against laws or actions of the state. Before the Civil Rights laws were the courts were more willing to acknowledge the direct involvement of the state in private abuses. But Civil Rights laws have reversed this trend, and it is now harder to hold the state accountable for infringement upon rights by the private sector. In a time when privatization is increasing, this threatens the civil rights of individuals who are receiving more and more services from the private sector.

Court cases such as *Burton v. Wilmington* and *Jackson v. Metropolitan Edison* serve as examples of instances where a private owner or operator that was regulated in some way by the state, was not bound in its actions by the Constitution. *Rendel Baker v. Kohn* and *Blum v. Yaretsky* are both cases where private owners and operators that were funded by the state but were not bound in their actions by the Constitution. These cases provide evidence that by turning public services over to private agencies, the state evades Constitutional restraints.

The Public Functions Doctrine states that when a private entity a "public" or state function, that it is subject to constitutional restraints. However, examples of cases show that this law is limited only to those cases where the actions of the private entity consist of powers that were traditionally and exclusively reserved to the state. In *Flagg Brothers v. Brooks* it was established that before a function is labeled a public function, it must be shown that:

1. the power in question is one which has been traditionally exercised by the government alone; and
2. the government must have abdicated total and unreviewable control over the exercise of the exclusive governmental function to a private party (i.e. only if the government no longer has any role at all in provision or production of the good or service).

The set of exclusive functions recognized by the government is actually quite (e.g. elections, management of town, eminent domain, education, fire and police, tax collection, etc.)

Any successful challenge to an action of a private agency hinges upon showing that the specific decision or action under attack was a direct product of state initiative and compulsion and/or was implemented by state officials.

The government could, through legislation, require private goods and service providers to extend to their clients constitutional protections, but the most needed services are most often the least politically influential. Government must restrict the discretion permitted private agencies.

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Article Summary

Gerbas, Jennifer and M.E. Warner, June 2003. "The Impact of International Trade on State and Local Government Authority, " Dept. of City and Regional Planning Working Papers #204. Ithaca, NY: Cornell University. Available at [http://government.cce.cornell.edu/?/doc/reports/freetrade/#book1 /](http://government.cce.cornell.edu/?/doc/reports/freetrade/#book1/)

The WTO, NAFTA, the General Agreement on Trade in Services (GATS) and the upcoming Free Trade Area of the Americas (FTAA) have been formulated to limit government participation in a number of ways in the name of free market competition. Government measures such as subsidies, taxes, health and environmental regulations, administrative rules, and government provision of goods and services are viewed as potentially interfering with the free market disciplines of competition based on price and quality.

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Article Summary

Warner, Mildred and Jennifer Gerbasi. "Rescaling and Reforming the State under NAFTA: Implications for Subnational Authority." *International Journal of Urban and Regional Research* December 2004 Vol 28(4): 853-73.

The new free trade agreements are rescaling governance in ways that have critical implications for subnational governments. The nation state is not simply being hollowed out, rather a new governance nexus is forming—of nation states, multinational corporations and international agreements—which explicitly excludes subnational and local government voice. This paper describes the new governance features of the North American Free Trade Agreement (NAFTA) and illustrates how they work out at the national, subnational, and local scales using cases from the United States and Mexico. NAFTA provides the template for other free trade agreements including the Free Trade Area of the Americas (FTAA) and a growing number of bilateral agreements. The authors show how NAFTA's governance structure is undermining subnational and local government authority in legislative and judicial arenas. Designed to advance privatization of public services, these agreements undermine the very ability of local governments to use markets for public goods by defining traditional state and local governance mechanisms as 'non-tariff barriers to trade.' Contradictions between private profit and public interest appear at the subnational level but their resolution is engaged at the global level between private investors and the nation state. Recognition of this rescaling requires attention to the reforming state and its implications for subnational authority and democratic representation and voice.



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Article Summary

Jennifer Gerbasi, Jennifer and Mildred Warner. 2004, "Is There a Democratic Deficit in the Free Trade Agreements? What Local Governments Should Know," *Public Management* 86:2 (16-21).

When state and local governments use market solutions for the provision of public goods they still play an active role in structuring the market in order to ensure efficiency gains and the preservation of public values. Government action defines clear property rights, a predictable adjudication process and open contracting to provide competitive market opportunities. However, the ability of state and local governments to play this role may be undermined by new restrictions on government action found in free trade agreements. These agreements undermine state and local government sovereignty by privileging foreign over domestic investors, replacing public courts with private arbitration, and supplanting traditional standards for legislation by requirements to be "least trade restrictive." Government regulations are being reinterpreted as barriers to trade, and a new definition of "takings" requires governmental compensation for lost potential profits from regulatory action. Ironically, the singular attention to market goals in the new trade agreements is undermining the potential for market solutions by altering the ability of government to serve the traditional role of balancing market growth with serving broader public values.

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Article Summary

Kohl, Benjamin, 2004. "Privatization and Regulation: A cautionary tale from Bolivia," submitted to *International Journal of Urban and Regional Research*, forthcoming 28(4) 2004.

The author, Ben Kohl, uses Privatization in Bolivian experience to illustrate that there are limitations of privatization in poor market regulations. On one hand, Kohl points out several advantages of privatization from both economic and political terms. They are increases in market operation efficiency as well as individual freedom, decreases in occurrences of corruption in state-owned-enterprises (SOEs), and liberalized market environment that promotes economic growth. On the other hand, however, Kohl also warns the disadvantages that accompany with privatization, which are the decreases of governmental services and revenues (p. 1-2).

Bolivia is one of the poorest countries in Latin America. The main revenue of the country depends on the export of raw materials. Since 1980, Bolivia has experienced two major economic breakdowns. In 1985, its inflation rate also rose to 20,000 % (p. 4). One of the idiosyncrasies of Bolivia is its informal economy, which includes the contraband and remittance of cocoa-cocaine. Scholars estimate that these underground economic activities count nearly as much as half of the whole nation's economic activities, which are employed around 2/3 of all Bolivians (p. 7).

The path of Bolivian privatization began in 1985, when the New Economic Plan succeeded in bringing hyperinflation under control. The privatization became aggressive after Sanchez de Lozada won the election in 1994. The Law of Capitalization allowed the six largest state-owned firms to be privatized. These firms included businesses in oil, gas, telecommunications, airlines, power generation, and railroad (p. 10). The Bolivia government sold out 50% of its SOE shares and kept 49% of remaining shares into pension fund administrators (AFPs). The reason behind holding the remaining SOE shares was to pay a universal old age pension called Bonosol. The government administration believed that foreign investments would not only enable increase in economic development from 4% to 11%, but also create 500,0000 new job opportunities over a four- year period. Sanchez had three goals in capitalization. They were

- (1) To create a privatization program with a social content
- (2) To increase rates of economic growth over the medium and long term
- (3) To change the government's role as the primary economic actor (p.3).

However, Sanchez's administration could not achieve his goals after all for six main reasons. Firstly, policy makers failed to consider that the quality of economic growth counts as much as the quantity in job creation. Secondly, the capitalization led to massive firings of unionized workers. Thirdly, the pension fund did not work. The AFPs had to borrow 44 million dollars with the interest rate at 11%. The AFPs could not raise the cash by selling its stocks due to the difficulties in establishing the Bolivian stock market. Fourthly, poor market regulatory and high social risk led investors to look to the short term and expect to earn risk premiums. Fifthly, the government was short of revenues because of the selling of its SOEs. The government

also had difficulty to tax its citizens, as the most accepted business practice to most Bolivians was to avoid taxes. Lastly, the unhealthy ownerships of privatized companies allowed certain persons to obtain internal business information, and therefore, easily to anticipate changes in stock prices (p. 14-17).

In conclusion, the Bolivian government failed to capitalize state-owned companies as a whole, although the capitalization succeeded in both attracting foreign investment and reducing the governmental interference in economics. The Bolivian economy failed to respond as predicted to the influx of foreign investment capital. Thousands of anticipated jobs never materialized, which instead caused the outflow of talent. The foreign investors reinvested and transferred the profits out of the country instead of distributing their earnings to the local government and paying taxes in Bolivia. Facing the sharp drop in revenue, the only option that the government had was to reduce its expenditures on health and education. Bolivian privatization failed in the absence of appropriate regulatory and market infrastructure (p.27-28).

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Article Summary

Shughart, William F. II 1999. "Interest Group Theory of Government in Developing Economy Perspective," in *Institutions and Collective Choice in Developing Countries* ed by Mwangi Kimenyi and John Mbuku. Brookfield, VT: Ashgate Publishing Co. pp 169-198.

This paper outlines the interest group or the 'capture' theory of the government. This theory rests on two fundamental premises:

The first is that the same behavioral assumptions of maximization of self-interest that explain decision-making of the market should be used to explain the behavior of the public policy makers as well. While firms maximize profits; consumers maximize utility, public policy makers also maximize their interest (i.e. political support)

The second premise is that policy outcomes should not be explained away as 'errors' or ignorance but should be seen as actual effects.

Government Failure

Goods that have positive or negative externalities are not produced at the optimum price or at the optimum amount if left to the market. The Pigouvian solution to this problem of market failure was government intervention. This assumes that the government benignly pursues the objective of maximizing social welfare. If this were true developing countries would have long solved their problems. Interest group theory looks at the wide divergence between the actual and intended effects of government intervention to understand why public regulation policies rarely benefit the consumers.

Market for Wealth Transfers

Interest-group theory explains how the monopoly power of the state can be mobilized selectively to benefit one group at the expense of the other. George Stigler (1971) formalized this notion by explaining that typically producer groups are smaller than consumer groups. Therefore they find it profitable to organize themselves into coalitions to lobby the public regulators for gain. On the other hand, consumers are a larger and more diverse group, and hence the cost of organizing themselves to lobby would be larger than the resulting gains.

The paper then explains the dynamics of the market for wealth transfers and the point of intersection P^* is the political equilibrium. The demand and supply curves could be

interpreted as the follows:

Demand: Assuming n individuals in the economy and $2n-1$ possible groups, each group's bid price is the price that it would be prepared to pay to receive a transfer of \$1. This price would be \$1 minus the costs of organizing/lobbying/collecting information/overcoming the free-rider problem. This gives a downward sloping demand curve, which shows that groups that have lower costs of organizing demand more wealth transfers.

Supply: The net supply curve $S-f$ is upward sloping and shows the price that each group would pay to avoid expropriation of \$1 after netting the costs of organizing. The curve shows that it is cheaper to expropriate \$1 from groups that have high costs of organizing.

Social Waste

The distance between the S curve and the $S-f$ curve is ' f ', which is the political broker's fee. These resources used for fee are a waste for the economy, as they do not create new wealth. The crucial point here is that there are information or transaction costs to collective action. The existence of a market for wealth transfers is due to the cost differentials of organizing where the political representatives effect redistribution. Hence they have an incentive to seek out issues on which prospective winners are better informed and well organized while losers remain ignorant about the transfers. Thus smaller groups have a comparative advantage in transfer-seeking activity, as their rate of return to information is higher.

Economic Regulation

Research shows that government intervention rarely achieves its announced goals. Interest group theory suggests that in the 'market' for regulation, smaller, well-organized groups stand to gain from the controls imposed by regulation, which creates incentive for them to use the regulatory mechanism. This is good for the regulators as well as it increases ' f '.

The paper then explains Sam Peltzman's model showing how 'private' and not public interest drives regulatory policies. The model looks at a vote-maximizing regulator. The analytic used is similar to that of a utility-maximizing consumer trying to attain the highest indifference curve of utility subject to a budget constraint. Here the regulator is trying to reach the highest iso-majority curve showing political support, subject to a price-profit trade off. (Higher prices bring on more consumer resentment and lower prices bring more producer resentment). The regulator seeks the price that maximizes political support subject to profit constraint. Stronger producer coalitions would shift the price higher towards P_m .

Extensions of the Interest Group model

Rent extraction: All human action is motivated by a rent-seeking behavior. Regulators

could allow themselves to be 'captured' by producer groups they are regulating. They could also threaten to impose costs on that group in order to extract more rent.

Heterogeneous firms: Interest groups need not be monolithic and each sub-group could further try to use the regulatory agencies to further its limited interests.

Economic Development: Trade protectionism and state ownership of enterprises also arises from the same regulatory motivation of maximizing rents, in spite of their obvious inefficiency.

Population growth: Child bearing and higher value of a male offspring could also be explained by interest group theory as a rational effort to expand in order to control the wealth-distribution levers.

Political successions: The theory explains how autocratic governments initially expand the government while trying to build a coalition to dilute the powers of those loyal to the previous ruler.

Conclusion

Interest group theory is an effort to understand why social welfare is not maximized when governments step in to deal with market failure by regulating. The theory is positive and not normative, in seeking to only explain why regulation 'fails'. The key step forward would be to frame regulations in such a way that there is synergy between the vote-maximizing objective of the politician and the utility-maximization of society. The question however would be: who if not the politician would frame that regulation?

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Book Summary

Graham, Carol. 1998. *Private Markets for Public Goods: Raising the Stakes in Economic Reform*. Washington DC: Brookings Institute Press.

Carol Graham's book consists of case studies of attempts by national governments to use markets to increase the efficiency of the public sector. Although market forces may redistribute resources more equitably than political institutions, many countries find it difficult to sustain market reforms politically due to the initial costs to citizens at the onset of the reforms. Graham focuses on the stakeholder approach as a means to sustain reform. The stakeholder approach assumes that active citizen involvement in reform will increase its political sustainability. Governments may attempt to sustain reforms by building coalitions between various citizen groups. Equity may be increased by widening services to the poor who use government services proportionally more than the wealthy. One danger in the stakeholder approach is the notion of citizen as consumer, so that only citizens with the resources to participate can influence government and institutional structure.

An individual's stake in new market reforms can occur through exit and voice. Exit involves removing one's stake in a particular institution and placing it in another. The exit option, although theoretically open to all citizens, is realistically open only to those who can afford alternatives. Exit can discourage the development of voice, because those who would have the strongest voices are usually the ones who can afford to exit. Voice is the more activist option and calls for the improvement of an existing institutional structure. Governments may enhance voice by establishing user fees for certain public goods. Voice also may be used by workers who feel loyalty to a bureaucracy and are willing to work within it to change the system internally.

Graham uses case studies to illustrate several aspects of market reform:

- **Chile**—By shifting some services to the private sector, government gave wealthier citizens alternatives while shifting public sector emphasis to poorer population.
- **Peru**—Government chose to address social welfare outside of government institutions instead of reforming existing government ministries.
- **Bolivia**—Increased popular participation in an attempt to gain more stakeholder support for reforms.
- **Czech Republic**—Government altered the incentive structure in reforms by using the voucher program; resulted in short-term success.
- **Zambia**—Illustrated the pitfalls of decentralization for a very poor country and

the need for capable infrastructure to sustain reforms.

- **Conclusion**—Efficiency Gains and Equity Tradeoffs

Political success of market reforms depends largely on economic success of the reforms. While citizens can elect candidates into office who run on reform platforms, it is difficult to measure exactly how much influence voters have, for they are usually voting on reforms already initiated instead of deciding on the content of the reforms themselves. Leadership of policymakers and the creation of a broad set of stakeholders are keys to the sustainability of market reforms

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Article Summary

Schick, Alan (1998). "Why Most Developing Countries Should Not Try New Zealand's Reforms." *World Bank Research Observer* 13(1):123-131.

During the past decade, New Zealand has introduced far-reaching reforms in the structure and operation of government departments and agencies. Developing countries have become very interested in this model because it promises significant gains in operational efficiency. However, these countries, which are dominated by informal markets, are risky candidates for applying this model. Basic reforms to strengthen rule-based government and pave the way for robust markets should be undertaken first.

New Zealand's government agencies are run by independent public managers who contract out all services and are monitored for accountability. Schick's article looks at New Zealand's system, both the benefits and cost, and finds reason that this system would not work for developing countries with large informal economies. Schick begins by describing New Zealand's government contracting system; he continues with a description of the informal markets often found in developing nations, followed by an explanation of why New Zealand's system would not work for developing nations and ending in a list of steps developing nations might follow to promote public sector reform. Schick's central argument is that there are important steps developing nations need to take before they follow the path of New Zealand.

New Zealand's System

There are two reasons that the New Zealand example is important. First, New Zealand has rapidly improved the quality of its government through institutional change. Second, because of the rapid change many countries look to New Zealand as an example of what to do to promote public sector reform. New Zealand has restructured its government to make individual departments more accountable and more efficient. To meet these goals, each department manager has greater flexibility in running the department. The goal is to create competition within government either by allowing departments to contract for services with other government departments, or for departments to contract with the private market. A civil service of accountability replaces one of trust and responsibility. Contracting extends even into the sector of policy advice. Department managers are allowed to choose between hiring private consultants or contracting with other government agencies for policy advice.

There are, however, problems with the New Zealand system in applying a business model to the public sector. First, contracting puts the focus on outputs, but many of the government interests are difficult to put in terms of outputs. How do you measure if national defense is provided? Second, the contract system is dependent on self-interested action, but self-interested action can go against the government's collective interest. Third, because of the importance of accountability managers tend to have the approach, "if it is not specified in the contract, it's not my responsibility." Fourth, what happens in the case of one agency providing a service to another agency? The agency expecting service has no means of exiting the contract, and taking recourse against the contracted agency, because in the end they are both the government. Because of this lack of recourse, the markets created by public contracting with other agencies are not real contracts in real agencies. Schick suggest that because of this failure of contracts to mimic the real market, New Zealand needs to take further steps in creating independent agencies that can compete. By doing this New Zealand will receive, "the full benefits of vigorous competition."

In Schick's analysis, the increased benefits of this system outweigh the costs listed above. However, many managers argue that the improvement in government performance is from the independent managers and not contracting. If this is true, relying on independent managers, but deemphasizing contracts would decrease the massive transaction cost of monitoring contracts.

The Informal System

New Zealand's system is heavily dependent on a strong system of regulating contract enforcement. In many developing nations such a system does not exist. Informal economies exist because the cost of obeying the law outweighs the benefits. Informal economies are at the opposite end of the spectrum compared to New Zealand's contract economy. Informal markets work through bribes, exchange of government favors, and hiring based on nepotism. In an informal system, there are two government budgets: one presented as the official budget, and another that is the official one and which determines what is spent and by how much. The public never knows what is in the second budget, which does not have to exist on paper, but prevents government transparency and promotes corruption, because no one can be held accountable.

Changing the Informal System

What would happen if a developing country with a large informal market adopted New Zealand's system? Giving independent power to corrupt bureaucrats would only increase corruption. Schick's final assessment is that there is an important step in moving toward a contract run government, and that step is creating a formal public sector, where employees get paid for their work. Schick describes three steps in making a formal system.

Progress in the public sector requires parallel progress in the market sector.

Economies operating under informal norms cannot happen at the same time as a formal public sector, because one sector will invariably affect the other. The exception to this is under a colonial system where a formal public sector existed, but the market remained largely informal. Schick cites China and Singapore as examples of economic modernization happening in tandem with government modernization.

Reliable external controls need to be established.

Working under a government that has control over corruption allows managers to build trust between each other and the citizens to whom they are providing services to. Once controls are in place, a public ethic in the public interest will be internalized, and the government can trust managers to act properly.

Politicians must first concentrate on basic public management.

Politicians must first be able to account for money coming into the government before they can be asked to account for money going out of the government. In an informal system money is hemorrhaging. Politicians must be able to stop the money leaking out of the system, before they can learn how to spend it.

Conclusion

While the New Zealand system has benefits and cost, it is important to understand where New Zealand was before it adopted its changes. New Zealand had a formal public sector first. With an established public sector New Zealand was able to develop and try new forms of public management. Developing countries must first take the step of formalizing their public sectors and their markets before they can try new forms of public administration.

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Article Summary

Clifford Wirth, "Transportation Policy in Mexico City: The Politics and Impacts of Privatization" *Urban Affairs Review*, Vol. 33, No. 2, November 1997, pp. 155-181.

For many years, and even more so recently, Mexico City policy makers have implicitly chosen to emphasize private and semi-private forms of transportation. By tracking subsidies to private forms of transportation and measuring the lack of public investment in public transportation infrastructure, Wirth finds *de facto* privatization of transportation policy highly costly from a social and ecological perspective.

Wirth challenges the idea that "privatization" occurs only when public sector responsibilities are shifted to private providers. A decision by a government *not* to take an active public investment role in one arena (e.g. the city's metro system) may lead to a very privatized landscape of delivery (as in Mexico City's resulting dominance of cars and mini-buses). Second, Wirth also advocates a cost-benefit analysis that includes social and environmental externality costs. He found 80% of the notorious air pollution imposed on Mexico City to be the result of private and semi-private modes of transport. In contrast, the bus and metro systems together, beyond disproportionately serving the poorer segments of the population, account for only 2.7% of air pollution.

In sum, Wirth wants local government officials to acknowledge their critical role in shaping the landscape of service delivery, as much by decisions they choose *not* to make as the decisions they *do* make.

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Article Summary

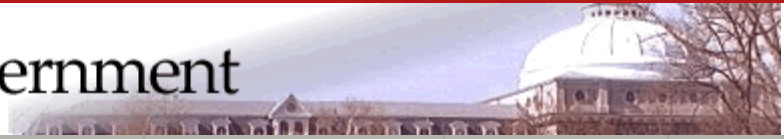
Gratto, Andre, Bryan Preston, and Thor Snilsberg. *Mitigating Corruption in New Public Management*. Ithaca NY: Cornell University Department of City and Regional Planning.

Corruption has been identified as a major barrier to economic and social development in developing countries, and considerable research has been done into the causes of and the solutions to corruption in these countries. Several factors that lead to or mitigate corruption in developing countries have been clearly identified: Revenue Proximity, Accountability, Information Transparency, Participation, Equality of Power/Wealth and Culture. In contrast, virtually no research has been directed at corruption in the context of the trends toward what is known as the New Public Management, or NPM. NPM is a new pattern of governance associated with the use of a wide range of different "tools" and with a reliance on third parties to manage and deliver government services. However, the factors of corruption identified by international research can be used to provide an environmental design framework to advise planners and public officials about the potential for corruption and how it can be mitigated with the NPM.

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Article Summary

McFarland, Stephen, Chris McGowan and Tom O'Toole (2002). "Prisons, Privatization and Public Values." Ithaca NY: Cornell University Department of City and Regional Planning.

The movement towards the privatization of corrections in the United States is a result of the convergence of two factors: the unprecedented growth of the US prison population since 1970 and the emergence out of the Reagan era of a political environment favorable to free-market solutions. Since the first private prison facility was opened in 1984, the industry has grown rapidly; gross revenues exceeded \$1 billion in 1997. This paper examines the industry's growth in the US in recent decades, and its current scope. The evidence for and against claims that private prisons can realize gains in efficiency are weighed, and implications of privatization for other public values including safety, justice, and legitimacy are examined.



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Article Summary

Warner, Mildred, James Quazi, Brooks More, Ezra Cattan, Scott Bellen and Kerim Odekon (2002)
Business Improvement Districts: Issues in Alternative Local Public Service Provision. Ithaca NY, Cornell University Department of City and Regional Planning.

Throughout the country and in cities such as New York, San Francisco, Cleveland and Philadelphia, Business Improvement Districts (BIDs) have been able to maintain cleaner and safer streets, decrease storefront vacancy rates, and address social welfare issues. BIDs levy assessments on real property for specific improvements beyond which local governments can reasonably provide. They have been effective in reversing decline and promoting commercial development in urban areas.

In general, BIDs are formed following a proposal by a group of property owners in a geographically defined area to fund supplemental governmental services (e.g. cleaning and maintenance), non-governmental services (e.g. landscaping, marketing and promotion), and capital investments (e.g. sidewalk widening). The municipality in which a BID is located collects the BID's supplemental property tax assessments through its general taxation powers and distributes them to the BID. A board of directors composed of property owners, merchants, residents and public sector representatives is then given authority by the government to undertake projects and programs within the district.

While the ability of BIDs to achieve their goals is rarely questioned, concerns have been raised over whether the success of BIDs has come at a cost. This website profiles the issues raised by both proponents and critics in a number of areas and provides case studies focussed on material from New York State to illustrate these points.

Link to full text: <http://government.cce.cornell.edu/doc/reports/econdev/bids.htm>

Transfer of Development Rights Programs

Using the Market for Compensation and Preservation

Jason Hanly-Forde, George Homsy, Katherine Lieberknecht, Remington Stone

Local governments undertake transfer of development rights (TDR) programs to use the market to implement and pay for development density and location decisions. TDR programs allow landowners to sever development rights from properties in government-designated low-density areas, and sell them to purchasers who want to increase the density of development in areas that local governments have selected as higher density areas.

TDR programs appear to offer many advantages to local governments that want to control land use but also compensate landowners for restrictions on the development potential of their properties. TDR programs can be easier to implement than typical zoning programs; they make development more predictable and use the market to compensate landowners for lost property value. TDR programs are also more permanent than traditional zoning regulations.

Although TDR programs appears to be a potentially powerful land use tool, few communities have had success in using these programs because of the associated challenges . TDR programs do not reduce the need for zoning and can actually be more complex to administer. Communities may not support TDR programs, and local governments may have to invest in community education programs to explain them to the public. Lastly, although the permanency of TDR programs can be an advantage, it may also be a liability, since a community's land use needs change over time.

Local governments that are interested in TDR programs should consider both how to create a strong market for development rights in their communities and how TDR programs interact with the 'takings' issue. The final part of this paper presents advice and information on both these topics and ends with an evaluation of TDR programs as a governing tool.

- [What is the history of transfer of development rights programs?](#)
- [What is a TDR program?](#)
- [How does a TDR Program Work?](#)
- [What are the advantages of TDR programs?](#)
- [What are the challenges of TDR programs?](#)
- [How can local governments build a market for a TDR program?](#)
- [Should local governments worry about TDR and 'takings' law?](#)
- [Is a TDR program a good governing tool?](#)
- [Conclusions](#)

Landownership was one of the first measures of citizenship in the United States. The passion to protect the right of property owners to reap economic gain from their land still burns strongly today. Because of this, local governments often encounter citizen resistance to land use controls that attempt to provide for a public good. As a result, zoning can be very difficult to implement.

Many planners tout transfer of development right (TDR) programs as a way to take the politics out of zoning. With TDR programs, the market makes land use and density allocations and compensates property owners whose development rights have been limited in order to preserve some societal good, such as open space, farmland or historic preservation. It is a potentially powerful tool, but in its thirty year history, it seems to have made little headway in communities across the country. This paper examines TDR programs, their benefits and their costs and suggests why the adoption of this tool has been limited.

What is the history of transfer of development rights programs?

Zoning was the first widespread attempt to balance individual property rights against the good of society. Early advocates also suggested that zoning would enhance property values (Karkainen, 1994).

In 1916, New York City enacted the nation's first comprehensive zoning ordinance after a spate of skyscrapers blocked sunlight from neighboring properties. At the same time, warehouses and factories were encroaching on fashionable retail areas of Fifth Avenue. The new zoning ordinance set both height and setback requirements and separated incompatible uses, such as factories and residences (City of New York Department of Planning, 2002).

From the beginning, critics complained about the unfairness of zoning since it benefits some landowners and limits others. In 1926 the U.S. Supreme Court ruled in the landmark case of *Village of Euclid, Ohio v. Ambler Realty* that the legal system recognizes many kinds of unequal burdens (Karkainen, 1994). The *Euclid* case required two hearings before the high court narrowly affirmed a community's ability to zone. (Callies, Freilich and Roberts, 1999)

The idea of transferring development rights between properties was first introduced in New York City with the passage of that first American zoning ordinance in 1916. It allowed landowners to sell their unused air rights to adjacent lots, which could then exceed the new height and setback requirements. In 1968, the city Planning Commission changed the rules to allow transfers between lots several blocks apart (Johnston and Madison, 1997).

In the early 1980s, the command and control nature of many regulations came under fire as an inefficient. Policy makers searched for ways to govern using the market (Henig, 1989-90). In 1986, Australia created a system of tradable fishing permits to stabilize lobster populations. During the first half of the 1990s, a system of tradable pollution credits in the U.S. cut emissions of sulfur dioxide (which causes acid rain) in half (Brown, 2001). With these successes, market advocates found the world moving in their direction—toward answering all kinds of societal questions with economics. Land uses proved to be no exception.

What is a TDR program?

Most people have a very two dimensional view of their property—just a piece of land on which to build a house or commercial building. But the bundle of rights that comes with a piece of property is much more complex. Some physical rights, depicted in Figure 1, include the rights to build, exploit natural resources, restrict access and farm. Other legally enforceable rights include the right to sell the land, subdivide it, rent it out or grant easements across it.

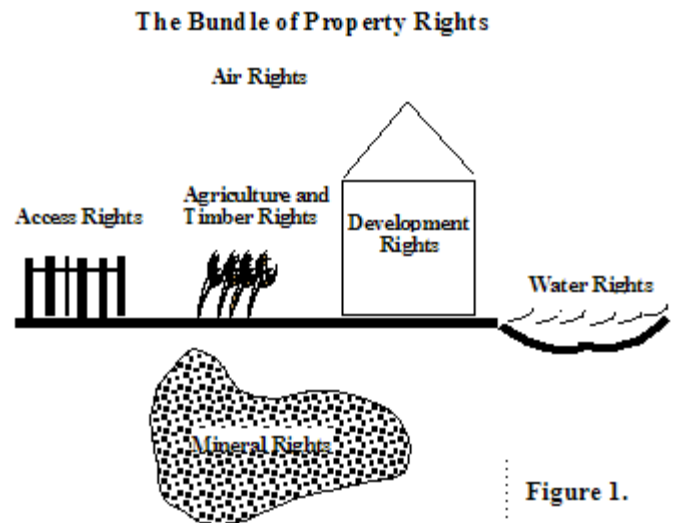
TDR programs allow landowners to sever the building (aka development) rights from a particular piece of property and sell them. Purchasers are usually other landowners who want to increase the density of their developments. Local governments may also buy development rights in order to control price, design details or restrict growth.

TDR programs strive for two main goals. First, communities can use TDR programs to preserve open space, agriculture, historic buildings or housing. And TDR programs make such preservation more equitable and politically palatable by compensating landowners who lose the right to develop their property.

How does a TDR Program Work?

To demonstrate the operation of a TDR program, we have created a fictional farming community called Circle County.

At first, Circle County is completely devoted to agriculture (Figure 2). However, its farms face development pressure from a growing urban area not depicted on the



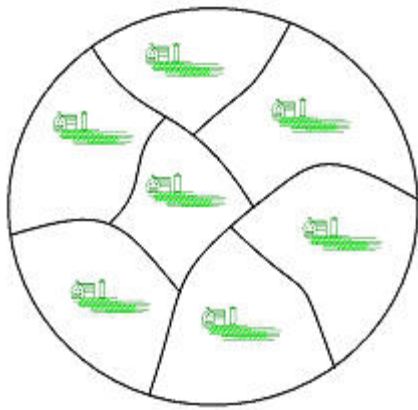


Figure 2 - Circle County

illustration.

At some point that pressure makes it economically less likely the land would remain in agriculture (Heikkila, 2000). Indeed many farmers call the option to develop their land their "retirement plan." When left to traditional zoning, market pressure often causes low density development, that is, suburban sprawl (Figure 3).

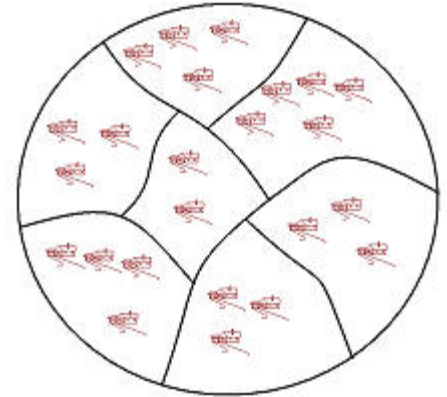


Figure 3 - Typical Sprawl Pattern

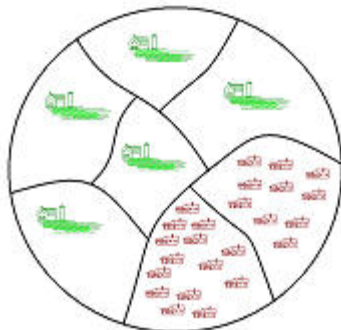


Figure 4 - Circle County TDR Program *TDR programs compensate property owners.*

However, Circle County government leaders decided to preserve their rural character. Under traditional zoning the only option would have been to tell some farmers that they could not sell their land for development. Instead the government instituted a TDR program. Farmers in the northern and western parts of the county could sell their development rights to builders in the southern and eastern areas designated for more density (Figure 4).

What are the advantages of TDR programs?

Local governments use TDR programs to mitigate the economic impact of land use regulations, specifically to compensate landowners for perceived partial takings (Johnston and Madison, 1997). This planning tool offers landowners a way to recapture some lost economic value when a property is downzoned from residential use to agricultural use for preservation purposes.

TDR programs are an easier way to implement zoning.

TDR programs do not replace zoning, but make strong land use regulations more politically feasible and easier to implement (Barrese, 1983). Local officials feel less political pressure if landowners are compensated for their "lost" rights. And a well-constructed TDR program reduces the demand for zoning variances, since developers will use the market, not their connections to the local zoning commission, to secure additional development rights.

TDR programs provide private funding for protection.

Finding public funds to protect open space and historic buildings is increasingly difficult as governments carefully watch their bottom lines. One reason local governments created TDR programs was to leverage market monies to achieve such goals. (Wolfram, 1981).

TDR programs make development more predictable.

Developers benefit from the clarity and consistency that TDR programs offer (Pruetz, 1997). Instead of incurring the costs and risks of negotiating for variances, developers can exceed certain zoning regulations simply by purchasing

Housing in Seattle

Seattle, Washington created a TDR program for affordable housing in 1985. The TDR program has created or preserved 559 units of affordable housing. It was recently reconfigured to create another 900 units.

(Walker, 2002)

development rights from other property owners.

TDR programs are more permanent than zoning.

Since TDR uses deed restrictions or conservation easements to sever and extinguish development rights, public values such as open space and historic buildings are permanently protected. In contrast, zoning rules can change over time and with new administrations.

“Zoning is just two public hearings and one vote away from changing.”

*Jim Lively, Planner
Michigan Land Use Institute*

What are the challenges of TDR programs?

TDR programs do not reduce the need for planning.

TDR programs only work in conjunction with strong zoning ordinances and good comprehensive planning. However, building political consensus on zoning issues is always a challenge. As a result, successful TDR programs require the commitment and political will of the community (Lane, 1997).

TDR programs can require increased administration.

In reality, TDR programs may be more complicated and expensive to implement than traditional zoning. Local governments must oversee (or contract out oversight of) the market; track and defend deed restrictions; and assist in proper preparation of easement documents. In many cases, the local government may regulate the market through TDR banks^[2] or other tools.

TDR programs require increased public education.

Citizens, real estate professionals, lawyers, assessors, and planners all need to be educated in the TDR process. Since successful programs require community buy-in, local governments must market the program, using mailings, public meetings, and advertisements. For example, efforts to institute a TDR plan in Santa Fe, New Mexico started with an all-day workshop (Pruetz, 2002).

Communities may not support TDR programs.

Despite public education efforts, it may be difficult to find areas willing to accept higher density development (receiving areas), since many people perceive that high density development decreases property values and quality of life.

TDR protects preservation values permanently.

Although some consider the permanence of a TDR transfer to be a benefit, it also limits the future options of a community as societal values and community characteristics shift.

"[The process of creating] a valuable receiving area involves the kind of higher density zoning that many conservation-minded suburbanites want to prevent in the first place."

(Haar and Kayden, 1989, p. 151)

How can local governments build a market for a TDR program?

Comprehensive land use and fiscal planning

Successful TDR programs start with strong comprehensive plans. Communities must encompass a enough land to have sufficient sending and receiving areas. Otherwise some kind of regional government or inter-municipal pact is needed to carry out the program and ensure the fair distribution of development and tax revenues. The planning process must also accurately gauge the desires of the

A Model TDR Program: Montgomery County, MD

The Montgomery County, Maryland is touted as having one of the most successful TDR programs in the nation. Since its inception in 1980, the county has protected over 50,000 acres of farmland and open space. Montgomery County's

community for development and preservation.

The supply side: sending areas

In the areas where land will be preserved, property owners must be motivated to sell their development rights rather than fully develop the land themselves.

Commonly this is done by downzoning their land to a lesser density. Other

factors may constrain development, such as environmental regulations, site problems or adequate public facility

ordinances^[3]. These factors can compel property owners to sell their development rights. In addition, a favorable

transfer ratio from the sending area to the receiving may make the transfer lucrative enough to entice sellers. For

example, in Montgomery County five times as many TDR credits could be transferred out as could be used on site.

achievement is due in large part to its success in forming a market for development rights.

(Montgomery County Planning Board, 2002)

The demand side: receiving areas

Designating the receiving areas can be the trickiest part of setting up a TDR program (Canavan, 1990). A working market requires that receiving areas face a demand for denser development than is currently allowed. For example, in Montgomery County developers used TDR credits to build, attractive transit-oriented-neighborhoods around the Bethesda and Silver Spring Metro transit stations.

Requirements that development projects use TDRs are an effective, if coercive, means of forming a market. And if communities eliminate alternative ways of achieving higher densities, such as variances, then the purchase of development rights becomes a necessity. This can have mixed results. The variance process is often viewed as flawed and tilted towards property interests. However, it can be much more responsive to changing community needs than a TDR program.

Other possible incentives for developers to buy building rights include maximum density bonuses, exemptions from some development impact fees, or even exemption from certain development standards like setback, open space, and parking requirements. (Pruetz, 1997)

Community participation in the comprehensive planning processes is particularly vital in receiving areas since many residents might believe that high density development lowers property values and diminishes quality of life.

Rights as currency

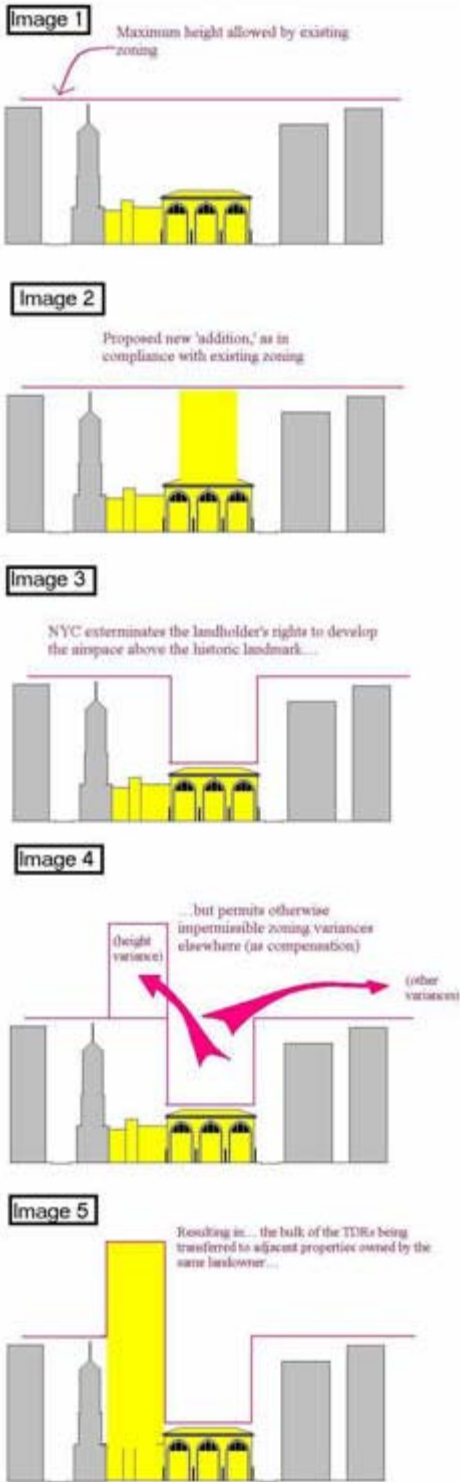
In communities with TDR programs, the rights become the currency of development. The development value (not price) of a TDR credit is set so that one equals another. Credits can be bought and sold at any time, not just when a particular development in the receiving site is pending. Also, a TDR should be a general investment

available to anyone, not just possible developers. Local citizens, land trusts and investors may all have an interest in the market for other reasons aside from development.

Grand Central Terminal, New York City

Grand Central Terminal, constructed in 1913, is one of the city's architectural masterpieces. In the late 1960s, the Penn Central Transportation Company wanted to construct a 53-story 'addition' over the protected landmark. The city decided the tower would destroy the character of the Terminal, so they allowed Penn Central to transfer the development rights to adjacent properties. (Figure 5)

Figure 5. Grand Central Terminal



Sometimes a municipality may step in and act as a broker, buying TDR credits for later sale. This idea of a TDR bank is increasingly popular. Municipalities can act essentially as a federal reserve bank influencing the price of the development rights. Some communities also put conditions on the sale of rights from their bank in order to influence other aspects of development, such as design details or affordable housing requirements. Finally, if the government buys TDR credits without eventually transferring them to a developer, the program can be a tool for restricting growth, similar to the more common 'purchase of development rights' program.

Brokers often step in to facilitate transactions, charging a fee of six to seven percent of the total price just as in regular real estate transactions. In some cases brokers may wind up advertising their TDR services, possibly taking over the marketing function from the government (Pruetz, 1997).

Public education is essential so that everyone remembers the program goals and learns the operation of the market. Mailings to and public meetings for landowners in sending areas, potential developers and residents of receiving areas are an integral part of the education effort. TDR program staff can also assist people with the legal aspects of the program.

When deciding on the number of TDR credits to make available, most literature recommends setting the ratio of sending credits to potential receiving credits to at least 2:1. This leaves room for receiving sites to be developed without fully using TDR credits to increase density to the maximum allowable. Montgomery County has used more than half of the sending TDRs but found that the ratio is down to about 1:1. (Montgomery County Planning Board, 2002) As a result, the price of development rights has dramatically decreased, so the county is in the process of looking for more receiving sites.

Communities must monitor the progress of the program to ensure that goals are met. If local governments do not have the expertise or interest in administering a program, they can consider hiring a local land trust or other service provider.

Should local governments worry about TDR and 'takings' law?

The Fifth Amendment to the U.S. Constitution reads, in part, "nor shall private property be taken for public use without just compensation." Traditionally, a taking was defined as a physical seizure of property by the state.

However, in 1922 the U.S. Supreme Court ruled that governmental interference in the form of excessive regulation may be so burdensome to a landowner as to have the same effect as an actual physical invasion thus establishing the regulatory taking. (*Pennsylvania Coal Co. v. Mahon*). Land use zoning falls under this broad legally-murky category of regulatory takings.

To complicate matters, the High Court has ruled that a landowner must lose total use of the property before the government pays compensation. A *partial taking* need not be compensated at all. Consequently, the state has every incentive to have its actions deemed partial rather than full takings. Some municipalities view TDR programs as a way to achieve this goal.

In *Penn Central v. City of New York*, the Supreme Court seemed to indicate that TDR credits have a value that could prevent a total taking of property - and thus require compensation. However, in the more recent *Suitum v. Tahoe Regional Planning Agency*, this attitude seemed to change. In a concurring opinion, Justice Scalia wrote that "TDRs... have nothing to do with the use ... of the land to which they are attached. The right to use and develop one's own land is quite distinct from the right to confer upon someone else an increased power to use and develop his land." However, Scalia goes on to praise TDR programs as a valuable land use tool, but not as a way for the government to avoid a takings claim.

It must be noted that the *Suitum* case concerned only the legal outer bounds of the issue - situations in which parcels in a given sending area are stripped of all rights to build. So long as a bare minimum of development is permitted on a particular set of landholdings, there may be no 'takings' issue. Montgomery County cleverly kept within the bounds of this loophole because it rarely zones land as zero-growth. It implemented a baseline minimum of one dwelling per 25 acres in its sending areas. (The result has been a proliferation of overpriced rural 'estates', which may be less desirable than maintaining agricultural land, but may be more attractive than the sprawling alternative.) (Pruetz, 1998)

TDR and Land Trusts

Since the land trust community has experience in the facilitation and administration of purchase of development right programs, local governments may want to explore the possibility of partnerships with private land trusts.

Local land trusts may be able to assist with education of the community, the marketing of the program and the facilitation of the conservation easements or deed restrictions. Clear and comprehensive contracts between the local government and the land trust are an essential element of any partnership.

So far, private land trusts haven't had much participation in local government TDR programs (Land Trust Alliance, 2002). One notable exception is that many municipalities donate the conservation easements that extinguish transferred development rights to a local land trust.

Also, the *Suitum* case heard by the Supreme Court might have been deemed a ‘just compensation’ if Lake Tahoe had some sort of TDR bank in place, whereby the owner could have quickly and easily sold TDRs at a fair minimum price without having to enter the marketplace. A TDR bank ensures liquidity and bridges the time gap between when an owner wishes to sell rights and when a developer needs to purchase them.

Is a TDR program a good governing tool?

Salamon (2002) cites five criteria on which we can judge the quality of a particular governing tool: effectiveness, efficiency, equity, manageability and legitimacy. How do TDR programs measure up?

Effectiveness

Does the governing tool achieve its intended objectives? This is the most fundamental question that must be asked. As previously mentioned, there are essentially two goals for TDR programs: preservation and compensation. The most highly touted programs do well at preserving land and the preservation is, by and large, permanent. However, even the model program in Montgomery County, Maryland has hit a few snags in terms of compensation. Due to a lack of receiving area demand, farmers in the sending areas that still hold development rights find them worth a lot less than when the program started.

Efficiency

Are the results achieved at a reasonable cost? Again there are two ways to examine the efficiency of TDR programs. One is administrative costs. The other is the cost of preservation. Administrative costs can be somewhat higher than under traditional zoning. Markets must be formed and monitored. TDR credits must be created and administered. Also, there are no savings over traditional planning techniques since a comprehensive plan and complete set of zoning rules must already be in place for TDR programs to work.

On the other hand, sometimes the only way to preserve land or historic places is by buying property or development rights. That is impossible for many cash-strapped local governments to do with public funds. TDR programs allow private money to be used to achieve those goals.

Equity

Are TDR programs basically fair and do they redistribute resources to people who need them? TDR programs try to spread the wealth of development by allowing landowners, especially farmers who equate their ability to develop their land with their retirement, to recoup their investment. To achieve this, the sending and receiving areas must be built properly to make sure that TDRs remain valuable. Otherwise, landowners in sending areas will find their TDR credits worthless and their land still unable to be developed.

However, creating value for landowners in the sending areas creates another equity problem for those in receiving areas. Residents of the receiving areas may not want the higher density development. This problem is particularly severe when the receiving area is an already existing suburb.

Manageability

Creating TDR markets can be a complex task. Decisions must be made to set up sending and receiving districts, underlying zoning, density planning and credit ratios. Some programs also require government-run TDR banks. Every choice affects the demand for TDR credits, their price and the success of the program. As the number of successful models increase, manageability should become easier, but it remains a complex task.

Legitimacy and political feasibility

A TDR program, with its inherent goal of compensating landowners, is naturally more politically palatable than typical

command and control zoning regulations. However, any kind of land use restriction generates controversy. Municipalities must build community support for the projects (Johnston and Madison, 1997). Successful TDR programs cannot be created by the will of an agency. Political legitimacy must be built over time.

For example, successful TDR programs typically have a pre-existing constituency built around the need for land use controls. In Montgomery County Maryland, the Planning Commission had extensively studied farmland economics. In Lake Tahoe, local residents faced an indisputable decline in water quality. In New Jersey's Pinelands program, the TDR program was the latest effort in a longtime farmland protection program (Johnston and Madison, 1997). Public education and buy-in are vital.

Conclusions

As policy makers continue to search for ways to use the market as a governing tool, local governments will continue to consider transfer of development rights programs. TDR programs can be effective, equitable governing tools that make zoning more politically feasible. These programs offer two key benefits to local governments: they compensate landowners for lost property value due to zoning, and they use the market to pay for the preservation of public goods.

However, these programs can be costly and difficult to administer compared to typical zoning. Local governments must oversee (or contract out) regulation of the market, complex operation for such an unusual good. Even with education and program marketing efforts, communities may not support TDR programs, especially when they are on the receiving end of increased density. Lastly, TDR programs usually protect land or buildings on a permanent basis. This is both an advantage and a disadvantage of this tool.

Communities should be aware that a TDR program is not a substitute for planning and zoning, rather TDR programs require strong zoning. Therefore, they may not provide a sure-fire way to avoid friction over property rights issues, although some innovative communities have designed their programs to lessen the likelihood of takings conflicts.

TDR programs will be most effective in communities facing strong development pressure, where officials believe it would be difficult to successfully implement traditional zoning restrictions to achieve preservation goals or where financial resources are not available for municipalities to buy land or development rights on their own. Montgomery County, MD offers the best example of how a community with these characteristics has formed and implemented a successful TDR program.

Despite its potential as a land use tool, transfer of development rights programs have been slow to catch on in communities. While there have been some visible successes, there have been many places where the schemes fail for one reason or another. So while policy advocates push transfer of development rights programs, it is likely that pragmatic local government officials are still reluctant to take the lead.

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^[1] Downzoning: The practice of reducing the zoning of a property from a more to a less valuable use (e.g. from commercial to residential or from residential to agricultural.)

^[2] TDR bank: A market regulation tool in which governments directly purchase development rights from landowners at a set price and then sell the development rights to developers in the future.

^[3] Adequate Public Facilities Ordinances (APFO) require that sufficient infrastructure, such as water and sewer services, be in place before any development construction can commence.

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Article Summary

Briffault, Richard 2000. "Localism and Regionalism." *Buffalo Law Review* 48(1): 1-30.

In the context of current metropolitan areas, it is the region that represents the most complete unit of economic, social and ecological structure. This fact points to the logic of establishing regional governance. However, resistance to regionalism is widespread. Briffault argues that this resistance is due to political reasons rather than theoretical ones. People do not disagree with the notion of the region as a socio-economic and ecological entity, but they do tend to see regionalism as a step toward centralization and a shift of power from local governments. Therefore, resistance to regionalism usually stems from the self-interests of local officials, firms, and other interest groups who benefit from strong local autonomy and regional fragmentation.

The primary challenge for regionalism is the establishment of legal and political structures to represent metropolitan areas. Certain special purpose bodies, such as watershed corporations, exist now but are unlikely to be able to integrate different public concerns, and also cannot keep up with the rapid changes that take place in metropolitan regions. As a first step, regionalists "call for new regional processes, structures, or institutions that can identify regional problems, formulate regional solutions, implement those solutions, and coordinate regional actions" (6).

Briffault also points out that regionalism has experienced resurgence since the 1990s. There are three reasons for this: exacerbating urban sprawl, concentration of poverty in inner-cities, and increasing competition in the new global economy. The global market sees a region as a competitive actor. Also, regionalism can be seen as a democratic tool in areas that have uneven distribution of wealth and a high degree of urban sprawl—the economic and social groups that have been separated by these forces have equal representation in a regional government.

On the other hand, advocates of localism argue that decentralization of power enhances efficiency, democracy and self-determination. They argue that decentralization allows municipalities to customize their public services to specific local needs, which gives citizens more opportunity to choose municipalities based on their preferences. Also, localism is said to promote democracy by making citizen participation more accessible and increasing the sense of community and ownership.

The reality of contemporary metropolitan areas, however, undermines most of these arguments. First, local actions often produce external economies and diseconomies, the significance of which increases in metropolitan areas where borders between municipalities are less relevant. Tiebout's efficiency model, one basis of the argument for localism, depends on the assumption that consumers are mobile and will shop around different municipalities. This is not realistic when you consider that zoning and availability of jobs greatly limits the mobility of people. "In metropolitan areas externalities can be avoided, mobility protected and the opportunity of poorer localities to make choices among public services secured only at the regional level" (20).

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Article Summary

Frug, Gerald. 2000. "Against Centralization," *Buffalo Law Review*. Vol. 48, No. 1, pp. 31-38

Many professionals concerned with the decline of the center city advocate for the centralization of government services and targeted programs for the poor. Gerald Frug argues that these tools are no longer politically feasible and cannot be used to solve the problems of the inner city. He believes that the current definition of decentralization is the problem, not the structure itself, and that decentralization can in fact work at solving the problems of the inner city.

Since the 1960s, popular support for programs that centralize government's power has declined as enthusiasm for local control has grown. Americans now often view centralized power as a means of coercion. Frug believes that to argue against this current feeling would be useless, and that centralization is not the only possibility for saving inner cities.

Frug's strategy is to create an alternative to centralization that is better than the status quo. In order to do this, decentralization must be redefined to allow for the exercise of freedom while not allowing the inequalities that the current form produces. The current definition of decentralization includes two important components. First, local communities have the right of exclusion through zoning power. They also have the ability to treat community resources like private property, so that richer communities can increase the amount of services if they choose and restrict the benefits to those who live in their community. Both of these powers encourage a conception of local power that is akin to the ideas of public choice theory, where people "shop for cities."

To change the current definition of decentralization we need to change the discussion from "what we want," to "what we don't want." For this to happen, Frug suggests that regional institutions facilitate conversations between metropolitan residents about how they are affected by the decline of the inner city and resulting sprawl, in order to identify and selectively combat the results of sprawl.

It is clear that decentralization is creating many externalities in the metropolitan area that affect a much broader range of people than just those in the center city. Frug argues that the solution for metropolitan residents with different interests is to begin to dialogue with one another about how sprawl affects them all and begin to collaborate on solutions. He advocates for regional institutions that would bring together representatives from different cities to make decisions about their region.

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Article Summary

Lowery, David 2000. "A Transactions Costs Model of Metropolitan Governance: Allocation versus Redistribution in Urban America," *Journal of Public Administration Research and Theory* 10(1)(January): 49-78.

In this article, Lowery structures a critique of the public-choice approach that has dominated the debate on metropolitan governance in the last years by organizing the arguments used by the proponents of consolidated government. In order to accomplish this he first examines the model of individual decision making implicit within the new case for consolidation and compares it to public choice. Second, he studies the consolidationists' core institutional propositions on boundaries, and lastly, he evaluates the key hypotheses of the advocates for consolidation.

I. Individual decision making

Self-interest: According to Lowery, the public-choice model narrowly focuses on tax and services packages "assuming that variations in preference guide Tiebout sorting within a fragmented governmental setting" (52). However, preferences have been shown to be relatively homogenous. Also, location choice is guided by a "search for 'lifestyle maintaining conditions,'" which leads to segregation (52).

Conflict resolution: The public-choice case for fragmentation relies on bargaining as the way to deal with conflict. The case for consolidation emphasizes 'the use of modest coercive capacities via majoritarian politics', but within an institutional framework that legitimizes this (p.56).

Perfect/Imperfect Information: According to Lowery, both schools have relaxed their positions on the assumption of perfect information, primarily because of empirical findings about the less than complete information that citizens of metropolitan areas have about taxes and service packages, but also because further theoretical developments have emphasized different determining factors in location choice in conditions of less than full information.

II. Assessment of the role of boundaries

Boundaries are important to both sides of the debate in three aspects: first, they are the definers of inclusion and exclusion. For proponents of consolidation they create, modify and facilitate the articulation of citizens' self-interest and structure their conflict resolution. For public-choice proponents, boundaries are the reflection and consequent protection of separation.

The second function of boundaries is that they facilitate sorting. To public choice proponents, boundaries help by showing clearly distinguishable tax and service packages. To consolidationists, boundaries are founded on a wider array of criteria, including race and class.

The third function of boundaries is to define political property rights: the rules, venues for participation, who is enfranchised and who is not. In consolidated arrangements, funding for basic services is an allocative decision, while in fragmented ones it will require inter-jurisdiction subsidies, which makes the transaction redistributive. The case for fragmentation supports the notion that boundaries should be designed allocating

property rights in a way that near-Pareto conditions are satisfied. Consolidation supporters argue that this is a scheme to minimize opportunities for redistribution. It should be considered that individual preference is structured, and can be shifted to achieve broader community goals, through an interactive democratic process.

Lowery concludes with a transaction cost model that pays attention to how boundaries 'define political property rights that then interact with the perception and articulation of interests to enhance or impede the adoption of metropolitan-wide urban policies' (p. 73). It makes the distinction between allocative (in consolidated settings) and redistributive (in fragmented ones) choice. In consolidated settings, transaction costs are reduced by relying on democratic choice rather than intergovernmental arrangements. The model also addresses the interaction between the character and content of self-interest and boundaries. He offers three hypotheses in support of consolidation that provide a strong theoretical foundation for regional government structures:

- racial and income segregation will be greater in fragmented than in consolidated arrangements;
- in fragmented areas, the poor and minorities are isolated in jurisdictions with limited fiscal capacity and significant demand for expenditures, while wealthy whites go to enclaves with limited needs and a generous fiscal capacity;
- metropolitan-wide public policies designed to enhance equity in social opportunities and promote economic growth are supplied at higher rates in consolidated settings than in fragmented settings.

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Article Summary

Bollens, Scott 1997. "Concentrated Poverty and Metropolitan Equity Strategies." *Stanford Law and Policy Review* 8(2): 11-23.

Scott Bollens argues that regional governance can be a useful tool for combating metropolitan poverty. However, it is currently unworkable because the focus is on "things" regionalism, when "people" regionalism is actually what is needed. Things regionalism is based on systems maintenance, while people regionalism is based on lifestyle.

The current model of regional governance (things regionalism) is limited in its ability to combat urban poverty because it does not adequately address social equity, and fragments the collective regional interest, turning it away from anti-poverty concerns. Often, regional entities are established for the purpose of economic competitiveness and are biased toward single-purpose goals.

In order for regional governance to be effective in addressing metropolitan poverty, it must have comprehensive power to make tradeoffs across policy areas and political borders, rather than being restricted to narrow policy fields and single constituencies. It must take into account, as a whole, the lifestyles of the communities within the region, and the interactions between communities.

Regionalism and Metropolitan Equity Strategies

A hugely disproportionate number of people in poor neighborhoods are minorities, especially African-Americans, and this segregation leads to a perpetuation of poverty and a deterioration of inner-city neighborhoods. The methods he presents for combating this racial polarization can be classified under "in-place" (targeted community development) or "mobility" (movement of the poor out of inner-city neighborhoods).

Regional governance, because of its geographic reach and close ties to local sentiment, is in an ideal position to use both in-place and mobility strategies for combating the deterioration of poor neighborhoods. To do this, regional governance must rise above the traditional focus on "things" regionalism and instead focus on "people" regionalism.

With this as background, the article discusses ten regional planning strategies for metropolitan equity,

designed to achieve integrated inner-city and suburban communities. Each strategy depends on an ability to transcend the historical limitations of regional governance. (Strategies listed below.)

It is important to understand the connection between Bollens' theories on effective regionalism and his approaches to metropolitan equity. To counter the growing poverty of central city neighborhoods, in-place community development is necessary but insufficient. Deconcentration also must be employed in order to balance the distribution of jobs and housing across a metropolitan region. The best way to achieve this is through equity strategies advanced by regional policy-makers who have the power and inclination to launch a comprehensive, multi-tiered attack on concentrated poverty.

Bollens' Metropolitan Equity Strategies:

1. Channel federally-assisted housing expenditures to lessen racial concentration
2. Establish a regional government campaign against residential segregation
3. Limit regional suburban sprawl
4. Require fair-share affordable housing obligations
5. Encourage balanced distribution of jobs and housing
6. Target regional transportation and redevelopment strategies
7. Modify development review to advantage distressed areas
8. Site LULUs (locally unwanted land uses) based on equity criteria
9. Develop guidelines for local integration maintenance programs
10. Attack root fiscal reasons behind ineffective municipal planning

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Article Summary

MacLeod, G., 2001. "New Regionalism Reconsidered: Globalization and the Remaking of Political Economic Space." *International Journal of Urban and Regional Research* 25.4 (December): 804-829(26).

This article, focused on the current debate over regional development, gives a guarded assessment of "New Regionalist" research. The goal is to examine how and why some areas have experienced sustainable economic growth and an increased political capacity, and why one scheme for growth may not work for every region.

"New Regionalism" describes the writings of scholars who highlight the region as an effective arena for placing the institutions of economic governance (807). New Regionalism is the study of how economic institutions are no longer managed best at the national level, due to globalization. It also includes the study of why some areas, such as Silicon Valley, have experienced such high levels of sustainable growth while other regions have undergone similar steps toward development and have not been as successful.

The greatest difficulty in studying the region is defining it. There is a "fairly widespread conceptual vagueness in terms," making the region an elusive concept (811). MacLeod hopes that creating a new regional geography could "insulate researchers from reifying the region and encourage them to highlight the wider network of political, economic and cultural processes out of which cities and regions are constituted and governed" (812-813).

MacLeod presents a re-conceptualization of regional development and governance. Three key themes are emphasized. First, in most current academic inquiries, the region is seen as independent of social factors and politically neutral. MacLeod views this perception as "clearly unsatisfactory." There needs to be an understanding of the "complex processes out of which regions are historically constructed, culturally contested and politically charged" (823). The reality is that the region is often a product of the social and political factors present.

Second, Jessop's institutional-relational view of the state is an attempt at disentangling the political nature of the emerging regional world and the relationships between regions. Jessop maintains that it is the makeup of the region that determines the state political structure.

Third, there is a growing concern that globalization has reduced the centrality of the nation. MacLeod believes the state should be seen as the coordinator of globalization. States have a difficult time regulating international economies, but the region has continued to grow stronger. Therefore, the state should be there to help orchestrate regional entry into global markets.

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Article Summary

Brenner, Neil (1999). "Globalisation as Reterritorialisation: The Re-scaling of Urban Governance in the European Union," *Urban Studies* 369(3): 431-451.

Brenner examines globalization as a process of merging and reconfiguring territories. Brenner recognizes that while capital is flowing faster and further, globalizing forces cannot change the fact that much of a territory's organization is fixed in place geographically. Building on the fixed nature of urban, regional, state, and national agglomerations, Brenner investigates the re-scaling of territories as "intrinsic to this round of globalization." Building a competitive global position, ie. capturing global capital flows, relies heavily on re-scaling cities, states, and politics across all levels.

Central to Brenner's analysis is the historic nature of capitalism as a geographic force. In short, he summarizes capital as a relentless re-shaper of territories that has recently undergone a shift from a predominately state scale to the competitive global scale. Brenner argues that this change in "geographical scaffolding" forces states and cities to act on two distinct fronts simultaneously. Brenner calls the ability to act locally as well as globally "glocalization."

As a force, glocalization primarily acts on the state. It requires states to build local capacities that benefit a broader supranational structure. Brenner interprets glocalization as a re-scaling of state power. Upward re-scaling involves transferring many tasks to the supranational level. Downward re-scaling devolves many state programs to the regional and local institutions. While this seemingly is a hollowing-out of the state, Brenner finds that at the urban-regional level, state power is actually created. Regulating new economic space and managing the disjuncture between "world cities" and the urban areas that host them essentially re-scales state government into state governance.

As states use larger supranational structures to gain the industrial and administrative efficiency necessary to attract and generate capital in a global environment, they must also understand the role of their "world cities." A world city is a "space of global accumulation" (Friedmann 1995) that no state can fully control. Through their key role in global capital flows, world cities are re-scaling beyond the power of the state. In many ways global cities compete against one another and coexist as nodes in a global network outside the control of the state.

The cost for gaining global competitiveness is often the state's autonomy. This "precondition for contemporary capital accumulation" is creating an "economic disjuncture between the world city and the territorial economy of its host state." In the European Union, it is becoming clear that geo-economic power is moving away from the state level and to the world cities. While Brenner recognizes that politics is becoming problematic between cities and states, his conception of the state as a platform of economic growth allows for this and calls for new concepts of scale that account for reterritorialisation and the social relations in glocalized areas.



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Article Summary

Jessop, Bob 1997. "The Entrepreneurial City: Re-imagining localities, redesigning economic governance or restructuring capital," pp 28-41 in *Transforming Cities: Contested Governance and New Spatial Divisions* ed. by Nick Jewson and Susanne MacGregor. Routledge: London.

Jessop considers the transformation of the contemporary city within the context of globalization. Focusing primarily on British cities, the author analyzes four trends in the drive toward a more entrepreneurial urban political economy: 1) the redefinition of local economies as entrepreneurial units; 2) the link between this redefinition and new forms of governance; 3) the transformation of modern urban economics within global economics; 4) the political economy of globalization within which this transformation is occurring.

Post-war macroeconomic and microeconomic policies designed to facilitate full employment, price stability, economic growth, and the distribution of social welfare are no longer feasible through the national-state. Cities must increasingly use new, entrepreneurial modes of production and governance to secure competitiveness. Likewise, the state must exploit the competitive advantages created by successful entrepreneurial cities, to secure an advantage internationally. This strategy can only be carried out through long-term organizational coordination coupled with effective performance assessment and accountability standards.

Several general trends are pivotal to the contextualization of the entrepreneurial city: 1) the de-nationalization of statehood, including the abdication of de jure sovereignty to supranational institutions and the devolution of authority to the city/regional level; 2) the transformation from government to governance in the form of partnerships between state agencies and non-governmental organizations; 3) the internationalization of the national state and a subsequent magnification of the transnational implications of domestic behavior.

All of these processes contribute to the rise of the entrepreneurial city. Jessop concludes that the transformation of urban economics toward entrepreneurialism is driven by globalization, resulting in local activities such as new governance methods of public/private networking.

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Article Summary

Orfield, Myron. 1997. "Metropolitica: Coalitions for Regional Reforms," *Brookings Review*. 15(1):6-9. <http://www.brookings.edu/press/review/winter97/morfield.htm>

Using Minneapolis-Saint Paul as an example, Myron Orfield discusses the urban decline, inner-suburban decay, and urban sprawl that has blighted so many American cities over the last several decades. He then presents regional solutions for deconcentrating poverty, which Orfield sees as the key to solving the myriad of urban problems that stem from poverty and segregation.

Throughout the 1980s and 90s, Minneapolis-Saint Paul experienced the "push" of concentrated need in the inner city, along with the "pull" of concentrated resources in the outer suburbs. These forces combined to create intense white flight from the inner core of the Twin Cities, resulting in rapid segregation and the concentration of poverty. Crime and joblessness in these areas soared. At the edge of the Twin Cities metropolitan region, the most prosperous developing communities used restrictive zoning to exclude "undesirables" and build a broad, rich tax base to keep services high and taxes low.

The traditional approach to solving the problems of America's inner cities has been to try to turn their disadvantaged residents into middle-class people. This has proven to be nearly impossible; the solution remaining is to end the unnatural concentration of poverty. Deconcentration helps solve the problems of poverty on two levels. For individuals, it opens access to opportunity in the form of jobs, unstressed schools, and adequate local services. For a community, it breaks poverty down into more manageable pieces and creates community and metropolitan stability.

Orfield gives two steps, to be implemented on a regional level, toward the deconcentration of poverty. The first is regional reform in fair housing, including the destruction of regulatory barriers to affordable housing in the suburbs. Orfield contends that once affordable housing is built at the metropolitan periphery, the expansion of the urban and suburban distressed areas will slow and ultimately stop.

The second reform is tax-base sharing. The most prosperous areas of the metropolitan region will share a certain portion of commercial, industrial, or residential property taxes on high valued homes region-wide. Orfield argues that property tax-base sharing: (1) creates equity in the provision of public services, (2) breaks the intensifying metropolitan mismatch between social needs and property tax-based resources, (3) undermines local fiscal incentives supporting exclusive zoning, (4) undermines local fiscal incentives supporting sprawl, and (5) ends intra-metropolitan competition for tax base.

In Minneapolis-Saint Paul, working class suburbs have joined forces with the inner city to create regional reform. The first step was the metro-majority coalition in the state legislature, followed by the Alliance for Metropolitan Stability. These local coalitions that are beginning to take action in the Twin Cities provide an example to cities everywhere facing polarization.



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Book Summary

Rusk, David. 1993. *Cities without Suburbs*. Washington D.C.: Woodrow Wilson Center Press.

Cities without Suburbs is based on David Rusk's experience as mayor of Albuquerque, New Mexico and member of the New Mexico state legislature. In this book, he uses detailed census analysis to show that the most economically robust cities are "elastic." That is, cities that can capture their suburbs in a regional government, and with that, their tax base, have lower poverty and crime, better education systems and a better fiscal outlook. Cities that are "inelastic" lose their population growth to the suburbs and tend to be less fiscally stable and more racially segregated, as well as more impoverished than elastic cities. Examples include Detroit, Cleveland, Louisville and Milwaukee. Rusk argues that elastic cities are more successful because they practice some form of regionalism.

In addressing the practical side of implementing regionalism, Rusk contends that restructuring local governments is not a task for the federal government. Rather, it is a responsibility of citizens and political leaders at the local and state levels. He examines the mechanisms and politics of creating what he calls metro governments, and presents three specific options for the creation of metro governments:

1. Empowering Urban Counties

The most direct and efficient way to create metropolitan government in the majority of metro areas is to empower urban county government. In this scenario, the county government assumes the functions and responsibilities of the municipal governments within its boundaries, and municipalities are abolished.

2. Consolidating Cities and Counties

This involves creating area-wide governmental units, focusing on consolidating municipal governments with their surrounding county governments. Consolidation brings unification of the tax base and centralization of planning and zoning.

3. Combining Counties into Regional Governments

This involves combining several counties in the same metropolitan area into one regional government.

Challenges to these regional approaches include potential loss of power at the local level. Minority constituencies may have less voice in the issues affecting them directly. Also, different municipalities may have different problems depending on their history, geographic location and economic capacities.

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Chapter Summary

Rusk, David, 1999. [Journeying Through Urban America](#). Brookings Institution Press, Washington D.C.
Chapter 1: *Inside Game, Outside Game*

In the first chapter of his book, *Journeying Through Urban America*, David Rusk, accomplished organizer, mayor, and multi-positioned civil servant turned urban scholar, introduces his observations of contemporary urban trends. He focuses on the dynamics of population, regional integration and fragmentation across different cities in the U.S. Basing claims on his analysis of census data, Rusk highlights the fact that sprawl positively correlates with economic, racial and social segregation.

Rusk introduces the concept of city elasticity (initial density times rate of boundary expansions) as a way to think about the decreasing population densities in U.S. cities. "Elastic" cities are able to absorb would-be suburban growth and maintain authority over the metropolitan area despite a fast growing population. These cities witness benefits including fiscal health, spatial integration of social and economic groups, and economic growth. The larger the market share of new development subsumed in a single government's jurisdiction, the stronger its defense against the negative effects of suburban sprawl. "Inelastic cities," losing their share of population growth to suburbs, suffer the loss of the white middle class and their commercial facilities and tax base. Inelastic cities are left with mainly poor blacks and Hispanics with desperate service needs but no tax base.

Cities can achieve metropolitan integration and become more elastic in two ways: annexation or city-county consolidation. Inelastic cities have many fragmented "little box" governments, with each suburb functioning as an independent governing unit. Elastic cities are central cities that are able to expand their jurisdiction to include population growth, either by annexing or consolidating at the county level, aggregating into one cohesive "big box" government.

Rusk is quick to note, however, the political difficulties of consolidation. If regions cannot "become one governmentally," Rusk comments, they can employ quasi-regional governmental structures in as many areas as possible, including regional tax-base sharing, fair-share low and moderate income housing policies, and sprawl-limiting regional land use policies.

Rusk next moves to describing how cities became the way they are and attempts thus far at combating decline, which he describes as an "inside game". The "inside game," he warns, is not enough; the "outside game," or regional strategies outlined in this article, must be a complementary strategy. He highlights best practices for these regional strategies by examining the sprawl-controlling policies of Oregon, the mixed income housing laws in Montgomery County, Maryland, and revenue sharing legislation in Dayton, Ohio and Minneapolis, Minnesota. In his opinion, the impetus for these policies must take place at the state level. Finally, he acknowledges the tremendous difficulty of implementing these policies faced by city, county and state leaders, but points out that it has happened in other areas, with great results.



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Article Summary

Foster, Kathryn 1996. "Specialization in Government: The Uneven Use of Special Districts in Metropolitan Areas." *Urban Affairs Review* 31(3): 283-313.

The use of special districts has grown remarkably over the past few decades: 7% from 1987 to 1992 (to 31,555 units). Municipalities grew 0.7% over the same time period to 19,000 units. Explains Foster, "Districts enjoy the financial support, tax exempt status and quasi-monopolistic service-delivery advantage of public governments, together with the limited political visibility, internal management flexibility, and financial discretion of private corporations" (284).

Foster assesses four alternative theoretical perspectives on the uneven use of districts.

Institutional Reform Perspective

- Privileges the welfare of the community over individuals
- Integrated metro service delivery is most efficient for equity and efficiency (Rusk 1993)
- Smaller governments lack scale or administrative capacity. Special districts still fragment geographically and service-wise, but can instill rationality on a polycentric government structure.
- Regional government is best. Variables of regional districts are: number of governments, population size.

Public Choice Perspective

- Privileges the individual over community
- Response to service demands—special districts are a rational response to differentiated service demand.
- Sub-county or municipal districts allow services to meet the growing needs of the population when growth outpaces government capacity.
- Districts allow residents to mix levels of services (a la carte). Multi-functional regional government would not allow such variation. Accommodates diversity of preference.
- Especially appropriate for unincorporated areas in a metro region.
- Variables: growth in population, percent population in unincorporated areas, income diversity.

Metropolitan Ecology Perspective

- A complex response – especially determined by legal and political factors.
- Legal factors on finance and boundary change are especially important. The more constrained the municipalities – the greater use of districts (Bollens 1986).
- State level variables: restrictions on boundary change, annexation, incorporation and annexation constraints, debt constraints, home-rule powers.

Critical-Political Economy Perspective

- Development interests, logic of capitalism, power relations.
- Government action reinforces the growth-driven capitalist system.
- Property development is key (Piven and Friedland 1984).
- Special districts are politically isolated and financially powerful—can be manipulated to control the development process. Easier access to capital via bond markets. This makes them more favorably

disposed to growth than general purpose government (Heiman 1989).

Results

Legal and institutional factors are of primary importance in the use of special districts. Use of special districts is also determined by population size (demand) and number of district types legally enabled (supply).

Institutional reform:

Small localities have less of a tendency to form districts than large ones. More region-wide districts appear in regions with more governments, but also more municipally coterminous districts. So there is as much rationalization of fragmentation via districts as you see additional fragmentation via more municipally coterminous districts.

Public choice:

Population growth is not significant. Heterogeneous service demands are not significant. Property taxing districts are more common, other district types are not. There are more region-wide districts than sub county ones, which contradicts public choice expectations.

Metro ecology:

More consistent with expectations. Districts are less common when annexation or incorporation limits operate alone. Districts are a second-best option to annexation and incorporation. When they operate together, then you see more districts. When debt restriction is present, there is more use of tax financial districts. When tax constraints are present, you see fewer special districts. This is opposite of the expectations and may be due to historical reason. Under home rule, you see more regional and sub county districts.

Critical Political Economy:

No empirical support. The author thinks her proxy variable is bad—government may support growth directly. Increase in population leads to an increase in districts of all types. Functional breadth of districts allowed by state legislature is the most important.

Conclusion: Special district use is based on structure, legal and demand factors. It is useful to think about special districts in their variety of types. Legal state rules are important and geography may also matter.

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Article Summary

Parks, Roger, and Ronald Oakerson. 1993. "Comparative Metropolitan Organization: Service Production and Governance Structures in St. Louis, MO, and Allegheny County, PA." *Publius* 23: 19-39.

In this article, the authors identify and measure key structural characteristics of "fragmented" metro areas, employing a comparative study of two metropolitan city - counties: St. Louis City and County, MO, and Allegheny County (Pittsburgh), PA. The authors argue that these areas "work" by means of an integrating structure built by local governments together with county and state governments. This study was limited to structures created around four local services: Police, fire, streets, and education. The study of governance structures focused principally on those relevant to the provision units responsible for these services.

Many people consider a large number of local governments to be fragmented, which, in turn, is thought to produce ineffective organization and poor performance. For others, a large number of local governments means competition and consequent pressures for efficiency.

Metro areas are best viewed as "local public economies," in which local governments function primarily as "provision units." Metropolitan production structures can be understood by means of an industrial organization framework. The production structure of an industry is measured along horizontal and vertical dimensions from integration to differentiation. Integration combines production in fewer firms while differentiation distributes production across more firms. Horizontal differentiation/integration refers to the number of firms that produce a specific good or service for a market. While vertical differentiation/integration refers to the number of firms that produce intermediate products used in producing the final goods or services delivered to consumers.

Although highly fragmented by conventional measures, St. Louis and Allegheny County areas have developed sophisticated structures that integrate the production of numerous service components and facilitate metropolitan governance while accommodating the strong preferences of local communities for a large measure of self-governing autonomy. Both areas have developed similar service - industry structures for the production of basic service - structures that are both vertically differentiated among a variety of service components and highly integrated in the production of key support services. In the midst of this diversity, the two central cities, Pittsburgh and St. Louis, operate vertically integrated service structures that impose the same scale of organization on nearly all service components. There are some differences however.

Allegheny County fosters more productive relationships between county and municipal governments due to its full incorporation. Therefore Pittsburgh benefits from strong county government support for its economic development efforts. St. Louis County, on the other hand, uses its ability to obtain special state legislation and is therefore better situated than Allegheny County to reach binding settlements across all local governments that address problems unique to the county.

The idea is a sense of regionalism. Both areas have created governance structures that promote collective consideration and action across local government boundaries. This is evidence that overlapping jurisdictions can assist inter-local problem solving when joined into governance structures that include voluntary associations of local government and/or public private fellowship.

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Article Summary

Cigler, Beverly A. 1994. "Pre-Conditions for Multicommunity Collaboration." Pp. 39-58 in *Toward an Understanding of Multicommunity Collaboration*. AGES Staff Report 9403. Washington, DC: USDA, ERS.

Cigler argues that intergovernmental collaboration can build the capacity of rural local governments, which often lack the necessary resources and expertise to adequately provide government services or conduct policy decision-making activities. However, "truly collaborative ventures are system changing," (p. 41) and thus potentially threatening to existing government entities. Further, if one partner has an organizational or political weakness, it jeopardizes the success of the collaborative effort. Hence, though the results of collaboration can be positive, the conditions necessary to achieve it can be extensive. Cigler is careful to emphasize that there is a continuum of possible cooperative relationships between governments ranging from loose, flexible links often developed to share information or to begin moving toward a common purpose (networks and cooperation) to more formal links forged to perform a specific often complex task (coordinating and collaborating). Some intergovernmental partnerships begin as networks and evolve to a more formal, lasting, and essential relationship in response to increased needs or as trust between the partners grows.

Cigler examines three cases of rural intergovernmental collaboration through the framework of previously-observed pre-conditions to collaboration which she derived from previous case studies. The preconditions are:

- a disaster occurrence,
- a political constituency of cooperation,
- supportive capacity building or incentives provided by external sources,
- early and continued support by elected officials,
- visible advantages of cooperation for participating governments,
- existence of a policy entrepreneur,
- early focus on visible, effective strategies, and
- an emphasis on collaborative skills-building.

While none of the three cases presented in this text exhibited all of these pre-conditions, three did appear to be particularly important in all cases studied. These were: a disaster occurrence - either a recent or anticipated natural or economic disaster, visible advantages of cooperation for participating governments, and the existence of a policy entrepreneur.

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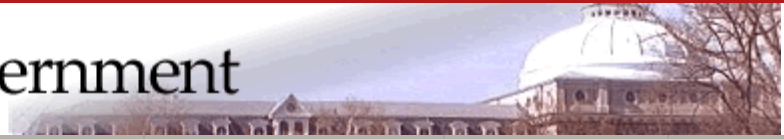
Article Summary

Oakerson, Ronald. 1987. "Local Public Economies: Provision, Production and Governance." *Intergovernmental Perspective* 13: 3/4, pp. 20-25.

Provision refers to collective choices that determine (1) what goods and services to provide, (2) what private activities to regulate, (3) the amount of revenue to raise, (4) the quantity and quality standards of goods, and (5) how to arrange for productions. Production refers to the more technical processes of transforming inputs into outputs.

Organizing the provision side falls into three main classes: preference revelation, fiscal equivalence, and accountability. On the other hand, organizing the production side is based on economies of scale and co-production. The options linking provision with production are self- production, coordinated production, joint production, intergovernmental contracting, private contracting, franchising, and voucher. Governance has to do with the choice of rules, which is separable from both production and provision.

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Article Summary

Jansen, Annica. 1994. "Multi-Community Collaboration and Linkages: A Framework for Analysis." pp. 59-76 in *Toward an Understanding of Multicommunity Collaboration*. AGES Staff Report 9403. Washington, DC: USDA, ERS.

Jansen, drawing extensively on the work of Pierre Clavel (*Opposition Planning in Wales and Appalachia*, 1983) provides a theoretical framework for analyzing relationships between different levels of government. She defines the tension between levels of centrality of government and local government capacity as the essential indicator for types of intergovernmental relationships. Local capacity is defined as "having the institutions necessary to deal with information" (60). Centrality is defined as "having physical and/or organizational linkages with the economic and political centers of decision-making, or the economic or political 'core'" (60). Using a matrix of low and high centrality and local capacity, Jansen defines four types of intergovernmental relationships.:

	Local capacity	
Centrality	Low	High
High	Hegemony	Polyarchy
Low	Isolationism	Separatism

Jansen argues that when both centrality and local capacity are present or both are absent, as in the cases of isolationism and polyarchy, the relationships are stable. When there is a disparity between levels of centrality and local capacity, however, as in cases of hegemony or separatism, a region will seek to equalize the forces.

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Article Summary

Advisory Commission on Intergovernmental Relations (ACIR). 1974. "Local Government Reorganizational Issues." *The Challenge of Local Government Reorganization*. Washington, DC: U.S. Government Printing Office.

The report chronicles the rise of multi-county regional government councils since the 1960s, in response to requirements for federal program funding. There is little agreement about the role of these new forms of government in the American political system, but few consider them to be forerunners of true metropolitan governments (such as Portland, OR). This report attempts to evaluate their role in the context of other government reorganization efforts.

Four factors should be considered when evaluating the service delivery of these new government units: authority, efficiency, equity and accountability. Areawide cooperation takes many forms, including:

- Intergovernmental service agreements to meet area needs
- Transfer of functions between higher and lower governmental units
- The growth of the urban county (as opposed to the traditional city government)
- Areawide special districts to deliver key services
- Multifunctional areawide special districts
- Annexation
- City-county consolidation
- Federation (eg, systematically dividing functions between upper and lower tier governments)

Because of the various problems inherent in these solutions, it appears the best approach may be comprehensive reforms to existing local governments. Unfortunately these changes may be the most difficult to achieve. State and federal governments can play a role in overcoming these obstacles by creating incentives for reform and by being flexible and supportive, but not authoritative.

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Article Summary

Perlman, Ellen. 1993. "Secretive Governing: Authorities proliferate; So Does Possible Misconduct." *City and State*. March 1, pp. 9-11.

This article notes the sudden 12% increase between 1987 and 1992 in special quasi-governmental or intergovernmental districts (often called authorities, as in the Metropolitan Transportation Authority). Perlman cites several reasons why legislative bodies choose to create special districts:

1. they are a way of skirting state constitutional limits on taxation, spending, and borrowing
2. they enable state and local governments to appear to be cutting their budgets while continuing to ensure service provision;
3. they are a tool of intergovernmental collaboration cutting across political boundaries to meet regional needs.

Though special districts are sometimes necessary to accomplish a particular task or achieve economies of scale in providing a specific service, they are vulnerable to abuses difficult to curb due to the lack of direct public accountability and even accountability to the governments which created them. Abuses include nepotism, overpriced service rates, and mismanagement.

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Article Summary

Advisory Commission on Intergovernmental Relations (ACIR). 1974. "Alternative Government Structures." *Government Functions and Processes: Local and Areawide*. Washington, DC: U.S. Government Printing Office.

Modern federalism is a cooperative and consequently difficult endeavor. The debate over the assignment of urban functions is one of both means and ends, questioning both the how and the why of government service provision. The sharing of power contributes to the dynamism of the federal system, where the subject is constantly debated.

Theorists have developed various models for government service assignment, which include:

- Polycentricity/Decentralization
- Federation (eg, systematically dividing functions between upper and lower tier governments)
- Consolidation

These models all have supporters who claim their various merits based on the criteria of efficiency, equity, public satisfaction with service, and so on. Empirical findings show that no model appears to be completely effective or without deficiencies.

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Article Summary

Carpinello, George F., and Patricia E. Salkin. 1990. "Legal Processes for Facilitating Consolidation and Cooperation Among Local Government: Models from Other States." Albany, NY: Nelson A. Rockefeller Institute of Government.

This report introduces the legal structure and processes used to facilitate cooperation, consolidation, and coordination among local government entities in other states and in several foreign countries. Many other states, especially in the South and West, have been more active in making changes that can serve as instructive examples for New York. They have applied a number of methods and strategies for implementing territorial and functional changes including annexation, consolidation, functional transfer.

Annexation, in particular, has been one of major methods for local boundary changes in the western and southern regions. Not only has population grown and shifted, but unincorporated land also existed in their territories. These states illustrate various methods for annexation: unilateral annexation by municipality or voter approval, by judicial approval, by boundary commissions, or by special state legislation. In contrast to many southern and western states, however, all counties in New York are divided into towns and cities.

Another means for changing municipal boundaries is consolidation. It has been applied mainly in city-county consolidations. The vast majority of attempts and successful consolidations are in the South and West. Some states allowed the affected government bodies to form consolidation commissions or allowed the voters to initiate the process by petition. Not every attempt was successful. Voters tended to disapprove it because of fear of higher taxes and an unwillingness to assume responsibility for major problems of cities. Consolidation in New York is more unlikely due to the absence of general laws or procedures and the requirement of an affirmative vote in each affected jurisdiction.

Many states also attempted to transfer the governmental function to a higher metropolitan-wide entity. Some states like Ontario, Canada, and Florida were successful, because they not only have constitutional or statutory provisions, but also because they allow for transfers without voter approval. Other states, including New York, however, were not successful because of voter disapproval and other procedural barriers. Instead, some states have instituted cooperative agreements or contracts among municipalities to provide services.

There are some limitations on the formation of new governmental units. "Defensive incorporation" by communities has created fragmentation and reduced the incentives for consolidation and more comprehensive cooperation. Moreover, this issue tends to be treated as a problem restricted to the local entities. Though in many cases annexation or consolidation efforts are defeated, there is still considerable pressure to reduce duplication of services and to make the most of economies of service.

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Article Summary

Coon, James A. n.d. "Intergovernmental Cooperation." Local Government Technical Series. Albany, NY: Department of State.

This article discusses possible reasons for considering formal intergovernmental cooperation and examines practical and legal considerations. The author points out that the desirability of cooperative efforts among governments depends on economies of scale, convenience of performing the task, distribution of natural resources, surplus physical facilities, and the need for duplication of services.

Decreasing unit costs of services such as water and sewage treatment and incineration encourage municipalities to enter into intergovernmental cooperative agreements to achieve economies of scale. When one government can more easily perform a task, cooperation may also be sought. For example, town highway departments may perform work for other jurisdictions when it is more convenient. In the case of natural resources that are not equally available in every jurisdiction, such as water and sand, intergovernmental cooperation may be required to fulfill the needs of their communities. When municipalities have surplus physical facilities due to population decline or shifting local priorities, intermunicipal cooperation for sharing facilities such as office space often yield savings. Municipalities may also reduce duplication of services by sharing police services or fire and ambulance dispatching services.

In addition, the author addresses legal information needed for two types of formal cooperative agreements, service agreements and joint agreements. Under service agreements, one local government contracts with another to provide service at a stated price. The contract will contain basic elements: the nature of the agreement (type of service, reason for contract, statutory authority for the arrangement); scope of service (performance standards, limitations on the service's availability); service charges (amount, times, and manner of payments); liabilities of the parties (specific provisions to cover responsibility for damage to persons or properties); and contract term (duration of the agreement).

Under a joint agreement, governments agree to share the performance of a function or the construction and operation of a facility. In New York State, all counties outside the City of New York and all cities, villages, towns, and school districts are allowed to enter joint operating agreements. Unlike a service agreement, a joint agreement requires a majority vote of the governing body of each locality, and any referendum or special consent required by law for an additional government to provide a service. In addition to the "service contract" elements, joint agreements should clearly define the composition of the governing body, the method of selection of its members, selection and duties of its officers, the staffing arrangements for the workforce of joint agency, financial considerations such as the method of apportioning costs among jurisdictions, and property considerations, including defining ownership of property and termination of the agreement.

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Article Summary

New York State Office of the State Comptroller. 1994. "Local Government Cooperative Service Provision." Albany, NY.

Abstract

In much of the privatization debate the idea of alternative government service provision usually leads to a question of whether to privatize or not. Little attention is paid to the idea of collaboration between municipalities. In this study of intermunicipal cooperation, the Office of the New York State Comptroller has provided a wealth of information, ranging from guiding legal principles to general agreement guidelines, that could facilitate a practical solution for governments seeking to improve the delivery of their services.

Programs for Intermunicipal Cooperation

The study's conclusion indicates there are six programs where intermunicipal cooperation results in outcomes that have a wide applicability in New York State. These are: 1) Recreation, 2) Sewage and Wastewater Treatment, 3) Multi-employer Collective Bargaining Research and Support, 4) Highway Transportation, 5) Purchasing and, 6) Police Services. These are by no means the only areas where municipalities may benefit from cooperation. Indeed, outlined in the document are several other cases, unrelated to the above mentioned programs, where municipalities have shown gains. Day care, emergency management, health care, general administration, cultural activities, and air transportation are some that are mentioned. The possibilities for intermunicipal cooperation abound.

Criteria for Analysis

The Office of the Comptroller, in considering cases for inclusion in this study, selected those programs based on three main criteria: 1) Their ease of implementation, 2) Cost/benefit justification and, 3) Applicability to large numbers of municipalities. The primary objective of the study was to develop specific program initiatives most suited to the needs of New York State local governments. Essentially, a 'how to' guide is provided.

Intermunicipal Cooperation and State Law

Under Article 5-G of the General Municipal Law, any municipal corporation or district may participate in a cooperative agreement. While other laws exist that enable municipalities to act in concert with each other, Article 5-G provides overriding statutory authority for cooperative agreements. This is important because the law does not preside over the underlying activity or service, just the agreement. In terms of who may actually engage in such activities, any combination of cities, towns, villages, boards of cooperative educational services, fire districts or school districts are eligible to participate. A provision to include public libraries is discussed. Two types of agreements are identified in relation to this law. The first is an agreement where municipalities jointly provide an activity while the other is a contractual arrangement between participants.

Within Article 5-G are legal requirements that each participant must consider. For instance, municipal corporations may only enter into an intermunicipal agreement to provide a function which they are

empowered to provide individually. Also, municipalities may not circumvent other legal requirements, such as public hearings or mandatory referenda, by virtue of the agreement. Most importantly, the governing body of each municipality involved must approve the agreement by a majority vote.

Issues to Consider in Intermunicipal Cooperation

Aside from legal issues, there are several "Best Practices" that emerged from the study worth mentioning. While this may seem obvious, it is not a legal requirement to have a written agreement. Other ideas to consider are:

- a method or formula for equitably allocating resources
- a mechanism for compensating employees and personnel
- some provision for equipment and/or facilities
- an agreement for handling liabilities

In addition to the above list, municipalities may want to consider incorporating some mechanism for handling fiscal arrangements, as well as monitoring and evaluation, into the agreement.

General Guidelines for Cooperation

This section of the study is perhaps the most useful because it offers advice on how best to determine whether a particular activity is suitable for intermunicipal cooperation. The guidelines proposed address issues related to conducting feasibility studies, performing needs assessments, and negotiating contracts. Several pieces of advice are conveyed during this discussion. For instance, a cost determination and comparison is suggested to determine if intermunicipal cooperation could improve an activity's efficiency and effectiveness. If a service results in reduced costs, increased efficiency, and/or fulfills a perceived need then it should be undertaken. With regard to preparing the agreement, the study concluded that, in addition to the above mentioned issues to consider, the agreement should be reviewed by the municipality's respective legal counsels. Some method for mediating disputes should also be incorporated into the agreement.

Conclusion

This study is extremely useful because several fundamental elements regarding intermunicipal cooperation are discussed. Some of these issues may seem obvious but clearly they are essential to ensuring a stable arrangement.

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Article Summary

Liebschutz, Sarah F. 1990. "The New York Experience with Cooperation, Coordinating Structures, and Consolidation: Selected Case Studies."

In 1963, the Advisory Commission on Intergovernmental Relations (ACIR) reached the conclusion that "political realities preclude shattering the [system] in order that it might be remodeled in conformity with an updated model" (ACIR as quoted in Liebschutz, p. 1). Taking this 30-year old statement as a jumping-off point, Liebschutz presents six case studies of intergovernmental cooperation in New York State including studies of regional waste management and regional policing. Her objective is to determine if it is possible to gain the advantages claimed by advocates of restructuring ("improved and more cost-efficient public service, coordination, equality in financial burdens, and responsibility for area-wide policy" p. 2) while preserving the identity and autonomy of cooperating local governments.

Though Liebschutz does not herself draw any conclusions from the case studies, I believe that the six examples she has chosen confirm that it is indeed possible for governments to cooperate and gain the associated benefits without losing autonomy. Furthermore, the cases, particularly the examples of failure, illustrate that efforts at cooperation which do not maintain local government and citizen autonomy will fail. This could be the result of a bias in case study selection. The examples of successful intergovernmental cooperation have the common element of emphasizing a participatory process and cooperative problem solving rather than immediately solving a concrete problem.

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Article Summary

Benjamin, Gerald. 1990. "The Evolution of New York State's Local Government System." Albany, NY: Nelson A. Rockefeller Institute of Government.

This article explains the evolutionary development of four categories of local governments in New York State: counties, towns, cities, and villages. These local entities differ in their origins and have undergone changes throughout the state's history, particularly in their governmental structure and functions. In response to the growth and diversity of population, direct democracy in rural areas gave way to representative system and the executive power in urban areas tended to separate from legislative or judicial functions.

New York's 62 counties were originally created by the state for its own administrative convenience. They were just agents of state rather than municipal corporations. As the population grew, uniform state law was increasingly inadequate to meet the needs of burgeoning suburban areas. The legislature in 1935 made significant changes to extend counties' powers as municipal corporations. Since then, counties have gone more rapidly toward greater power and autonomy. As a result, The Municipal Home Rule Law was adopted in 1963. By the law, most counties generally came to adopt charters and to have an elected executive or appointed manager, separately from the state.

Towns, like counties, were also involuntary in their birth. All territories in a county are divided into towns. Towns, therefore, exercised little self-rule and were controlled by counties. As population grew, particularly in suburban towns, pressure continued for extending the powers of town government. The town meeting diminished and town boards and supervisors grew in importance. The more populated towns were often changed into villages. Since the 1920s, the powers of first-class towns were as extensive those of villages. Town governments regulated land use, built highways, provided police, and regulated all sorts of public behaviors by town laws. In 1976, general provision was made for towns to adopt a manager system of government. There are 932 towns in New York.

Cities, differently from counties and towns, were created as public corporations to meet special local needs. The power of each city derives from a unique statute. Cities are not organs of the state. Generalization about cities, however, becomes more difficult than other entities, because of their unique charter and special needs. Moreover, their substantial powers and structures even among the current 41 cities vary considerably, even though most of them have mayor-council systems.

Village governments have far more powers than towns, as extensive as those of early cities. The growth of the autonomy and power seems to be like those of cities. There are currently 556 villages in New York State. Most villages were chartered before the early twentieth century.

The four types of local governments have been converging incrementally in their structure and powers since the Civil War, increasing their similarities while diminishing their differences.



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Article Summary

State Commission on the Capital Region. May 1996. "Growing Together Within the Capital Region," Draft Report. Albany, N.Y.: Nelson A. Rockefeller Institute of Government.

This report, which runs about 150 pages including appendices, outlines ways in which the six-county Capital Region of New York State (so named because its main city is Albany, the state capital) can work as a region to strengthen its economy, become more competitive, attract visitors, and generally function more efficiently. The four priority areas highlighted in the report are:

- economic development
- regional planning
- solid waste management
- roadmap for cost reduction

In the area of solid waste management, the report advocates the development of "cooperative regional approaches to solid waste management, working in partnership with businesses and nonprofit organizations and enlisting the support of citizens." The authors recommend the creation of a nonprofit regional consortium to serve as the umbrella agency for improved waste management coordination efforts.

The "roadmap for cost reduction" refers to an effort to examine government functions and expenditures to find ways to reduce the local property tax, which is currently 73% higher than the national average. The report suggests beginning this comprehensive process by looking at two counties.

The capital region has 131 general-purpose governments (counties, cities, towns, and villages) and 60 school districts. Intergovernmental cooperation is already occurring in some areas, such as highway systems, where some equipment and services are shared, but other opportunities exist. The report proposes creating a regional clearinghouse for information on equipment and storage facilities owned by each local government. It also recommends creating a regional consortium of local governments to pool resources, share equipment and expertise, jointly administer common services, and achieve economies of scale where possible. Training programs and information and records management are mentioned as two areas where local governments could collaborate.

This report focuses on ways local governments can work together to solve common problems, by sharing information and identifying areas where cooperation would be beneficial. The authors view intermunicipal cooperation as the key to improving efficiency.



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Article Summary

Desfosses, Helen. 1994. "Regionalization-Who Needs It?" *Regional Report* 1, no. 1. Key Bank Center for Regional Studies (March).

In the Capital Region people are discovering that they need regional solutions to problems that spill over political boundaries. The Key Bank Center for Regional Studies was established to explore and promote these Regional solutions.

Regionalization refers to the growing interest among local government and non-government organization to join forces to tackle problems that defy solution within established political boundaries. Government officials and citizen are interested in finding an alternative to the dilemma of either cutting service or increasing taxes. Regionalization may offer that alternative.

Other places have been instituting regionalization with success. In Indianapolis, Senator Richard Lugar (then Mayor of Indianapolis) was able to merge county and city governments in 1970, into a new regional government know as Unigov. In Toronto, a two-tier system means that some functions are regional and other are addressed by local government. In Charlotte/Mecklenburg, NC, only the police and fire departments remain separated into city and county departments. Finally, in Portland, Oregon, the METRO government represents the only elected regional government in the U.S.

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Article Summary

Nathan, Richard P. "Keynote Address: Reinventing Regionalism." Regional Plan Association, April 26, 1994.

The new frontier for the reinvention of government is regionalism. There are too many governments - 83,327 by the last Census count. Regionalism, however, is nothing new. The list of city-county combination governments dates back to New York City in 1898. In Louisiana, the Baton Rouge merger plan occurred in 1947. Miami and Dade County, Florida, merged in 1957. Nashville and Davidson County, Tennessee, linked up in 1963, as did Jacksonville and Duval County, Florida, in 1968. Also, in 1970 Indianapolis and Marion County formed Univgov.

These types of consolidations have dried up over the years for two main reasons. The first is political. People like local units, because it gives them a sense of identification and community. The second reason is race. Metro government consolidation often led to demands for school district integration on a greater scale than people thought would have been the case if consolidation hadn't occurred. This is ironic because race was the reason for regionalism in the first place. As minorities began to dominate central cities, regionalizing was a way to dilute their strength politically.

The focus now of regionalism isn't structural but functional. We are seeking the right scale of diversity while placing great emphasis on public and private cooperation. One reason for regionalism is to tackle the problems that defy solution within established political boundaries, like solid waste management, water purity, transportation, and delivery of social services. A second reason is to save money by shifting the delivery of services from local to the more efficient regional level. A third reason for regionalization is to strengthen a region's economy by involving the business community in the process, while fostering a spirit of public-private cooperation.

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Book Summary

Osborne, David, and Ted Gaebler. 1992. *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector*. Reading, MA: Addison-Wesley.

The authors, David Osborne and Ted Gaebler, argue that American governmental bureaucracy, which was appropriate to the industrial era and times of economic and military crisis during which it was created, is not the best system of governance for the post-industrial information age.

Since the 1960s, the American public increasingly wants quality and choice of goods and services, and efficiency of producers. However, quality and choice are not what bureaucratic systems are designed to provide, nor is efficiency possible in a system of complex rules and drawn-out decision-making. Moreover, since 1982, reductions in federal funds has made it more difficult for state and local governments to meet the continued citizen demand for services and increasing expectations for quality.

The authors' prescription is *entrepreneurial government*, which focuses on results, decentralizes authority, reduces bureaucracy, and promotes competition both inside and outside government. Government's clients are redefined as *customers* who are empowered by being able to choose among providers of various services, including schools, health plans, and housing options.

The authors discuss the various options for delivering public services, utilizing the public, private, and nonprofit sectors. And they provide 10 principles, based on numerous case studies, that guide the fundamental transformation of our industrial era public systems:

- [Catalytic Government](#)
- [Community-Owned Government](#)
- [Competitive Government](#)
- [Mission-Driven Government](#)
- [Result-Oriented Government](#)
- [Customer-Driven Government](#)
- [Enterprising Government](#)
- [Anticipatory Government](#)
- [Decentralized Government](#)
- [Market-Oriented Government](#)

This book offers a vision and a road map, and it will intrigue and enlighten anyone interested in government.

[Introduction: An American Perestroika](#)

The authors argue the American public sector bureaucracy is no longer an appropriate system of governance for the post-industrial information age. To meet continued citizen demand for services -- and increasing expectations of quality, choice, and efficiency -- governments should change the ways they provide services from the bureaucratic model to a more entrepreneurial one characterized by flexibility and creativity as well

as conscious efforts to improve public sector incentive systems.

Chapter 1: Catalytic Government: Steering Rather Than Rowing

Catalytic governments separate *steering*, or providing guidance and direction, from *rowing*, or producing goods and services. Osborne and Gaebler give numerous examples such as contracts, vouchers, grants, and tax incentives.

Chapter 2: Community-Owned Government: Empowering Rather Than Serving

Community-owned governments push control of services out of the bureaucracy, into the community. Examples show how bringing communities into the picture empowers the people who are the intended recipients of services and results in better performance.

Chapter 3: Competitive Government: Injecting Competition into Service Delivery

Osborne and Gaebler believe that improving both the quality and cost-effectiveness of government services can be achieved through competition rather than regulation. Introducing competition does not necessarily mean that a service will be turned over to the private sector, rather the crucial function of competition is ending government monopolies.

Chapter 4: Mission-Driven Government: Transforming Rule-Driven Organization

Mission-driven governments deregulate internally, eliminating many of their internal rules and radically simplifying their administrative systems such as budget, personnel, and procurement. They require each agency to get clear on its mission, then free managers to find the best way to accomplish that mission, within legal bounds.

Chapter 5: Result-Oriented Government: Funding Outcomes, Not Inputs

Result-oriented governments shift accountability from inputs to outputs, or results. They measure the performance and reward agencies, so they often exceed their goals.

Chapter 6: Customer-Driven Government: Meeting the Needs of the Customer, Not the Bureaucracy

Customer-driven governments are those that make an effort to perceive the needs of customers and to give customers a choice of producers. They use surveys and focus groups to listen to their customers, and put resources in the customers' hands.

Chapter 7: Enterprising Government: Earning Rather Than Spending

Enterprising governments stress earning rather than spending money. They charge user fees and impact fees, and use incentives such as enterprise funds, shared earnings, and innovation funds to encourage managers to earn money.

Chapter 8: Anticipatory Government: Prevention Rather Than Cure

Anticipatory governments seek to prevent problems rather than delivering services to correct them. They redesign budget systems, accounting systems, and reward systems to create the appropriate incentives.

Chapter 9: Decentralized Government: From Hierarchy to Participation and Teamwork

Decentralized governments transfer decision-making authority to those individuals and organizations at the bottom of the organizational hierarchy. They restructure organizations and empower employees and create labor-management partnerships.

Chapter 10: Market-Oriented Government: Leveraging Change through the Market

Market-oriented governments utilize a market mechanism instead of an administrative program to provide goods and services to the public. They reinvent themselves through the application of market-oriented incentives.

Chapter 11: Putting It All Together

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Book Summary

Osborne, David, and Peter Plastrik. 1997. *Banishing Bureaucracy: The Five Strategies for Reinventing Government*. Reading, MA: Addison-Wesley.

This book provides reinventors with practical know-how that can be applied. Osborne's early book, *Reinventing Government*, primarily described the characteristics of entrepreneurial governments. *Banishing Bureaucracy* sees a step further and provides a detailed description of the strategies used to create entrepreneurial governments.

The authors view reinvention as a fundamental transformation of public systems and organizations to create dramatic increases in their effectiveness, efficiency, adaptability, and capacity to innovate. They believe reinvention of public systems is accomplished by changing their DNA—their purpose, incentives, accountabilities, power structure, and culture. Bureaucratic systems are replaced with entrepreneurial systems and self-renewing systems.

For changing government's DNA, the authors lay out five strategies (five C's) and introduce more than 900 tools. The *five C's* are:

1. *The Core Strategy for Creating Clarity of Purpose*

The first critical piece of DNA determines the purpose of public systems and organizations. The core strategy is to clarify the purpose of government. It uncouples *steering*, or providing guidance and direction, from *rowing*, or producing goods and services, so that each organization can concentrate on achieving one clear purpose.

Tools for the core strategy include sunset rules (require that programs be reauthorized periodically), devolution (transfer activities to a lower level of government), competitive bidding (uncouple steering from rowing by requiring the rowing function be competitively bid out), performance budgeting (define the outcomes and outputs policy makers desire), and others.

2. *The Consequences Strategy of Incentives*

The second key piece of DNA determines the incentives built into public systems. The consequence strategy changes the incentives by creating consequences for performance.

Tools for the consequence strategy include performance awards (providing employees with nonfinancial recognition for their achievement), bonuses (one-time cash awards), and performance budgeting (inserting required performance levels into budget documents).

3. *The Customer Strategy for Accountability to Their Customers*

The next fundamental piece of system DNA focuses primarily on accountability. The customer strategy gives customers a choice of service delivery organizations and sets customer service standards public

organizations must meet.

Tools for the customer strategy enhance public choice by allowing recipients of public services to choose between different providers—all public or both public or private. This can be achieved through vouchers and reimbursement programs (give those eligible for certain services the resources to purchase them themselves, or reimburse providers when they do) or customer complaint systems (track and analyze customer complaints, ensure prompt response).

Chapter 6, "[The Customer Strategy: Putting the Customer in the Driver's Seat](#)" describes Minnesota's experience with public school choice.

4. *The Control Strategy for Shifting Control Away from the Top and Center*

The fourth critical element of DNA determines where decision-making power lies. The control strategy pushes significant decision-making power down through the hierarchy and at times out to the community. There are three approaches in application of the control strategy: Organizational Empowerment (eliminating many of the rules or other controls imposed by higher levels of the organization), Employee Empowerment (reducing hierarchical management control and pushing down authority to front-line employees) and Community Empowerment (shifting bureaucracy's power out into community).

Tools for the control strategy include decentralizing administrative controls, labor-management partnerships (agreements between managers and unions to cooperate on improving organizational performance and working conditions), and community-based regulation and compliance (shifts control over regulatory and compliance functions to communities, such as business or neighborhood associations).

5. *The Cultural Strategy for Creating an Entrepreneurial Culture*

The last critical piece of DNA determines the culture of public organizations. The culture strategy attempts to change the organization's habits, hearts, and minds.

The tools for the cultural strategy are, for example, meeting the customers (expose employees to the customers through focus groups, conversation, or front-line work), redesigning the workplace (reinforces the emotional commitments leaders want, such as a sense of teamwork or a commitment to customer service), and benchmarking performance (comparing the performance of different organizations to dislodge outdated mental models by undermining faith in the old ways of doing business).

The authors acknowledge these strategies sometimes overlap, and some strategies are best used together. Thus, to optimize implementation of the strategies, reinventors must anticipate how these strategies will affect each other, and how they will work together most powerfully. In addition, they stress that the courage to reinvent is needed to use the five C's successfully.

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Book Summary

Tendler, Judith (1997). *Good Governance in the Tropics*. Maryland: Johns Hopkins University Press.

The purpose of “Good Government in the Tropics” is to highlight examples of good government in developing countries, especially Latin America. The literature on government in developing countries is full of examples of self-interested government servants, clientelism, and bloated and inefficient bureaucracies. This has led most think tanks and donor institutions to advise developing countries to trim their government size, privatize, contract out and subject public agencies to market-like pressures and incentives.

Tendler’s work is grounded in observations of “good government.” She critiques mainstream development thinking, as perpetuated by the mainstream donor communities, because it is most often based on observations of bad government practices. Tendler lists seven flaws that taint the advice of mainstream development thinking:

1. Advice arises from looking at poor performance
2. Advice suggests importing ideas from industrialized countries
3. Entire country is considered an example of good or bad government – local successes and failures are overlooked
4. Advice is often based on a strong belief of market superiority
5. Advice ignores Industrial Performance and Workplace Transformation (IPWT) literature
6. Advice is grounded in excessive faith in actions of the user or client of public services
7. Advice does not acknowledge the need to develop a good labor-management relations system.

Tendler’s book looks at what makes public sector workers dedicated. She examines four cases of good performance by a reformist state government in Ceara, Brazil in the late 1980s under Governor Tasso Jereissati. She focuses on four programs: rural preventative health care, business extension and public procurement from small firms, employment – creating public works construction and energy relief, and agricultural extension and small farmers.

Tendler identifies five central themes behind the successes:

1. Government workers demonstrated an unusual dedication to their jobs.
2. The government made efforts to instill a sense of mission in the workers.
3. Workers were more flexible and responded to the perceived demands of the clients.
4. Both workmanship pride and increased community pressures limited corruption and malfeasance.

A three way dynamic between the state government (central government), local government and civil society that did not fit the stereotypical roles in terms of building civil society.

[Chapter 1: Introduction](#)

[Chapter 2: Preventative Health: The Case of Unskilled Meritocracy](#)

[Chapter 3: The Emergency Employment Program and Its Unlikely Heroes](#)

[Chapter 4: Frontline Workers and Agricultural Productivity](#)

[Chapter 6: Civil Servants and Civil Society](#)

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Article Summary

Feldman, Barry, M. 1999. "Reinventing Local Government: Beyond Rhetoric to Action." *The Municipal Yearbook*. Washington, DC, ICMA.

Since Osborne and Gaebler wrote Reinventing Government, there has been much debate over the need to change the way government provides services to the public. The Reinvention movement calls for empowering citizens by getting the results they value. Supporters of reinventing government want to impose private market incentives on governmental activities and encourage competition in government decision making. Much of the pressure of reinventing government has fallen on local governments, especially city managers who are called upon by city councils and citizens to create policies that reduce the cost of government. Barry Feldman, a town manager, initiated a study to find out how much the rhetoric of reinventing government has gone from academic debate to actual implementation. A survey by the ICMA was mailed nationwide to all cities with a city-manager form of government and population of 10,000 or more and the response rate was 45% or 1,276 city managers returning surveys.

On the whole, city managers support the principles of reinventing government. However, according to the survey, city managers also make distinctions between the principles of reinventing government and their actions. Feldman tried to discover if managers implemented specific programs and included money in their executive budgets for these programs. The most common actions were to institute user fees, to contract out to a third party, offer employee training on customer service and use enterprise budgets. Performance based budgeting, or shifting decision making to neighborhood groups were least common. While managers supported the principle of empowering citizens, they did not request funds to train neighborhood groups. While managers may support making government more competitive and entrepreneurial, they continue to have concerns over whether this type of system can ensure fair, competent, and honest government. The conclusion drawn from this survey is that city managers are using the principles of reinventing government by blending them into principles of traditional government.

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Labor-Management Cooperation

As local governments nationwide struggle with demands for quality service delivery and fiscal constraints, they are employing a number of strategies. While these include privatization and intermunicipal cooperation, another technique that can lead to greater efficiency and cost savings is labor-management cooperation. The following background articles and special report examine some of the critical issues surrounding effective implementation of cooperative labor-management practices.

- [Industrial Relations Theory](#)
- [Transforming Work](#)
- [Cooperative Workplace Structures](#)
- [Incorporating Multiple Stakeholders](#)
- [Mutual-Gains Bargaining](#)

Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

- [Full Text](#)
- [Executive Summary](#)
- [Conclusions](#)
- [Resources](#)

Tools for Cooperation:

- [Labor-Management Committees](#)
- [Mutual-Gains Bargaining](#)
- [Total Quality Management](#)

Case Studies of Three New York State Counties:

- [Genesee County](#)
- [Ontario County](#)
- [Tompkins County](#)

Background: [New York State Civil Service Law](#)

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Book Summary

Denhardt, Janet and Robert Denhardt. *The New Public Service: Serving, not Steering*. M.E. Sharpe, Armonk 2003.

In Janet and Robert Denhardt's 2003 book [The New Public Service](#), the authors offer a synthesis of the ideas that are opposed to the New Public Management presented by Osborne and Gaebler. Their model for governance builds upon and expands the traditional role of the public administrator, which they call the Old Public Administration, and contrasts with the New Public Management. Following the structure of [Reinventing Government](#), the Denhardts divide their argument into seven principles. These are:

1. Serve citizens, not customers
2. Seek the public interest
3. Value citizenship over entrepreneurship
4. Think strategically, act democratically (In comparison to Osborne and Gaebler, Denhardt and Denhardt assert that there is a difference between "thinking strategically" and "entrepreneurial government.")
5. Recognize that accountability is not simple
6. Serve rather than steer (This involves listening to the real needs of the people and the community, not just responding in the manner that a business would to a customer.)
7. Value people, not just productivity

Here, the role of the public administrator is much more complex. He or she cannot simply act as a manager in the business sense by performing cost-benefit analysis. As Denhardt and Denhardt explain, "In the NPS, the public administrator is not the lone arbiter of the public interest. Rather, the public administrator is seen as a key actor within a larger system of governance including citizens, groups, elected representatives, as well as other institutions...the role of government becomes one of assuring that the public interest predominates" (p.81). They go on to further articulate this point with a quote:

The public manager's job is not only, or simply, to make policy choices and implement them. It is also to participate in a system of democratic governance in which public values are continuously rearticulated and recreated (Reich 1988, 123-24, quoted in D&D 96).

Denhardt and Denhardt assign quite a bit of responsibility to the public administrator, and at the same time stress the importance of public participation and community decision-making. The exact allocation of responsibility and power is unclear. Osborne and Gaebler are much more explicit on the relationship between government administration and its citizens, because they use the customer service model from business. The administrative role is further streamlined by moving as many choices as possible out of the political arena by converting those policy alternatives into market choices.

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Article Summary

Denhardt , Robert B. and Janet Vinzant Denhardt (2000). "The New Public Service: Serving Rather than Steering." *Public Administration Review* 60(6):549-559.

Linda deLeon and Robert Denhardt deconstruct the central arguments of the reinventing government movement which emerged in 1992 after the release of David Osborne and Ted Gaebler's book, [Reinventing Government](#). For deLeon and Denhardt, there are several damaging effects this political theory has on public administration. The authors critique three of the central arguments of reinvention—its use of a market model within government, its emphasis on customers rather than citizens, and its adoration of entrepreneurial management. They conclude by reflecting on the impacts these three elements have on democratic citizenship, civic engagement and public interest.

Underlying the three elements of the reinvention movement is the belief that the narrowly defined self-interests of many individuals (public administrators) can adequately approximate the public interest, and can do so without burdensome civic discourse. The political theory of reinvention places in the hands of public administrators, decisions that are typically derived through citizen participation and the democratic process. The authors argue that the reinvention movement "denigrates the role of collaborative action, produces an impoverished vision of the public interest, tends to exclude some persons from the public arena, and reduces trust among citizens and between their government (p.93)."

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Article Summary

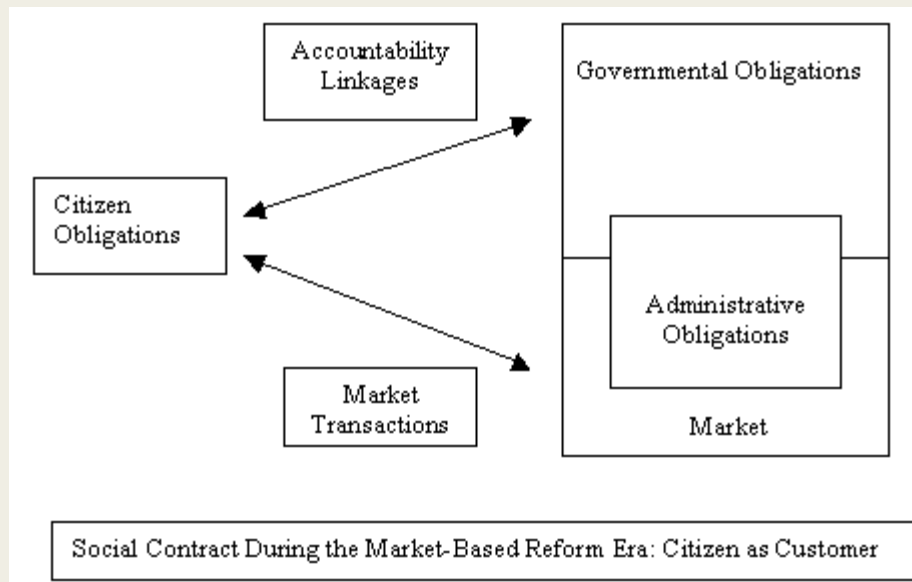
Blanchard, Lloyd A., Charles C. Hinman, and Wilson Wong, 1997. "Market-Based Reforms in Government: Toward a Social Subcontract?" *Administration and Society* 30(56) 483-512.

This article argues that market-based reforms reduce traditional conceptualizations of the social contract between citizens and government to a "social subcontract" between citizens, government, and private sector interests. Market based reforms include changes that reduce the scope and influence of governmental agencies (e.g. privatization and downsizing) or improve agency administration itself with the creation of market-like incentives. [1]

A social contract framework is used as a heuristic device to examine the historical development of public administration, the role of government in society, and the citizen-government relationship of the past century.

This analysis demonstrated three significant trends:

- 1) a growing government obligations sphere relative to the private market sphere
- 2) a growing administrative sphere
- 3) the movement of the administrative sphere into the market sphere.



The authors conclude that although reforms of earlier periods affected the size and the scope of the administrative apparatus, these changes did not *fundamentally* change

the relationship between citizens and government. However, they did find that the relationship is considerably changed under market-based reforms.

Considering these trends, they posit three fundamental implications for the citizen-government relationship and the social contract, which form the conditions that convert the traditional social contract into a social subcontract:

1) *Accountability arrangements are altered.*

The legal contracts between the government and the private sector entity will, to some degree, provide the accountability linkages to the citizens. Moreover, with the "blurring" of the government and market obligations, the citizen-government relationship is also "blurred". The social subcontract (characterized by the intrusion of the administrative apparatus into the market) makes it more difficult for citizens to monitor their government or even know where responsibility lies. Citizens will only have power as consumers.

2) *The government paradoxically co-opts the market by extending its administrative apparatus, and thus its scope, into the private sphere.*

While the formal institutions of government may remain constant or decrease in size, the increased number of informal institutions involved with public service delivery will only extend the scope of government oversight of the market.

3) *The legitimacy of public administration in particular, and government in general, may be threatened because of these changes.*

Without the extension of the administrative apparatus the accountability linkages would be completely diminished and the social contract and citizen-government relationship would undoubtedly suffer. Are the gains from economic efficiency worth the potential costs of lost government accountability and legitimacy?

Social contract model terminology:

Government obligations sphere: Based on the social contract, the government provides services and goods for people that would otherwise be difficult for people, acting as individuals, to provide for themselves. Ethical obligations include upholding less formal societal rules, which are largely determined by citizens' moral standards, common law, and historical precedent.

Private market sphere: A system where "the allocation of resources [is] determined by individual decisions between consumers and producers, without any central direction".

Administrative obligations sphere: Carries out government obligations through the execution and implementation of laws and rules.

Citizen obligations: Legal obligations of citizenship are the rights and obligations that are bestowed on citizens through legal statutes and constitutions. Ethical obligations derive from broader political, social, and economic obligations to community, which are influenced by community norms, values, and culture.

Accountability linkages: Basic political process, checks and balances, public interest groups, adherence to rules and ethical codes, etc.

Market transactions: Private contract-based provision of goods and services that emphasizes the role of the citizen as a consumer.

[1] The social contract is an agreement that establishes authority and obligations whereby individuals

concede certain freedoms and accept certain obligations in exchange for the provision of specific goods that they would have difficulty attaining as individuals and through other mechanisms.



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Article Summary

Warner, M.E. 1999. "Social Capital Construction and the Role of the Local State." *Rural Sociology*. 64(3):373-393.

With globalization weakening the role of the nation state, increased theoretical and practical attention is being focused on community level action, especially on the role of social capital. Proponents of social capital have given primary emphasis to voluntary associations. This paper looks at the role the state can play in building social capital. The historical nature of social capital in the community, the organizational structure of governmental intermediaries, and the design of specific program interventions condition social capital building. Hierarchical governmental intermediaries are contrasted with participatory community based initiatives. Three key factors: autonomy, linkage and returns on investment for both intermediaries and participating residents, are shown to affect social capital construction.



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Article Summary

Feldman, Martha & Anne Khademian (2001). "Principles for Public Management Practice from Dichotomies to Interdependence." *Governance and International Journal of Policy and Administration* 14(3):339-361.

Feldman and Khademian believe that it is possible to create more flexible and responsive local administrations. They stress responsiveness to the demands of the taxpayers and accountability for administrators. Management has to make every effort to seek out citizen opinion and act on it.

The idea of flexibly bureaucracy is an old one, but it has never been implemented on a broad scale, perhaps because simply understanding the system doesn't lend itself to leading it flexibly and openly. The authors argue that first, managers should not separate the demand for accountability from smooth operations. They should satisfy the need for flexible decision making processes by allowing more direct input from citizens. Secondly, by changing teaching and policy, there is a way to link flexibility in decision making and accountability for services into a new organizational system by which they support each other.

One current theory on public management has three basic principles: The first is that managers need to create "public value." The manager gains insight into the public's opinion by way of an election. Second, the manager must have a set of clear goals in mind, and manage this mission. Lastly, managers should hold the concept of "continuous self improvement" close to heart. In sum, if you know what the people want, and constantly work towards it, your mind should be open to ways to do it better.

In contrast, Peter Aucoin proposes specific structural changes to promote the goals of accountability & flexibility. His reforms have three basic principles: first, the separation of policy making from the operations that implement services. Second, the bottom line should be critical in evaluating organizations, making it very obvious what is working financially and what is not. Lastly, Aucoin suggests that smaller groups form within organizations to achieve short term, easily measurable tasks. These ideas come together into Performance Based Organizations (PBOs).

In practice, Feldman & Khademian push managers to be more inclusive not only when planning out how to accomplish goals, but also when they attempt to piece together problems and missions. This allows them to get ideas from those outside of the box, and better understand the problems of the area they are dealing with. The authors also emphasize primacy of process. It might be necessary for the process or administration to be redesigned to better accomplish the mission. Taking a step back and seeking input on the goals of the government is also important. The inclusiveness of a modern

administration causes the public to be more appreciated, and this in turn, means that they will hold those in charge that much more accountable.

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Book Summary

Crocker, Jarle, William Potapchuck and William Schechter 1998. *Systems Reform and Local Government: Improving Outcomes for Children, Families and Neighborhoods*. Washington DC: Center for Community Problem Solving.

Local government reform can help communities achieve positive change in the lives of children and families. This paper offers ideas for local governments to spur citizen involvement in communities and neighborhoods. Change will come about for families only through community participation in local initiatives. They believe that government reform must not strive only to improve current services, but must also work to create linkages between services, as well as support systems.

Successful government reform can be achieved only through involving community stakeholders in defining neighborhood problems, listing goals and deriving and implementing solutions. The need for community participation requires the government to change its role in the community from that of a regulator and service provider to a partner and facilitator. Six types of government reform are essential to support families and create social capital: systems reform in human services, community development, community organizing, collaboration, reinventing government and community building. They believe that by instituting changes in these areas, government reform can strengthen democracy, redefine citizenship, strengthen the role of government and ultimately produce better outcomes for families, especially those in lower-income brackets.

A true reform of local government will affect all levels of government, be comprehensive, induce stakeholders through collaboration, and transform the nature of relationships within and throughout the community. At the broadest level, reform will promote community-wide change all the way down to inter-agency change. The authors suggest seven elements necessary in reaching the goal of transforming the structure of governments and the way they relate to their communities:

- Seek comprehensiveness by addressing the whole set of problems and drawing on resources from multiple community groups
- Synthesize and decentralize services by locating service delivery in neighborhood centers, encouraging citizen participation and capacity to make decisions
- Employ results based tools by emphasizing results, accountability and performance
- Streamline institutions to encourage efficient, flexible and flattened structures systems
- Establish participatory and collaborative decision making by involving stakeholders in decision making, implementation, management and evaluation
- Build institutional forums by creating new relationships among public, private and nonprofit partners
- Create structures to support civic engagement with links to neighborhoods at all levels

While all of these elements are important, they stress how local governments can successfully reform by

selecting and combining those initiatives that will work best for their case.

There are challenges to local governments seeking to reform. One difficulty with engaging a multiplicity of citizens is that they will have very different perspectives on problems and how to solve them. This requires the need for community building – bringing citizens together, and while acknowledging their differences, building consensus about how to resolve public problems. Reforming local government in the setting of changing state and federal policy can be difficult. This requires constant dialogue not only with state and federal agencies, but also within the local government structure, assuring that employees understand reforms and are actively involved in the ever-changing process. Addressing taxpayer’s worries about where their money is going and what projects take precedence with scarce resources requires creativity and doing more with less.

Above all, local governments wishing to pursue systems reform must have a plan. They must start with research, analyzing what has worked (and failed) for cities similar to themselves. They need to assess what resources they have, what resources they need, and how to utilize them. Finally, it is most important to establish a network of links to other governments and agencies, for monetary and moral support.

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Article Summary

Abers, Rebecca, 1998. "From Clientelism to Cooperation: Local Government, Participatory Policy and Civic Organizing in Porto Alegre, Brazil," *Politics and Society* 26(4): 511-537.

In this article Rebecca Abers shows how "state actors can actually promote the empowerment rather than the weakening of civic organizations" (1) by examining the case study of Porto Alegre, Brazil. The "participatory budget" created by the local government in Porto Alegre in 1989 gave power and tools to neighborhood-based forums to make decisions about the distribution of municipal funds for capital improvements. She examines how this budget policy mobilized neighborhood groups, promoted participation and discouraged clientelism.

The focus of this paper is the "participatory budget," created by the Partido dos Trabalhadores (PT), a democratic-socialist party, who wanted to create a system of "popular councils" in neighborhoods, to take over much of the work of local government decision-making. The PT wanted to create allies in poor neighborhoods and govern "democratically." The administration created an institutional structure to encourage the creation of neighborhood associations and participation within the budget process. All adult residents could participate and in order to reduce the costs of participation, government officials were sent to the neighborhoods. The city was divided into "budget districts" following the lines of neighborhood coalitions and geographic features. General assemblies were held in each district, where government officials presented information about the city budget and participants elected their representatives and delegates to year-round forums and the Municipal Budget Council. Residents also met in neighborhood associations to discuss priorities for investment. District Administrative Centers were created to bring officials and city services closer to the residents. Community organizers hired by the government visited un-mobilized neighborhoods to help find new leaders, give out information and encourage participation. Abers believes that it was this direct contact with government organizers that drew new participants into the process.

Abers examines the Extremo Sul District and how the budget policy succeeded in mobilizing neighborhoods that were previously controlled by clientelism. Dozens of impoverished settlements lacking basic infrastructure existed in this district and most neighborhoods either had no association or residents were excluded from participation. Community organizers and high level officials visited the impoverished neighborhoods to collect information on the district's needs. It took four or five years after the budget policy was initiated, but organizing was successful and neighborhood leaders were able to break traditional associations that prohibited participation. The state was genuinely responsive to participant demands and participants were aware of this responsiveness.

The participatory budget policy created an arena in which it was rewarding and easy to participate. Abers found that the people most historically disempowered in Brazil, with lower income levels than the municipal average, were the most involved with the budget policy and civic organizations. Through this process, individuals began to see themselves as part of larger groups and created networks of trust and reciprocity. The policy was successful and residents learned how to organize, mobilize, cooperate and engage in debate about government policy.

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Article Summary

Litvack, Jennie, Junaid Ahmad and Richard Bird 1998. "Rethinking Decentralization in Developing Countries," Washington, DC: The World Bank.

<http://www.worldbank.org/html/fpd/urban/cds/mf/rethinking.html>.

This article deals primarily with the complexity of the decentralization problem, outlining what needs to be taken into account if decentralization is to be accomplished successfully in developing countries. With decentralization currently occurring by deliberate design, political necessity or default, the range of possible outcomes has neither been realized nor envisioned.

The distinction between decentralization in developing countries and their developed counterparts is taken as twofold. First, many of the assumptions made in literature on decentralization (in industrialized nations) such as the presence of 'voice' and 'exit' do not hold in developing countries. In developing countries, 'exit' is often constrained by lack of mobility (poor information, weak markets for land, labor and capital and risk aversion due to the absence/inadequacy of social safety nets). 'Voice' is constrained by problematic electoral systems. Both lead to a lack of accountability on the part of the government.

The second chapter goes to great length to point out that decentralization as a concept/ideology is neither inherently good nor bad, but is one of many tools for institutional restructuring. There is no decisive consensus on what the effects of decentralization will be. At its best, decentralization can affect equity (through allocation) and efficiency increases, as well as macroeconomic stability. At its worst it can fail to improve service delivery, promote the risk of national destabilization and induce undesirable second and third tier effects.

The debate on whether decentralization is 'good' or 'bad' is simply unproductive: decentralization is a political reality in many developing countries, as opposed to an option for deliberation. Thus, it is equally important to realize that the complexity of the problem does not lend itself to a simple, unified solution but calls for appraisal on a case by case basis. The search for solutions is limited by the lack of empirical evidence.

How then to proceed? Chapter 3 deals with the specific institutional design framework needed to address the problems of exit, voice and accountability. Fiscal federalism provides such a framework. Fiscal federalism is the assignment of expenditure responsibilities to each tier of government, often facilitated by intergovernmental transfer of funds. It is premised on the idea that 'decisionmaking should occur at the lowest level of government consistent with allocative efficiency' (chpt 3, p.10). This would dictate the optimal size for the jurisdiction of each service and service component. The authors provide examples of services, such as water supply and sewerage, for which there are roles and implications for different tiers of government.

To assign the appropriate tier of government, it first must be determined what outcomes are deemed desirable for the central government and how they are to be accomplished (e.g. direct provision, delegation, etc). Control of those issues that are determined to be of less importance to the central government should be relinquished to local authorities. Although detailed control over local use of funds is not desirable, some sort of monitoring is necessary to ensure the quality of service provided meets standards.

Raising revenue is part of this equation in that lower-tier governments are often unable to finance the expenditures for which they are responsible with own-source revenues. Three methods to bridge the gap between revenue and expenditure are: intergovernmental transfers, provision of taxation power for subnational governments, and subnational borrowing.

Allowing subnational governments to levy taxes is aimed at burdening local residents for the benefits they receive and can take two forms: a retail sales tax or a personal income tax. Litvak et al rule out a retail sales tax, citing administrative difficulties. The personal income tax is given more weight and is considered effective only when local authorities retain the ability to set the rate.

Intergovernmental transfers provide a more economically acceptable if logistically more difficult option. Transfers can be broadly divided into non-matching (lump sum) and matching transfers, the former further divided into selective (conditional) and general (unconditional) categories. Matching transfers require that funds be spent on specific purposes and that the recipient to some extent matches the grant. These transfers have the potential to distort local priorities and favor more affluent jurisdictions. Non-matching conditional transfers require the recipient spend at least the full amount received on the designated function. Problems of substitution (fungibility) come up when money that would have been spent on the designated function is diverted once the grant has been received, making the impact of the grant itself unclear. Unconditional non-matching grants do not have a specific use and therefore their impact varies. Subnational borrowing is considered a last resort due to the chance of increasing the pressures of cyclical borrowing.

If key services are provided through decentralized governments, there must be methods of ensuring that (1) the price facing service providers is 'right,' (2) the targeted groups are receiving the desired services at an acceptable level of quality and (3) non-compliance is dealt with in an equitable way. This will undoubtedly necessitate different tiers of government having common goals.

Chapter 4 addresses how institutions –organizations, the rules they follow and the means of enforcement – determine the success of decentralization. The authors focus on the regulatory framework and decentralized borrowing, the organization of service delivery, and the establishment of information systems and competitive governments.

The regulatory framework and decentralized borrowing are critical parts of decentralization. There are good reasons for allowing sub-national governments to finance their own investments by borrowing, but without the proper rules such borrowing can get out of hand. Hence, local governments should be allowed to raise their own

revenue and be forced to pay back any loans by raising local taxes. Borrowing should be done only for capital investments, and should require national approval. They also argue that the banking system must be kept separate from direct political intervention, but that the central government must ensure transparency and monitor the level and nature of the banking system's liabilities.

The organization of service delivery is another important factor. The question of who pays for a service is independent of how it is delivered. Each type of service has a different optimal way for funding and delivering it, so each service should be examined individually.

It is very important to establish information systems and competitive governments. One of the major arguments for decentralization is that local governments have better information about local wants and needs. Decentralization and open information allow citizens to compare the level of taxes they pay and the level of services they get with other municipalities. The central government can facilitate this by requiring uniform and complete budget and financial reports and by encouraging open budget hearings.

Not all sub-national governments are equally able to manage the challenges of decentralization. It is important that decentralization be synchronized across the fiscal, administrative, and political realms.

In the final chapter, the authors re-emphasize the need to enhance local accountability,

and point out that this can be done through decentralization. Decentralization can increase community participation and transparency, allow citizens to compare government performance across municipalities, and create incentives for fiscal responsibility on the local level. Some local governments do not have the capacity to manage the greater responsibility that decentralization brings. However, the authors suggest that local governments can increase their capacity or work with private corporations and NGOs to meet the greater responsibility.

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Article Summary

Prud'homme, Remy (1995). "The Dangers of Decentralization," *World Bank Research Observer* 10(2):201.

This article is a critique of fiscal federalism theory, which is a form of decentralization. Fiscal Federalism refers to a system in which local governments act autonomously in taxation and expenditure activities. There are no transfers between local governments. The central government, in general, "retreats" on all fronts. Prud'homme, in his study, highlights the dangers of such a system. He points to several major issues:

Redistribution (of any sort) cannot be undertaken at the local level. Centralization is a necessary prerequisite for redistribution, otherwise, a "capital flight" will occur wherever redistribution occurs. Ultimately, the generous local governments will be punished for enacting generous redistribution standards. A race to the bottom will occur. Prud'homme terms this "destructive competition."

Economic Stability is much more difficult to attain with a high degree of decentralization, because the central government has lost power over fiscal policy. Even if the national government does have power over fiscal policy, its policies will have no authority unless they are backed up by actual recourses, such as the holding of a significant share of total taxation and expenditures. Otherwise, "fiscal perversity" can occur: the local governments may distort the national government's ability to use fiscal mechanisms as a tool for stabilization. In the developing world, this will be particularly devastating.

Allocative Efficiency may be jeopardized under fiscal federalism. The focus on "demand efficiency" is inappropriate, particularly for the developing world: here, the problems are not "Tiebout model"-type mismatches in preferences and tastes, but a great want for basic needs (which are the same everywhere). Consequently, decentralization will bring negligible benefits, if any, to the 3rd world.

Corruption – or "informal taxation," will be decentralized along with everything else. In general, central government officials tend to be of higher rank, of higher status, and more mobile, therefore less tied to a particular locale. There are indications that this makes them more difficult to corrupt than local officials. If this is the case, corruption will rise with greater decentralization.

Beyond the Centralization-Decentralization Dichotomy. In general, some activities, cultures, regions, and services are more suitable to decentralization than others. Decentralization is certainly useful in some circumstances, but it is certainly not a universal cure-all. There is a critical mass beyond which smaller units of government will lack the capacity and/or incentive to engage in the task at hand. Units of government must be set up in such a scale that it is responsive to the needs of its citizens.

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Chapter Summary

Stohr, Walter (2001). "Introduction" in *New Regional Development Paradigms: Decentralization, Governance and the New Planning for Local-Level Development*. Eds. Stohr, Walter and Josef Edralin and Devyani Mani. Published in cooperation with the United Nations and the United Nations Centre for Regional Development: "Contributions in Economic History Series," Number 225. Westport, CT: Greenwood Press.

Globalization has two sides. On one hand, it has brought significant advances in economic, technological and democratic terms to many countries; on the other hand, in spite of these advances, poverty, hunger, health hazards, technological gaps and disparities in human welfare have also increased. Essentially, there has and continues to be a widening rift between the "haves" and the "have-nots". To address this increasing inequality, development efforts need to focus on and empower those who are being left behind. This requires a greater focus on and empowerment of local communities, which in turn requires the decentralization of administrative and political decision-making processes. In this introductory chapter, Stohr lays out the main themes of the book: 1) decentralization, 2) governance and the need to consider subsidiarity, equity and sustainability, and 3) the importance of civil society. Stohr also proffers a warning, namely that globalization and decentralization in tandem may harbingers the further fragmentation of civil society and undermine local power. However, the author concludes with recommendation to stave off this disintegration of social cohesion.

Decentralization

Inherent in the idea of decentralization is that different problems (and hence different communities) require different solutions. Traditional centralized governments are not able to address the myriad different situations that occur at the local level and new systems are needed. To solve local problems, new systems of government must be more decentralized and make increasing use of civil society and the private sector.

There are four major forms of decentralization through which responsibility may be transferred from a centralized body to lower levels of government:

- Devolution, which transfers governing responsibilities, such as planning and budgetary decisions to the local and regional levels and largely removes from the purview of the central government.
- Deconcentration, which connotes a spatial decentralization of the central government through the creation of local or regional line ministry offices.
- Delegation
- Divestment

Decentralization, the author writes, has the societal function to "allow society to achieve at the subnational and local levels the goals of poverty reduction, sustainable livelihood, environmental regeneration and gender equity" (2). The book, as Stohr notes, deals primarily with deconcentration and devolution and compares and contrasts their strengths and weaknesses through various case studies. The preliminary findings, which he outlines in the introduction, suggest that deconcentration, while maintaining a higher degree of centralized control over decision-making through line ministries, results in better resource allocation than devolution;

devolution, however, seems to encourage innovation in the creation of public/private partnerships and alternative financing strategies. At the same time, coordination between the various government departments and ministries may break down in the case of devolution.

Stohr notes, that despite the global discourse of decentralization and local empowerment, decentralization, particularly in the form of devolution, is not yet a widespread phenomenon. What passes for decentralization in the name of local control, looks more like deconcentration and can be viewed as a strategy to increase the presence of the central government in order to further its policy goals.

In addition, the authors of the book caution that decentralization is not a “panacea” to solve the problems of development, such as lack of participation, poverty and inequality. On the contrary, the institutionalization of decentralized decision-making whether fiscal, administrative and/or political should be adapted to the specific needs of each context. Decentralization, Stohr notes, in some national contexts with multiethnic populations engaged in power struggles may result in the fragmentation and breakdown of the national polity and civil society. In the worse case scenario this may lead to violence and chaos.

Governance, Subsidiarity, Equity and Sustainability

Governance is a governing structure in which the public sector, private sector and civil society cooperate to solve problems of a public socio-economic nature and to construct a more equitable society. Stohr introduces the concept of subsidiarity in order to reassert the importance of multilevel public decision-making power that begins at the local level and delegates power upward to higher levels of government. Because one of the main tenets of globalization is competition, Stohr notes, besides economic growth in some arenas, it has also fostered “individualization, atomization and a loss of solidarity” consequently contributing to the erosion of civil society (7).

While the expressed goal of decentralized governance is equity or at least improved equity, the key may be to strike the right balance of decentralized and centralized authority ensure redistribution both of resources and power in order to prevent that decentralization does not reinforce skewed local power relations and therefore preexisting inequalities.

Re-energizing and empowering civil society, Stohr argues, represents an important strategy in order to arrest the process of “inequalization” and reconstruct more equitable societies. “Changing public attitudes...from one of dependency to one of broad participation, initiatives and self-empowerment” represents an important first step toward development of an active civil society. Four types of barriers, however, impede the development of an engaged civil society: psychological barriers, economic barriers, social barriers and technical barriers. These “barriers” are rooted in a sense of helplessness and a psychological abrogation of local power to government authority. Overcoming this sense of disempowerment requires more than institutional decentralization. It also takes time (at least 10-15 years) and the cooperation not only of local agencies, NGOs and volunteer groups, but also the genuine involvement of national and supranational agencies in order to build an empowered sense of solidarity and common purpose. This may lead to long-term sustainability.

Stohr offers another definition of sustainability, which seems to contradict the direction of the arguments being made in this introduction, particularly when viewed in relation to subsidiarity. On the one hand, he seems define sustainability in local terms as “the ability to regenerate in a self-supporting way not only for environmental but also in human and social systems” (6); on the other, the concept of subsidiarity recognizes the necessity for redistribution and intervention from national and supranational institutions (6).

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Article Summary

Cerny, Philip G. 1999. "Globalization and the Erosion of Democracy." *European Journal of Political Research*, 26:2.

Philip Cerny analyzes the form and function of democracy in today's globalized world. He asserts that liberal democracy is being eroded through increased globalization and internationalism, and therefore factors such as public accountability, responsiveness, policy capacity, and legitimacy are all in decline. The result is the emergence of ad hoc public and private governance structures that undermine the democratic state from above and below, leading to a "durable disorder" of overlapping and competing institutions.

Cerny asks two questions:

1. To what extent is democracy 'as we know it' so embedded in the nation-state that we cannot transplant it into the kind of governance structures and processes characteristic of a complex 'globalizing' world?
2. To what extent is globalization itself essentially undemocratic?

The answers to these questions are very disturbing: "The kind of world which is crystallizing through globalization is not only inherently less permeable to democratically-grounded values and conceptions of the public interest or collective good, but also less capable of generating the policy outcomes that people want (p.6)."

Today's globalizing world is set on a somewhat shaky framework. A single world marketplace is emerging, resulting in the loss of state capacity to make effective economic policy decisions. This is a threat to democracy, as shown by a look at the history of political institutions throughout the world. Democratic transitions arise from the public demand for democracy when the state demands war taxes, manpower, loyalty, etc. If the state is unable to control economic policy, this natural system breaks down.

"The nation-state can in some ways be said to be both a product of the 'global' system of its era and the source of the dynamic drive for globalization (10)." Regardless, it is necessary to question how globalization affects the economic, social and political environment within which states operate. This includes the internationalization of markets, the effect of new production techniques that are more flexible and tailored to a range of different market structural conditions, and the development of new information and communications technology. These advances may affect the sovereignty of the state, in that they corrode and transform specific tasks, roles and activities.

Currently there is a 'fiscal crisis of the state': the costs of simply maintaining state functions and structures outstrip the sources of taxation and other income. Further, the expansion of international trade and financial flows, while at first supporting domestic economic management and social democratic functions of the industrial welfare state, now makes states vulnerable to political and market pressures of financial liberalization and increased international capital mobility. This change compounds with the delegitimation of the national and industrial welfare state, a call for lower taxes and balancing budgets, and loss of regulatory policy throughout the world.

State legal systems- the core framework of national sovereignty- are increasingly being bypassed, especially by the most internationally-linked firms and market actors. Democratic public law is being replaced with negotiated private law, due to the changing nature of the public/private relationship, and private sector interconnections across borders.

Cerny concludes with a number of predictions about the evolution of government structures and the role of democracy in the future. He presents three possible scenarios: global hierarchy, global chaotic anarchy, and the emergence of a relatively stable, quasi-pluralistic system that he calls "plurilateralism." Existing democracy, as we have known it, will no longer function effectively in a world of fragmented globalization.

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Article Summary

Donahue, John D. 1997. "Tiebout? or Not Tiebout? The Market Metaphor and America's Devolution Debate." *Journal of Economic Perspectives* 11(4) 73-82.

In this article, J. Donahue examines the Tiebout model of interjurisdictional competition at the state level. He agrees that competition of service provision and taxation at the local level can "wring out waste and tighten management by forcing officials to respond to citizens' priorities and deliver more value for taxpayers' money".

Donahue also argues that the market has real life conditions for competition that are not given at the government level. For example, new governments do not have free and easy entry. He questions solutions for government competition by saying that there are cases when decentralization can yield higher disadvantages than advantages to the well being of the local government. To support his view, he presented three cases in which interstate competition benefits are questionable:

- *The Case for Collusion.* This involves states working together instead of competing with one another to reach better outcomes. Interstate competitive bidding attracts "jobs" (investment incentives) but turns hazardous to the locality if it starts offering more than the new "job" is going to provide. For example, in the case of the states allowing gambling casinos, certain states that have not legalized casino gambling may suffer from its side effects such as crime and psychological illnesses, in addition to the money outflow of the residents who gamble elsewhere. In these cases governments would be better off if they collaborated and set common standards.

- ***Heterogeneous mobility and "Citizen's Surplus".*** Changes in state policy have made citizens feel that they are expected to "vote with their feet." Donahue says that only a low 3% of the US population moved to different states in 1990 (1990 US census results). He explains this with the "citizens surplus" concept that says that most citizens have other ties (extra value) to their locality (i.e., family, friends and economic connections) in addition to the services they receive or taxes they pay. Furthermore, although businesses do not have locational ties, they have other kinds such as strong investments or location access to inputs or markets. There are an increasing number of businesses that base their location decisions on state policies being made. Interstate competition can be expected to evolve to favor and attract businesses that are more mobile and desirable.

- ***Distribution, Income Inequality and Welfare Reform.*** Notorious gains have resulted from the transfer of distribution responsibilities to state governments (wage increases, targeting areas with distributional issues. However, Donahue says that the effects of the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 will remain a matter of conjecture until the results can be observed. Donahue also suggests the possibility of a "race-to-the-bottom"

triggered by the future cut of federal welfare transfers to the states that would increase their welfare benefit cuts so that they do not become “welfare magnets,” or attract the poor in search of better benefits.

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Book Summary

Donahue, John D. 1997. [Disunited States](#). New York: Basic Books.

John Donahue is critical of devolving the role of the public sector from the level of the federal government to that of the states. Donahue does not believe that states can relieve us of the need to confront our problems as a nation. He examines the rationale for devolution, including the notion that by allowing states to compete with one another they can become more efficient. He debunks this argument by offering examples of destructive competition in which states pursue the lure of capital through incentives such as location subsidies and tax exemptions, which do not serve to aid the state/local economy in the long run.

Donahue argues there is little evidence that the public sector will be more efficient at the state level than it is the federal level. He says that the challenges facing America today include mitigating cynicism in government on the public's part and narrowing the gap between the benefits expected from government and the citizen's willingness to endure taxation. As states take on more responsibilities they open themselves up to more criticism.

Donahue refers to devolution as "the endless argument" over the equilibrium between nation and state. From early on in U. S. history the balance between national and state authority has been one of contention. Donahue offers the prescription that devolution should occur in situations where states vary greatly in goals and where competition increases efficiency and is not destructive. He does not think that antipoverty policy should be devolved to the states. Donahue believes that a major focus of reform efforts on the part of policymakers should be fixing government as opposed to devolving its responsibilities down to the state level. For Donahue, devolution does not offer an easy alternative to changes on a national level.

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Book Summary

Katz, Michael 2001. [The Price of Citizenship: Redefining the American Welfare State](#). New York: Metropolitan Books.

In this book, Michael Katz explores the history of the American welfare state and offers his projections for its future. He reviews the major welfare policy overhauls of the twentieth century, paying attention to the ideological underpinnings of each one. This serves to chronicle the change in national mindset from welfare as a safety net for all, to a set of programs designed to force people into the workforce. As a result, welfare no longer serves to protect Americans from the unpredictability of the market, but rather makes them more subject to it.

Katz focuses on the increasing ties between welfare and employment. In the quest to distinguish the deserving from the undeserving poor, policy makers have gradually changed the definition of citizenship in America toward including only those with jobs. Katz discusses the magnitude of this shift, pointing out the negative effect that it has had on the nation's neediest citizens. Katz views the history of welfare through the lens of what it means to be an American citizen, giving an eye-opening view of the consequences of altering this definition.

[Chapter 1: The American Welfare State](#). Katz unpacks the "American welfare state" to reveal an elaborate framework of public and private systems.

[Chapter 2: Poverty and Inequality in the New American City](#). The author looks at the economic, demographic, and spatial forces that have created the modern American city.

[Chapter 4: Governors as Welfare Reformers](#). Governors became the most prominent welfare reform agents during the 1990s by cutting benefits, changing regulations, and experimenting with new welfare programs.

[Chapter 5: Urban Social Welfare in an Age of Austerity](#). Katz chronicles funding changes that have affected America's largest urban areas.

[Chapter 6: The Independent Sector, the Market and the State](#). American charity and social services have traditionally been provided by a complex blend of private organizations and public agencies.

[Chapter 7: The Private Welfare State and the End of Paternalism](#). The author describes the private welfare state in the United States, which consists of work-related benefits, mainly those offered by employers to their workers.

[Chapter 9: New Models for Social Security](#). Katz examines Social Security in the U.S. and the question of whether or not the government should privatize this system.

[Chapter 10: The Assimilation of Healthcare to the Market](#). Katz recounts the development of the U.S. healthcare system and notes its chronic inability to provide reasonable coverage at reasonable costs to those most in need of public assistance.

[Chapter 12: The End of Welfare](#). An overview of the pre-1996 welfare system, or Aid to Families with

Dependent Children (AFDC), and its overhaul under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).

Epilogue: [Work, Democracy and Citizenship](#). Katz analyses the contemporary concept of citizenship in U.S. society to discuss the viability of welfare in the current context of the three forces that are redefining the welfare state: 1) the war on dependence, 2) devolution, and 3) markets.

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Article Summary

Peterson, Paul 1995. "Who Should Do What? Divided Responsibility in the Federal System," *The Brookings Review* 13(2): 6-11.

Peterson discusses the roles of local, state and federal government in the provision of two types of public policies, developmental and redistributive. He points to recent history to argue that state and local governments should fund the development necessary to sustain economic growth, but that federal government should provide redistribution necessary to compensate those that do not benefit from the growth.

Developmental policies provide physical or social goods necessary for sustained economic growth (e.g., transportation, education, sanitation, police, and fire, etc.). They are best handled at the state and local level. Localities have incentive to provide more efficient goods and services because of the threat of people voting with their feet, especially locally. State and local government can share ideas and therefore promote a variety of good programs and also avoid bad ones throughout states and the country.

Developmental policies are not appropriate at the national level because they result in "pork," not growth. Programs and grants for developmental goods and services often do not help the economy but tend to be irresponsible expenditures by Washington politicians. In the past, this "pork" was made possible because inflation automatically pushed people into higher income-tax brackets causing tax increases that were disguised and politically feasible. This ended in 1981 with a sharp income tax reduction. Fiscal deficits, anti-tax pressures and senior citizen entitlements combined to push for more state developmental spending.

Redistributive policies transfer funds from those who have gained the most from economic development to those who have gained the least. This includes pensions, welfare, health care, unemployment, etc. Redistributive policies are best implemented at the national level because it is difficult for those who pay to move away. They don't work as well at the state and local level because those governments must be concerned with economic development and will therefore almost always provide less redistribution in exchange for a higher tax base.

A state that provides higher benefits than its neighboring state will see an inflow of applicants. Therefore, states try to match or provide lower benefits than their neighbors, resulting in a race to the bottom. This trend is supported by the very minimal increases in redistributive spending at the state and local levels since 1962, despite the greater awareness of the country to the problems of poverty. The new TANF block grants do not increase funding with an increase in applicants.

In an effort to cut federal spending in 1995, the Republican Congress and Clinton teamed up to give states responsibility for more of both types of spending, developmental and redistributive. Peterson feels comfortable with the shift of developmental policies to the

states, but not redistributive policies. State and local governments are becoming increasingly competitive and the tendency for them to provide redistributive services is decreasing.

Peterson predicts that shifts to states and cities will be “unworkable and short-lived” because they are “at odds with the underlying structure of the federal system.” He further predicts that if he is wrong, the well-being of those that depend on the programs will be dramatically compromised. Many examples can be seen of states cutting welfare programs when given the flexibility to do so.

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Article Summary

Powers, Elizabeth. 1999. "Block Granting Welfare: Fiscal Impact on the States," Occasional Paper 23. Washington DC: The Urban Institute. <http://www.urban.org/url.cfm?ID=309040>

The mechanism for federal funding of welfare experienced a serious transformation under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. Funding for state-run welfare programs switched from open-ended match grants to fixed block grants. The switch had a number of significant implications. The withdrawal of federal grants that matched state spending placed the burden of marginal costs of welfare programs on states. The implementation of fixed block grants from the federal government simultaneously increased the discretion of states to make decisions regarding their own welfare expenditures. Concerns over possible drastic cuts in benefit levels, tightened eligibility requirements, or the elimination of citizen entitlements to meet the new fiscal constraints have stimulated major discussions about the effectiveness of this switch. Some important questions are: What are the impacts on state fiscal environments by switching to block grants? How much of the burden of welfare finance does PRWORA effectively transfer to the states? How efficiently are the federal block grants and the additional "stabilizing funds" used in states?

Powers' study uses a simulation method to analyze the period since PRWORA was enacted. She finds that the total cost to the federal government under the new system of block grants (in the form of TANF - Temporary Aid to Needy Families) is just 1.4 percent less than the prior cost of AFDC - Aid to Families with Dependent Children. Therefore, while the nature of federal funding changed immensely under the new block grant system, the quantity changed very little. Also, the distribution of federal funding among states is uneven and arbitrary. As a result, some states have been forced to spend far more than others under TANF, while a number of other states spend much less.

The Contingency Fund is the stabilizing federal fund which is divided among those states with demonstrable needs. Due to unfair requirements, the distribution of this \$2 billion fund is also fairly arbitrary. In order for states to be eligible to receive contingency funding, they must demonstrate a significant increase in their unemployment rates and food stamp caseloads, as well as a 20 percent increase in their welfare spending. Under these conditions, states experiencing substantial and ongoing financial difficulties may still fail to meet the exact criteria for accessing the fund, while mostly larger states with higher concentrations of poor can qualify easily without significantly increasing their welfare spending.

This study argues for the need to adjust block grants during the funding cycle in response to the varied fiscal scenarios of the states. The current block grant system is not responsive to the evolving needs of individual states. The distribution of federal funds is based on illogical standards, and the fixed nature of these grants keeps states

from spending as much as they need. States exhaust themselves financially to qualify for use of the Contingency Fund. States now view welfare spending as more of a monetary risk than a positive social investment. If the federal government continues to devolve the fiscal responsibility of social welfare to the states in this way, state policymakers will continuously seek ways to make larger cuts in programs in order to survive financially and politically, and have less regard for the welfare of individuals left in need.

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Book Summary

Conlan, Timothy 1998. [From New Federalism to Devolution: Twenty Five Years of Intergovernmental Reform](#). Washington, DC: Brookings Inst. Press. Chapter 14: *"Intergovernmental Reform and the Future of Federalism."*

Conlan chronicles the changing trends of devolution and federalism reform over the past 25 years, through the tenures of Richard Nixon, Ronald Reagan and Newt Gingrich. Shifts are examined in terms of the differences in the men's ideology, methods employed and the outcomes of reform.

Conlan describes Nixon as an 'activist conservative.' Nixon's managerial approach, based on theories of public administration and finance, aimed to improve the management of intergovernmental programs by making government more efficient and responsive at all levels. Nixon emphasized devolution of power to the states by the 'sorting out' of the functional responsibilities of various governmental levels. In his view, the federal government was responsible for levying taxes while the states were responsible for administering local spending. To this end, capacity-building programs were included in block grants. Uniform national benefits for welfare were proposed, entitlement spending and intergovernmental regulations expanded. Nixon's policies were consistent with the theories of public finance.

Ronald Reagan, on the other hand, was highly skeptical of domestic governmental activism. He felt that Nixon's model of mere managerial restructuring constituted insufficient reform. Reagan advocated reduction in governmental activism at all levels, encouraging private initiative and volunteerism. Breaking from Nixon's approach of 'sorting out,' he aimed at bringing taxation and spending functions together under the federal government to reduce uncontrolled spending by states. Reagan proposed a \$90 billion plan to eliminate all federal aid programs and a corresponding 23% tax cut. The administration's domestic spending program deeply cut federal grants for state and local governments. Paradoxically, Reagan did maintain a safety net of programs for the poor, which grew during most of his presidency.

Gingrich attacked the redistributionist model of Reagan. He took special aim at cutting poverty programs, which had been supported during Reagan's reign. He wanted to remake the welfare state into an "opportunity society." By decentralizing power and decision making, he sought to reduce the size and reach of the federal government. The devolution of power to state and local governments was only a partial step. The bestowing of power to its origins, the citizens, represented true dispersal.

The intellectual basis of reform shifted across the past 25 years. Nixon's reform agenda was guided by theories of public administration and finance, which aimed at restructuring intergovernmental relations on the basis of executive leadership, clear lines of authority and improved coordination. During the eras of Reagan and Gingrich, diminishing federal responsibility in redistributive programs indicated the shift from theories of public finance.

The reforms of Gingrich show an increasing proclivity to the public choice theory, which emphasizes controlling public sector growth and non-interference in the market.

The decreasing difference between federal and state shares of total government revenues, modernization of state governments (in terms of strengthened institutional capacity), well balanced fiscal systems and increased representation of minorities support devolution. The move toward decentralization can be viewed as the decline of the nation state as a result of the interplay of political and economic factors. The decline of the nation state and the increasing demands of citizens from local governments has led to the creation of sub-national entities that are required to take on more responsibility for provision of goods and services than before, and hence demand greater local autonomy and policy devolution.

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Article Summary

Gold, Steven D. 1996. "Issues Raised by the New Federalism." *National Tax Journal* 49(2) 273-87.
<http://ntj.tax.org>

Two years after the Republican congressional victory marked by the "Contract with America," Steven Gold examines the effects of New Federalism and what he calls the "devolution revolution" on local and state governments. Gold points out that devolution is not an amorphous concept, but is varied in both content and application.

Three main components of the devolution program are stated:

1. *Aid reduction to state governments*

Federal aid represents between a quarter and a third of state government resources. As most states have structural deficits in future payments, there is the possibility of a looming fiscal crisis. Several factors could ameliorate the crisis, including gradual phasing of federal aid reduction, economic growth (and tax receipts) from a balanced budget, and the possibility of smaller cuts over time.

2. *Shift from matching to non-matching grants*

This policy shifts the burden of federal programs such as welfare programs and Medicaid onto state governments. The shift means that there would be less federal aid to offset the contraction of state revenues in the event of a recession; hence, the state budget would be severely stressed in a recession.

3. *Enhanced flexibility for state governments*

The efficiency gains from allowing state governments greater autonomy would not necessarily be offset by the negative effects on the budget. These efficiency gains rely on the ability and creativity of the individual state governments, and it is likely that these governments will exploit their newfound freedom through fiscal manipulation rather than increasing efficiency.

The second part of the article describes five trends in state policy that necessitate further research. These five areas are:

- . Structural balance of state budgets
- . Discretionary tax changes
- . Determinants of state spending
- . Interactions between state and local governments
- . Effects of federal aid

Finally, the devolution program involves powerful structural changes that require further

research. He worries that squeezing the system from the top will result in instabilities elsewhere. Unless there is less structural rigidity, and increased research, the devolution program is unlikely to reach its full potential.

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Chapter Summary

Salamon, Lester M. (2002). *The Tools of Governance: A Guide to the New Governance*. "The New Governance and the Tools of Public Action: An Introduction." Oxford: Oxford University Press.

"New governance" is a new way of thinking about how government and public administration meet the diverse needs of society. New governance is a movement away from public agencies and programs to a collaborative, tools-based system of public action. While earlier government activity focused on direct delivery of goods and services, new governance leverages third parties and seeks to network their capabilities to create solutions to an increasing array of public problems. Loans, loan guarantees, grants, contracts, social regulation, economic regulation, insurance, tax expenditures, vouchers, and more serve as tools that contribute to an increasingly decentralized government structure.

In new governance, picking the combination of tools to use involves political decisions. Salamon notes, "a strong pro-market bias underlies tool choices in the U.S." Under new governance, public administrators become network managers, and "activation," "orchestration" and "modulation" skills become essential. New governance is more than contracting or decentralization. It is the replacement of "command and control" with a network of managed third parties.

Tools for public action are required to build the knowledge base the "new governance" requires. Salamon evaluates tools for public action using four dimensions (coerciveness, directness, automaticity, and visibility) and five criteria (effectiveness, efficiency, equity, manageability and political legitimacy). Governments are increasingly likely to adopt less coercive, indirect, automatic and invisible tools, which are typically delivered by private actors in the form of a loan or liability. Although these appear effective and efficient, they have significant accountability and legitimacy challenges as well as management difficulties.

A tool for public action is defined as "an identifiable method through which collective action is structured to address a public problem". (p.19) Tools differ from programs in that a single tool can be applied to different programs. Tools structure action by defining the participants of public programs, their roles and the relationships amongst them. The entities that exercise tools for public action are not only governmental but also private. A tool is a package of different elements, such as a type of good or activity (a cash or in-kind payment or a restriction), a delivery vehicle for this good or activity (through a loan, a grant, voucher, the direct provision of service), a delivery system (a government agency, a nonprofit organization), and a set of rules defining the relationships among the entities that comprise the delivery system.

Tools can be evaluated through five criteria: *Effectiveness, efficiency, equity, manageability* and *legitimacy*. Salamon also examines each tool by four dimensions. First is the degree of *coerciveness*, which measures the extent to which a tool restricts individual or group behavior. *Directness* measures the extent to which the authorizing body of public activity is involved in its execution. *Automaticity* measures the extent to which a tool utilizes an existing administrative structure. *Visibility* measures the extent to which the resources devoted to a tool show up in the normal government budgeting and policy review processes.

With the growing tendency toward decentralization, public skepticism of government, and efficiency as a criterion of public action, indirect, invisible and automatic tools are increasingly popular. However, policymakers are under increasing political pressure to

select tools which are the most difficult to manage and the most likely to diverge from public objectives. This leads to more management accountability and legitimacy challenges.

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Article Summary

Rhodes, R.A.W., (1996). "The New Governance: Governing without Government," *Political Studies* XLIV:652-667.

In this article Rhodes grapples with the significance and definitions of "governance" as a way to explicate the trends and form of British government reform since the 1980's. Rhodes reviews and critiques various definitions of 'governance.' And find these inadequate in explaining the new governing structure that had developed in Britain by 1995. Rhodes begins by identifying two generally accepted and understood governing structures 1) hierarchies, namely government bureaucracies, and 2) markets, the rallying cry of privatization advocates in the 1980's. Rhodes, however, finds these lacking in explanatory power and adds a third one, networks, which he recasts as "governance," and posits as an alternative conception of contemporary governing structure in Britain. Before arriving at his definition of governance as "self-organizing networks," Rhodes evaluates different strands of literature assessing government reform and governance in order to arrive at a critical assessment of how the term "governance" may contribute to our understanding of the current working of governments as they become increasingly embedded in network relationships in order to provide services to the public.

- Governance as **Minimal State**, Rhodes argues, embodies the ideological and political call for downsizing the state.
- Governance as **Corporate Governance** focuses our attention on the policy-making, goal-setting role of government and sets the requirement for transparency and public accountability.
- Governance as **New Public Management (NPM)**, Rhodes argues follows closely from the above criteria and develops a notion of government directing or "steering" action by structuring the market, which takes over the actual service provision or the "rowing" function.
- Governance as **Good Governance**, as advanced by the World Bank "marries new public management to the advocacy of liberal democracy" (657).
- Governance as a **Socio-cybernetic System** can be conceptualized as the effects of the interactions among government, social, political and economic actors wherein no one actor has a monopoly over information or expertise. In other words, the public may set broad goals and create a regulatory framework but as actors interact within this institutional environment, they work in and reshape the network of relations to solve problems.
- Governance as **Self-organizing Networks** is related to the above form of governance in that it focuses on governance as referring to networks in which private, non-profit, and public individuals and organizations interact to provide public services. However, the focus here is on the autonomous character of these networks as deregulation and alternative service provision mechanisms increasingly debilitate the ability of government to steer.

In order to distance his conception of governance from NPM and refute its applicability to inter-organizational

networks, Rhodes highlights four ways in which it fails to capture the characteristics of contemporary government structure: 1) NPM's focus is within the organization instead of managing outside linkages; 2) NPM concentrates on objectives instead of on the importance of maintaining relationships and trust; 3) NPM highlights results while Rhodes' model reveals a possible breakdown in public accountability; 4) NPM's emphasis on competition does not fit with the imperatives of steering inherent to a network model.

Definitions of governance as a socio-cybernetic system, or as self-organizing networks then are closest to Rhodes conception of governance. In this model no single actor, including government, has all the knowledge, tools, or power to either dominate or to make policy work. "The task of government is to enable socio-political interactions" and to manage relationships of trust and cooperation within a network (659). Government becomes something broader – 'governance' – when it provides services through outside organizational patterns. Finally, he suggests that networks to provide services are self-organizing, and that these "integrated networks resist government steering, develop their own policies and mold their environments" (659).

This emerging governing structure, however, Rhodes postulates, poses serious challenges to accountability and governability, particularly within the context of representative democracies. The fragmentation and decentralization of service delivery reduces the government's control over implementation and its ability to co-ordinate and steer the networks. Worryingly, the complexity of these relationships also erodes responsibility and accountability since outcomes are the product of multiple actors. To address some of these concerns Rhodes suggests tools of intergovernmental management to strengthen communication and facilitate problem solving between different branches of government. At best these efforts may help the problems of co-ordination and steering but cannot address issues of democratic accountability. Rhodes cautions that the policy networks he has identified may both shut out the public and be resistant to central guidance, "becoming the prime example of governing without Government" 667).

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Article Summary

Turner, Bryan S. 1990. "Outline of the Theory of Citizenship," *Sociology* 24(2) (May): 189-217.

Bryan Turner critiques T.H. Marshall's conceptual framework of citizenship and offers his own concept, both in response to common critiques of Marshall's framework and in recognition of the change from a national to global perspective.

T.H. Marshall argued that there are three basic manifestations of citizenship - the civil, the political, and the social. He stated that 18th Century Britain saw the development of the civil rights of individuals; the 19th Century saw the development of political rights in the increased access of workers to the parliamentary process; and the 20th Century saw the development of social rights, which became the basis of claims to welfare and entitlements. Marshall further argued that a contradiction exists between formalized political equality, and ongoing social/economic equality, rooted in capitalist society and the existence of private property.

Turner summarizes the many critiques of Marshall's concept, but ultimately criticizes him most strongly for his anglocentric analysis, which explores the concept of citizenship solely as it developed within the British experience. Marshall's concept of the capitalist state fits uneasily into today's notion of global capitalism, or "disorganized capitalism" (p. 195), in which the state has less control. A more thorough analysis of the development of citizenship across various nations can lead to the recognition that several forms of citizenship exist.

Turner ends his analysis by commenting on globalization and changing concepts of citizenship. He mentions both an increasing regional autonomy and localism, and the move toward global notions of political responsibility. We must develop a new conceptual framework in order to express new ideas of citizenship in the global world. The concept of citizenship can also be further investigated as it has evolved in ethnically complex countries and in developing countries.



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Article Summary

Marshall, T.H. (1950). "Citizenship and Social Class" in *Citizenship Debates: A Reader* ed. by Gershon Shafir, Minneapolis: University of Minnesota Press, 1998.

In this essay on citizenship, T.H. Marshall asks how our modern idea of citizenship, built on equality, can coexist with the competitive market, based on inequality.

He first outlines the history of citizenship over the past 250 years by dividing it into three threads: 1) civil: rights necessary for freedom; 2) political: equal rights under the law and the right to participate politically and 3) social: the right to a measure of economic welfare and security.

The civil rights aspect of citizenship developed in Britain in the 18th century, with the rise of individual liberty, the right to work in the occupation of one's choice, and the end of servile status for peasants. The political rights aspect developed in the early 19th century, with the disconnection of the right to vote from economic status. Social rights of citizenship formed in the 20th century, starting with the introduction of free and compulsory elementary education.

Our egalitarian society has been able to reconcile itself to the inequalities of capitalism by holding out a supposed equality of opportunity. All are capable of enjoying certain rights (such as property ownership) in that all are allowed to strive for them without hindrance or special protection. At the end of 19th century, this conception of citizenship created a sense of common membership in and loyalty to the nation.

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Article Summary

Holston, James and Arjun Appadurai (1999). "Introduction" in *Cities and Citizenship* ed. by James Holston.

Citizenship is more than the right to participate in politics. It includes cultural, civil and socioeconomic rights. Since the 18th century citizenship and nationality have been linked to establish full membership in society. What it means to be a member in society has been a historical development that has been conservative, exclusionary, democratic and revolutionary. Nations established citizenship as an identity which coordinates all other identities. Cities are the main arena for the development of citizenship and signify the enormity of citizen rights and all of its liberties. Today transformations have created many uncertainties about aspects of citizenship that in the past seemed secure. These transformations are a result of an increasing dichotomy between the global and national arenas.

One of the problems with citizenship is that in theory, full access to rights depends on citizenship but in practice, formal membership is not a sufficient condition for citizenship. An example is that poor citizens may have formal rights but are excluded from participation and the rights of citizenship. Similarly, legally resident non-citizens often have the same civil and socioeconomic rights as citizens.

Some people believe that citizenship should be made more exclusive by denying social services to non-citizens or by enacting zoning regulations that keep the undesired out. Others argue for a more inclusive citizenship by addressing it in non-local and supranational terms. Holston believes that both forms of citizenship can have negative outcomes. Localism can result in violence and racism and the elimination of local community prevents active participation.

The Liberal Compact claims that individuals must pursue their own ends with a similar liberty for all. Critics argue that people do not have the moral depth that liberalism requires and that it produces passive citizens. The most vocal critics affirm the right of difference as an important part of citizenship. There is a growing rejection of citizenship as a homogenizing force that impoverishes and reduces. The politics of difference indicates a basic change in the historical role of citizenship. There are arguments that all people have a right to a minimum standard of living, because of their right as citizens. Social movements of the urban poor have expanded citizenship rights.

Trans-nationalization creates new forms of inequality, reduces loyalty and commitments to place and generates a new global network of cities. Nations must change their structure to attract global resources and accept legal authority of transnational regulatory bodies. This gives power to managers of social capital and takes away privileges from labor. The international market has its own laws that de-legitimatize national laws and

citizenship. With the break down of nationality, until trans-nations become stronger, cities are important sites for rethinking citizenship.

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Chapter Summary

Katz, Michael (2001). "Work, Democracy, and Citizenship," epilogue of *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books.

In his epilogue, Katz analyses the contemporary concept of citizenship in U.S. society to discuss the viability of welfare in the current context of the three forces that are redefining the welfare state: 1) the war on dependence, 2) devolution, and 3) markets. Within the welfare state ideas about citizenship revolve about whether people born or nationalised are entitled to citizen rights (pre-existing status) or whether people deserve to be citizens (achieved status). By linking the citizenship to a welfare state rooted in the notion of earned benefits and family values, Katz argues, the deserving citizens become defined as those who have jobs and form families. Thus those who do not work, or are single parents, become marginalized as the undeserving poor and consequently second class citizens, disproportionately represented by women and people of colour.

The War on Dependence:

Katz describes how the discourse of dependence the Welfare reforms in the 1990s has "encouraged tightening the links between benefits and employment, which makes health insurance, retirement pay, or income support more difficult to claim outside of a regular job" (353). At the same time, the increase in jobs is largely in the lower income sector where competition is high due to flex-work and an increased labor supply of former welfare recipients. Katz notes a distinction between 'work' and 'a job,' where work is that which reproduces society, (e.g. domestic labour, community organising, promoting culture), and a job is only that aspect of work that brings you into a relationship with an employer. In contemporary U.S. society, Katz illustrates, good citizens are those who focus on the job instead of work, thereby undermining the social reproduction of society: "There is something bizarre about a rich society that assigns so many of its important tasks to a voluntarism that is defined as different from work and that carries no entitlement to the social benefits of citizenship" (354).

Devolution

Katz argues that allowing states to run their own public benefit systems has created vast state by state differences between eligibility for public assistance. As a result it becomes perfectly acceptable that citizens in identical situations experience hardship only due to "an accident of geography" (355).

Markets

Katz argues that the privatisation debate has not sufficiently engaged 1) the question of power in market relations and 2) where markets are appropriate and where they are not. Markets, Katz asserts, reduce societal complexity to mere material incentives and preferences resulting in a process of individualisation that turns relations into commodities and erodes social responsibility. Because markets recast democracy as consumer choice, they redefine not only the welfare state but also American democracy. He concludes that neither the inflow of immigrants nor the challenges of multiculturalism undermine national cohesion, but rather unchecked markets. To contest this process, Katz identifies three points of action: 1) loosen the link between public benefits and employment 2) establish health care as a citizenship entitlement and 3) focus less on caseload quantity and make public assistance accessible to the poorest in society.

Why Should Local and State Governments Pay Attention to the New International Treaties?

Jennifer Gerbasi and Mildred Warner

June 2002

International trade arena is gaining a new audience. Traditionally a matter reserved exclusively for the federal government, state, county and municipal governments are taking a closer look at how the new generation of trade treaties may place greater demands on all levels of government. Governments are trying to understand the best way to enjoy the benefits from the markets and protections provided by the treaties while retaining local governmental authority. The Western Governors Association, the National Council of State Legislators, and the National League of Cities are a few entities that have made public requests to the US negotiating body, the United States Trade Representative (USTR) for clarification of or protection from the treaty obligations. Why are they concerned?

International Trade Treaties Impact Local And State Laws

As currently formulated, the new treaties may significantly restrain the authority of state and local governments. Though the treaties do not directly require changes to existing laws, they do lay a foundation for challenging democratically created laws and customary domestic practices. A broad range of state and local powers may be impacted including, but not limited to zoning, water management, land use planning, the finality of the court system, and public service provision^[i]. Regional cooperation, business subsidies, regional environmental plans and precautionary health regulations are common tools planners and legislators use to encourage growth and protect human health as well as property values. These mechanisms may be impractical or non-compliant with treaty obligations. New international standards stemming from free trade treaties (such as the North American Free Trade Agreement (NAFTA), the Free Trade Area of the Americas (FTAA), and the General Agreement on Trade in Services (GATS) waive government immunity, forbid the use of many planning tools like those listed above, and supercede local preference and democratically established legislation. Other areas that may be affected by the treaties include pesticide residue laws, recycled content laws, pollution control, licensing requirements and labeling. Customary public policy considerations may not be legitimate in the international trade arena.

Deference to State Laws Supplanted by International Standards

States and localities are currently able to customize legislation to meet local needs and concerns. The treaties obligate federal, state and local laws to comply with international standards. If there is a conflict, international arbitration tribunals are authorized to interpret the law and levy heavy financial fines for non-compliance. Historically, when federal and state laws have differed, US courts have given deference to state laws as long as they did not contradict the federal law. The government closest to the citizens is assumed to be most able to represent local preferences and priorities. Public policy and economic conditions are criteria for selecting what is appropriate in the context of each geographical area. These new international trade tribunals are not obligated or encouraged to follow or consider US customs or law. State and federal governments have historically enjoyed some protections from frivolous lawsuits because they cannot be sued without consenting to the case. Under the NAFTA, immunity is waived. Foreign nationals with financial investments in the United States can challenge laws they perceive as limiting expected profits. Investors challenge the national government directly, not the specific state or local government. State and local governments have no seat at the negotiating table or arbitration panel hearings. It is unclear whether the government body that passed the offending measure or the nation will pay if the challenge is successful.

New Rights Bring Investors on Par with Nations

An "investor" is any person, company or lender with a financial venture that sells goods or services in a participating country where the investor is considered foreign (i.e. US investor in Mexico)^[ii]. These investors have a right to sue for "government measures" that affect their investments negatively. The rights are based on the legal principle that commercial entities have a right to be ruled by the least burdensome laws necessary to achieve the stated objective. Laws must pass a three-part test that proves that:

1. the objective is considered legitimate under the WTO;
2. it is the least trade restrictive alternative available; and
3. the measure does not constitute a disguised restriction on trade.

These new investor rights may exceed the rights given to citizens under the Constitution. Foreign investors may be paid for partial regulatory takings that are considered non-compensable, reasonable losses for the privilege of citizenship in the domestic context^[iii]. This change is the basis of much of the concern voiced by state and local governments.

Devolution and Preemption: Concurrent and Competing Trends

In contrast to "devolution" which is increasing the authority of state and local government, international trade agreements appear to encroach on state sovereignty. State and local government associations have made public statements to Congress outlining their concerns that State rights to self-governance under the 10th amendment are being eroded. The National Association of Counties (NACo) has long been on guard against federal preemption in the domestic context. NACo has only recently voiced concerns about international trade treaties prompted by investor provisions in the Andean Trade Promotion and Drug Enforcement Treaty. California has created the Senate Select Committee on International Trade Policy and drafted legislation specifically to identify the potential threats to public health, the environment and the legislative process. Local governments from Oregon to Massachusetts have written resolutions requesting a more meaningful presence in the negotiations, or the ability to opt out of these treaties entirely. Academics, non-governmental organizations (NGOs) and the international community are also studying international treaties and attempting to join the debate at the negotiating table.

The concerns of the government groups are similar, and the resolutions to Congress and requests for information from the USTR have common themes. State and local governments are seeking to participate fully in the negotiations to try to preserve the traditional powers of state and local governments. In case of failure in that pursuit, they are requesting that the USTR protect these rights in the negotiations. Specifically, they are asking the USTR or Congress to:

- Provide open and transparent proceedings including negotiations, submissions and arbitrations and a mechanism for meaningful participation in those proceedings.
- Reserve equal rights to the people, and apply constitutional restrictions equally to foreign investors.
- Preserve police powers that are the basis for protecting human health, environmental resource conservation and fair competition.
- Make states and localities immune from the investor challenges.
- Require the investor's national government to consent to the claim being brought against the defending government to avoid frivolous claims or those that do not serve the greater public interest.
- Preserve the concept of federalism in practice in the United States by ensuring that States continue to be the dominant policy makers in traditional areas such as land use planning, education, and public services.

Financial Claims May Stall Legitimate Regulations

In theory, governments can continue to manage in the usual fashion even under the treaties. However, the taxpayer would have to pay millions of dollars for the federal government to defend the measure and pay the fines if defeated. The current potential liability to the United States from NAFTA claims is \$1.8 billion USD. The number of claims is expected to expand proportionally with the addition of 31 more countries under the Free Trade Area of the Americas (FTAA). There is no indication at this point if the Federal government will pass the cost of fines on to the state and local governments or continue to pay out of general funds.

The challenges span the gamut of local legislative efforts^[iv].

- Methanex v. United States: A Canadian company is challenging a California resolution to ban a ground water pollutant. Potential cost: \$970 million
- Ethyl v. Canada: \$13 million was paid as a settlement in a case parallel to Methanex. Canada also apologized and lost the right to ban the chemical (banned already in some US states).
- Loewen v. United States: Challenges the Illinois standard court of appeals process, which requires a bond equal to 150% of damages. Potential cost: \$725 million
- Sun Belt Water, Inc. v. Canada: Questions the right to refuse to export a natural resource. Potential cost: \$220 million
- Metalclad v. Mexico: \$17 million paid to stop water pollution from a hazardous waste facility.

Ohio Democrat Congressman Sherrod Brown stated that “in NAFTA and in every public health challenge under the WTO, 33 straight times, public health laws, environmental laws, and food safety laws, every single time they have been struck down”. Given the potential implications of these challenges, it is surprising that there are not more governments actively involved in this debate. In early 2002, Bill Moyers broadcast the issue to the public over PBS in the program “Trading Democracy”. The media has given a glimpse of the increasingly popular protests against “free trade”, the WTO and the FTAA. However, these protests have not focused on state and local government concerns. NGOs have been effective in getting their agenda heard, but state and local governments have not been very active in the public debate.

More State and Local Governments Should Join the Debate

States and local governments rely on history and future demands to formulate current but predictable legislation that meets the needs of the communities they serve. State representatives have not convinced the treaty negotiators of the dangers of loss of this stability due to trade obligations. Treaty negotiators believe free trade treaties should focus on economic issues and some state and national sovereignty must be lost in the give and take of treaty formation.^[v] Neither the framers (including government and commercial interests) nor the public are focused on the implications for everyday governance of our states and cities. Planners and elected representatives of this country need to educate themselves about the issues that affect their constituents and regions. A balance must be struck between the benefits of free trade and the preservation of state and local sovereignty.

^[i] Keuhl, Senator S., Senate Joint Resolution No. 40 – Relative to international investment agreements submitted to the legislature March 20, 2002.

^[ii] The North American Free Trade Agreement, Chapter 11, Article 1101.

^[iii] Dalton, Robert, E., 1999. National Treatment Law and Practice. M. Leigh and L.B. Ederington, Eds. Chapter 6, “United States”. American Society of International Law, Washington, DC.

^[iv] International Institute for Sustainable Development, 2001. Public Rights, Public Problems: A guide to NAFTA's controversial chapter on investor rights. World Wildlife Fund, Canada.

^[v] Record of statement to the Subcommittee on Ways and Means Hearing on Free Trade Deals: Is the United States Losing Ground as its Trading Partners Move Ahead? March 29, 2001.

TAKING THE HIGH ROAD: LOCAL GOVERNMENT RESTRUCTURING AND THE QUEST FOR QUALITY

**Michael J. Ballard
Mildred E. Warner
Department of City and Regional Planning
West Sibley Hall
Cornell University
Ithaca, New York 14853
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A full copy of this report and a searchable database of the case studies can be found at Professor Warner's Local Government Restructuring web site:
<http://www.crp.cornell.edu/projects/restructuring/>

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EXECUTIVE SUMMARY

All local governments face challenges to improve service delivery. This report outlines two alternative strategies—the "high road" which uses new management innovations to increase internal productivity, and the "low road" which focuses on downsizing and contracting out. While other studies have focused on contracting out, this study provides a longitudinal look at contracting and presents detailed case studies of municipalities, which have brought back in house previously privatized services. These case studies provide empirical evidence on the problems associated with contracting and the potential for internal restructuring as an alternative.

Contracting is costly. Research on problems with contracting out in the for-profit sector is shown to have parallels in governmental contracting. Difficulty of contract specification (especially for complex services), the cost and difficulty of monitoring contract performance, and limited cost savings are some of the problems that cause governments to bring previously privatized work back in house. Broader public values—responsiveness to changing citizen demands, maintaining high standards of public service delivery among the workforce—also can be compromised with privatization.

While competitive bidding is associated with some cases of contracting back in, for many governments' dissatisfaction with privatization was so strong that no effort was made to rebid the contract. In many of these cases new patterns of labor management cooperation within the public sector resulted in improved efficiency and service quality at lower costs than private contracts. Taking the "high road" of restructuring through improved labor-management cooperation can provide better quality service with fewer risks and greater social rewards. For those public officials who truly wish to "reinvent government" internal management reforms deserve a closer look.

Rapid changes in the economy on the one hand and the unrelenting demand for public services on the other have placed new pressures on all levels of government to "banish bureaucracy" and "reinvent" the public sector. Reinventing government is a noble and desirable goal, but many reform efforts have failed by focusing too heavily on downsizing the public workforce through the privatization of government services. While privatization can take many forms, the most common practice is for governments to "contract out" services to private organizations. In these situations the government continues to use public funds to pay for services, but the responsibility for production of the service is shifted to a private firm.

In some instances, privatization through contracting out is part of a larger ideological crusade to reduce the absolute size of government.¹ In other cases, contracting out is driven by management fads imported from the private sector, where the practice is commonly used but remains poorly understood.² A third influence is the general shift in American society towards greater mistrust of government coupled with a renewed faith in the textbook model of free markets.³ When combined with advice from popular management books and magazines to

become more "businesslike" in their operations, many public managers find the lure of contracting out to be irresistible.

Are the proponents of contracting out right? To what extent have the economic and organizational benefits actually followed? This study attempts to answer these questions by looking at local governments' experiences with contracting in the United States. The report begins with a review of several academic studies that assess the impact of contracting out on individuals, organizations, and communities. Unfortunately, many of these studies show disappointing results with contracting out in both the public and private sectors. To better understand why contracting out often has not lived up to its promise, this report looks at several case studies from across the country where public officials have chosen to bring work back in house following a period of privately produced service. Finally, the report looks at one important but underutilized alternative to privatization, namely, the refashioning of labor-management relations through innovative "partnership" programs. These programs demonstrate that the efficiency of public services can be improved significantly through the use of internal management reforms. Given the risks involved in privatization, labor-management partnerships should be

given priority over contracting out when public managers see the need to restructure local government services.

Contracting out imposes high costs on individuals

Proponents of contracting out argue that both public and private organizations need to "cut the fat" and get "lean and mean" in order to survive.⁴ Given that most government services are labor-intensive, contracting out services provides government with an indirect method of reducing the number of individuals it employs directly. When hiring decisions are no longer in public hands, privatization allows contractors to use lower priced labor without having to adhere to civil service wage scales. Government-by-contract also permits greater flexibility in determining employment levels, work rules, and health and safety standards since private firms are often subject to less restrictive regulations than public entities.⁵

Increased flexibility, however, comes at a price. To begin with, contracting out imposes high costs on individual workers. The overwhelming majority of government employees are individuals who have performed well and played by the rules, but often pay dearly in the form of increased job insecurity and lower wages and benefits when work is contracted out to the lowest bidder.⁶ Furthermore, because of the specialized nature of many private contractors, workers' opportunities for advancement and training may decline as well. The janitor who works for local government may, over time, work her way up in the system via a series of vertical and horizontal moves through different departments. In organizations that specialize in just one service, however, those ladders of opportunity

disappear for all but the most skilled employees.

Contracting out has society-wide consequences

Contracting out also imposes high costs on society. It is no secret that America's urban areas suffer from a host of serious social and economic problems, ranging from crime and unemployment to racial segregation and increasing class inequality. In a provocative and insightful essay published in the *Boston Review*, Daniel Luria, Vice President of the Michigan Manufacturing Technology Center, and Professor Joel Rogers of the University of Wisconsin contend that these unfortunate outcomes are the direct result of public policy choices that favor "low road" development strategies in response to new competitive pressures.⁷ Low road employers compete by keeping costs, and therefore wages, as low as possible. When low road strategies dominate the local economy, economic insecurity, rising inequality, and poisonous labor relations often follow.

In contrast, "high road" organizations rely on better quality products and superior service to stay ahead of the competition. Management experts contend that emphasizing quality and service requires a well-trained and highly committed workforce in order to be successful. These organizational demands, in turn, translate into higher wages, cooperative labor relations, and more innovative and productive workplaces. In addition, high road employers attract superior quality workers and typically serve as better corporate citizens in the communities in which they operate.

Box 1. Taking the Low Road: Privatized Trash Collection in New Orleans

In the mid-1980s, the City of New Orleans, Louisiana paid sanitation workers about \$9 an hour and provided health insurance and other benefits. Ten years later, after privatization, those same workers are hired on a daily basis, paid the minimum wage, and have no benefits.

Waste Management, Inc., the firm responsible for trash collection in New Orleans, uses a subcontractor to fill its daily need for "hoppers," sanitation workers that dump trash into the back of garbage trucks. Hoppers receive no training from the company, and are responsible for providing their own safety equipment such as lifting belts, face masks, and safety vests.

Some hoppers meet their drivers in the truck yard, but most are picked up under a nearby freeway each day at six o'clock in the morning. A full day's pay is not guaranteed, and a truck breakdown can leave a hopper stranded and unpaid.

Waste management's treatment of its employees had gotten so bad that in one month the company missed pickups at 8,800 locations because it didn't have enough hoppers to collect the trash. In response, the city threatened to fine Waste Management \$280,000 for the uncollected garbage.

The hoppers' performance has come under strong criticism as well. According to city officials, it is not uncommon for hoppers to demand tips or beer in exchange for picking up a resident's trash. Even the city's sanitation chief says she and her family were threatened after refusing a hopper's demand for cash.

Source: "Two-Edged Sword: More Public Workers Lose Well-Paying Jobs as Outsourcing Grows", *The Wall Street Journal*. August 6, 1996. p. A1.

While Luria and Rogers' research primarily looks at the business strategies of private companies, the same lessons apply to public sector employers as well. Governments, like private firms, also consciously choose to follow the high road or the low road when making employment and contracting decisions. Local governments can walk down either path, but the potential benefits to both the city and the community are vastly greater on the high road. Public officials who choose to follow the high

road not only benefit directly from the efficiency gains that flow from high-performance workplaces, but they also benefit indirectly from the important social benefits that such a strategy produces. In general, high-road strategies are strongly associated with healthy and stable local communities. Strong communities, in turn, help to attract and keep the brightest people and the most dynamic businesses in the region.

Examples of how high road and low road strategies play out at the local level are presented in Boxes 1 and 2. In these cases, both New Orleans and Portland saved money by restructuring traditional service delivery methods. Portland's high road strategy, however, accomplished much more than simple cost savings. Building upon Portland's success in constructing a new baseball stadium, the city and its unionized workforce have been able to create a new level of trust and cooperation across a wide range of public services. In addition to reducing expenses, the

introduction of innovative management reforms has produced major service improvements, has strengthened both management and the union, and has resulted in a far less adversarial bargaining relationship than had existed previously. In contrast, the New Orleans case vividly illustrates the dark side of low road management strategies. While New Orleans' strategy may have saved the city money, the negative impact of such a strategy on residents' quality of life far outweighs any cost savings that resulted from privatization.

Box 2. Taking the High Road: Investing in Employees in Portland, Maine

In 1992 public officials in Portland, Maine succeeded in attracting a minor league baseball team to the city. At the time, however, the city faced a major league problem: it had no adequate facility for the new team to play, and lacked the funds necessary to hire a private contractor to do the job.

In response to this opportunity, the City Manager's office and union leaders jointly developed an innovative plan to construct the new stadium using Public Works employees and equipment. The plan involved 10-hour work days and an incentive program that rewarded employees based on productivity levels. Similar agreements were negotiated for employees not assigned to work on the new stadium since they were now required to provide the same level of service with fewer employees during the seven months it took to construct Hadlock Field.

The Hadlock Field construction project was so successful that the city created its own in-house construction company. The construction company is guided by the same principles that made the stadium so successful: teamwork, cross-training, labor-management cooperation, flexible work schedules, and employee bonuses for meeting project cost and quality objectives.

Projects tackled by the construction company included rebuilding sidewalks, street construction and maintenance, and sewers. The city is in the process of expanding the range of work projects tackled by city crews, and expects to take on more projects each season in the future.

Source: Patricia Peightal, et al., "Labor-Management Cooperation—City of Portland, Maine". *Public Personnel Management* 27(1) Spring 1998. pp. 85-91.

The benefits of contracting out have not materialized

As the preceding discussion makes clear, the individual and social costs of contracting out can only be justified if such efforts lead to better quality and lower priced government services. Yet evidence from a broad range of studies suggests that public services do not substantively improve after contracting out.⁸ In an extensive review of empirical studies of privatization in the United States, for example, Professor George Boyne of Cardiff University finds that "only around half" of all studies are associated with lower spending and greater efficiency.⁹ Furthermore, Dr. Boyne finds that "many of the studies contain specific methodological flaws that cast doubt on the validity of the evidence on the impact of service contracts, and in some studies, the authors draw conclusions that are not substantiated by their own evidence."¹⁰

Professor Boyne's claims are substantiated by Professor Janet Rothenberg Pack of the Wharton School of Business at the University of Pennsylvania.¹¹ In her research on fifteen cities and counties that had experimented with contracting out, about half of the places she studied had encountered "disruptive experiences" which included quality problems, attempts by firms to renegotiate or renege on contracts, and costly monitoring activities. Equally important, only half of the public officials she interviewed could continue to claim any cost savings from contracting out after just four years of privately provided service.

Researchers at Washington State University draw similar conclusions in their 1998 study of privatization by

Oregon county governments.¹² Looking at county governments' experiences with road maintenance and construction contractors, Professors Brent Steel and Carolyn Long find that 42 percent of counties experienced contracting problems. The most commonly cited problem in their study was the failure of contractors to perform work in a timely manner (100 percent of cases), followed by work not performed to specifications (50 percent), contractors' failure to communicate effectively with affected citizens (36 percent), change order problems (36 percent), and work area security and safety problems (29 percent). In addition to the problems associated with contracting out, the authors estimate that the cost of contract administration was in the 10 to 15 percent range, and that "savings, if any, from contracting out may be partially or fully offset by substantial agency costs associated with the contracting process, including the expense of preparing plans and specifications to a greater level of detail, the cost of advertising and processing bids, and the cost of monitoring, inspecting, and conflict resolution."¹³

Private firms also disappointed with contracting results

A common defense of privatization is that errors in implementation, not the concept itself, are to blame for failed privatization programs.¹⁴ These kinds of arguments make it easy to claim that the blame for failed contracts still rests with government, and that the solution lies with increasing, not decreasing, the role of the private sector in government service provision. Has the private sector's experience with contracting out been any better? Because private firms

also rely on outside contractors for a wide range of goods and services, their experience with contracting out deserves a closer look by public officials than it has received.

Large-scale studies of the private sector's experience with contracting out are rare, in part because private firms are not subject to the same disclosure requirements as public entities. A recent survey of over one thousand senior business executives conducted by the global consulting group PA Consulting, however, is telling: In that survey, only five percent of firms reported "high" levels of benefit from contracting out while suffering "low" drawbacks. The most common response, representing thirty-nine percent of the cases, had been 'mediocre'.¹⁵

Academic studies of organizational performance provide some clues as to why contracting out in the business world has failed to live up to its promises. Because contracting out is a form of restructuring that often leads to reductions in personnel, its impact on organizations is similar to downsizing. Few would disagree with the proposition that both contracting out and downsizing result in shattered careers, broken friendships, and significant losses in investments in employee training and development. For these reasons and others, academic studies of downsizing hold valuable lessons for public sector managers considering contracting out.

The strong negative effect that downsizing through contracting out has on the morale of employees should not be underestimated. In a recent study

published by *The Academy of Management Review*, Professor Wayne Cascio of the University of Colorado reviewed over five hundred articles on downsizing and interviewed twenty-five senior executives from business about their experiences.¹⁶ A principal finding from this research, says Professor Cascio, is that "study after study shows that following a downsizing surviving employees become narrow-minded, self-

absorbed, and risk averse. Morale sinks, productivity drops, and survivors distrust management. In fact, this constellation of symptoms is so common that it has taken on a name of its own: *survivors' syndrome*."¹⁷ Given the impact of

...only five percent of firms reported "high" levels of benefit from contracting out while suffering "low" drawbacks. The most common response, representing thirty-nine percent of the cases, had been "mediocre".

downsizing on employee morale, it should be expected that performance rarely meets the company's expectations. According to 1998 survey results from the American Management Association, only 41 percent of downsizing companies reported productivity increases, and only 37 percent have realized any long-term gains in shareholder value.¹⁸

According to Professors Susan Reynolds Fisher and Margaret White, such disappointing results can be explained by the damage caused to an organization's "learning capacity" when an individual leaves the firm.¹⁹ Fisher and White believe that an organization's capacity for innovation and development is derived from the day-to-day interaction between employees working on common problems. The contribution of these informal networks to the health and vitality of the organization is

significantly greater than that implied by a simple head count, the authors warn, and hence managers should be wary of any restructuring effort, including contracting out, that threatens these crucial networks.

This issue is well illustrated by recent research by Dr. Chris Lonsdale and Professor Andrew Cox of the Center for Strategy and Procurement Management at the University of Birmingham, England.²⁰ Lonsdale and Cox believe that contracting out invariably leads to a loss of cross-functional contact between departments. "When a contract company is operating away from the firm's site there can be a loss of profitable contact between that function and others which relate to it," they argue. "While this can be addressed, many firms report that contract employees are rarely as prepared as in-house colleagues to go beyond their immediate remit and take the time to work out ideas which may be of benefit to the firm as a whole."

A further issue that Lonsdale and Cox raise is the effect that the limitations of a manager's own knowledge and competence can have on an outsourcing deal. For example, when a service is provided in-house certain aspects frequently are provided by employees in other parts of the organization, and consequently often are not recognized explicitly in the contract agreement. This oversight commonly leads to a host of additional charges not built into the original cost estimates. In one example, the authors tell the tale of a petroleum firm that was charged nearly \$500,000 in

excess fees in the first month of its information technology contract because the company had wrongly assumed that these services were included in the original contract price.²¹ Stories such as these should not be surprising, the authors caution, because contracting is the core competency of many of the vendors that organizations must deal with. Since contracting is a primary focus of their business, these companies have learned to write contracts that shift most of the risk onto the purchaser of the service.

In summary, contracting out government services imposes high costs on individuals, local governments, and communities. In spite of these high social costs, the efficiency gains from contracting materialize only about half of the time. Furthermore, the private sector's poor record with contracting suggests that such lackluster results are unlikely to improve as public managers gain experience with administering private contracts.

In contrast, using high road strategies to reform public bureaucracies often results in improved governmental efficiency, but does so without the negative consequences that result from contracting out. Across the country, high road strategies are becoming more common as public bureaucracies borrow from new management models such as Total Quality Management (TQM) and labor-management cooperation programs in order to improve organizational performance. According to *Working Together for Public Service*, a major report published by the U.S. Department

...many firms report that contract employees are rarely as prepared as in-house colleagues to go beyond their immediate remit and take the time to work out ideas which may be of benefit to the firm as a whole.

of Labor, labor-management cooperation programs typically result in higher quality service, greater cost effectiveness, better quality of work life for employees, and improved relations between workers and management.²² Similar positive results have been reported by the International City/County Management Association (ICMA) in its study of TQM programs in local government. In that study, the overwhelming majority of governments surveyed reported strong positive results from quality improvement programs, as Table 1 shows.²³

"Contracting back in" an important trend in public service provision

New survey evidence shows that public officials are starting to learn that

privatization has its limits. While contracting out continues to be widely used by many local governments, the practice of "contracting back in"—where governments choose to resume in-house production following a period of privately produced service—is becoming increasingly common.

The most complete source of data on contracting arrangements of local governments is provided by the International City/County Management Association (ICMA). Every five years, the ICMA surveys all counties with more than 25,000 residents and all cities with populations greater than 10,000. In addition a sample is drawn from one in eight cities and counties with fewer than 10,000 residents. On average, 1,500 municipalities respond to the survey.

Table 1. Impact of Quality Improvement Efforts on Municipal Performance	
Performance indicator	% reporting positive experiences*
Quality of service	89%
Productivity	85%
Customer satisfaction	83%
Amount of service to customer	82%
Timeliness	79%
Cost reduction	75%
Increased communication	84%
Improved group decision making	78%
Stimulated high-quality performance	61%
Ability to improve in spite of constraints on resources	70%
Improved decision making due to availability of information	70%
Improved timeliness of internal processes	63%
Movement of decision making to lower level	68%
Commitment to stakeholders	72%
Morale	70%
Goal assessment	57%
New performance measures	72%

**Sample size varies from 168-191 cities and counties.*

Source: Jonathan West et al, "Total Quality Management in Local Government", *The Municipal Yearbook* 1994. Washington, DC: International City/County Management Association. p. 24.

This survey provides a very comprehensive view of the complex mix of services offered by local governments, with questions asked for sixty-four different public services.

By matching responses from different survey years, our research team has been able to determine the degree to which local governments both contract out services to private providers as well as the frequency of contracting back in.²⁴ Using ICMA data we found that on average across all responding municipalities, eight services were newly contracted out between 1992 and 1997. The more interesting finding, however, was that on average five services were brought back in house during this same period. Hence while these data show that contracting out is still a common practice across the country, dissatisfaction with contracting out is widespread and causes local governments to bring services back in house.

Why do local governments choose to bring work back in house?

That so many local governments bring work back in house implies that contracting out as a model of public service provision has its own set of problems that its proponents have either underestimated or ignored. Yet the survey data alone do not tell us why governments choose to resume public production of services. To better understand the nature of contracting back in and the factors associated with it, a series of telephone interviews was conducted with public officials from across the country between June and August 1999. The case studies from those interviews are reprinted here as Appendix A.

Methodology

Using the ICMA data as a guide, local governments were selected for interviews based on a population of greater than 30,000 residents, six or more cases of contracting back in, and at least one case of contracting back in for service areas where union membership is strong. A small number of additional cases were chosen based on leads from union members or newspaper clippings.

Most of the interviews were with the city or county manager for that municipality. On several occasions follow-up interviews were conducted with department heads or directors of specific programs in order to develop a more detailed understanding of a particular program or service. Local union officials also were interviewed in a handful of cases. Interview times varied from ten minutes to about one hour.

In total, public officials from fifty-eight places were interviewed. Those interviews produced twenty-six cases of contracting back in from twenty-two different places (see Table 2). While these cases do not provide a large enough data set to generalize the findings to the larger population, the cases can help us to understand the rationale behind contracting back in, as well as provide clues on the efficacy of privatization as an alternative form of public service delivery.

The bulk of the cases of reverse privatization represent the typical kinds of blue-collar work most often cited as good candidates for contracting out. With the exception of public works, wastewater treatment, and fire services, the remaining cases consist of the types of services for which private sources of production are relatively common. In most areas these services can easily pass

the "yellow pages" test in which a number of local private firms can be found that offer similar services.²⁵ It should not be surprising that the cases here represent services that are typically thought of as prime targets for privatization. Since these are the kinds of services that are most often contracted out, it follows that they have a higher

nine cases contracting back in was the result of public employees submitting the winning proposal in a competitive bidding process. On twenty occasions work was brought back in house due to problems with the private contractor. Often the two categories overlap. For example, it is not uncommon for public agencies to win competitive service

Place	Service(s)	Competitive Bidding	Failed Contract
Akron, Ohio	Road Repairs	n/a	n/a
Ardmore, Oklahoma	Waste Water Treatment Plant		⊗
Campbell, California	Buildings and Grounds Maintenance		⊗
Charlotte, North Carolina	Paratransit Service	⊗	⊗
Cincinnati, Ohio	Yard Waste	⊗	
Columbus, Ohio	School Grounds Maintenance		⊗
Fort Collins, Colorado	Paratransit Service		⊗
Fort Lauderdale, Florida	Infrastructure Pipe Installation	⊗	
Independence, Iowa	Grass Mowing, Laundry Services	⊗	⊗
			⊗

probability of being brought back in as well.

A useful way of classifying the cases is to divide them according to the process by which local government resumed public service production. In

contracts following a failed privatization attempt. The more typical scenario, however, is for government officials to take over the service without initiating a new round of competitive bidding. In fourteen cases, it was clear to local

government managers that the service could be produced more efficiently in house, thereby making competitive bidding unnecessary.

Contracting Back in Due to Failed Privatization

In the cases presented here, failed privatization was the most important reason for contracting back in. In these instances the work is brought back in house due to problems associated with the service provider or with the contracting process. Rather than return to the market and initiate a new round of competitive bidding, public managers caught in these situations feel that problems with service delivery are rooted in the contracting process itself. Because these kinds of problems can not be solved by private means, public officials choose to rule out privatization as a viable alternative and resume public production of the service.

Every case that chose to bring the service back in house without resorting to competitive bidding reported significant contracting problems. Yet even for those places where competitive bidding was used (and the contract awarded to public employees) problems with private contracts still played a role in five of nine cases. While it is difficult to generalize from such a small sample, there appear to be serious problems with contracting out. The analysis below looks at a number of the case studies to better understand how and why contract problems arise and, more importantly, why public production is chosen over competitive bidding for specific services.

Contracting Issues

Private sector models of contracting out provide a useful

framework for understanding governments' decisions to produce services in house. For businesses, the choice of whether to produce in house or to contract out is often referred to as the "make or buy" decision. While cost minimization is important, this approach also recognizes that cost estimates include more than just the monetary value placed on a good or service. In particular, this model employs the notion of "asset specificity" to incorporate the many non-tangibles that go into the decision to contract in or out.²⁶ Asset specificity refers to the degree to which the investments associated with production are unique to the parties involved in the transaction. Investments with a high degree of asset specificity are highly specialized and normally have few alternative uses. Examples include "hard" goods such as complex machine parts or custom-made computer programs, but "soft" goods like industry-specific knowledge and relationships with customers and clients fall into this category as well.

A high level of asset specificity decreases the probability that an external supplier will be able to produce a particular good or service in a cost-effective manner. Because of the inability of both the buyer and the seller to accurately specify what, when, and how certain functions are to be carried out, costs associated with monitoring quality often outweigh any savings that accrue from external production.

These problems are magnified in the public sector because of the multiple purposes and goals associated with public services. While it is relatively easy for a buyer to recognize a high quality pencil or machine part, judging quality becomes much more subjective when complex services are involved.

Even for the cases presented in this study, where most of the services are simple, ubiquitous, and relatively easy to specify, numerous examples exist where conflicts arose because of the difficulties associated with specifying the service.

While evidence from some of the cases suggests outright abuse by the private contractor—such as the Iowa laundry service that charged its public sector customer based on the weight of the laundry when it was wet, not dry—other cases highlight the importance of clearly defined contracts. In Lubbock, Texas, for example, a private trash hauler attempted to renegotiate its contract because the weight of the trash it collected was greater than the company anticipated. Heavier loads meant that the company had to pay higher than expected landfill fees, and the firm attempted (unsuccessfully) to shift those costs to local government.

The care management program for the Senior Services Department of Irvine, California serves as a more complex example of the difficulties involved in specifying contracts. In Irvine, public officials attempted to privatize its care management program in 1995. With about one hundred active cases at any given time, the city offers assistance to seniors in need of help with health care, transportation, housing, and other social services. In spite of a competitive bidding process, the request for proposals attracted only one bidder that the city felt was sufficiently qualified to run the complex program. After reviewing the technical responsibilities contained in the contract, however, the lone qualified bidder chose to withdraw from the competition. The perception

Professor Pack of the Wharton School estimates that monitoring costs can be as high as 15 percent of total contract costs.

was that many of the contract services were hard to measure, difficult to administer, and that performance would be judged largely on community perceptions rather than tangible results. This created a sense that the cost to administer the program would grow far beyond the ability of the contractor to manage the program within the available budget. Unable to attract qualified contractors, department administrators instead chose to keep the service in house.

A related problem is that the contract language may be over-specified. Under these circumstances, contract language may be too specific to allow government to satisfy the changing needs of citizens. When Moore, Oklahoma contracted out its public works department in 1993, it made sure that minimum service levels were included in the contract. When citizens began demanding more than the minimum from their government in the

mid 1990s, however, the city was unable to accommodate citizens' preferences because it was still bound by the strict terms of the contract

it had signed three years earlier.

Another issue that is well illustrated by the Moore, Oklahoma case is the problems that occur when a single contractor is responsible for a complex basket of services. In Moore, one company was responsible for streets, drains, parks, cemeteries, building maintenance, sanitation, fleet maintenance, animal control, wastewater treatment, water and sewer line maintenance, and water meter reading. The sheer size of this contract made it

exceedingly difficult for public officials to monitor service levels and quality.

Given the complexity involved in specifying contract arrangements it should not be surprising that the costs associated with monitoring contracts has been shown to be quite high.²⁷ The more typical scenario, however, is for governments not to do any monitoring at all. In our research team's analysis of ICMA survey data on the subject, we found that more than half of the governments that contract out do not have any formal procedures for monitoring contract arrangements.²⁸ Not monitoring contracts significantly increases the chances that either costs increase or quality suffers—or in some cases, both problems may surface. On the other hand, places that do take monitoring seriously may find that the cost of monitoring contracts equals or surpasses any anticipated savings from private service delivery.

More than one respondent from the case studies indicated that in house production was resumed because of the high costs of monitoring private contracts. In Pinellas County, Florida, for example, the county terminated its contract for grass mowing at 360 water pumping stations because of its inability to control service quality. "Servicing so many remote locations made it very difficult to monitor service quality, says the County Administrator, "so for this service it made more sense for the county to do the job."

City officials in Campbell, California report similar problems. In Campbell, the city contracted out its park maintenance functions in the early 1990s as a way to cut costs. After two years with the private contractor, however, the city chose to bring the work back in house following numerous

complaints from city residents about service quality. Having residents complain to the city rather than the contractor resulted in significant time and resources being wasted by city employees. Not only were city employees required to handle residents' complaints, they then had to visit the park in question to check up on the contractor's work, contact the contractor to inform him of the problem, and finally revisit the park to ensure that the work had been re-done properly. Given that the number of complaints was significantly higher than when public employees did the job, city supervisors quickly grew tired of the extra burden created by the contracting process and brought the work back in house.

Park maintenance has remained a publicly provided service in Campbell since 1996. According to City Manager Bernie Strojny, city workers provide better service because they possess a sense of ownership that is unique to public employees. "City employees invest more," he says, "because they genuinely care about the place they work at." In contrast, city properties are just one of many locations that the private contractor serves, which Strojny believes contributes to the contractor having less of an interest in service quality.

In both Pinellas County and the City of Campbell monitoring costs were high because public officials found themselves constantly "putting out fires" that had been "lit" by the contractor. Both places were lucky, however, in that the service in question was relatively easy to monitor by area residents. In these cases, citizens are able to serve as reasonable substitutes for direct monitoring by government. The public sector is not so fortunate, however, when service quality cannot be observed

directly and citizens are unable to play the watchdog role. This was the case in Savannah, Georgia, where fire services had traditionally been provided by both the City of Savannah and South Side Fire Protection, Inc., a non-profit fire department that provided firefighting services to about one third of the city.

South Side Fire consisted of a mix of volunteer and professional staff and had served Savannah's southern neighborhoods for decades. When the city annexed South Side Fire's service area in the 1970s, the company continued to provide fire services to this part of the city. As Savannah continued to grow, concerns were raised about the differences in service quality between the City of Savannah Fire Department and South Side Fire. Whereas previously the South Side consisted mainly of single family housing, over the years the South Side grew to include a number of large retail and office complexes. Responding effectively to these types of calls required a different method of firefighting than what South Side could offer. The number of city firefighters responding to calls was always the same, for example, whereas the number of South Side volunteers that responded to calls varied at each event. Over time the city increasingly became concerned with service quality and response times on the South Side. Tellingly, one of the most vocal proponents for change was the city council representative from the South Side, who argued that the quality of service was inferior to that offered by the city.

Conflicts over what should be considered quality service were only half of the problem. Just as important, the cost of the service had risen significantly over time. The city found itself paying

for equipment and stations "over and over again," and the company would increase its charges to the city on a yearly basis. The extent to which South Side fire was overpriced relative to the city was made clear when City Council decided to bring the service in house in early 1998. In a last-ditch effort to save its business, the company offered to provide the service at a significantly lower price than what it was currently charging. This sudden drop in price only angered city officials, who wondered how much, and for how long, this "non-profit" organization was overcharging them.

In sum, the Savannah case makes clear the difficulties associated with contract arrangements where service quality is hard to monitor and the true costs of the service are difficult to quantify. But even in other service areas where quality and price considerations are easier to measure, the time and resources spent on monitoring can still be significant. The degree to which these additional costs outweigh the potential efficiency gains of private production is an empirical question that can only be answered on a case-by-case basis. The evidence presented here, however, suggests that these costs are often considerably higher than most governments anticipate.

Economic and Market Issues

Much of the preceding analysis presumes that, contracting costs aside, privately produced services are cheaper. Indeed, lower costs were the primary reason most governments in this study choose to contract out in the first place. Lower costs, however, usually resulted in lower quality services as well. Research by Harvard University Professor John Donahue suggests that

much of the cost savings from privatization come from local governments choosing to follow low road economic strategies that rely on the lower priced labor of private firms.²⁹ If we make the reasonable assumption that lower priced inputs result in lower quality outputs, then it should not be surprising that service quality was a major problem in a majority of the case studies.

In both Charlotte, North Carolina and Fort Collins, Colorado local governments ended private contracts for paratransit service for the elderly and disabled because of service quality problems. In Charlotte, the taxi company responsible for the service was not accustomed to working with disabled clients, and drivers viewed city charges as less desirable passengers compared to other customers. The program was plagued by similar problems in Fort Collins, where users of the service often complained about the lack of courtesy on the part of drivers. Additionally, the private contractor had numerous problems attracting and retaining quality employees, resulting in unreliable service.

The City of Whittier, California, attempted to privatize its public bus service in the early 1990s. At the end of the five-year contract, however, the city chose in house production over a new round of competitive bidding, citing poor service quality as the primary reason for the switch. The city received numerous complaints about dirty buses and unqualified drivers. Equally important, the expected cost savings from privatization quickly disappeared because of significantly higher accident

rates and greater than expected costs for vehicle repairs.

The above examples of privatized transit service all relied on lower priced labor to minimize costs.

Yet, in every case the low cost option proved to be unsustainable over the long run. Either quality levels slipped to

such unacceptable levels that the service was no longer a benefit to citizens, or else the problems resulting from low cost provision (e.g., higher accident rates and increased liability claims) effectively erased any financial benefits from private service delivery.

An important related issue is the degree to which local governments can accurately judge when private service delivery is cheaper. Anecdotal evidence from the case studies suggests that pricing contracts is more art than science. This should not be surprising given the uncertainty that surrounds contracting, but what is surprising is the degree to which contract bids vary. In Charlotte, North Carolina, for example, bids on paratransit service ranged from \$12.60 to \$20.49 per trip. In Lubbock, Texas, bids for a portion of the city's residential trash routes varied from \$3.6 million to \$7.3 million—a difference of nearly 103 percent.

Figures like these suggest three things. First, sufficient competition is critical to cost savings when competitive bidding is used. Second, it is imperative that local governments who use competitive bidding allow public departments to participate in the bidding process so that costs can be properly benchmarked. Finally, if a public service is privately provided, it is crucial

Anecdotal evidence from the case studies suggests that pricing contracts is more art than science.

that public officials pay close attention to monitoring the price, quality, and quantity of the contractor's work throughout the term of the contract. The following section examines more closely the cases that involved competitive bidding.

Contracting Back in Due to Successful Competitive Bidding

A key variable for explaining the likelihood of contracting back in is whether or not public employees are allowed to bid against private providers. Quantitative analysis of US Census data from 1987-1992 shows that the presence of unionized employees increases the probability of contracting back in.³⁰ This finding suggests that unionized workplaces are more likely to have the right to submit contract proposals, but bidding rights for public employees are increasingly common in non-unionized settings as well.³¹

The rules governing the public sector's ability to bid on contracts vary considerably from place to place. In Pinellas County, Florida, for example, public employees are allowed to compete with private providers when a service is first put out to bid. Once that contract is "lost" to the private sector, however, only private firms have the opportunity to bid on future contracts. The county sees the start up costs associated with bringing a service back in as too expensive to be worth the effort. Not only would the county have to hire new employees to provide the service, but new equipment and buildings may be required as well.

Making city departments competitive means providing them with the resources necessary to assemble quality bids.

Other places view the bidding process differently. In Charlotte, North Carolina, it is the norm for public employees to bid on contracts, and the city expects its departments to be competitive in the bidding process. Making city departments competitive means providing them with the resources necessary to assemble quality bids. In many cases, this includes allowing managers to hire outside consultants to help develop the department's proposal. Cases where services are kept in house are viewed as "victories" for the city, and are a source of pride for public employees.

A third example of how the bidding process works can be found in Lubbock, Texas. In Lubbock residential trash collection is subject to competitive bidding, and public employees are encouraged to bid for the service. What makes Lubbock different than most places, however, is that only one third of the service is put out to bid at any given time, and the City would never choose to privatize the whole service. "We would always keep at least one third of the service in house," says Mildred Cox, the Director of Public Works. "This way we never lose the ability to keep the private firms on their toes. Just as important, having competitive bids provides the city with important information about what constitutes efficient service."

Taking the High Road Through Public Sector Innovation

The fact that government departments often win competitive contracts highlights the ability of the public sector to improve efficiency

through the use of high road management practices. There is ample room for increased efficiency in public provision so long as employees are empowered to make decisions on how the service should be delivered. By drawing on the expertise of front line workers, innovation in the design of work leads to significant cost savings. Theories of organization development concur that line employees often know how to do their jobs best, and will excel at what they do if given the chance by management.³² For public employees dealing with complex services and the need to keep a wide array of constituents satisfied, this is even truer.

Many of the cases of contracting back in were tied to process improvements in public management. As such, they demonstrate public innovation is a viable alternative to private provision. Often small changes can lead to significant savings. In Warwick, Rhode Island, for example, management and the union worked together to redesign the way residential trash is collected, resulting in savings of over \$1.1 million over five years. In Akron, Ohio, city workers developed a plan to combine water and sewer line repairs with road repairs. "Why do the same work twice?" asks union president Leo Armstrong. "If we're already there repairing the hole, we might as well finish the job. Not only can we get the job done faster, but it saves the city money, too."

In other cases, efficiency gains were the result of specific management practices being brought in from the

private sector. In Charlotte, North Carolina, managers of the city's paratransit service instituted a gainsharing program for its employees that resulted in savings of over \$160,000 in 1998. Half of this money will be divided equally among the department's employees, which amounts to an annual bonus of \$1,600 per employee, or about seven percent of an employee's total pay.

Labor-management cooperation programs can have a significant impact on improving efficiency in unionized settings. In Fort Lauderdale, Florida, "partnership" programs between labor and management have resulted in a number of competitive bids being awarded to public employees. Fort Lauderdale's partnership programs are a product of the Cooperative Association of Labor and Management (CALM), an innovative program that employs the concepts of total quality management to increase productivity and promote cooperation and understanding between the union and city administrators.

One example of CALM's impact comes from the city's attempt to privatize infrastructure pipe construction in early 1997. When the Request for Proposals was issued, a labor-management committee quickly formed to prepare its bid for the competition. The committee was co-chaired by the union president and the director of labor relations for the city, who together co-chair all partnership committees. Having these two established veterans on the committee "helps to create a safe

The fact that government departments often win competitive contracts highlights the ability of the public sector to improve efficiency through the use of "high road" management practices.

environment for our people," says union president Cathy Dunn. This way we can establish trust among all parties early on, and get to the real work of developing our proposal." In addition to the co-chairs, the committee consisted of a supervisor, division manager, and four crew members. Each committee member is encouraged to participate fully in the development of the proposal, and any member has the right to veto elements of the plan that they don't like. "All it takes is one 'no' vote and the project stops," says Dunn.

The CALM committee won the contract by submitting the lowest cost bid. Public employees were able to beat the competition by restructuring how the service was delivered. Work schedules were changed to reduce travel and set up time, and the size of the pipe crews doubled, following the example of successful private firms that do the same work. The results of these changes have been dramatic: In the first year alone, city crews laid over three and a half miles of pipe, compared to an average of just one mile of pipe for privately-run crews.

The above examples clearly demonstrate that the public sector can be as effective if not more effective than firms in the private sector doing similar work. In every case, the key to public sector success is empowerment. When workers are provided the tools and the resources necessary to bring about

change, innovative policies and programs often follow. Privatization and empowerment, however, are rarely compatible. When employees are mistrustful of management, when job security is uncertain, and when departments see their colleagues' jobs sold to the lowest bidder, convincing workers to "buy in" to *any* new program is a daunting task.

Conclusion

The evidence presented here indicates that the contracting process is rarely as smooth as its proponents claim. Often poor results were due to the inability of either governments or private contractors to clearly communicate their expectations to each other. On other occasions, disappointing results were the outcome of one party or the other underestimating costs or overestimating savings from privatization. For a third group of cases, contracting back in was not the result of failure on the part of private firms, but rather successful innovation by public employees.

The latter findings suggest that taking the high road, in the form of TQM or labor-management cooperation, can provide equal or better quality service as the best private firms, but do so with fewer risks and greater social rewards. For those public officials that truly wish to "reinvent government," internal management reforms deserve a closer look than they have been getting.

APPENDIX A

CASE STUDIES OF CONTRACTING BACK IN*

Akron, Ohio Road Repairs	20	Lubbock, Texas Residential Trash Collection	29
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Lakewood, Colorado Street Sweeping	29	Whittier, California Public Bus Service	39

*A searchable data base of these case studies can be found at Professor Warner's Local Government Restructuring web site: <http://www.cce.cornell.edu/community/govt/restructuring>

City of Akron, Ohio

Keywords: Public Works

Road Repairs

In Akron, Ohio city workers dig up the pavement at over 1,200 locations each year to make water and sewer line repairs. When the repairs are finished, workers put a temporary patch over the damaged pavement. In the past, private contractors would then move in to resurface the road.

For the past two years public employees have done the resurfacing work, and saved the city over \$500,000 in the process. “Why pay to do the same work twice?” asks AFSCME Local 1060 President Leo Armstrong. “If we’re already there repairing the hole, we might as well finish the job. Not only can we get the job done faster, it saves the city money, too.”

The city used to spend about \$800,000 a year for the service, and when the money ran out, the resurfacing stopped. This often meant that many of the repairs were never completed. Today, all the city’s road resurfacing jobs get done, and at a significantly lower cost than what the city used to pay.

“We’ve become a trend-setter in the area,” says Armstrong. “Other city departments are looking at what they can bring back house since what we’ve done here has been so successful.”

Now even other local government workers are looking at taking on new jobs. In nearby Summit County, for example, road crews there just took back road striping after several years of privately provided service.

“It’s truly a win-win situation,” Armstrong says. “The payoff for our members is greater job security, and citizens get the best service at the lowest cost.”

Case based on interview with Leo Armstrong, AFSCME Local 1360, August 19, 1999. See also “Akron Workers Pave the Way,” AFSCME OC8 News July/August 1998. p. 15.

City of Ardmore, Oklahoma

Keywords: water, failed contract

Wastewater treatment plant

Ten or fifteen years ago the wastewater treatment plant in Ardmore, Oklahoma was privately run. The service was brought back in-house after about two years because the private facility repeatedly failed to meet federal and state effluent limits. Since that time, service quality has improved significantly. Because the service was brought back in house long before Mr. Hines worked for the city, he did not know any other details about the service.

Case based on interview with Blaine Hines, City Manager, June 21, 1999.

City of Campbell, California

Keywords: Grounds Maintenance, Failed Contract

Buildings and Grounds Maintenance

During a major recession in California about six years ago, the City of Campbell decided to contract out its

buildings and grounds maintenance services to a local contractor. At the time the city was under pressure to cut costs, and the private contractor offered to provide the service at a rate significantly lower than what the city was paying its own employees to do the job. In addition, the department had a number of job vacancies, which made it easy to transfer the remaining one or two employees to other city departments following privatization.

The contract was brought back in house after two years with the private contractor. Poor quality service was the primary reason for the transition. The city received numerous complaints from area residents about the quality of maintenance at city parks, and city supervisors were growing tired of constantly having to monitor the contractor's work.

The city's decision to take over the service was also facilitated by the healthy economy in Silicon Valley. A growing tax base enabled the city to be less concerned with cutting costs and focus its attention on improving service quality. The city briefly considered hiring another private contractor, but an internal review by the Public Works department showed that public employees could provide better quality service for about the same cost.

Buildings and grounds maintenance has remained a publicly provided service in Campbell since 1996. The city had no problems bringing the service back in house, in part because the city makes a conscious decision to never sign long-term contracts with private providers. In this case, the contract was written so that the city could terminate the contract at any time.

Service quality has improved tremendously now that public employees are back on the job. According to City Manager Bernie Strojny, city workers provide better service because they possess a sense of ownership that the private contractor does not. "City employees invest more," he says, "because they genuinely care about the places they work at." In contrast, city properties are just one of many locations that the private contractor serves, something that Strojny believes contributes to the contractor having less of an interest in service quality. The city program currently employs three or four people.

Case based on interview with Bernie Strojny, June 18, 1999.

City of Charlotte, North Carolina

Keywords: Transit, Competitive Bidding, Failed Contract

Paratransit Service

The City of Charlotte, North Carolina operates a transit service for the elderly and disabled that employs about fifty workers. Around 1993-1994, the city decided to privatize night and weekend service as a way to cut costs. The number of passengers served during these periods was low, yet the city still required a dispatcher, supervisor, and drivers to be on staff at all times. To avoid these expenses, the city contracted out with several local taxi companies to provide the service. Taxis were paid between \$18 and \$20 for each trip. Since these companies needed to have supervisors and dispatchers on duty full-

time anyway, it was thought, the city should save money by having the service privately provided. In addition, at the time the city was having problems getting enough drivers to work these less-desirable shifts. For these reasons and others, the city did not submit its own bid to provide the service in 1993-1994, an otherwise common practice in Charlotte.

The service was brought back in house in 1995 following several complaints from paratransit riders. The taxi drivers were not accustomed to working with disabled clients, and viewed them as less desirable passengers compared to their other customers. In contrast, city drivers worked with disabled clients every day, and often knew their regular passengers by name.

As part of the city's efforts to increase efficiency, the entire service (days, nights, and weekends) was put out to bid in 1996. Public employees won the contract because their bid was significantly lower than their two competitors, Davey Transportation and Laidlaw. The city won the contract with a bid of \$12.60 per trip, compared to the competitors' bids of \$16.95 and \$20.49 respectively. The successful city bid was assembled by Charlotte DOT staff with the assistance of KFH, a private consulting firm. The taxi companies that had provided the service previously did not bid on the contract, in part because they did not have the number of vehicles necessary to run the service full-time. The new three-year contract went into effect in July 1997.

This year the city expects to provide the service for \$160,000 below the bid price. Most of these savings have come from reductions in overtime pay, which has declined significantly since the city instituted automated shift

scheduling. Half of this money will be divided equally among the employees, which amounts to an annual bonus of \$1,600 per full-time employee, paid quarterly. Part-time employees also receive the bonus, based on the number of hours worked. On average, the gain-sharing program amounts to about 7 percent of an employee's total pay, which averages between \$25,000 and \$30,000 per year.

Case based on interviews with Mr. Lynn Purnell, July 2, 1999 and August 6, 1999.

City of Cincinnati, Ohio

Keywords: Residential Trash Collection, Competitive Bidding

Yard Waste

In 1996 the City of Cincinnati, Ohio expanded its recycling program to include curbside pick up of yard waste. The program began after a local firm, Rumpke, approached a city council member with the idea, and offered to perform the service for \$1.5 million annually. Upon hearing the news, a second city council member approached the union and said the city would be willing to offer AFSCME the contract if it could beat Rumpke's price.

A labor-management committee soon formed to research the program. The committee determined that city employees could perform the same service for less than \$1 million--fully one third less than what the private contractor was asking. The labor-management committee continues to meet annually to review the past year's performance and set the contract terms for the upcoming year.

The successful program is now in its third year of operation. About twenty-five full-time and seasonal jobs have been created as a result of the program.

Case based on interview with Renita Jones Street, AFSCME Rep from the Cincinnati Regional Office, July 1, 1999.

City of Columbus, Ohio Public Schools

Keywords: Grounds Maintenance, Failed Contract

Grounds Maintenance

For as long as anyone can remember, public schools in Columbus, Ohio, had used a private contractor to maintain the district's fifteen athletic facilities and eight large open fields. Public school employees had never bid on the contract because they lacked the special equipment necessary to do the job.

Around 1993 employees in the school landscaping and vehicle maintenance departments devised their own plan to bring the work in-house. The plan involved purchasing a new fifteen-foot wide bat-wing mower and repairing an aerator and a seeder that had been in storage for over fifteen years.

Following two years of lobbying school administrators, the school district accepted the employees' proposal and canceled their existing agreement with a private contractor. Public employees took over the service beginning with the 1995-6 school year.

Savings from the public program totaled \$105,000 during the first year of the contract (more recent data is not available). The public crew has also

expanded its services beyond what the private contractor provided. For example, now all fields are aerated twice yearly, a service that would cost over \$27,000 if a private contractor were hired to do the job.

Service quality also has improved since bringing the service back in-house. For example, the private contractor paid little attention to accommodating game schedules or to the quality of service beyond mowing. In contrast, public workers have even gone so far as to take soil samples to Ohio State University for analysis, so that the appropriate fertilizers can be applied in the spring. "They've done a great job," according to Greg Van Horn, Athletic Director at Walnut Ridge High School, "which makes us want to do a great job. They've made us all really happy."

"The value of the commitment demonstrated by OAPSE members, who took the initiative to improve services for our kids and to save money for the Columbus Public Schools, cannot be overestimated," said School board President Mark Hatch. "We appreciate and can always count on this kind of loyalty and devotion from our OAPSE members."

Case based on OAPSE News, volume 56, number 3 December 1996/January 1997. pp. 1-2.

Fort Collins, Colorado

Keywords: Transit, Failed Contract

Paratransit Service

In an effort to cut costs, the City of Fort Collins, Colorado privatized its paratransit service for senior citizens and

persons with disabilities in 1996. For two years Shamrock Taxi ran the program, but several complaints of poor service quality resulted in the city bringing the program back in-house. While under private contract, the service had numerous problems hiring and retaining employees, resulting in unreliable service. In addition, users of the program often complained about the lack of courtesy on the part of van drivers.

The owners of Shamrock Taxi were upset when the city decided to take back the service in 1998. They tried to generate community support for their cause, arguing that the city's claims of poor service were unfounded. The taxi company failed to sway public opinion, however, which was firmly on the side of city government.

The service currently employs about 25 part-time employees. Costs for the program are similar to what the taxi company charged, but service quality has improved significantly.

Case based on interview with John Fischbach, City Manager, June 24, 1999.

City of Fort Lauderdale, Florida

Keywords: Public Works, Competitive Bidding

Infrastructure Pipe Crews

For several years the City of Fort Lauderdale, Florida, relied on private contractors to provide two thirds of the city's water pipe infrastructure, with the remaining third of the work being done by city crews. In January 1997, the city announced plans to put the final third of the service out to competitive bid.

A Request for Proposals was issued for the service and several private firms expressed interest in the contract. The city's own crews were interested in the work as well, and a labor-management "partnership" committee quickly formed to prepare a bid.

Fort Lauderdale's "partnership" programs are a product of CALM, the Cooperative Association of Labor and Management, an innovative program that employs the concepts of Total Quality Management to promote cooperation and understanding between labor and management and boost productivity for the city. The successful program has been in place since 1994 and includes sixteen sub-committees and over 200 employees.

The city's Public Services Water Pipe Committee prepared its proposal in less than three months. The committee was co-chaired by the union president and the director of labor relations for the city, who co-chair all partnership committees. Having these two established veterans on every committee "helps to create a safe environment for our people," says Local President Cathy Dunn. "This way we can establish trust among all parties early on, and get to the real work of developing our proposal." In addition to the co-chairs, the committee consisted of a supervisor, division manager, and four crew members. Each committee member is encouraged to participate fully in the development of the proposal, and any member of the team has the right to veto elements of the plan that they have problems with. "All it takes is one 'no' vote and the project stops," says Dunn.

Once the committee completed its proposal, it was then sent to an internal auditor to ensure that the committee's budget estimates were

correct. Having this extra check in place added credibility to the employees' proposal in the eyes of City Council and guaranteed that all project expenses were included in the bid.

Private sector bids for the job varied from \$110 to \$127 per linear foot. In contrast, the city crews won the contract with a bid of just \$70 per foot. Public employees were able to provide the service at such a low cost by restructuring how the work was done. Work schedules were changed from five eight-hour days to four ten-hour days to reduce set up and travel time. Equally important, pipe crews doubled in size from six to twelve workers, following the example of successful private firms that do the same work.

Productivity has increased dramatically since the work was brought back in-house. In the first year alone, city crews managed to lay over three and a half miles of pipe. In comparison, private crews delivered an average of only one mile of pipe per year.

City officials were so impressed by the public employees' work that the pipe contract was recently doubled to include two thirds of city pipe jobs. Since bringing the work back in, employment in the department has increased from one crew of six workers to two crews that employ over thirty people.

Case based on interview with Cathy Dunn, AFSCME Local 532, August 3, 1999. See also "Florida City Workers Find New Ways of Improving Services," AFSCME Public Employee. Sept/Oct 1995. pp. 20-21; and "AFSCME Local 532 and the City of Fort Lauderdale, Florida Cooperative Association of Labor and Management (CALM)". AFSCME Partners for Change Series. <<http://www.afscme.org/wrkplace/p-ftlaud.htm>> 2 pp. 1998.

Independence Mental Health Institute, Independence, Iowa

Keywords: Laundry Service, Failed Contract

Laundry Services

Laundry services at the Independence Mental Health Institute in Independence, Iowa, were brought back in-house earlier this year following three to four years with City Laundry of Oline, Iowa, a large regional laundry service.

Managers at the facility thought that the private contract could save the state money, since continuing to provide the service in-house would have required the institute to replace its aging washers and dryers. The substantial savings promised by the private contractor were never realized, however.

The Mental Health Institute paid for the laundry service based on the weight of each load. Yet the private contractor charged the facility based on the weight of the load when the laundry was wet, not dry, as the Institute had expected. In addition, slow turn-around times resulted in the facility having to purchase an additional set of linens in order to have sufficient stock on hand to cover the laundry rotation.

The facility had to purchase new equipment in order to bring the service back in-house. Managers were reluctant to buy new machines because of the high cost of industrial washers and dryers, but knew that the one-time expense would be worth it over the long run.

Since bringing the service back in, service quality has improved tremendously. The facility has hired three new employees to run the service.

Case based on interviews with Larry Bathan, Independence, IA Local President,

June 28, 1999, and Tom Anthony, Council 61 in Des Moines, IA, June 29, 1999.

Independence Mental Health Institute, Independence, Iowa

Keywords: Grounds Maintenance, Competitive Bidding, Failed Contract

Grass Mowing

The Independence Mental Health Institute, a state-run hospital for the mentally ill in Independence, Iowa, has had as many as forty-one services contracted out at any given time. Grass mowing services were no exception, and a mid-sized, regional contractor was responsible for the service between 1990 and 1998.

When the contract for the mowing service went out to bid in the spring of 1998, AFSCME state workers put in their own bid against approximately twelve other service providers. AFSCME won the competition with a bid of \$65,000, compared to the lowest private bid of \$80,000.

Cost savings of nearly twenty percent were only one of many reasons why AFSCME workers were awarded the contract. The AFSCME proposal was attractive to state officials because bringing the service back in-house meant that the hospital had better control over how services were delivered. Cutting times could be coordinated with the needs of the facility, whereas the hospital had no control over when the private crews would come to mow the facility's extensive lawns and recreation areas. For example, it was difficult for hospital staff to schedule outdoor activities for the residents because the

ball fields and play areas were mowed at different times every week. The irregular schedule of the cutting crews meant that planned activities often had to be postponed or canceled.

Poor service from the private contractor was another reason why the service was brought back in-house. Operated largely by teenagers, the contractor's machines had taken down trees, burned the grass, and bumped into buildings on several occasions.

This poor quality service was the main reason why the private contractor did not challenge AFSCME's successful bid. If anything, the firm worried that the state would impose performance penalties for property damage they caused at the facility.

In order to win the contract, state employees had to re-engineer the way the mowing service was provided at the facility. Whereas before the facility employed three full-time employees year-round, the service is now provided by one full-time employee and three seasonal staff. "More employees would certainly allow us to improve service quality," says Council 61 Representative Tom Anthony, "but even with our limited staff the service has improved significantly since being brought back in-house."

Case based on interviews with Larry Bathen, Independence, IA Local President, June 28, 1999, and Tom Anthony, Council 61 in Des Moines, IA, June 29, 1999.

City of Irvine, California

Keywords: Food Service, Competitive Bidding, Failed Contract

Care Management

The City of Irvine operates two seniors' centers that provide a wide variety of services to the local elderly population. Among their many programs, the centers offer care management services for individuals in need of assistance with health care, transportation, housing, and other social services. At any given time there are about 100 active cases in the system.

The lead staff person for this service was charged with administering a community-based care management program. In addition to direct service, this person also coordinated a variety of volunteer programs and maintained linkages with local, state, and federal agencies. Unfortunately, many of the technical aspects of managing a geriatric social work program had been overlooked by the city when it first budgeted for the position several years earlier. As a result, the city often had problems retaining the lead staff person for this service. In evaluating its options for stabilizing the program, rather than upgrade the lead staff position, the city chose to privatize the entire program in 1994.

The Request for Proposals attracted few qualified bidders. In spite of a competitive bidding process, the city felt that only one contractor had the qualifications necessary to run the complex program. After reviewing the technical responsibilities contained in the service contract, however, the lone qualified bidder chose to withdraw from the competition. The perception was

that many of the contract services were hard to measure, difficult to administer, and that performance would be based largely on community perceptions rather than tangible results. This created a sense that the cost to administer the program would grow far beyond the ability of the vendor to manage the program within the available budget.

Unable to attract qualified contractors, in 1995 city administrators went back to City Council and asked that the lead staff position for the program be upgraded. This time they were successful in their request, and the program has remained in public hands ever since.

Case based on interviews with George Searcy, Superintendent of Senior Services, City of Irvine, California, June 24, 1999 and August 3, 1999.

City of Irvine, California

Keywords: Social Services, Competitive Bidding, Failed Contract

Senior Citizens' Meal Program

Across the country, federal law dictates that local Agencies on Aging provide a meal program for senior citizens. For the City of Irvine, responsibility for this task lies with Orange County, a large urban county that includes more than thirty different municipal governments.

Rather than allow each municipality design its own meal program, the county used to be divided into three service districts, with a single meal service provider for each district. In Irvine's case, the service district included eighteen different municipalities. Each district contract

was administered by a non-profit agency, who then hired a private food service company to prepare and deliver the meals to city-run seniors' centers.

The complexity of the service arrangement resulted in the city having no control over the program, even though it was the final "consumer" of the service. Because it was the county that paid for the service (with federal dollars), all decisions regarding service delivery and program design were made at the county level. Yet the two levels of government had different ideas of what constituted quality service. For county officials, service quality was measured in program efficiency; distributing the largest number of meals at the lowest cost was their primary goal. In contrast, the city's primary concern was to deliver high quality meals, since its employees had to interact with the senior citizens that used the service on a daily basis.

The meal program was brought back in house in June 1998 after 10 years with the private contractor. "It took the city five years to recognize the problem," says the Superintendent of Senior Services, "and another five to fix it." Poor service quality was the principal reason for bringing the service back in house. Lunch-time meals were prepared at a location eighteen miles away, and put on delivery trucks at 4:00 am. By the time the food was served at noon, few seniors were interested in eating it.

Slow delivery times were one reason for poor quality food, but cost considerations were another. The federal dollars used to pay for the program were insufficient to pay for the service as it was being administered by the county. Not only did the county have to pay its own administrative and overhead costs, it also had to pay the

regional non-profit agency responsible for administering the program, who then had to pay the private contractor, who needed to make a profit off each meal.

Irvine was able to bring the service back in by bidding on its own contract when the most recent Request for Proposals (RFP) was issued. Its bid was similar to those put in by private contractors, but the city promised higher quality service. Simply getting the opportunity to bid involved months of lobbying the Orange County Board of Supervisors, who were wary of allowing a government agency to bid on a competitive contract. Opposition to the plan centered on the city's lack of experience in the food service industry. After considerable debate, however, city officials, with the backing of two local seniors' groups, were able to convince the county that they had the qualifications necessary to run the program.

Facilities for the new service already existed in one of the city's two senior centers. Built just five years ago, the developers of the center had the foresight to include kitchen facilities in the new building, in anticipation for a growing elderly population in the area. Administration of the program was folded into the routine activities of center management. Between four and six new food service jobs were added to the center's payroll.

Since returning to public hands, satisfaction with the service has increased dramatically. In the year since the city took over the meal plan, use of the service has increased by over 100 percent.

Case based on interviews with George Searcy, Superintendent of Senior Services, City of Irvine, California, June 24, 1999 and August 3, 1999.

City of Lakewood, Colorado

Keywords: Public Works, Failed Contract

Winter Street Sweeping

Prior to 1997, the City of Lakewood, Colorado used private sweeping contractors to supplement city sweeping forces in the winter months. The additional sweeping effort in the winter was needed to remove sanding material from the roadways in a more expeditious manner, in order to address PM-10 air quality concerns and overall city aesthetics.

In 1997 the decision was made to eliminate the contracted winter sweeping services and use the funds budgeted to lease three additional sweepers and hire four seasonal employees to supplement city employees in the winter months. This decision was made due to quality and reliability problems with private sweeping contractors.

Service quality has improved considerably since bringing the service back in-house. The quality and reliability problems have been solved, and there has also been an increase in sweeping quantity of approximately 25 percent.

Case based on interviews with Jim Zelinski, Deputy City Manager, and Chris Jacobsen, Maintenance Operations Manager, July 1, 1999.

City of Lubbock, Texas

Keywords: Residential Trash Collection, Competitive Bidding, Failed Contract

Residential Trash Collection

In May 1995 the City of Lubbock, Texas began its first experiment with private service delivery when it hired Browning-Ferris Industries (BFI) to provide one third of its residential trash collection services. BFI won the three-year contract with the city following a competitive bidding process that included two other private firms.

The BFI contract was the city's first experiment with private service delivery, and as such the city approached privatization cautiously. Rather than contract out the entire service, city officials instead chose to put just one third of city routes out to bid. Keeping a majority of the service in-house gave the city the option to return trash collection to public hands if the private contractor failed to deliver high quality service.

Cost savings with the private contractor averaged about \$150,000 annually, according to City Manager Bob Cass. However, service quality was lower with the private contractor. The city maintains detailed records on the number of complaints received for both publicly- and privately provided services, and the number of complaints per 100 households was significantly higher with the private firm.

About two years into the contract BFI attempted to renegotiate its agreement with the city, citing unexpected costs. The original contract was negotiated such that BFI would be paid on a per-household basis. Yet the weight of trash collected per household was higher than the company expected,

which meant that the company had to pay more than it had anticipated to dispose of the trash at the local landfill. The city refused to renegotiate its contract, however, and the contractor finished out its three-year term at the agreed-upon price.

BFI's contract ended in May 1998, and the service was again put out to competitive bid early that year. This time the service contract was for a period of five years rather than three, and the contract was for the right to serve forty percent of the city's households instead of thirty-three percent. In addition, the contract was rewritten so that the service provider would be charged based on the number of cubic yards "tipped" rather than the number of households served. By charging for service according to the number of cubic yards tipped the city hoped to avoid the unanticipated costs faced by the private provider during the previous contract.

The Spring 1998 Request for Proposals attracted bids from three private providers as well as the city. Public employees won the contract with a bid of \$3.6 million over five years, compared to private bids of \$7.3 million (BFI), \$6.6 million (El Paso Disposal), and \$6 million from Duncan Disposal.

The city's bid of \$3.6 million represented savings of forty percent compared to the lowest private bidder. The city was able to lower its costs by restructuring the way the service was provided. Rather than pick up trash twice weekly year-round, the city changed its service to once a week during the winter (November to February) and twice weekly during warmer periods (March to October). Equally important, the work week for city employees was extended from forty

to fifty-three hours per week. While overtime pay was significantly higher under the new system, total costs were still lower than if the city were to hire additional full-time employees to deliver the service.

The city's bid was carefully assembled by an interdepartmental team. Members of the team included staff persons from the city's fleet department, budget office, and public works, as well as solid waste employees. In addition, the city's internal auditor and an independent certified public accountant reviewed all bids received, including the city's cost estimates. The auditor and accountant's thorough evaluation of all cost items ensured that the total costs of providing the service were included in each proposal, and added credibility to the city's plan in the eyes of City Council.

The city had no problems taking back the service. Because city officials knew that they might take back trash collection services at any time, the city kept its seven best trucks that were scheduled for retirement in storage during the three years of private service provision. Consequently the city did not need to purchase any expensive new equipment when it took over trash collection in 1998.

Between seven and nine new drivers were hired to provide the service. The city's fully automated system uses large (3 cubic yard) containers to collect residential trash. As a result laborers in addition to the driver are not required to provide the service. These dumpsters are located in alleys and are shared by three to four families, on average.

The city's five-year contract for trash collection will be put out to competitive bid again in 2003. Like the two previous rounds of competitive

bidding, only one third of city routes will be considered for privatization. According to the Director of Public Works, Mildred Cox, the city would never consider wholesale privatization of the service. "We would always keep at least one third of the service in house," says Cox. "This way we would never lose the ability to keep the private firms on their toes. Just as important, having competitive bids provides the city with important information about what constitutes efficient service."

Case based on interviews with Bob Cass, City Manager, and Mildred Cox, Director of Public Works, July 26, 1999 and August 3, 1999.

Iowa Veterans Home, Marshalltown, Iowa

Keywords: Food Service, Failed Contract

Food Service

In an effort to cut costs, food service and housekeeping services at the Iowa Veteran's Home in Marshalltown, Iowa were contracted out in March 1993. For five years these services were provided by J.A. Jones, but the company lost its contract when the services were put out to competitive bids in March 1998. Morrison Health Care won the food service contract, while ABM was granted the housekeeping contract at the Home.

It was not long before residents and family members complained about the new food service. Morrison Health Care was not used to serving such a large number of senior citizens on a daily basis, and this lack of experience was reflected in the low quality meals that residents were served.

After only a few weeks with the new food service contractor, news of the poor service reached State Representative Teresa Garman (R) of Ames, Iowa, who took it upon herself to terminate the Morrison contract. Researchers at her office determined that state employees were best equipped to handle the job, and that public staff could run the program for \$90,000 less than what the contractor was currently charging.

The state had no problems getting out of the five-year food service contract, and was only required to give Morrison Food Service 90 days notice. For its part, Morrison argued that it could have done a better job, but was overburdened by government regulations which limited its ability to provide quality service.

The new public contract is scheduled to go into effect on October 1, 1999. AFSCME expects that between 76 and 88 new public positions will be created as a result of the transition. The Home plans to hire most of Morrison's current workforce, which should facilitate the transition. As state employees, food service workers are expected to make a dollar more per hour, on average.

State Representative Garman's next project is to return housekeeping services to state control as well. ABM employees who currently provide the service are working under highly stressful conditions, says AFSCME rep Pete Peterson, and the firm is having problems keeping qualified staff. Mr. Peterson expects negotiations for housekeeping staff to begin sometime later this year.

Case based on interview with Pete Peterson, AFSCME Representative, June 30, 1999.

City of Moore, Oklahoma

Keywords: Public Works, Failed Contract

Public Works

In response to fiscal stress, the City of Moore, Oklahoma decided to contract out its public utilities and public works departments in December 1993. Services in the contract included streets, drains, parks, cemeteries, building maintenance, sanitation, fleet maintenance, and animal control. Following a competitive bidding process that included three different companies, the five-year contract was awarded to Professional Services Group (PSG), a large multinational firm.

When PSG took over public works, nine employees chose not to take jobs with the private firm. Four months later PSG terminated eleven additional employees, bringing the total reduction in staff for the department to twenty. Following the layoffs PSG employed about forty-five workers. In spite of the staff reductions, PSG still managed to meet its contract obligations to the city. "For the first three years, everything was working well," said Richard Sandefur, Director of Public Works. "PSG had demonstrated that it could do more with less manpower than the city."

After about three years with the private contractor the local economy improved considerably, and citizens were demanding a higher level of service that what PSG was required to provide under the terms of the contract. Moore City Council felt that PSG should provide this higher level of service at no extra cost to the city, and that the company should hire back some of the

employees they terminated to provide the additional service.

PSG rejected the city's request, arguing that since they were fulfilling the terms of the contract they were under no obligation to hire additional staff without an operating budget increase from the city. For the extra money that PSG was going to charge to expand services, the city decided that it made more sense to cancel the contract and bring the work back in-house.

In addition to cost considerations, the city chose to take over public works functions to improve service quality. "The city has a better idea of what the city wants," said Mr. Sandefur, "and therefore it made sense to bring the contract back in-house." Making public works a city department again has allowed the city to adjust its level of service on a case by case basis. In contrast, the PSG contract did not have the flexibility required to meet changes in citizen demand for services.

In September 1997 a new service agreement was signed by the city and PSG. Under the new contract, most public works functions would return to the city, effective immediately. PSG would retain the operation of the waste water treatment plant, water and sewer line maintenance, and the reading of water meters for an additional five-year term.

After taking over public works, the city increased the number of employees in the department by ten, bringing the total to thirty-nine. PSG currently employs sixteen workers to provide water service. Combined, the two parties employ fifty-five people. This figure is about ten less than what the city employed prior to privatization, but ten more than what PSG used when it ran both programs.

The new service arrangement between PSG and the city has been in effect for about two years, and both sides have been pleased with the results. "Management and employees are working together to give the citizens the increased level of service they deserve," Sandefur said.

Case based on interviews with Michael Drea, City Manager, and Richard Sandefur, Director of Public Works, August 16, 1999 and August 17, 1999.

Village of Northbrook, Illinois

Keywords: Meter Reading, Failed Contract

Water Meter Reading

About six years ago, the Northern Illinois Gas Company approached the Village of Northbrook, Illinois, with a proposal to take over the village's water meter reading service. Attracted by the company's promise of significant cost savings, the village accepted the gas company's offer.

The village quickly discovered that any cost savings from the program were offset by poor quality service. Problems with the service centered on the transfer of billing information between the two organizations. While the gas company was responsible for reading the meters, it was the village that sent out bills and collected fees from its customers. However, the billing information supplied by the gas company on magnetic tape had high error rates, which meant that the village often had to double-check the information sent by the company. This situation was further complicated by the fact that the two organizations used

different billing software programs. Contrary to the agreement, information sent by the gas company could not be easily transferred to the village's computer system, which resulted in significant delays in billing customers and valuable time wasted by village employees.

About a year into the contract the village informed Northern Illinois Gas that it would cancel its contract if the billing problems were not corrected within 90 days. The company failed to improve its quality of service during this time, resulting in the service being brought back in-house. Four new part-time positions with the village were restored as a result of the transition.

Case based on interview with John Novinson, Village Manager, July 8, 1999.

Pinellas County, Florida

Keywords: grounds maintenance, failed contract

Buildings and Grounds Maintenance

Private contractors maintain over 80 percent of all buildings and grounds in Pinellas County. The one exception to this rule is grass cutting at the county's 360 water pumping stations, a service that was brought back in-house following 18 months of privately provided service.

The pumping stations are on small lots (50' by 50') surrounded by chain-link fences. Most stations are located at remote spots in residential neighborhoods, and are rarely visited by county employees. In 1996 county officials contracted out grass cutting at these facilities in order to cut costs. While the private contractor was willing

to provide the service at significantly lower rates than what it would cost for the county to do the job, the contractor quickly found that he and his crews were unable to maintain such a large number of small lots in a timely fashion.

Following a number of complaints from residents living near the pumping stations, the county chose to end its contract with the private contractor half-way through its three-year contract. The contractor admitted he was in over his head, and was relieved to see the contract terminated. County employees have provided the service for over two years now, and service quality has improved tremendously.

The decision to bring the work back in house was a joint effort of the County Administrator and other managerial staff. No additional employees were required to provide the service. Rather, the work was incorporated into the daily routine of county maintenance workers.

Bringing services back in is rare in Pinellas County, where a large number of services are contracted out. "Grass cutting at the pumping stations was a unique case," says County Administrator Fred Marquis. "Servicing so many remote locations made it very difficult to monitor service quality, so for this particular service it made more sense for the county to do the job." The county has contracted out a number of services to private providers over the past decade, and generally has been pleased with the services of its contractors. However, satisfaction with services is only one reason why the county rarely takes services back in-house; equally important are the rules governing the competitive bidding process. When a service is first put out

to bid, county employees are allowed to compete with private firms for the contract. Once that contract is "lost" to a private contractor, however, only private providers have the opportunity to bid on future contracts. The county sees the costs associated with bringing a service back in as too costly to be worth the effort. Not only would the county have to hire new employees to take over the service, but new equipment and buildings may be required as well. In short, the start up costs associated with bringing a service back in house make public bids on competitive contracts prohibitively expensive for the county.

Case based on interview with Fred Marquis, County Administrator, July 6, 1999.

City of Rialto, California

Keywords: Meter Reading, Failed Contract

Meter Reading

Three years ago, the City of Rialto contracted out its water meter reading to a private contractor. The three employees that had performed the work previously had all recently retired, which meant that the transition would have no effect on city employees. The program cost about the same as with city workers, but the city saw contracting out as a way to lower the number of workers it had to supervise directly.

Following several complaints from consumers, the city chose to bring the service back in house about a year ago. The employees hired by the private contractor were not reading the meters directly, but rather estimating households' water usage. These estimates were often way out of line

with actual usage, which angered many consumers.

Service quality has improved since returning the service to public employees. Costs are about the same compared to the private contractor.

Case based on interview with Joe Guzzetta, City Administrator, June 28, 1999.

City of Rialto, California

Keywords: Grounds Maintenance

Park Maintenance

Park maintenance services (mainly grass mowing) for two larger parks in Rialto were brought back in-house three years ago after being contracted out for “several years.” The purchase of a gang mower by the city made it financially feasible to take over the private contract. No new jobs were created as a result of the change in service delivery.

Case based on interview with Joe Guzzetta, City Administrator, June 28, 1999.

City of Sanford, Florida

Keywords: Ambulance Service, Failed Contract

Ambulance Service

Like many places around the country, emergency medical service in Seminole County, Florida used to be provided by two teams of emergency technicians. The first team, usually employed by the municipal fire department, was responsible for the initial emergency response. Their job

was to provide paramedic services to those in need as quickly as possible. The second team, a privately provided ambulance service, was responsible for transporting patients to area hospitals after the first team had stabilized the patient.

The rationale behind the two team approach was that patients could be served more efficiently since paramedics could spend more of their time on emergency calls and less time transporting patients. Rather than improve quality of care, however, having two teams provide the service resulted in duplication of services and slower response times. Often the ambulance service was slow to arrive on the scene, which meant that valuable time was wasted for both the paramedics and the patient. When the ambulance crews did arrive, they were then required to perform the same treatments and ask the patients the same questions that the paramedic team had done only minutes before.

About three years ago, the City of Sanford, along with a majority of municipalities in Seminole County, chose to eliminate the second team altogether and have only one team responsible for both initial treatment and transportation of the patient. This way one team would be responsible for the care of the patient from the time of arrival at the scene of the call to the time the patient entered the hospital emergency room.

In order to keep response times low, the city had to hire eight additional paramedics and purchase some new equipment. These additional expenses are paid for by revenues generated from ambulance service fees. The new system costs about the same as the previous two-team system (if not slightly

more), but quality of care for patients has improved significantly.

The city did not have a long-term contract with the private ambulance provider, which meant that there were no major barriers to bringing the service in-house. It is also worth noting that the ambulance service was never publicly provided until the program was redesigned three years ago.

Case based on interview with Anthony Vanderworp, Chief Administrative Officer, July 7, 1999.

City of Sanford, Florida

Keywords: Meter Reading, Failed Contract

Utility Meter Reading

“Around 5 years ago” the City of Sanford contracted out its water meter reading service to FDL. The service was taken back in-house after one year with the private contractor. After performing the service for one year, FDL determined that they could not provide the service at the price they had said they could. The company went to the city and asked for more money, but the city decided that the amount they were asking would cost more than if the city provided the service with public employees. Mr. Vanderworp could not recall the finer details of the transition, since the change occurred prior to his arrival in Sanford. He did note, however, that the change affected just one or two employees.

Case based on interview with Anthony Vanderworp, Chief Administrative Officer, July 7, 1999.

City of Savannah, Georgia

Keywords: Fire Services, Failed Contract

Fire Services

On the south side of Savannah, Georgia, fire protection services had historically been provided by South Side Fire Protection, Inc., a non-profit fire department with a mix of full-time professional staff and local volunteers. The city of Savannah annexed the South Side in the late 1970s, but South Side Fire continued to provide fire service to this part of the city. The rest of the Savannah metropolitan area was served by the city’s own professional fire crews. By the late 1990s South Side Fire was responsible for about a third of the city’s fire service.

As the South Side continued to grow, concerns were raised about the differences in service quality between the City of Savannah Fire Department and South Side Fire. Whereas previously the area consisted of mainly single family housing, over the years the South Side grew to include two major shopping malls, a number of multi-story office buildings, several car dealerships, and a variety of other commercial developments. Responding effectively to these types of calls required a different method of firefighting than what South Side Fire could offer. In addition, the number of city firefighters responding to each call was always the same, whereas the number of South Side volunteers responding to calls varied at each event.

Following two and a half years of planning and debate, the city terminated its contract with the private company in early 1998. The decision to take over the

service was made by city staff and elected officials. One of the most vocal proponents of the change was the city council representative from the South Side, who argued that the quality of service from the private company was inferior to that offered by the city.

South Side Fire Protection fought hard to protect their business. However, the owners of the company lacked credibility in the eyes of most city council members, and failed to reverse the city's decision to take over the service. The city was increasingly concerned with service quality and response times on the South Side. More importantly, the cost of service had risen during the life of the contract. The city found itself paying the company for equipment and stations "over and over again," and the company would increase its charges to the city on a yearly basis.

The extent to which South Side Fire was overpriced relative to the city was made clear during the final round of negotiations with City Council. In a last-ditch effort to save its business, the company offered to provide the service at a significantly lower price than what it was currently charging. This sudden drop in price only angered city officials, who wondered how much, and for how long, this supposed "non-profit" organization was overcharging them.

The decision to take over fire protection in the South Side was facilitated by the fire fighters' union. Several years ago the union "realized it needed to get competitive," and worked with city administrators to reorganize the department and make it more efficient. This strong relationship with the union made it easy for city officials to support the takeover.

Between forty and fifty new union jobs have been created with the

expansion of the city department. Around twenty-five of the new hires came directly from South Side Fire Protection. City wages and benefits were only slightly higher than their non-union counterparts at South Side.

Since the City took over fire services fifteen months ago, service quality has improved dramatically. During its first year of operation the city estimates that the new arrangement has saved taxpayers over \$200,000, and expects savings to increase as the program matures.

Case based on interview with Michael Brown, City Manager, June 25, 1999.

Sioux City, Iowa

Keywords: Residential Trash, Competitive Bidding

Residential Trash Collection

In Sioux City, Iowa, residential trash collection had been privately provided for over 20 years. At one time there were as many as seven small trash holders providing the service to different parts of the city, but for the past several years trash had been collected by a single company called Solid Waste, Inc., owned by the video rental giant Blockbuster.

When the service was put out to bid in the fall of 1996, the director of the Sioux City Utilities Department approached union leaders with a proposal to put together a bid for the project. Their hard work resulted in public employees winning the contract with the lowest of three bids for the service.

The cost difference between the city's bid and its competitors' was

minimal, says AFSCME member Garland Treloar. What made the difference, he said, was the joint proposal by Treloar and the Director of Public Utilities in front of City Council. "We have two choices." Treloar told the Council. "We can make these workers part of the community. We can offer them a decent wage to support their families. And we can be sure that the money the city spends stays here in Sioux City. Or, we can continue with business as usual and send half of what we spend on trash collection off to some corporate headquarters in New Jersey."

The city had no problems taking over the service. Private contractors who had collected trash in the past had always used city-owned trucks and maintenance facilities, so there was no need to purchase new equipment to do the job. In fact, the trash trucks and uniforms worn by the private contractor had always been branded with the Sioux City logo, even though the service was provided by a private firm.

Approximately 10-12 drivers and 10-15 "hoppers" (trash collectors) were hired to provide the new service. Service quality has improved tremendously, and accident rates with the city are way down compared to the private contractor.

The service will go out to bid again in February 2000.

Case based on interview with Garland Treloar, AFSCME Local President, August 18, 1999.

The City of Warwick, Rhode Island

Keywords: Residential Trash Collection, Competitive Bidding

Residential Trash Collection

In the spring of 1992 the Mayor of Warwick, Rhode Island, decided to privatize sanitation and recycling services. In spite of strong union opposition, the plan was approved by City Council and a Request for Proposals (RFP) for trash collection and recycling was issued. The winning bid came from Truk-Away of Rhode Island (later known as United Waste Services) who was awarded a five-year contract for the service.

Truk-Away's contract ended in early 1997, and the city again solicited bids for the trash service. The RFP attracted bids from five private firms and a sixth bid from the city's public works department. The city won the five-year contract with a bid price \$1.1 million lower than its closest private competitor.

The winning proposal was a joint effort of the mayor and city council, the finance director, the city solicitor, the public works department, and AFSCME Local 1651. Under the new plan, all trash collectors work together as a team, with drivers collecting trash in addition to driving the trucks. When a truck is full, only one person drives it to the landfill; the other worker is taken to a different route to help the two workers on that truck collect trash faster.

Twenty-two new full-time employees were hired to provide the service. The city also acquired 14 new trucks, since its old equipment was sold to Truk-Away when the service was privatized in 1992.

The city's contract with public employees is similar to the previous private contract in that the city can terminate the agreement at any time. "If it doesn't work we have a fall-back position, and that's important to the taxpayers," said Councilman Al Ferruolo. In addition, the service will again be put out to competitive bid again in 2002. "Our own workers, they're going to be accountable," said Council Member Richard DeGregorio, "because they don't want to lose the business in five years."

Case based on correspondence and newspaper clippings from Joseph R. Peckham, Business Agent for RI Council 94, AFSCME.

City of Whittier, California

Keywords: Transit, Failed Contract

Public Bus Service

Like most cities in California, the City of Whittier faced serious budget constraints in the early 1990s. In an effort to cut costs, the city decided to

privatize its public bus service. Following a competitive bidding process that included three private firms, the city awarded a five year contract for the service to a local bus company about seven years ago.

At the end of the private contract, the city decided to bring the bus service back in-house. Poor service quality was the primary reason for the switch. The city received many complaints about dirty busses and underqualified drivers. The accident rate for the private service was significantly higher than when the city did the job, which meant that much of the cost savings from privatization were lost due to the sharp increase in liability claims. Equally important, the bus company cut corners on routine bus maintenance and safety checks, resulting in higher than expected costs for vehicle repairs.

The city's bus fleet is small, with about six buses providing the service.

Case based on interview with Thomas Mauk, City Manger, August 6, 1999.

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Introductions to Selected Cases

- **Methanex Corp. v. USA** is the only reported direct challenge to a United States law. Methanex, a Canadian Corporation and maker of a component of MTBE, is challenging California's decision to ban MTBE in order to protect public health and prevent water pollution. Under NAFTA, Methanex is claiming that California is expropriating their market in favor of domestic providers of substitute products. NAFTA grants foreign investors rights to be treated at least as well as domestic companies (national treatment), have access to domestic markets, and be regulated by the least burdensome method. The claim suggests that California should focus on stronger enforcement of environmental regulations rather than phase out the pollutant. ^[1] The case is being heard in an international tribunal that will determine whether the United States will have to pay for the lost profits due to the ban. Part of the claim is based on the mention of MTBE by name in federal mandates to lower air pollution. Since the federal government suggested the chemical is an acceptable additive, some suppliers argue that they acted in reliance on traditional US law and should not lose the market they relied on. This case may have been avoided had the legislators focused on the clean air goals the benefit the additives might confer rather than specifically listing a particular chemical compound in the legislation.
- **Sun Belt Water, Inc. v. Canada** challenges the right of a government to restrict access to natural resources by limiting the number of license holders. Canada made a decision to limit the water that can be shipped from Canada by not awarding new business licenses in Canada to foreign or domestic water-exporters. Sun Belt a US company unlicensed in Canada, made a contract to bring Canadian water to California. Sun Belt claims that government agents refused to grant the license to ensure that a Canadian firm would receive the contract. That unfairly prefers Canadian firms to US investors, and therefore breaches the investor's right to national treatment. The claim is based primarily on the fact that most of the license holders are Canadian at this point, so the law is a barrier to new (foreign) investment in what Sun Belt considers a competitive market. (No water has been shipped from Canada to the US at this time). This case is pending (hasn't been accepted as a claim), but an award to Sun Belt would establish that government can not limit the number of companies in an industry even if the commodity is a scarce natural resource. Sun Belt lawyers have also stated that they are stakeholders and as such should be involved in setting Canadian water policy.
- **Ethyl Corporation v. Canada** was the first case settled under NAFTA. Similar to the Methanex case, Canada settled a challenge to an environmental protection based decision to ban imports of the gasoline additive MMT. Ethyl claimed that the ban was put in place to give preference to Canadian suppliers even though there are none. The only supplier is a US company. Canada made a surprising decision to settle, and paid Ethyl \$13 M USD. Municipalities and public unions in Canada stepped up efforts to limit the effects of NAFTA and FTAA soon after the decision.
- **MetalClad v. Mexico** cost Mexico \$16M USD. This case shows how important it is to have federal and local cooperation, communication and solidarity. A local environmental impact statement that showed that a hazardous waste handling site would pollute the ground water was preempted by prior federal and state approvals. A conflict between federal and local authority was the deciding factor rather than the uncontested pollution of the ground water under the site. The lesson for states and localities is two-fold. First, it is important to have regulations in place and available to those who do business in the community. These should be followed as a standard procedure to set the tone of working with that community and put newcomers on notice. As soon as the government notices investment in the community, an effort should be made to educate the investor. Secondly, the city in Mexico tried to turn

the area into an environmental preserve to save it from the land use. This reactionary legislation is not acceptable under NAFTA. Laws should be in place before investment and building begins.

- **Mondev International v. the United States** is another case that illustrates the need for neutrality in documents and laws. Mondev claimed that Boston was discriminating due to their foreign status as evidenced by repeated references to Mondev as a Canadian company. Mondev had developed a portion of land and substantially improved the property values in the area. They tried to exercise an option to buy other adjacent land and Boston defaulted claiming that the option was not valid any longer. The court sided with Boston, and Mondev is challenging under NAFTA claiming that the treatment was due to foreign status. This case is clearly based on contracts, but gets into the international arena and beyond the US court system due to the foreign status of one party. This case, when decided, may give foreign companies better negotiating power than domestic companies in hopes that challenges can be avoided.

For a complete list of cases involving all NAFTA parties, see www.naftalaw.org.

For all WTO disputes see www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm.

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Resolutions Submitted by State and Local Governments Regarding Trade Promotion Authority, Chapter 11 and International Trade Agreements

Some cities, counties, state legislatures associations and individual government actors are concerned with different facets of the international trade arena. Some like Senator Kuehl of California, one the states that is facing a NAFTA challenge, are concerned that state and local regulations may be threatened by trade obligations. Associations like the National League of Cities are concerned that the obligations may change land use and property laws that have been formulated at the local level traditionally. Most of those concerned with the local impacts of trade have requested that:

- current laws and traditional roles be protected;
- that the negotiation process be transparent;
- to participate in dispute resolutions that target laws in their jurisdiction;
- and often that Congress should prepare a list of the federal and local laws that would be affected by each obligation.

The following letters and resolutions are regarding many facets of the trade debate. Many request that NAFTA Chapter 11 on Investment not be used as a template for the Free Trade Area of the Americas. Others request modifications of the Trade Promotion Authority. Though TPA has been approved, the documents reflect the broader concerns of the localities. Several of the communities have rejected the free trade agreements and request to be exempted from any participation. This collection is not exhaustive and does not include testimony before Congress or the USTR. Please see Legislative Briefings for official testimony.

Author	Date
1. State and local organizations letter to all United States Senators	May 20, 2002
2. State Legislatures	
National Conference of State Legislators	
Letter to Senators Baucus and Charles E. Grassley re: TPA	March 1, 2002
Policy on Free Trade and Federalism	July 2000
Policy Position on NAFTA	
Presidential Trade Promotion Authority Policy	
Letter to Gloria Blue of the U.S. Trade Representative	August 22, 2001
Letter from members of California Legislature to California Congressional Delegation	April 25, 2002

Letter from members of Oregon Legislature to Senators Gordon Smith and Ron Wyden	May 17, 2002
Senate Select Committee on International trade Policy and State Legislation	
Efforts by Cities and States to Examine their Role in International Trade Agreements	July 11, 2002
Senate Joint Resolution No. 40 - Relative to international investment agreements*	March 20, 2002
Minnesota State Senate Resolution	May 7, 2002
Oklahoma State Senate Concurrent Resolution	May 9, 2002
Letter from Governor Gary Locke, Governor of Washington	November 7, 2001
Washington State Democratic Party "Resolution to Oppose "Fast Track""	
Legislative Assembly of the State of Oregon Senate Joint memorial #2-2	May 10, 2001

3. State Attorneys General

National Association of Attorneys General Resolution In Support of State Sovereignty and Regulatory Authority	March 22, 2002
HR 3005 Summary of Concerns	
Letter from Bill Lockyer, California	April 3, 2002
Letter from William Correll, Vermont	April 17, 2002
Letter from Eliot Spitzer	May 9, 2002
Letter from G. Steven Rowe, Maine	April 25, 2002
Letter from Mike McGrath, Montana	May 14, 2002
Letter from Thomas Reilly, Massachusetts	May 17, 2002
Letter from Robert A. Butterworth, Florida	May 13, 2002

4. State Court Chief Justices

Conference of Chief Justices Letter to Senator Daschle and Senator Lott	May 15, 2002
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5. Counties

National Association of Counties (NACo) Resolution on trade Agreements	May 4, 2002
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6. Cities, Towns and Townships

United States Conference of Mayors letter to Senator Daschle	March 21, 2002
United States Conference of Mayors Resolution	June 18, 2002

National League of Cities letter to all United States Senators	March 13, 2002
National Association of Towns and Townships letter to all United States Senators	April 4, 2002
League of California Cities letter to Senator Boxer	May 20, 2002
Oklahoma Municipal League Board Resolution No. 02-01	May 1, 2002
Oklahoma Municipal League letter to Senator Nickles	
Glendale, CA City Council Resolution	June 26, 2001
Salem, Oregon City Council Resolution "Oppose Fast trace and FTAA"	May 10, 2001
City Council of Philadelphia Resolution on Fast Track and the FTAA	May 2, 2002
International Municipal Lawyers Association letter to all United States Senators	March 12, 2002
American Public Health Association letter to all united States Senators	May 3, 2002

* Vetoed by the Governor

If you have any letter or resolutions from a government association, actor, city, county or state, please submit to jcg28@cornell.edu.

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Privatization, Free Trade and the Role of State and Local Governments

Presented by Mildred Warner and Jennifer Gerbasi to the Association of Collegiate Schools of Planning Conference, Baltimore, MD. November 2002. Based on Cornell Department of City and Regional Planning Working Paper #203.

Privatization, Free Trade and the Erosion of Government Authority ([view](#) or [download](#))

Presented by Jennifer Gerbasi at the Economic Policy Institute Conference on Privatization, Washington, D.C. April 4, 2003. (A [summary introduction](#) and [citations and abstract](#) are also available.)

Free Trade and the Potential Conflicts with Domestic Water Policy ([view](#) or [download](#))

Presented at Cornell University, Ithaca, N.Y. May 5, 2002. Overview of potential conflicts with water conservation, exports, and international trade obligations.

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Contacts

To submit content, send hard copies to Cornell University, 215 West Sibley Hall, Ithaca, NY 14850-6701, or contact via e-mail or phone:

Jennifer Gerbasi Mildred Warner
607/255-6647 607/255-6816
jcg28@cornell.edu mew15@cornell.edu

Senate Select Committee on International Trade Policy
and State Legislation
Senator Sheila James Kuehl
Legislative Office Building
1020 N Street, Room 248
Sacramento, CA 95814
916/322-8616
F-916/324-3036

The Honorable Senator Baucus (D)
Senate Finance Committee (Fast Track - Trade Promotion
Authority)
United States Senate
Washington D.C.
511 Hart Senate Office Bldg.
Washington, D.C. 20510
(202) 224-2651
(202) 224-4700 (Fax)
(800) 332-6106 (from MT)
(202) 224-1998 (TDD)

National Conference of State Legislatures
1560 Broadway, Suite 700
Denver, CO 80202
303/830-2200
F-303/863-8003
<http://www.ncsl.org>

Attorney General Scott Harshbarger
Commonwealth of Massachusetts
1 Ashburton Place
Boston, MA 02108
617/727-22--
F617/727-5778

Dr. Robert Stumberg
111 F StreetNW, Room 102
Harrison Institute of Public Policy
Washington, D.C. 20003
202/662-9603

The Honorable Representative Levin (D)
United States House of Representatives
House Ways and Means Committee (Trade)
Michigan-12th, Democrat
2300 Rayburn HOB
Washington, DC 20515-2212
Phone: (202) 225-4961

State Representative Byron Rushing
Room 544 State House
Boston, MA 02133
617/722-2637

Public Citizen's Global Trade Watch
215 Pennsylvania Avenue SE
Washington, D.C. 20003
202/546-4996

Canadian Union of Public Employees
Jane Stinson
21, rue Florence Street
Ottawa, ON K2P 0W6
613/237-1590

International Institute for Sustainable Development
161 Portage Avenue East, 6th Floor
Winnipeg, Manitoba Canada R3B 0Y4
204/958-7700
F-204/958-7710

jstinson@cupe.ca
<http://www.cupe.ca>

<http://iisd.ca>

Western Governors' Association
1515 Cleveland Place, Suite 200
Denver, CO 80202-5114
Phone: (303) 623-9378
<http://www.westgov.org/>

National League of Cities
Veronique Pluviose-Fenton
Principal Legislative Counsel
1301 Pennsylvania Avenue NW, Suite 550
Washington, DC 20004
Phone: (202) 626-3000
<http://www.nlc.org>

Links

- [FTAA Official Website](#)
- [FTAA Second Draft Text](#)
- [General Agreement on Trade in Services](#)
- [NAFTA claims repository](#) (Site created by Todd Weiler, a Canadian lawyer. This is a repository for the NAFTA claims, and has the official text and papers that analyze some early investor-state disputes and their broader implications.)
- [Official listing of GATS services listed by the US](#)
- [Official World Trade Organization](#) (This site has information on the World Trade Organization, the Uruguay Round and the General Agreement on Tariffs and Trade.)
- [United States Constitution](#)
- [United States State Department](#) (Provides NAFTA claims in which the US is a party. Use the search button to look for the cases by name.)
- [World Trade Organization Disputes](#) (This site lists chronologically 290 nation-to-nation disputes. The US is a party in 142 of these cases.)
- [Official NAFTA web site](#) (Also see to [the USTR summaries of the agreement.](#))

***THE IMPACT OF INTERNATIONAL TRADE ON
STATE AND LOCAL GOVERNMENT AUTHORITY***

Jennifer Gerbasi and Mildred Warner

***Department of City and Regional Planning
Working Paper #204***

May 2003

Please direct comments to:

Jennifer Gerbasi

607-255-6647

jcg28@cornell.edu

Mildred E. Warner

607-255-6816, 607-255-6681 (fax)

mew15@cornell.edu

Department of City and Regional Planning

Cornell University

215 W. Sibley Hall

Ithaca, NY 14853-6701

The Impact of International Trade on State and Local Government Authority

Jennifer Gerbasi and Mildred Warner



Since the 1990's, the United States has vigorously pursued and become a party to international trade agreements such as the World Trade Organization (WTO) and the North American Free Trade Agreement (NAFTA). Traditional trade treaties are intended to open new commercial opportunities and technology sharing avenues which promote economic development by leveling the playing field .

The new trade agreements have the potential to open unprecedented service and goods markets bringing economic growth to U.S. investors. However, this new generation of trade agreements reaches beyond the traditional agreements that limit excessive tariffs, import limitations, or customs practices and may change substantively domestic governance at all levels. Benefits to state and local government will depend in large part on the interpretation of the agreement regarding state and local government authority.

The WTO, NAFTA, the General Agreement on Trade in Services (GATS) and the upcoming Free Trade Area of the Americas (FTAA) have been formulated to limit government participation in a number of ways in the name of free market competition. Government measures such as subsidies, taxes, health and environmental regulations, administrative rules, and government provision of goods and services are viewed as potentially interfering with the free market disciplines of competition based on price and quality.

<i>New Generation Trade Agreements</i>		
Name	Signatories	Highlighted Impacts on Government
North American Free Trade Agreement (NAFTA) 1994	United States Canada Mexico	<ul style="list-style-type: none"> ▪ Individual foreign investors can sue nations ▪ Dispute resolution in secret tribunals ▪ Removes state court jurisdiction over cases ▪ Property redefined for foreign investors
The World Trade Organization (WTO) 1995	144 countries	<ul style="list-style-type: none"> ▪ Trade-legal test for all government action ▪ Binding obligations ▪ Financial penalties for government actions
The General Agreement on Trade in Services (GATS) 1995	The 144 WTO Countries	<ul style="list-style-type: none"> ▪ Liberalizes services listed in the agreement ▪ Government provision exception limited to those services not offered privately ▪ Water delivery and treatment, schools, and prisons may be open to competition
The Free Trade Area of the Americas (FTAA) In draft form Expected 2003	34 North, Central and South American countries and the Caribbean but not Cuba.	<ul style="list-style-type: none"> ▪ Liberalizes all service sectors not specifically excluded ▪ Draft includes NAFTA investor rights chapter ▪ May extend foreign investor protection from performance requirements to domestic investors

State and local laws may be affected because the trade agreements extend to all levels of government including administrative agencies or businesses contracted to implement programs legitimized by government authority. The United States is a federalist government in which the federal government shares powers with the states. Federal law preempts state law where they conflict.ⁱ Trade agreements become federal law when congress ratifies them and, therefore, trump state and local law. There is a shift in power from the state to the federal government whenever the federal government agrees to international obligations that bind the states. States are duty bound to govern for the benefit of the people of that state, which is a discriminatory standard by its nature. The federal government, through the commerce clause of the U.S. Constitution prohibits the states from inhibiting interstate commerce in pursuit of local advantage. Federal district courts hear disputes between foreign parties and the states. The federal courts interpret state law in this process and are used to avoid state bias, not to supplant federal law. Under NAFTA, foreign investors can bring these claims to binding international arbitration panels. This avoids both the state and federal domestic court systems, and any obligation to use U.S. laws. This process lacks the predictability of the U.S. court system and the framework in which local and state governments function.

Under NAFTA claims are

- decided in closed arbitration;
- defended by the federal government;
- the state does not have access to the hearings; and
- state law is irrelevant.

The foreign investor is on par with the nation and chooses the court, the law, and level of transparency.

Proponents of free trade consider the loss of sovereignty, and growth of international influence to be a step in the right direction for international cooperation. By extending U.S. investor protections to other countries the agreements help safeguard investments abroad. Some state and local government associations believe that the benefits can be attained without limiting the dynamic, flexible and community-based leadership role of local and state government actors.

Other analysts believe that the trade agreements shift powers away from the state toward the federal government, international arbitration panels, and individual foreign investors. NAFTA Article 105 and the NAFTA implementation language specifically assert that the federal government must take measures to ensure that sub-national government agents, quasi-governmental organizations or authorized contractors comply with the agreement obligations. Thus the agreements increase pressure on state and local governments to defer to international standards rather than community standards or custom.

New Rights Bring Investors on Par with Nations

An "investor" is any person, company or lender with a financial venture that sells goods or services in a participating country where the investor is considered foreignⁱⁱ. These investors have a right to bring nations into international arbitration to defend government measures that affect their investments (property) negatively. These agreements expand foreign investor rights by granting:

- ✓ property rights greater than domestic citizens and

Property is defined to include future profits, market share, and market access which by their nature would allow compensation for partial takings, in conflict with the U.S. takings clause.

- ✓ access to an international court that can award damages for government actions that impact investor profits.

The expanded view of "property" is defined to include future profits, market share, and market access. Partial losses of profit or use of land may require government compensation. This is a greater right than U.S. citizens have under the takings clause. Partial regulatory takings are considered non-compensable, reasonable losses for the privilege of citizenship in the domestic contextⁱⁱⁱ.

Foreign investors have also been granted the right to comment on draft legislation that might affect investments. If displeased with the final legislation, foreign investors can circumvent the legislation and challenge the law by asking a secretive international arbitration tribunal to declare the law invalid under NAFTA on a number of grounds. These changes are the basis of much of the concern voiced by state and local governments. The concern is not unfounded, and has been reinforced by the actions of some investors.

Several California communities noticed a terrible smell and taste from their water taps. A study of Santa Barbara revealed that MTBE (methyl tributyl ethanol), an additive used to make gasoline burn cleaner, had leached into the wells. Separate scientific studies found MTBE to be carcinogenic and very difficult to remove from water. Aesthetically, a few drops of MTBE can make an Olympic pool-sized reservoir of water taste and smell like turpentine. Freshwater resources are critical to California, so to protect public health and the environment, the Governor of California called for a ban of the chemical.

Methanex, a Canadian firm that provides one component of MTBE, is currently challenging California's right to ban MTBE on the grounds that it violates NAFTA Chapter 11 obligations. The company has interpreted the ban as an expropriation of their market though it accounts for only 6% of their product sales. Methanex further claims that the state should have pushed for strict compliance with existing environmental inspection regulations of underground tanks rather than eliminating the chemical. To choose the more expeditious route of eliminating the chemical from the stream of commerce conflicts with Methanex's right to be governed by the least trade restrictive methods available. Methanex is claiming nearly a billion dollars in damages including good will, reputation and future profits. The challenge is being entertained by a tribunal at the time of writing though no arguments have been made public .



Methanex v. U.S.

The Methanex case is resting on whether the U.S. must enforce environmental laws that require better underground storage tanks, or can choose to eliminate MTBE and only use chemical additives that don't leak from the tanks that are now in use.

Methanex claims that under the agreement the nation should have to pay them for their loss of business, or repeal the ban and pay for containers impermeable by MTBE to prevent the pollution.

California chose to ban MTBE rather than spend large sums of money to replace tanks or increasing inspections.

The U.S. court system has awarded California cities millions in damages from refineries for the environmental damage cause by MTBE. In either case, the financial burden is placed on the government, not manufacturers or users.

Domestically, the U.S. court system has been supporting cities affected by this chemical and making gasoline refiners pay. California cities have sued refiners for MTBE ground water well pollution. Courts have awarded cities close to \$40 million for remediation.

"Sovereignty" is the power to govern without external limits"
Schweke, 1999

IMPLICATIONS FOR STATE AND LOCAL GOVERNANCE

The manner in which state and local governments protect public health, encourage sensible growth, economic development and interpret their laws is in question under trade agreements. These traditional powers are not protected, and may be targets for elimination as "non-tariff barriers to trade" in some instances. The WTO and NAFTA change the way that laws are made, the interpretation of those laws in the court system, and the scientific standards on which they are based. Taxes on foreign businesses operating in the U.S. may be limited by NAFTA as will the ability of states to require state licenses, certifications, or the residency of key personnel under GATS. Performance requirements, bonds to ensure a fund for liability in case of dispute, and any preferences for local goods or labor may conflict with NAFTA. State and local governments are bound to the international trade agreement obligations and must comply with all of the restrictions on government market intervention.

State Sovereignty Challenged

Some state members of Congress, such as California Senator Sheila Kuehl and Massachusetts Representative Byron Rushing are concerned that the obligations may go so far as to encroach on state sovereignty. Both states and state legislators support free trade and understand the importance of foreign markets to US growth. California boasted \$1.7 billion of exports in 1999 and supported those exports with \$13.5 million of subsidies annually.^{iv} Kuehl and Rushing are concerned, however, that the trade agreements lack procedures that promote meaningful public input and may undermine domestic legislation.

States currently pass laws that affect health, property rights, taxation, development, and environmental regulations. These laws are generally upheld if they are rationally related to a legitimate government purpose and do not conflict with or are not less stringent than federal law. NAFTA further burdens all U.S. "government measures" that may impact trade to be consistent with international standards.

Laws that may have an impact on foreign investments must pass a test called the "trade-legal" requirement. Laws must pass a three-part test that proves that:

1. the objective is considered legitimate under the treaty;
2. it is the least trade restrictive alternative available; and
3. the measure does not constitute a disguised restriction on trade.

The analysis does not take into account the public policies, customs or goals of the government body making the law. The treaties require laws to be the least burdensome necessary to achieve the legitimate government objective. The highest priority in the treaties is to encourage, support and protect foreign investment. All other priorities are secondary.

Who Makes These Agreements?

The federal government has the exclusive power to make agreements with foreign governments. The "treaties" discussed in this paper are actually presidential agreements. They carry the same weight as treaties, but the ratification process is significantly different.

For both, the executive branch formulates the U.S. goals by consulting with 30 industry specific advisory boards and negotiates with foreign nations through the United States Trade Representative (USTR).

For a *treaty*, the president must be advised by the Senate and receive the consent of 2/3rds of the Senate. A *presidential agreement* is approved by both houses, but requires only 51% in each house to carry. NAFTA was presented as a presidential agreement and the FTAA is also in that format.

Fast-track further limits the role of the Congress in affecting international agreements. Congress has 60 days to review the proposed agreement and then is limited to a yes or no vote. It is limited to 20 hours of debate. Congress cannot modify the agreement, but must reject it entirely to have it revised. The only opportunity for state and local governments to safeguard critical programs and get exceptions for specific laws is to participate in the negotiations before ratification .

Government measures defined loosely are rules or regulations from any government actor or authorized contractor. Under the trade agreements, government measures may be challenged if they affect foreign investment profits, market share, or give preference to domestic investors. To be upheld, the laws have to be legitimate under international rules rather than rationally related to standards used in the U.S. The penalties for non-compliance involve huge and unpredictable financial awards. Previous treaties and agreements were voluntary and were enforced only by tariffs or boycotts. These new agreements extend the interpretation of "non-tariff barriers to trade" to include many state and local government laws and procedures.

The Legislative Process

Trade agreements have broad implications for the legislative process including changes in the formulation of laws, the public participation and representation of citizens and foreign investors, and the interpretation in the courts. Laws must be in compliance with the trade agreement obligations, and may be interpreted in international tribunals rather than the traditional courts. This circumstance limits citizen input, judicial interpretation, and the state's role as the democratic representative of citizen voice.

Public Participation Must Include the International Community

Foreign investors will have an opportunity to ensure that the laws passed in the US will not negatively affect their investments. Regulators and rule makers have to provide a comment period open to all foreign investors who may be impacted by the resulting government measure. All rulemaking bodies must invest in communication procedures that announce pending and new rules to all potentially concerned parties including current and future investors. Investors may take this opportunity to explain to the state or locality why the proposed legislation or rule might conflict with a trade agreement, and outline how that might translate into an international arbitration and a substantial financial reward to the investor. These concerns may take precedence over the will of the citizens and the goals of the state.

Health Laws and Harmonization

Existing laws must also be harmonized with the participating countries. Either all countries have one set of regulations, or each party may simply accept each others' different laws as comparable or acceptable. *Harmonization* results in one law that is a compromise of the other laws. The point is to lower the uncertainty and transaction costs of investors by having similar laws in all countries whenever possible. The Western Governor's Association believes state standards may be compromised through this process. State laws regarding environmental protection, natural resource management and consumer safety are generally more stringent than the standards used by U.S. trading partners.^v U.S. federal and state safety standards would have to be lowered to comply with the required harmonization preempting the states' role in setting the acceptable risk.

Once laws are harmonized, challenges may still be brought to tribunals under NAFTA. The controversy over Lindane is a good example. Lindane was targeted as a persistent organic pollutant (POP). Lindane has been used to kill head lice and to stop fungal damage in agricultural seeds. In these applications, Lindane has caused death, seizures and rashes in children and adults who have come into contact with the chemical. Equally troubling, the chemical breaks down very slowly once in the environment. It was considered for the POPs Treaty but was not included.^{vi} Since it was not listed, but remained controversial, the U.S. and Canada harmonized their laws regarding its use. Lindane was to be sold freely until July 1, 2001, and the governments would fund a new study to assess the health risk. The compromise was that all U.S. and Canadian companies would stop manufacturing in December 2000 and sell the stock over the next six months. When the voluntary agreement was published, the Canadian announcement said that Lindane could not be used after July 1, 2001, and violators could be subject to a \$200,000 fine. Lindane dropped in value precipitously.

Harmonization

U.S. safety standards are likely to be compromised in the negotiation for a single legal standard.

Crompton is a United States manufacturer of Lindane. The manufacturer is now bringing a NAFTA challenge. Crompton says that it only agreed to take Lindane off the market if the study proved it was harmful, and that the government is acting in bad faith.^{vii} The risk assessment by the governments was never completed, so Crompton is challenging the scientific basis for the ban. The governments had included the manufacturers in the initial decision, and Crompton is treating the government like a contractual partner that is in default rather than a regulatory authority obligated to protect human health. Crompton questions the need for Lindane to be banned, and is demanding \$100 million from Canada for the premature loss of market share, the retraction of the ban, and return of their license to manufacture the chemical. If the tribunal allows Crompton to move forward, this challenge threatens the finality of negotiations between parties to harmonize laws. Financial compensation for affected profits would be valued above the ability of government to stand by a compromise or otherwise legitimate legislation.

The Precautionary Principle Could Be Challenged

The Lindane case begs the question, "who decides?" Does a manufacturer have a burden to prove a chemical is safe, or must the government prove certain harm before acting to protect the public? The burden seems to be placed on the governments in the NAFTA and WTO cases at this time.

Crompton Corporation v. Canada

Lindane was nearly listed as a persistent organic pollutant (POP), which would have banned its use under the POPs Treaty. It has been used to stop spoilage of seeds as well as an ingredient in lice-removing shampoo. Canada was permitted to use Lindane on canola seeds, while US farmers treated 13 other crops. According to some US and European studies, Lindane is carcinogenic and acute exposure symptoms include seizures, skin rashes, and neuromuscular complaints.. Crompton asserts that the ban is to benefit Canadian replacement products. This would violate the national treatment requirement that bans domestic preference over foreign goods. The next round of POPs negotiations may eliminate all use of Lindane, but Canada may have to pay the manufacturer damages under NAFTA before that is resolved.

U.S. governing agencies are generally allowed to use the precautionary principle to avoid damage to the public from a substance that is potentially harmful. The precautionary principal is a risk averse policy that favors erring on the side of safety when scientific evidence suggests that something may be harmful, but harm is not certain. The trade agreements require a scientific basis for government measures which suggests that the results of any study be reproducible and statistically significantly different from control groups. Less information tends to settle questions in favor of using the product until it is proven harmful rather. A government exercising caution where evidence is forthcoming or scant may be inviting a challenge. The same government entity may face some liability domestically for not acting quickly enough to protect the affected public. An imminent NAFTA challenge may make the decisions more economically driven because public policy and local conditions are irrelevant to international tribunals.

Foreign investors may try to impose international standards to challenge the scientific basis of the state or local government for restricting the use or release of what is considered a pollutant in the US. For example, the California legislature was convinced that there was enough scientific evidence that MTBE should not be introduced to the environment. Other researchers in Germany concluded that it was not dangerous, and the Canadian manufacturer is claiming that the U.S. should accept those scientific studies. The challenges may be resolved in the state or local government's favor, but at a significant cost to both the state and the federal government defender.

Professional Licensing

Harmonization is not limited to health or environmental legislation. NAFTA and GATS require that all laws affecting investment be as similar as possible in the participating countries.¹ One of the first topics being considered by special GATS subcommittees is the issue of licenses for professionals. At this time, without the appropriate license with the credentials required by a state, lawyers, accountants, doctors and other professionals cannot operate. The trade proponents are striving to come up with universal criteria for licenses that will allow these services to be traded freely. This is a huge detour from the state character of licenses in the past that require specific knowledge of local customs and practices.

¹ "Affecting investment" is a broad category that encompasses anything that could inadvertently change the property rights or future expectations of the foreign investor including higher expenses of raw materials which might result in a loss of profit.

Protections for Current Laws Weak

There are some general exceptions that exempt open-ended categories of laws. These exceptions provide a false sense of security because in some cases these exceptions have sunset clauses, and in others they are available as candidates for compromises in future rounds of liberalization. The continued obligation to liberalize is called a "rollback" requirement. The grandfathered laws are restricted by a "standstill" requirement that means that the law can not be strengthened. This freezes future lawmaking powers at the point the agreement is negotiated.^{viii}

State and local governments protect public health, encourage sensible growth, economic development and interpret their laws...These traditional powers are not protected, and may be targets for elimination as "*non-tariff barriers to trade*"...

Exceptions may not protect natural resources

There is no guarantee that exceptions will be interpreted consistently over time. The General Agreement on Tariffs and Trade (GATT) has a general exception for protecting animals, plants, and exhaustible natural resources. It is not clear what those natural resources are. It is fairly certain that water is not among them since the USTR and the Supreme Court of the United States both consider water to be a commodity, and the GATT defines water as all water other than sea water. Although NAFTA defers to the GATT, NAFTA preempts the GATT where the two are in conflict, so GATT protections may be overruled by interpretations of NAFTA. There is a potential conflict between the reserved right to protect natural resources (GATT Article XX) and the obligation to continue exports of products at the average level of the previous 36 months (NAFTA Article 15). The implication is that a country would be obligated to continue natural resource exports regardless of changed local conditions or serious risk of unsustainable depletions.

A U.S. company is challenging a Canadian ban on the export of fresh water on this basis as well as other national treatment claims. Sun Belt, Inc. claims that British Columbia, a province of Canada, expropriated their profits by putting a temporary moratorium on freshwater export. Sun Belt had contracted with a local firm to export water to California. Sun Belt is asking for \$1.5 billion in lost profits and the reinstatement of the license to export. A company spokesperson has claimed that NAFTA has made them an active participant in Canadian political process, and a rightholder of Canadian water. NAFTA is controlling because, in Sun Belt's view, water is a commodity like any other, and therefore must be traded under NAFTA rules. The case has not been approved for arbitration by the tribunal at this point, but is evidence of the types of issues that may be raised under the agreements. It may inform future decisions of planners, conservationists and manufacturers alike.

U.S. Court System Avoided

Foreign investors can avoid U.S. state and federal courts. The claims are heard by an international tribunal.

The investor and country:

- Each select a judge, and jointly agree on a third.
- Jointly select laws to use (the law of either country or some international standard)

The tribunal:

- is closed to the public
 - can ignore domestic law
 - has limited appeals
- can award financial penalties

It is important to note that British Columbia's moratorium was in effect before NAFTA was signed. Sun Belt is going back retroactively to say that it was owed the NAFTA treatment before the trade agreement was in existence. Legislators may be concerned that implications of having issues as critical as access to the freshwater supply can be decided by an international tribunal with no direct accountability to local citizens. The tribunals emphasis may be given to economic criteria over local public health and environmental quality concerns.

The Courts Lose Jurisdiction at the State and Federal Levels

The agreements invite foreign investors not only into the legislative process, but also to interpret laws once applied. This is a significant shift in influence that limits the ability of the state to act in an autonomous, independent, self-interested manner. If the resulting measure is perceived as discriminating against foreign investors, or gives domestic competitors an inadvertent advantage, the foreign investor can challenge the law. This challenge would be heard in international arbitration. Tribunals are selected by the two parties to the challenge (an investor and a party country) and they choose the standard of law that will be used to decide the controversy.

Both the venue and the finality of the courts are modified under NAFTA. The arbitration panels and international law replace the state courts as the venue for hearing complaints against a state action and the standards applied. Under NAFTA, the federal government defends the claim in an international setting according to whichever law the parties choose, which has generally been the international standard. The state does not directly participate, and state law is not considered unless the parties both agree that it will be the standard. If a domestic court decision is made, an unfavorable outcome for the foreign investor might encourage the investor to go into arbitration by claiming discrimination and avoid the state law.

The *Loewen Group, Inc. v. United States* challenge is an example of this threat.^{ix} Loewen, a Canadian funeral home, has been granted standing by a NAFTA tribunal to sue the United States for requiring a bond before the appeals process. Loewen was found guilty of illegal competitive tactics and was fined \$100 million compensation and \$400 million punitive damages award in the Mississippi Supreme Court. Mississippi requires that appellants post a bond (equal to 125% of the award) which would be due if the appeal fails. Loewen settled the case for \$175 million. Still dissatisfied with the outcome, in 1998 Loewen turned to the NAFTA process for relief. Loewen is claiming that the actions of the awarding jury and the court have been influenced by its status as a foreign company, and therefore are challenging the damages award. If Loewen is successful, there will be broad implications for all U.S. courts. If the NAFTA tribunal protects Loewen by declaring the Mississippi law invalid, then the impact of NAFTA will be that

- investors will not be required to exhaust remedies before going to arbitration,
- investors can go through the court system and then challenge it if not satisfied,
- court decisions will not be given weight by the tribunal or considered in their deliberations,
- no civil dispute with a foreign investor can be considered settled until a tribunal has also considered it.

If Loewen is successful, the U.S. court system could be circumvented entirely. While this would not be a lenient interpretation, it illustrates the restrictions on government action integral to the trade agreement. The way the NAFTA is written the arbitration panels are under no requirement to give the court or the state laws deference. A single foreign shareholder, without the consent of the company or country of origin, could claim an investment loss and challenge the legitimacy of the American court system. The courts would lose their ability to interpret the law for foreign cases. There would be two standards for disputes, one for foreigners set by NAFTA, and the traditional U.S. law for domestic companies and investors.

Democratic Deficit

"Civil society is based above all on the free generation and exchange of information, with openness and participation as prerequisites. It is the recognition that decentralized, flexible, locally rooted responses are indispensable..."

Bruce Rich

Mortgaging the Earth

The Structure of the Agreements Creates a Democratic Deficit

As outlined above, foreign investors have the right to participate in domestic lawmaking, and if they are not satisfied with that process, can take their complaints to an international arbitration tribunal that is not available to similarly situated domestic investors. These arbitration hearings are not open to the public, and though the U.S. federal government would be a participant in any claim against a U.S. governmental entity, the proceedings remain behind closed doors unless both parties agree to make a public disclosure.

The success of the U.S. system is based on the transparency of the process, and the ability of citizens to participate in debates regarding laws, policies and actions. Public hearings are an opportunity for all stakeholders to be heard, and ideally come to a balance of interests. The U.S. system is built on the notion of checks and balances. If a lawmaking body exceeds its authority, the court or the executive can keep the legislature in check. International trade agreements lack such checks and balances. These trade agreements give foreign private investors the right to arbitration tribunals to second-guess the legislature and the courts. International law may be used as proof that a U.S. law is too stringent. Neither U.S. citizens nor state and local governments are allowed access to these tribunal proceedings.

Loewen Group, Inc. v. United States

Loewen Group is a Canadian funeral home that was sued in Mississippi by a local business for unfair competition. Loewen was found guilty of fraudulent business practices in their expansion effort. The jury awarded \$100 in compensatory damages, and an unprecedented award of \$400 million in punitive damages including emotional distress. Loewen chose to settle for \$175 million rather than put up the required bond for \$625 million to appeal the decision. Then the Canadian company decided to take the case to a NAFTA tribunal. Loewen asserts that the bond for appeals is not reasonable and forced them to settle and requests \$725 million compensation. The law is of general application, not just for foreign companies. If successful, Loewen will circumvent the U.S. court system. The facts of the case are not in question, but the ability of the state of Mississippi to require a bond from domestic and foreign citizens alike before the appeals process begins. This is a significant threat to the finality of the court system, and could give foreign enterprises a way to avoid civil penalties for misconduct.

On a procedural level, domestic and foreign businesses have better access to the negotiators because corporations fill the 30 industry-specific advisory committees that have direct access to the President and the United States Trade Representative (USTR). The public can submit written comments to the Committee for the Participation of Civil Society, or to each negotiating group. No committee is obligated to respond to citizen inquiries. State representatives can try to influence Congress and the members of the committees, but are not privy to the negotiations within the advisory committees. After the trade agreements are passed, administrative staff often modify the text without public input. Under GATS, ongoing administrative harmonization is required to continue the process of liberalizing markets and removing trade barriers. As a government action, however, foreign investors can demand to be notified of these changes or seek damages later if profits are negatively impacted.

The strategic advisory role of the corporate interests may raise concerns. "The literature on regulation ... is almost universal in its conclusion that it is difficult, if not impossible to prevent the "capture" of [regulatory] systems by the interests they are supposed to regulate."

Luberoff, 2000

Enhanced Property Rights Conflict with Land Use Planning

Of all of the roles of local government, land use is the most specific to place. Many localities post signs at the edge of town announcing that local zoning is in place, and permits for building and businesses will be required. Zoning affects a broad range of on site land uses and allowed impacts on neighboring lands and waterways. The placement of businesses, residences, and the allowed uses of land are local decisions. Environmental regulations and emissions standards can be set by state governments and sometimes regional or local governments. The latitude to set restrictive land use regulations or environmental regulations to protect human health might be challenged under NAFTA and later trade agreements.

Environmental Regulations

The use of zoning balances the benefits of being a citizen with the rights of a landowner to profit from the use of the property. Commercial enterprises have always been heavily regulated and the courts consider it foreseeable that the status quo will change. Therefore, domestic investors have no reasonable expectation that profits from the property will be secured in perpetuity. Foreign investments may use a different standard for deciding appropriate compensation for losses of market share or profits. Governments may have to pay for environmentally based restrictions (air, water pollutant restrictions) if the regulations are strengthened due to a change in circumstance and inadvertently limit the return on investment

Land Ownership

NAFTA investor rights would consider restrictions on foreign land ownership or leasing to be discriminatory. Residency requirements for land ownership, use, or access to resources exist in some form in Nebraska, Oklahoma, Indiana, Kentucky, Mississippi, Wisconsin, Arizona, Colorado, North Dakota, Montana, Pennsylvania, Iowa, Minnesota, Oregon, Nevada, Alaska, Hawaii, Georgia, California, Maryland, Massachusetts, and Washington state.

Western Governor's Association

Ownership or Access to Natural Resources

Lack of access to natural resources may be considered discrimination in violation of the national treatment requirement. States that limit foreign access to minerals or water include Alaska, Montana, Arizona, Utah, Wyoming, Idaho, and Oregon.

Western Governor's Association 1997

expected by the foreign investor. The national government, as the party to the agreement, may be expected to satisfy that lost expectation of profit.

Government compensation for property loss or the act of *expropriation* or *takings* is not new. The concept of takings in the domestic context awards compensation to citizens whose property is used or burdened for the public good. In the US, only the loss of use of the property *in its entirety* gets compensation unless the government physically occupies all or a portion of the land. (The citizen would be compensated only for the occupied portion). The courts have long held that the diminution of the value of property is insufficient to be considered a takings. The trade agreements suggest that *partial takings* may be granted to foreign investors. This would mean that **counties** that wanted to place restrictions on land use that required setbacks, buffer zones or denied dredge and fill permits might have to pay foreign investors for their compliance.

The *Metalclad v. Mexico* challenge illustrates this expanded definition of takings as well as the potential for private investors to overrule public health and environmental concerns. Metalclad is a US company that purchased land in Mexico with the intent of building a processing plant for toxic wastes. The Mexican regional and federal governments approved the venture. The building commenced and was completed based on representations of approval from the federal government. The local government never issued a building permit and refused to on the basis on the environmental impact report. The local government would not allow the plant to operate because it would have exacerbated the ground water pollution problem. In a desperate attempt to stop the plant, the community zoned the site as a preserve.

Metalclad took the claim to a NAFTA tribunal and was awarded \$16.8 million, (the cost of the building). The tribunal also could have awarded the lost profits estimated in the business plan or loss of reputation. Judge Tysoe, one of the judges who sat on the tribunal, voiced concern that this broad interpretation of the trade agreement could interfere with customary and legitimate zoning laws.^x The potential for environmental damage or the health effects of ground water contamination were not considered to be critical to the determination of the case. The impact on the investor was the main concern of the tribunal.

Note that the community would not allow the property to be used as a toxic waste facility, but did not say that the property could not be used for other purposes. A U.S. court would not award takings if there were still economic uses of the property available. The ability to use the property is protected, but not a particular use. Particular uses must be consistent with local zoning, and broader public policies. The trade agreement does not incorporate any of these criteria in the deliberations. If foreign investors receive similar awards against the U.S., domestic investors may lobby for equal rights to partial takings in the future. In

"[T]his broad interpretation of the [agreement] could interfere with customary and legitimate zoning laws."

Judge Tysoe, British Columbia

fact, this has been proposed in Congress and defeated. Compensation for partial takings would undermine the basis for land use law in the U.S.

Economic Development Restricted

Local and state governments use many mechanisms to enhance economic development. Many of the most successful programs include subsidies or preferences available only to resident businesses, or businesses that meet a certain criteria for a disadvantaged class. NAFTA and the WTO specifically target subsidies that in any way give preference to domestic business or discriminate against foreign investors.

Performance bonds, performance requirements, local input and labor requirements and local business preferences are among the activities that may be interpreted as non-compliant with NAFTA and the WTO. Programs that may be at risk include:^{xi}

- Community reinvestment acts
- Living wage ordinances
- Use of public pension funds for redevelopment
- Purchasing criteria other than price and quality
- Minority business support
- Buy local or buy American policies
- Recycled or local content preferences

These programs are common programs used by local governments to support local businesses or draw investors to the community. The use of economic development to nurture local business is against the free market principles that guide international trade agreements. The goal of the agreement is to encourage foreign investment by leveling the playing field through harmonization or freezing regulation so that investments are more predictable. State and local governments lose flexibility and predictability within that process.

States use subsidies and tax breaks to encourage economic development, fund services for the poor, and reward initiatives that fulfill public purposes. These practices may be considered illegitimate if the result gives the government or domestic investors an edge over foreign investors. Any subsidies available to U.S. companies must also be made available to foreign concerns. Tax breaks must be available equally and without residency requirements.

Traditional Government Services May Be Challenged

As a provider of goods and services, governments receive special interest rates to save the public interest on large capital projects. If a government activity is also provided by private industry, any subsidy or better lending rates enjoyed by the government may be considered illegal subsidies that favor government providers over foreign private enterprise. For example, United Parcel Service (UPS) is challenging Canada's right to use their letter delivery routes to also deliver parcels. UPS claims that access to the Royal Post infrastructure is unavailable to UPS, and therefore puts the Canadian Post at an unfair competitive advantage. Under the NAFTA, any subsidies available to domestic market competitors must be available to foreign concerns as well. Tax breaks must be available equally. UPS, therefore, is demanding either access to this infrastructure, which would allow their packages to be carried by the Canadian

UPS v Canada

UPS is claiming substantively that this is a failure to provide national treatment (preferring Canadian competitors to U.S. counterparts) and an abuse of government monopoly power. Procedurally, UPS is bringing the challenge under Chapter 11 claiming a breach of a Chapter 15 requirement for Parties to properly control their government monopolies. UPS contends that any breach of the other chapters in the agreement are failures to comply with the minimum international standard of treatment required in Chapter 11. If this argument is accepted, then every violation of any part of the treaty would open a Party to a Chapter 11 dispute resolution. It is arguable that the dispute resolution section was intended to prevent discrimination or nationalization of property and was not expected to include other articles of the agreement.

letter carriers at no extra charge, or financial compensation equal to that value. There is no reason that this challenge could not be posed to the United States Postal Service if UPS is successful since the U.S. uses the same government-owned corporation arrangement and delivers the same services. The challenger could be a Canadian investor in Federal Express, or a sole proprietor with a license to deliver packages in Canada.

Privatization Process Altered

Professor John Roberts defines the role of the state as an umpire between private interests, and an advocate for the public problem of market failure (Appleton 1994 at 206).^{xii} Privatization has the potential to offer alternative provision of public goods and services. State and local governments fulfill this role when they carefully construct contracts for private industry to provide goods and services traditionally provided by the state (solid waste disposal, water distribution and treatment, etc.). However, the government has to play a market-structuring role to promote competitive efficiency while serving broader public values in the public service.^{xiii}

In the NAFTA, GATS and FTAA regime, privatization is a matter of course, not a decision to be made by individual localities or public utilities. The trade agreements, to varying degrees, liberalize markets to provide goods and services that have been supplied by the government. Recall that governments provide public goods in the first place because of market failures such as externalities and free riders. From the GATS each party specifically lists the services that the government will open to private competition with public providers². There is an exception for services that are provided by government agencies, but the caveat is that the service must not be available in the marketplace. Thus, the existence of private hospitals, schools and water treatment plants could open the door for private industry to compete with the government to provide these services.

Government latitude in a number of areas may be significantly reduced under the agreements. According to Barry Appleton, a Canadian plaintiff's attorney in NAFTA challenges, the trade agreement was drafted specifically to restrain the traditional role of the state. Quality and access to public services may be undermined if governmental control over the contracting process is weakened. Government subsidies currently used to lower costs and expand citizen access may be claimed by foreign investors as compensation for lost profit and market share due to the lower cost of government provision.

² GATS is a "bottom-up" approach that includes only what is listed. NAFTA and FTAA are "top-down" treaties, which means that all services that are not specifically excluded are liberalized.

Costs May be Significant

There may be significant costs incurred by local and state governments in trying to satisfy these international obligations. Many localities would have to enhance administrative and legal departments to gain the expertise necessary to communicate the legislative agenda with potential investors in all participating countries.

It is unclear whether the localities and states that are challenged will be financially liable for the damages awarded to investors. The known challenges against the United States at this time include claims for \$1.8 billion. There may be other claims that have not been reported since, there is no obligation for either party of the arbitration or the tribunal to make it public. (The Loewen claim was admitted only after a Freedom of Information Act request). A group at the Fletcher School of Law and Diplomacy at Tufts University undertook a study to assess the potential financial liability posed by international trade agreements. They estimated the liability at \$32 billion in the first four years that all agreements are in effect. Over the following four years the estimate climbs to \$159 billion.^{xiv} Legal fees, staff time, and lost productivity of government employees who will respond to these cases are not included in the estimates.

A Balance Between Economic and Governance Goals

The focus of these agreements is on increased trade and economic growth. These goals are not balanced by concerns with other public policies and governance goals. The historical legal framework of the U.S. may be altered dramatically by the property rights expansion for foreign investors. For example, the Clean Water Act relies on land use management techniques and zoning. The technology-forcing advances required by the Clean Air Act were costs absorbed by the private industries benefiting from the production of wastes. Both of these major federal initiatives rely on state and local cooperation and the takings law as interpreted by the Supreme Court. Government regulatory approaches such as these could be stymied by expropriation awards under the free trade agreement. Domestically, some litigators stress that rampant takings liability would bankrupt many local governments or divert financial resources from critical public works.^{xv}

There needs to be a balance between the free trade agenda and the need for domestic governance. The restrictions and obligations of the trade agreements are substantial and may impact significantly state and local governments' ability to protect their residents, resources, and economic viability of local industry.

State and local governments are concerned that decision-making based on local conditions might be severely restrained and burdened by international interests entirely unfamiliar with the needs of the residents.

Zoning that restricts development in order to protect drinking water sources, wetlands, or steep coastal areas from mudslides may have to pay foreign claims for partial takings if the tribunals interpret the actions as expropriations of land investment profits.

REACTION BY STATE AND LOCAL GOVERNMENTS

Governments are trying to understand the best way to enjoy the benefits from markets and free trade provided by the agreements while retaining state and local governmental authority.

The Western Governors Association (WGA), the National Council of State Legislators (NCSL), and the National League of Cities (NLC) are a few entities that have made public requests to the US negotiating body, the United States Trade Representative (USTR) for clarification of or protection from the trade agreement obligations. These entities are not against free trade. The National Conference of State Legislatures, for example, supports free trade, but recognizes that reservations can be made to avoid unnecessary preemption and preserve traditional state authority.^{xvi} Similarly, the National Association of Counties (NACo) supports free trade, but not to the exclusion of federalism. NACo supports accountability including federal identification and communication of all impacts federal legislation may have on state and local operations.^{xvii} Over a dozen counties and municipalities have passed resolutions requesting protection from the agreements or declaring that they will not participate in the agreement and do not consider themselves bound. Canadian public unions and some municipalities have been very critical of the agreement and have requested major revisions or repeal. Some of these groups have requested that the NAFTA not be used as a template for other agreements without revisions to Chapter 11.

Despite the public controversy over international trade and the clearly communicated concern expressed to the USTR and members of Congress, the FTAA draft made public in 2000 contained a virtually verbatim replica of Chapter 11. The ability of state and local governments to eliminate the burdens of the legislative restrictions and the threat of Chapter 11 liabilities is hindered by the singular focus on the economic benefits of the agreement. Giving up the state right to immunity provides the corresponding right for U.S. companies to opt out of the court systems in other signatory countries. Allowing foreign input into our legislative process opens the door for U.S. business interests to shape foreign laws on subjects that may constrain profits abroad.

State and local governments could benefit from early participation in the negotiation process and by educating both their constituencies and representatives in Congress. State and local representatives should seek to understand the impacts of free trade on their constituents.

- Will investor rights may be in conflict with community values?
- Will takings legislation, if expanded, could make environmental and health regulations too expensive to enforce?
- Will subsidies and revenues be considered discriminatory?

State and local government representatives are the frontline of democracy and have an obligation to preserve the democratic, federalist character of the U.S. government. Democracy requires participation, representation, and debate. Federalism requires a clear delineation of powers shared between the state and federal governments. International trade agreements blur these distinctions, and grant foreign investors rights, participation, and representation superior to that of U.S. citizens.

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Restructuring Local Government

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Options For County Nursing Homes in New York State

Authors: Michael Ballard, Kevin Sherper and Mildred Warner
Department of City and Regional Planning, Cornell University

Collaborators: Jack Pease, President, County Nursing Facilities of New York, Inc.; Katy Connolly, Executive Director, County Nursing Facilities of New York, Inc.; Steve Alviene, Deputy Director of Labor Relations, Civil Service Employees Association
May 1999

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Acknowledgements

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Executive Summary

County-run nursing homes have a long and honored tradition of providing high quality care to the elderly throughout upstate New York. In spite of being prized assets in the communities they serve, the future viability of county homes is uncertain. As the long-term care industry undergoes rapid and significant change, county homes must seek out new and innovative ways of providing high quality service at the lowest possible cost.

To address current challenges and identify strategic opportunities, county home administrators and labor leaders, with the assistance of Cornell University, collaboratively designed and administered three surveys on the current status of New York State's 43 county homes. Broadening the range of services, marketing the home to the community and other health care providers, strengthening working relationships between labor and management, and renovating existing facilities are all viewed as top priorities for county homes to remain competitive in the industry.

In addition to assessing market trends, we focused on two key findings. First, staff turnover rates are significantly lower at county homes compared to their private-sector competitors. Research suggests that low staff turnover is strongly correlated with high quality care, and therefore turnover rates constitute a key comparative advantage that county homes should market to their advantage.

Second, we assessed county homes' interest in organizational restructuring. Contrary to popular wisdom, we find that interest in restructuring is unrelated to either fiscal stress or pressure from county government. Rather, we contend that interest in restructuring should be viewed as a signal of managers' willingness to innovate, and that management and labor can work together to improve the competitiveness of public nursing homes.

Introduction

In New York State, county governments own and operate over 10,000 nursing home beds in 43 of the state's 63 counties. County-run nursing homes have a long and honored tradition of providing high quality care to older persons throughout upstate New York. In spite of being prized assets in the communities in which they operate, the future viability of county homes is uncertain. Continued financial support at both the local and national level is always tenuous as governments face continued pressures to reduce expenditures and hold the line on property tax increases. At the same time, county homes must compete with private-sector and non-profit nursing homes that are allowed to operate under considerably less restrictive rules and procedures.

The future of county homes is complicated by the rising costs of health care in the United States. The price of health care continues to grow significantly faster than national inflation rates, and long-term care is not immune to this larger trend. In New York State alone, Medicaid spending on long-term care totaled \$5.7 billion in 1995, and annual increases in expenditures of ten percent or more are not uncommon (Weiner and Stevenson, 1998: 85). The high costs of long-term care have compelled many counties to consider getting out of the nursing home business. Yet some of these bolder initiatives entail significant risks. In Dutchess County, for example, privatization of the county home resulted in its eventual closure, forcing many elderly residents to seek care outside their home community.

An alternative to privatization is internal innovation through labor management cooperation. These innovations often succeed, resulting in small but significant improvements in the lives of county home residents and employees. All too frequently, though, innovative programs at one facility go unnoticed by others, even though all county homes face similar challenges. To address this problem, labor and management leaders, with the assistance of the Department of City and Regional Planning at Cornell University, engaged in a collaborative strategic planning effort at the statewide level in spring 1999. Leaders from the County Nursing Facilities of New York State (CNFNY), the Civil Service Employees Association (CSEA) and Cornell collaboratively designed and administered three surveys for nursing home administrators and union representatives. The surveys assessed the financial health of county homes, the status of labor-

management relations in these facilities, and the degree of interest in redesigning established service delivery models.

In addition to questions about the general characteristics of county nursing homes, we focused on two key issues. First, we were interested in learning more about problems with high staff turnover in the industry in general and in county homes in particular. In Section II of this report we examine the link between nursing home turnover and the quality of care in county facilities. We find that staff turnover is lower in county facilities, but the evidence linking lower turnover and higher quality care is inconclusive. Nevertheless, existing research suggests that low turnover is strongly correlated with higher quality care, and we believe this characteristic is one of the key strengths of county homes.

The second major issue addressed in this report is county homes' interest in undertaking organizational change. In Section III we look at management and labor's perspectives on the likelihood of restructuring, and attempt to explain why some counties may be more interested in restructuring than others. Contrary to popular wisdom, we find that interest in restructuring is unrelated to either fiscal stress or pressure from county government. Rather, we view interest in restructuring as a signal of managers' willingness to innovate. In our discussions with county home administrators, the message was clear: managers want their homes to be the market leader in their communities, but all too often lack the economic resources and legal framework required to do so.

Project Methodology

To gain a better understanding of conditions in and challenges to New York county homes, CNFNY and CSEA worked with Cornell University to design and administer three surveys of New York State's forty-three county nursing homes in March and April 1999. Two of the surveys targeted nursing home administrators and one was directed to labor officials.

Members of the CNFNY Executive Board reviewed drafts of the administrator surveys and provided feedback. All three survey instruments were fine-tuned with the assistance of a professional polling firm retained by CSEA. Each organization was responsible for administering its own surveys.

For the initial survey of nursing home administrators, which focused on restructuring and fiscal health, 35 of 43 homes responded. Twenty of 43 homes answered the second administrator survey, which asked questions about the service mix and quality of the physical facility. The survey of labor officials had the lowest response rate, with 14 of 43 homes responding. While the results in this report cannot be generalized across all county homes in New York State, they do provide a solid foundation from which to build future research on county homes. The results also raise several important but unanswered questions.

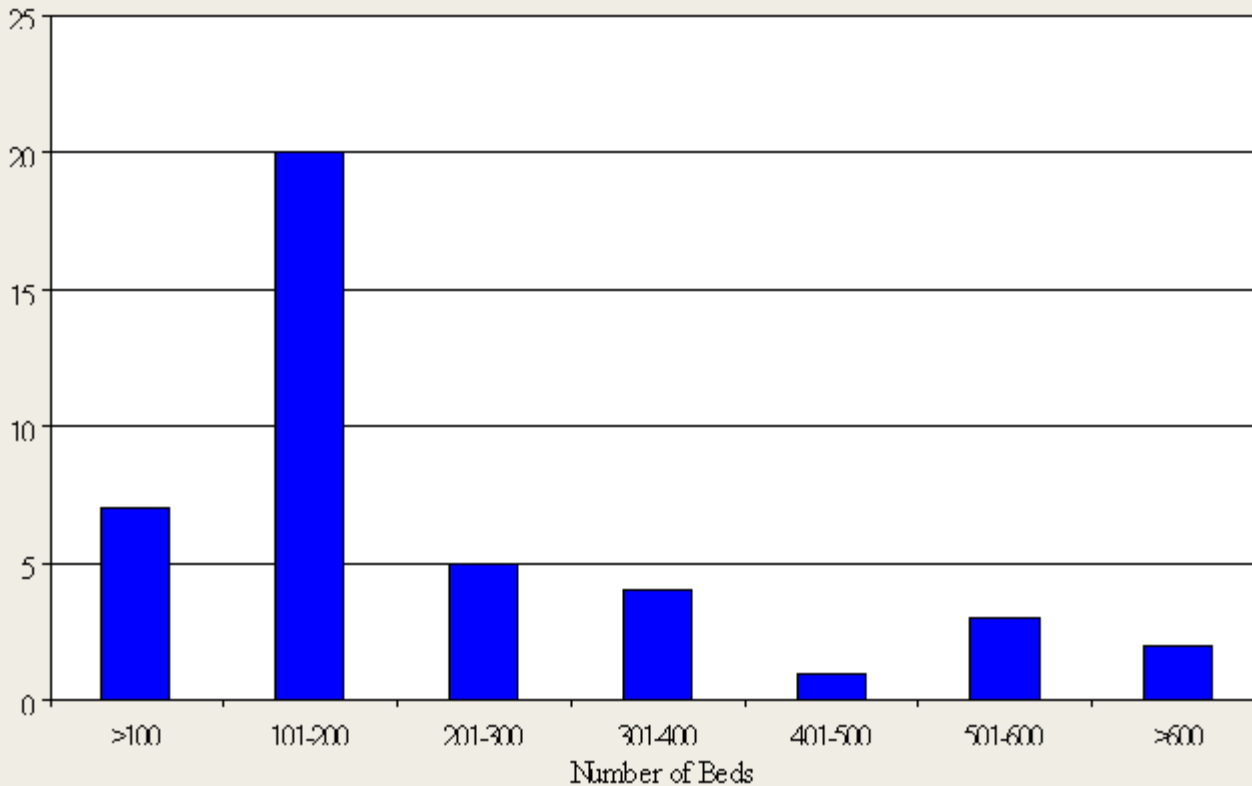
To supplement the survey results we conducted additional research on trends in the long-term care industry both in New York State and across the country. All sources are listed near the end of this report.

I. GENERAL CHARACTERISTICS OF COUNTY HOMES

County homes are larger than the competition

County homes are significantly larger than their non-profit and for-profit counterparts, averaging 233 beds per facility versus 148 beds. However, the county home average hides significant variation among facilities, as Figure 1 shows.

Figure 1. Distribution of Beds in New York County Nursing Homes, 1999



Source: HCFA Nursing Home Compare, online at <<http://www.medicare.gov/nursing/search.asp?State=NY>>. Accessed May 1, 1999.

Half of county homes surveyed have not been renovated this decade

From a sample of fifteen responding county homes, we found that seven homes had undergone no renovation within the last nine years. According to a report issued by the Center for Governmental Research (CGR), changing architectural standards and expectations can play a critical role both with respect to the attractiveness of a facility and how functional the building proves to be for service delivery (CGR 1997: 12). Lack of recent renovations not only can give the home an "image problem," but may also reduce worker efficiency. For example, simple changes such as the location of nursing stations can have a substantial impact on the time required to perform routine tasks. For these reasons, renovation of older homes should be a high priority for all county facilities.

Competition in the industry is on the rise in New York State

According to survey respondents, strong competition exists in 85 percent of New York counties. Some of that increased competition has come from area hospitals offering similar services, and that form of competition is expected to increase in the future, according to 58 percent of administrators. A similar proportion of respondents (60 percent) indicated that hospitals are currently competing with the nursing home for long term care, compared to just 40 percent in the past.

One way of responding to increased competition is to develop contacts with other health care and social service agencies in the county, which may serve as a referral point for care for the county home. Eighty percent of county homes view themselves as a referral point for nursing care, and 61 percent of homes are referral points for rehabilitative care. These figures suggest that most county homes are competing successfully with other nursing homes in their service area, but that a few homes could work harder at developing long-term relationships with other service providers.

Interest in marketing is strong, yet only half of county homes market their services

Half of all respondents market the services of the county home to the wider community. Newspaper ads, radio spots, and community events are the most common forms of advertising, whereas only one home has used television to convey its message. Print ads and community events are perceived to be the most effective ways of reaching out to the community. Radio ads, in contrast, are viewed as the least effective form of marketing the county home. Building public interest, educating the public, developing public support, and filling beds were the most important reasons why county homes chose to advertise. Attracting paying clients was the least popular reason for marketing. This response should be expected, however, given that the central mission of the county home is to serve clients regardless of their ability to pay.

Another form of marketing that can reap significant rewards is "internal" marketing to other health care providers in the home's market area. For example, establishing personal contacts with administrators at area hospitals or managers of home health care agencies can result in sharp increases in patient referrals to the county facility.

Regardless of whether the nursing home has marketed its services in the past or not, 90 percent of respondents indicated an interest in additional training in marketing. As competition for residents increases, so does the importance of an effective marketing strategy. This includes "non-traditional" marketing strategies such as networking with regional health care providers.

Client satisfaction with services a priority across the state

Ninety percent of respondents have mechanisms in place that monitor residents' satisfaction with the services they receive. Resident council meetings are used in every home where services are monitored, followed by resident surveys (95 percent), family council meetings (72 percent), and the use of a suggestion box (56 percent).

County homes offer fewer services than the competition

As Table 1 indicates, county homes offer fewer services, on average, than their competitors. Differences between county homes and the private sector are particularly striking for head injuries, licensed adult home care, assisted living, long-term home health care, and adult day care. While private sector provision of these services suggests that many of these services are in high demand, legal constraints prevent county homes from offering many of these services. In spite of strong consumer preference for assisted living facilities, for example, New York State law prohibits public nursing homes from establishing assisted living units.

Table 1. Service Mix for New York County Homes and Competition

Service	County Homes*	Competition*
	(Percent of homes offering)	
Skilled Nursing	100	100
Alzheimer's Unit	35	69
AIDS Unit	15	15
Behavior Unit	10	25
Head Injury	10	42
Licensed Adult Home Care	10	68
Respite Care	30	30
Hospice Care	74	88
Assisted Living	0	50
Long-Term Home Health Care	0	78

Adult Day Care	16	80
Children's Day Care	6	13

N = 20

* Data on services offered by competitors are based on county home administrators' knowledge and due to the low response rate should be approached cautiously.

Labor and management relationships are strong, but still room for improvement

County home administrators view management-labor relations in a favorable light. Of the managers surveyed, eighty percent characterized labor-management relations as "cooperative", compared to 64 percent of responding labor leaders. Labor-management committees represent one way to resolve workplace conflicts, and approximately 60 percent of homes use these committees. In our survey 62 percent of labor respondents believe these committees are effective at solving problems.

II. GAINING A COMPETITIVE EDGE THROUGH LOW STAFF TURNOVER

Academic research suggests that nursing homes with stable staffing patterns are far more likely to provide consistent quality and continuity of care (Anderson *et al.*, 1997; Burnfeind and O'Connor 1992; Halbur and Fears 1986). In other studies, low staff turnover has been correlated with fewer bedsore problems and lower incidence of aggressive and disruptive behavior by home residents (Rudman 1994). From a managerial perspective, low staff turnover correlates with greater cost efficiency (Bonn 1997, Banaszak-Holl and Hines 1996, Alexander, Bloom, and Nichols 1994 in Anderson *et al.*, 1997).

In spite of the benefits of attracting and retaining quality employees, staff turnover in the nursing home industry is a serious problem. In the private sector, non-profit homes average annual turnover rates between 48 and 86 percent, and for-profit homes' rates range from 72 to 118 percent annually. (Serrow *et al.* 1993, cited in Anderson *et al.*, 1997).

Our survey results show that New York county homes have very low rates of staff turnover compared to their private-sector counterparts nationally. In 80 percent of responding homes, annual turnover rates for RNs, LPNs, and support staff were 25 percent or less. In 60 percent of responding homes, annual turnover for CNAs was 25 percent or less. Only five homes reported turnover rates greater than 50 percent for any category of nursing staff.

Low levels of staff turnover in county facilities suggest that quality of care should be higher in county homes compared to their non-profit and for-profit competitors. When we compared quality of care in inspection report data available from the New York State Department of Health (Nursing Homes Compare 1999), we found that on average county nursing homes register fewer health deficiencies per bed than their private sector counterparts. County homes average 1.83 deficiencies per 100 beds, compared to 2.04 in proprietary and 1.86 in the non-profit sectors (see Table 2 below).

If county homes are evaluated according to the number of deficiencies reported *per facility* rather than *per bed*, because county facilities are larger, on average, than their private sector counterparts (233 beds versus 148 beds in privately-run homes), it should be expected that county homes have higher incidences of deficiencies. When deficiencies are measured on a per-facility basis, county homes have the highest number of deficiencies.

Table 2. Summary Table of Reported Deficiencies by Sector,

According to New York State Department of Health Data, May 1999

	Average Number of Beds	Average Deficiencies Reported Per	Deficiency Rate Reported Per 100 Beds
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		Facility	
Proprietary Homes	148	2.34	2.04
Voluntary Homes	148	2.32	1.86
County Homes	233	2.88	1.83
Average NYS-wide, excluding NYC, Bronx and Queens counties	157	2.40	--

Source: "Nursing Home Compare, Nursing Home Search, Nursing Homes in New York," <<http://www.medicare.gov/nursing/search.asp?State=NY>>. Accessed 1 May 1999.

One possible explanation for the mixed results is the data gathering methodology used by the Health Care Finance Administration (HCFA) to rate nursing homes. The number of deficiencies per facility reported by the HCFA varies widely across counties. This suggests that the variation in reported deficiencies may have as much to do with variations in inspection practices from place to place as it has to do with the quality of care provided at individual homes.

The one firm conclusion we can draw from the data is that staff turnover at county facilities is significantly lower than the competition. Both academic research and common sense suggest that low turnover rates result in higher quality care. Having loved ones cared for by the same people day after day not only increases residents' comfort levels but also helps build strong friendships between residents and staff which are priceless. We believe that county homes should capitalize on this unique strength by highlighting the quality of staff in marketing and promotional materials.

III. RESTRUCTURING COUNTY HOMES IN NEW YORK STATE: CHANGING THE STATUS QUO

Workplace restructuring in the private sector has been a constant theme for much of the past two decades. More recently, restructuring has become a big issue in the public sector as well. Efforts to privatize or "reinvent government" are taking place in many state capitals across the country, and New York State is certainly part of this larger trend. For public nursing homes, restructuring comes in a variety of forms. [1] While the first part of this report discussed *internal* restructuring (through marketing, labor management cooperation, service expansion), we now turn our attention to *external* forms of restructuring - namely privatization. While most nursing homes already operate on an enterprise budget basis (24 of 35 respondents), only five are considering other internal market incentives such as performance based budgeting. External market restructuring was assessed in four areas: privatization to a for profit entity, obtaining voluntary or non-profit status, forming a public benefit corporation (PBC), or closing the home.

About one quarter of homes are considering external restructuring

Of the thirty-five responses we received, nine administrators indicated that they are considering at least one form of external restructuring at the nursing home. Public benefit corporations are by far the most popular option (with all nine homes considering) because they allow homes to offer a wider range of services while keeping the home public. Privatization to for profits is only being considered by three homes, and privatization to non-profits only by one home. No home is considering closure.

The survey results tell us how many administrators are presently thinking about external restructuring but it does not tell us *why* the county home might be interested in restructuring. However, informal conversations with labor leaders and nursing home administrators suggest that fiscal stress is the leading cause of an administrator's decision to restructure. The typical scenario is one where the nursing home faces increasing pressure from hard-nosed county officials who see the nursing home as an opportunity to cut costs for local government.

To see if these perceptions mirror reality, the survey asked nursing home administrators questions about the level of fiscal stress at the home, as well as questions regarding their relationship with county official

Neither fiscal stress nor poor relationships with county officials explain interest in restructuring

If the decision to restructure were the result of poor financial performance by the home, then one might expect the nine homes that are considering external restructuring to be under fiscal stress. Yet in every case, the survey results indicate these homes ran budget surpluses, not deficits. Thus fiscal stress does not appear to be driving administrators to consider external restructuring.

A related argument is that the pressure to restructure comes from county-level officials. Either the county is under fiscal stress and is looking to cut costs, or county representatives are looking to shrink the size of government for ideological reasons. However under each restructuring option, home administrators indicated county interest in restructuring was even lower than home administrators'.

When nursing home administrators were asked about their relationship to county government, 97 percent of respondents stated that the county legislature sees the nursing home as "essential" to the mission of local government. In addition, 94 percent of administrators felt that their relationship with the county legislature was either "cooperative" or "very cooperative" and only 6 percent of respondents characterized their relationship as adversarial. One possible conclusion from these data is that county governments value the important role that the nursing home plays in the community. Another conclusion is that most county homes have strong relationships with their local representatives, and therefore the threat of heavy-handed change being imposed from above is unlikely.

A less optimistic interpretation of the data is that the current friendliness between county homes and local governments is a result of additional financial support in the form of intergovernmental transfer payments (IGT funds) from Washington. During the 1997-1998 fiscal year county homes received over \$63 million in payments, and 20 counties received payments of \$1 million or more for their nursing homes. Yet the future of IGT moneys remains uncertain. Were these funds to be taken away, a majority of county homes would return to running budgetary deficits. In this survey, 11 homes reported a deficit with IGT, but 27 homes predicted a deficit if IGT monies were removed. If IGT were removed, administrators believe that many more nursing homes would face increased pressures from county governments to consider restructuring.

Entrepreneurial leadership may explain interest in restructuring

If neither fiscal stress nor poor relations with the county explain administrators' interest in restructuring, what does? Our survey can only provide clues to this puzzle. Other than the fact that the nine homes considering restructuring have budget surpluses, these homes are indistinguishable from other nursing homes in the survey. Turnover rates, measures of fiscal stress at the county level, and range of services offered are no different at these nine homes than at any other county home in New York State that responded to our survey.

An alternative explanation for administrators' interest in restructuring has to do with the management and staff that run the most profitable homes. Since all the homes that are considering restructuring are also the homes in the best financial shape, a strong case could be made that the administrators in these homes are innovators. As industry leaders, these homes may be open to exploring new ways to increase productivity, lower costs, and improve service availability and quality. For example, the public benefit corporation option may allow county homes to offer a wider range of services without losing their public employee status. Gaining access to a wider range of more profitable services (especially assisted living) is key to public sector nursing home viability. Simply *considering* a variety of options, however, does not mean that a home will act on any one of them. Rather, interest in restructuring may stem from knowledge of industry trends and a strong desire to remain at the forefront of this highly competitive industry. Performance based budgeting and expanding the range of offered services are important in that regard.

The extent to which county nursing homes in New York State are pursuing innovation is of major interest to both management and labor. Nursing home administrators can learn a lot from what their colleagues in other counties are doing, so as to improve service in their own facilities. Employees too have an interest in

promoting innovation. Not only can education help employees better understand the industry, but cooperation can empower employees to participate as equal partners in discussions of change with management. While privatization is not a likely or preferred option, marketing, labor-management cooperation, and service expansion appear to offer great potential.

IV. PROJECT SUMMARY AND DIRECTIONS FOR FUTURE ACTION

The purpose of this project was twofold. First, our goal was to collect baseline data on the current status of New York State's county-run nursing homes. We were especially interested in learning more about the fiscal health of county homes, the status of labor-management cooperation, and the degree of interest in redesigning existing service delivery systems. Second, we wanted to start a conversation between labor and management about what steps need to be taken to ensure the long-term viability of county homes. To that end, labor leaders and nursing home administrators met in Albany to discuss the future of publicly-provided long-term care in New York State in May 1999. During that meeting participants suggested a number of proactive measures that county homes could pursue to make them stronger institutions. These include:

- Increasing investments in the physical plant
- Developing stronger ties with feeder institutions
- Broadening the range of services offered at the county home
- Marketing aggressively the home's services to the community
- Determining best practices and developing programs for their dissemination
- Facilitating communication between labor and management
- Developing new programs to retain employees, especially CNAs
- Creating opportunities for employee training and skills enhancement
- Increasing resident satisfaction with existing services, and
- Building partnerships with advocacy groups and other stakeholders.

Each of these measures can go a long way towards making county homes better places for both county home residents and the people who work there. Their success, however, depends on the ability of labor and management to address these challenges in new and innovative ways.

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APPENDIX

A. Data and Methodological Limitations on Use of Quality of Care Data

The "health deficiencies" measured by the New York State Department of Health cover a wide range of factors with varying degrees of severity. While some have significant health implications (e.g., incorrect medical dosage for patients) others do not (e.g., failure to post the most recent inspection report in a public place). Due to time limitations, we assessed the homes only according to incidence of reported deficiencies. We made no effort to track the relative scope or severity of these deficiencies and compare them across sectors. (For further information on the scope, severity and definitions of these data, see the source web page at http://www.medicare.gov/nursing/define.htm-reg_def.)

In our brief overview of inspection data, we noted an apparent wide variance in number of deficiencies reported by county. We speculate that some variation in reported deficiencies is attributable to differences in inspection practices from one team to another.

B. Survey Instruments

C. CGR Report Summary

[1] The Center for Governmental Research report (1997) details a much broader array of restructuring options than we examined in our study. For a more extensive discussion of these options and their implications, see the CGR report.

**INNOVATIONS IN
COUNTY NURSING HOMES IN
NEW YORK STATE**



CORNELL

A joint project of
the Civil Service Employees Association
County Nursing Facilities of New York, Inc.
and the Department of City and Regional Planning at
Cornell University

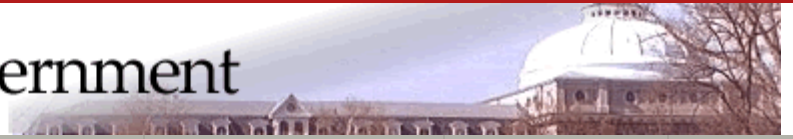


11/29/99

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PRISONS, PRIVATIZATION, AND PUBLIC VALUES

STEPHEN MCFARLAND
CHRIS MCGOWAN
TOM O'TOOLE

PRESENTED TO PROF. MILDRED WARNER
PRIVATIZATION AND DEVOLUTION CRP 612
DECEMBER 2002

- INTRODUCTION TO PRISON PRIVATIZATION
- EVOLUTION AND SCOPE OF THE PRIVATE PRISON INDUSTRY
- EFFICIENCY AND QUALITY QUESTIONS
 - PROponents OF PRIVATIZATION
 - OPponents OF PRIVATIZATION
- PUBLIC VALUES
 - SAFETY
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Introduction to Prison Privatization

The movement towards the privatization of corrections in the United States is a result of the convergence of two factors: the unprecedented growth of the US prison population since 1970 and the emergence out of the Reagan era of a political environment favorable to free-market solutions. Since the first private prison facility was opened in 1984, the industry has grown rapidly; gross revenues exceeded \$1 billion in 1997. This paper will examine the industry's growth in the US in recent decades, and its current scope. The evidence for and against claims that private prisons can realize gains in efficiency will be weighed, and implications of privatization for other public values including safety, justice, and legitimacy will be examined.

The Evolution and Scope of the Private Prison Industry

The birth of the contemporary American private prison industry may be traced to 1984, when the United States Immigration and Naturalization Service became the first federal agency to contract for private correctional services, with the Corrections Corporation of America. This initial movement toward the federal privatization of corrections was quickly followed by contracts for outsourcing developed by the US Marshals Service and the US Bureau of Prisons in 1986. The first county-level private prison contract was signed in 1984, between Hamilton County, Tennessee and the Corrections Corporation of America. Shortly thereafter, in 1985, the first state-level contract was signed, between the Commonwealth of Kentucky and the United States Corrections Corporation (NCPA 1995).

In 1987, approximately 3,122 inmates out of 3.5 million inmates were confined in private corrections facilities in the United States. By 2001, the total United States inmate population had swelled to a staggering 6.5 million inmates—123,000 of whom were confined in private facilities. This 4,000% increase in the number of prison beds in private hands was fed by the concomitant 90% growth in total inmate populations in the United States as a whole. (BOJS, 2001). Currently, over 32 states and Puerto Rico have formed contracts with corrections corporations. Figure 1, below, illustrates the inmate capacity of private prisons by state as of 1999 (Thomas, 2002).

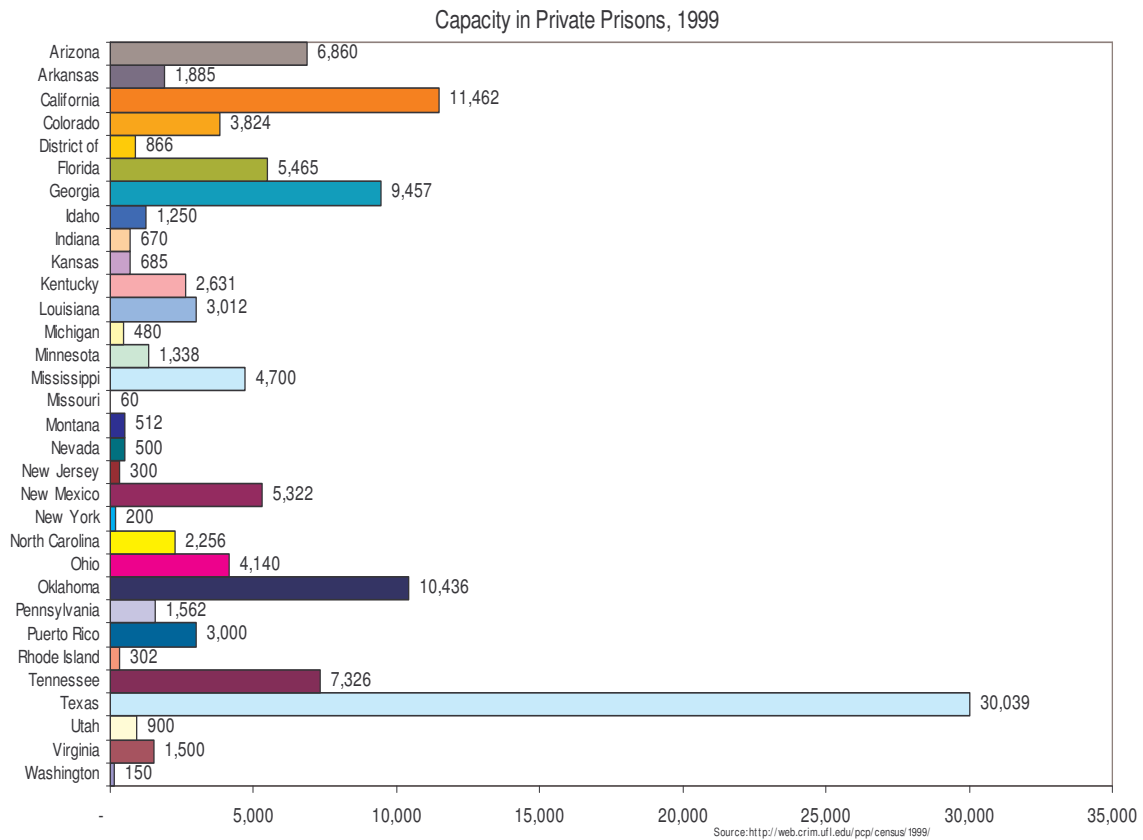


Figure 1

As the above chart shows, per 1999 estimates, Texas, California and Oklahoma exhibit the largest inmate populations incarcerated in private facilities, with populations of 30,000; 11,000; and 10,000 inmates, respectively (Thomas 1999).

Although Texas holds the highest number of our nation’s private prison beds, the proportion of inmates in private facilities to the total Texas inmate population is only 10.1 percent. New Mexico outsources the largest proportion of its inmate population to private corporations (43.8 percent), followed by Alaska (31.7 percent), Montana (32.7 percent), Wyoming (28.3 percent), Hawaii 22.9 percent), Wisconsin (16 percent), Mississippi (16.9 percent), and Tennessee (15.5 percent) (Fig. 2-ok DOC, 2002).

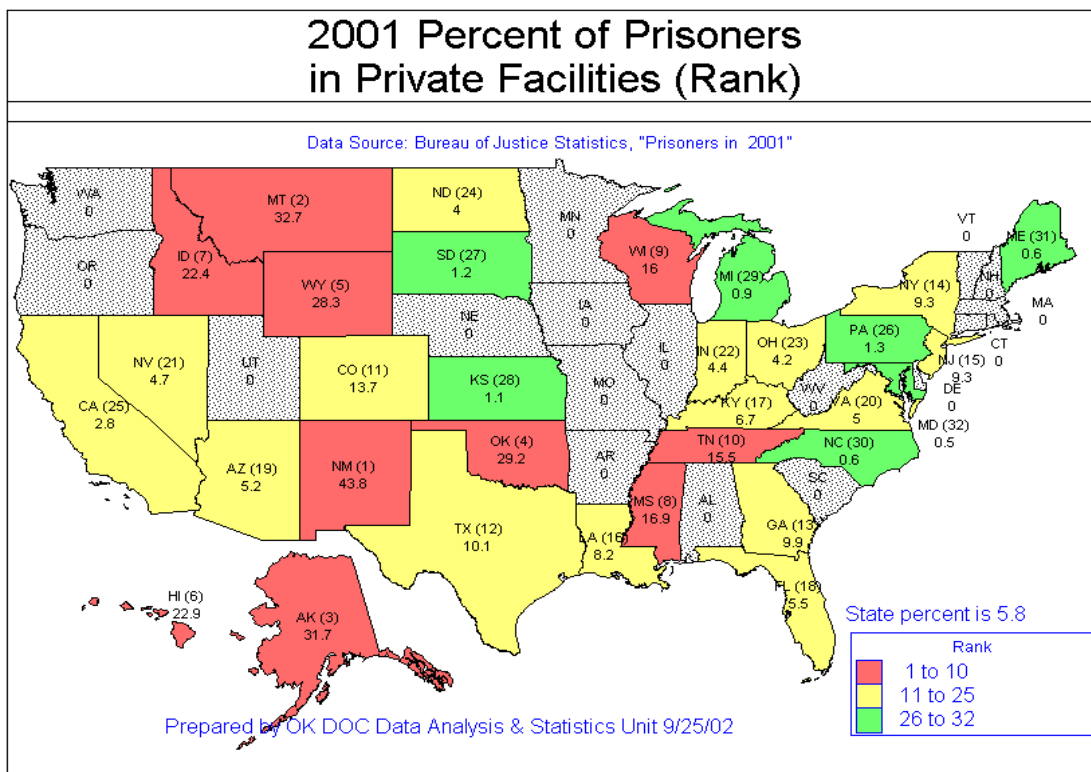


Figure 2

The financing of private corrections facilities varies from state to state, and, concurrently, from facility to facility. The per diem rate formed through a contract in Oklahoma, for example, may be substantially different from that formed in Tennessee. In general, however, there are two broad methods of financing the capital costs incurred through the construction of private corrections facilities – either the corporation undertakes the construction of the private corrections facility without public assistance and rents its services to a contracting jurisdiction, or the jurisdiction issues bonds to finance facility development. When bonding occurs, the private corporation normally administers the prison for an established period of time, after which control is diverted back to the contracting jurisdiction (Leonard, 1990: 71-76).

Operational costs of private corrections facilities vary depending upon both the type of facility and programs offered to assist in incarceration or rehabilitation. A facility's security classification has the greatest impact on its operating cost. In Oklahoma, the average rate for a medium security facility is forty-eight dollars per prisoner per day. This rate is subject to change with each subsequent contract negotiation. Indeed, in 2002 New Mexico was able to renegotiate the contracted per diem rate for one of its maximum security facilities from ninety-three dollars to sixty-five dollars. Rates can also be adjusted upward; corrections companies operating in Oklahoma have realized a forty cent (\$0.40) increase in their per diem rates as a material incentive for the provision of drug and alcohol rehabilitation programs (OK, DOC, 2002).

In 1999 there were 14 private prison corporations operating in the United States, with a total capacity of 122,871. The two largest, Corrections Corporation of America and Wackenhut Corrections Corporation, operated 55.6% and 21.73% of the total market

share, respectively. Table 1 (below) lists the largest private prison firms operating in the United States, with their total capacity and market share, as of 1999 (Thomas, Charles, 1999 Census).

Table 1: Firms Operating in the United States in 1999

Management Firm	Capacity of Facilities Under Contract in United States	Market Share of United States Contracts
Alternative Programs, Inc.	340	0.3%
Avalon Correctional Services, Inc.	350	0.3%
The Bobby Ross Group	464	0.4%
CiviGenics, Inc.	2,791	2.3%
Cornell Corrections, Inc.	7,138	5.8%
Correctional Services Corporation	6,517	5.3%
Correctional Systems, Inc.	272	0.2%
Corrections Corporation of America	68,256	55.6%
The GRW Corporation	362	0.3%
Management & Training Corporation	9,177	7.5%
Maranatha Production Company	500	0.4%
Wackenhut Corrections Corporation	26,704	21.7%
Totals	122,871	100%

Private Prisons, the Efficiency and Quality Questions:

Most arguments for the privatization of prisons revolve around one issue: efficiency. The purpose of privatization of any government undertaking is to improve the quality of the

service provided without increasing the costs, or to decrease the costs without decreasing the quality of service. It is mainly on the strength of claims to efficiency that prison privatization expands in scope.

Proponents believe that private prisons not only costs the taxpayer less, but also require the state-run agencies to operate more efficiently themselves. When private companies are allowed to enter into the market for prisons, they argue, state run facilities are forced to operate more efficiently or risk losing their funding. Those who oppose prison privatization point to studies claiming that the superior efficiency of private facilities has not been conclusively demonstrated (GAO, 1996). Few available studies account for both cost and quality, making conclusive judgment about efficiency impossible. Insofar as savings are realized, they argue, it is through making dangerous cuts in labor costs (Greene, 2001). Further, they say, studies comparing costs have not thoroughly accounted for overhead costs and costs of negotiating contracts, thus underestimating the cost of private facilities as compared to public ones.

Whenever a public service becomes privatized a question arises as to whether or not the service quality will be affected, either positively or negatively. But within the realm of prisons though there is a dispute which has arisen over what quality of service actually means. Some argue that the purpose of a correctional facility is to rehabilitate the offender, so upon release s/he can reenter society and become a productive member. Others believe that the purpose of prisons is to lock away those who commit crimes, so that they are not free to commit additional crimes in society. In this view, prisons are meant to be a deterrent, to help persuade people from committing the crimes. Generally speaking, there are three main types of issues when looking at quality.

- Security of the institution; number of escapes, number of deaths, etc
- Rehabilitation efforts; Drug Rehabilitation, Education, etc.
- Quality of life; medical treatment, food, recreational services, etc.

Privatization Proponents

A study of the quality of prisons in New Mexico showed that private facilities had a higher quality of service in all but one category, “care”, as figure 3 (Montague, Erik; August 2001) below shows.

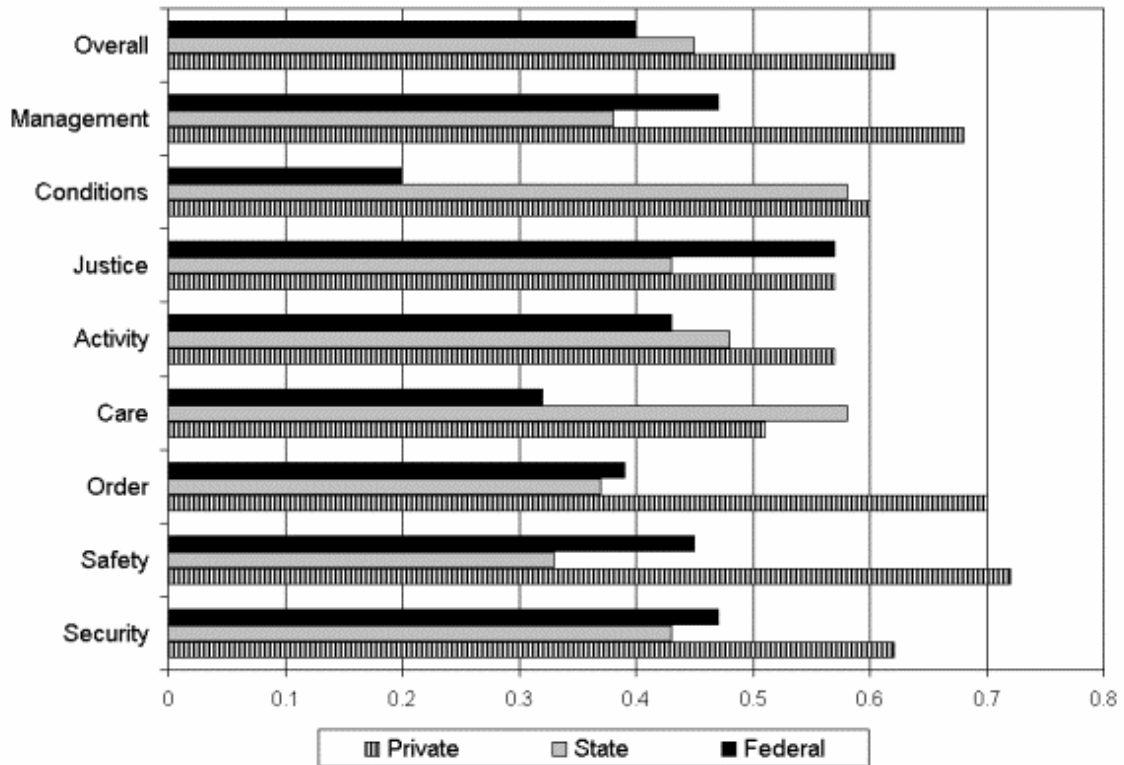


Figure 3

The study was based on a Bureau of Prisons survey and included both prisoners and correctional staff in the respondents. When comparing federal, state and private facilities

within New Mexico, the private prisons were more highly rated by respondents in almost every category. Doubts regarding the quality of the facilities are not supported by this analysis.

Proponents of privatization argue that private prisons, through innovative design and management, and by realizing economies of scale, can lower the overall costs of incarceration:

- Studies in both 1997 and 2000 by the State of Arizona of costs associated with both public and private prisons found evidence of cost savings:
 - The 1997 Study found average costs per inmate per day in government prison was \$43.08, as compared to \$35.90 in the private prison, estimated savings of 17% (Thomas, 1997)
 - The 2000 Study found average costs per inmate per day in government prisons was \$46.72 in 1998 and \$45.85 in 1999, as compared with the average costs of \$40.36 in 1998 and \$40.88 in private facilities, estimated savings, of 13.6% in 1998, and over 10% in 1999. (Dept. of Corrections, Arizona, October 2000)
- Corrections Corporation of America claims that between 1994 and 1998, the states that contracted with them for prison facilities saved a total of \$248 Million in costs. (www.correctionscorp.com)
- 1996, Louisiana conducted a survey of the costs of three identically built prisons, one run by the state and the other two by private corporations. The study found that the average per diem rate of the state facility was \$26.76 while the average cost for the private facilities were \$22.96 and \$23.51, savings of 14 to 16 percent. (Reason Policy Institute, Pg. 4)

Opponents of Privatization:

Critics of privatization claim that there are no true efficiency gains from privatization, arguing that comparative studies of efficiency often ignore a number of key factors, by

looking only at the operational costs (per diem rates). In 1996 the US General Accounting Office brought into question a number of the key assumptions that the proponents of privatization claim. Ultimately, the GAO found that there was no evidence conclusively demonstrating efficiency gains from privatization (GAO Reports, GAO/GGD-96-158). The GAO pointed out flaws in many of the studies touting efficiency gains from prison privatization. They found virtually no reliable multi-year studies. Those that they did find suffered from flaws including: failure to compare similar institutions, failure to account for both cost and quality, or lack of a nuanced account of hidden costs.

The cost of contract negotiation is an example of a cost that is often overlooked. The process of gathering proposals from corporations, analyzing them, and determining who is awarded the contract is an expense that is usually ignored. This is an additional cost that the state must endure in determining whether or not to contract out the service. Another cost that can raise the operation costs of any given contract is excessive health care costs. When a contract is negotiated between a state and a private corporation for the costs of a correctional facility, generally a negotiated health care rate is established, and anything above this amount must be covered by the state. While the rates negotiated will cover a majority of the health care needs of an inmate, in cases of severe disease this is not usually the case, and the additional costs must be borne by the state, which is ultimately responsible for the health of the prison population.

Another possible explanation for the appearance of efficiency gains is the shift in tax burden to local municipalities. In years past, the mentality of “Not In My Back Yard” (NIMBY) arose whenever a new prison facility was to be built. Then, as areas began to

see that there were possible economic gains by the placement of a prison near an economically impoverished town, the mentality began to change. Rural towns began to see prisons as a stable economic source for the area, and municipalities began to offer economic development funds to private prison corporations for the construction of new facilities within their jurisdiction.

Table 2: Subsidies Given to Corporations (Jail Breaks, 2002)

Operating Company	# of Facilities in Study	% Of Facilities with Subsidies	Total Value of Construction Bonds (in millions)	Total # of Subsidies Found
Corrections Corporation of America	37	78%	\$406.4	41
Wackenhut Corrections	16	69%	\$165.5	21
Cornell Companies	2	50%	\$0.0	1
Five Others	5	60%	\$56.6	4
Total	60	73%	\$628.6	67

What is often overlooked is that there is no clear evidence of prisons being a strong source of economic growth. As in the case of military bases, while the creation of a new prison, or the loss of a former older facility may make people believe that excess economic growth will occur, there is little evidence supporting these statements. (Hooks, Gregory; 2002).

Public Values

Efficiency aside, prison privatization presents some serious dilemmas regarding public values such as safety, justice, rehabilitation, and legitimacy.

- [Safety: Do private prisons pose a threat to the safety of prisoners, prison workers, or the general public?](#)
- [Justice: Are the mechanisms of private prisons liable to distort sentencing?](#)

- Rehabilitation: Can the profit motive be reconciled with the need to prepare inmates for productive lives after prison?
- Legitimacy: Is incarceration an inherently governmental function? Is it right that profits be reaped from human imprisonment?

Safety

Opponents of private prisons argue that their incentive to cut costs to maximize profits presents a threat to the safety of prisoners, prison staff, and the public at large. They argue that private prisons tend to have fewer guards with less experience, which results in an increased rate of violent incidents behind bars. One study found violent incidents to be as much as 50% more frequent in private prisons (Greene, 2001). Also, private prisons may pose an increased risk of prisoner escape; a study cited by the Reason Public Policy Institute, no foe of privatization, found that government-run prisons have fewer escapes, less substance abuse and greater recreational and rehabilitation measures in place (Moore, Adrian 1998).

Further, some critics of privatization claim that the relative ease with which private industry can construct new prison cells leads to an over-reliance by government on incarceration at the expense of preventive social programs-- programs which, they argue, are more effective in preventing violence (Logan, 2002, Currie 1998). A study by Grassroots Leadership found that discretionary funds in the state of Mississippi were being routed from education to private prisons (www.grassrootsleadership.org).

Industry supporters, on the other hand, argue that through innovation in prison design and operation, private prisons are made safer than public facilities. Proponents argue that the profit motive creates incentives for safety, as violent disturbances in facilities leads to greater costs in the long run (Lissner et al, 1998) . A safe prison, they argue, is a profitable prison.

Justice

Those who oppose prison privatization make the case that the industry has the incentive and the wherewithal to extend the amount of time convicts will remain in prison, and that this presents a threat to justice. The industry, they say, can extend sentences in two ways. First, it has thrown its influence, through lobbying and campaign contributions, behind “tougher” laws such as "three strikes", mandatory minimum sentencing, and "truth in sentencing" that increase the duration of sentences. The conservative American Legislative Exchange Council (ALEC) has been extremely active in advocating truth-in-sentencing and three strikes policies throughout the United States. This organization is heavily funded by the corrections industry, and indeed ALEC's Criminal Justice Task Force is co-chaired by Brad Wiggins, a former director of business development for the Corrections Corporation of America (Bender, 2000). The strength of these kinds of political influence, opponents fear, will only increase as the industry grows. As one observer notes, corrections corporations have "paid handsomely to play the public policy game, and will likely do so again"(O'Connell, 2002).

The second way opponents of privatization worry that private firms will distort the administration of justice is by exerting undue influence on parole hearings. Opponents argue that since prison firms are generally paid per prisoner per day, they have an incentive to extend inmate stays as long as possible, and so are liable to reduce prisoner's chances for parole or good time off by exaggerating or fabricating disciplinary infractions (DiIulio, 1990).

Industry supporters point out in response to these concerns that industry campaign contributions are smaller than those made by public sector unions (Moore, 1998). There is no evidence, they say, of private prison officials manipulating parole decisions.

Rehabilitation

The profit motive, opponents of privatization say, distorts the function of prisons towards incapacitation and away from the provision of rehabilitative services that would help prisoners rejoin society productively, and curb recidivism. Corrections firms have no incentive, they say, to provide costly rehabilitative treatment and services. Industry analysts respond that it all depends on the contract. There is much potential for contracts to be structured in ways that provide incentives to firms to provide services such as drug treatment (Lissner, et al, 1998.). Indeed, in Puerto Rico and Australia, pilot programs are being conducted with so called "outcome-based contracting", wherein fees are tied to the impact and measured outcomes of incarceration (Cornell et al, 1998).

Legitimacy

Opponents of privatization argue that it is an illegitimate delegation of government authority to allow private companies to take control of an integral part of the justice system. Proponents of privatization disagree. They make a distinction between the function of the courts and that of the prisons. It is the proper duty of the public sector, they argue, to determine just sentences for violations of the law. But the duty of the prisons, they argue, is merely to carry out the sentence of the courts, and they see no reason why this task ought not be delegated to a private entity. Opponents of privatization claim to the contrary that it is difficult or impossible to distinguish these two functions, given the level of control that prison officials have over the nature (and, potentially, the duration) of an inmate's stay. Prison officials have the prerogative to impose disciplinary measures ranging from revocation of yard privileges to the imposition of solitary confinement, and so have a great deal of control over just how punitive an experience each sentence truly is (DiIulio, 1990).

Shifting Public Values

Champions of the private prison industry justify its continued expansion by pointing to the public will for increased incarceration. Voters have consistently been supportive of harsher sentencing measures that create a demand for more prison beds. And yet there is a growing movement that has come to see increased incarceration in general, and growth of the private prison industry in particular, as a threat to public values. For example, the mission statement of the Grassroots Leadership organization's "Public Safety and Justice Campaign" reads:

For-profit private prisons, jails or detention centers have no place in a democratic society. Profiteering from the incarceration of human beings compromises public safety and corrupts justice. In the spirit of democracy and accountability, we call for an end to all for-profit incarceration(www.stopprivateprisons.org).

Grassroots Leadership has organized religious, labor, student, and community groups to fight private prisons through media advocacy, education, lobbying of government officials at all levels, and pressuring corporations involved in the private prison industry. For example, Sodexo Marriott, the largest single investor in CCA, divested its holdings in the prison firm in response to pressure on college campuses to cancel food service contracts. (www.grassrootsleadership.org)

Many states, such as Louisiana and New York, in response to pressure from labor unions and other groups, have enacted moratoriums on or banned private corrections facilities, while other states, such as Wisconsin, have enacted statutes that prohibit the construction of private prisons on speculation-- that is, without prior contract (AFSCME, 2002). While the growth of this billion dollar industry seems to have slowed at the level of the state prison, the federal government now seems to be contracting for many of its facilities with private firms (www.grassrootsleadership.org). It remains to be seen whether the efficiency gains promised will be realized, and whether the government can, through innovative contracting, reconcile the dilemmas that prison privatization poses with respect to public values.

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A cogent analysis of the moral and ethical questions raised by prison privatization.
- DOC, State of Oklahoma. *Private Prisons*. www.doc.state.ok.us/docs/private_prisons.htm
Contains useful information about private prisons in the state, as well as many good links to articles, studies, charts, and other web-sites.
- Grassroots Leadership Homepage. www.grassrootsleadership.org
This activist organization has devoted itself to organizing labor, religious, and community groups to work together towards abolishing private prisons. The site contains links, press releases, an online newsletter, journalism, and academic studies.
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This anti-privatization paper includes troubling anecdotal evidence of abuses of authority in private institutions.
- Hooks, Gregory; Mosher, Clayton; Totolo, Thomas and Lobao, Linda "The Prison

Industry: Carceral Expansion and Employment in U.S> Counties, 1969-1994" DRAFT, September 2002

This is a draft paper currently being considered for publication in the Social Science Quarterly. The draft was provided by Gregory Hooks, and is a collaboration between sociologists at Washington State University and Ohio State University.

Jail Breaks, "Economic Development Subsidies Given to Private Prisons" Good Jobs First, 2002

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This anti-privatization site looks at the investment by municipalities in prisons as a means of economic development.

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Industry paper makes the case that the corporate profit motive can be reconciled with the demand for rehabilitative treatment of prisoners.

Logan, Charles. "Arguments for and Against Private Prison Contracting" on *The Prison Privatization Research Site*. <http://www.ucc.uconn.edu/~logan/>

A thorough and succinct list of the various arguments for and against, without analysis. This pro-privatization site is maintained by Prof. Charles Logan of UConn, and has many links to studies and other sites.

Douglas C. McDonald, ed. *Private Prisons and the Public Interest*. New Brunswick: Rutgers University Press, 1990.

The data in this collection of articles from a wide range of perspectives are no longer current, yet it contains analysis of many financial, moral, contractual, and political issues that continue to be central to the prison privatization debate.

Moore, Adrian T. "Private Prisons: Quality Corrections at a Lower Cost." Reason Public Policy Institute, 1998. <http://www.rppi.org/privatization/ccrp/pubs.html>

This survey of studies from this right wing/libertarian think tank concludes that private prisons can save 10-15% in costs without sacrificing quality. Few of the studies the survey examines combine analysis of cost and quality together, so conclusions about efficiency gains are questionable.

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This piece of journalism, illustrated with vivid examples, places prison privatization within the political-economic context of the 30-year history of the 'prison-industrial complex'.

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This pro-privatization site contains some useful information on the number and location of private prisons, as well as links to other sites maintained by private prison supporters. The site's content should be held strongly suspect, as its author, Charles Thomas, was found to be in conflict of interest after accepting a large consulting fee from the Corrections Corporation of America.

Torres, Sam and David Schichor. "Has the Privatization Concept Been Successful?", in *Controversial Issues in Corrections*, Charles B. Fields, ed. Boston: Allyn and Bacon, 1999.

A succinct debate on the merits of prison privatization.

U.S. General Accounting Office, "Private and Public Prison: Studies Comparing Operational Costs and/or Quality of Service," GAO/GGD-96-158, August 1996
This survey of early-1990's research comparing public and private prisons on measures

of cost and quality finds no evidence of efficiency gains from privatization that can be generalized, and makes useful recommendations for designing further research studies.

Eric Montague "Private Prisons: A Sensible Solution" Policy Brief, Washington Policy Center August 2001

This policy brief provides an analysis of several states' attempts at prison privatization and provides some strong evidence in support of privatization. The purpose of the policy brief was the privatization of prisons in Washington State.

Mitigating Corruption in New Public Management

**Presented to Prof Mildred Warner
Privatization and Devolution CRP 612
December 2002**

**By:
Andre Gratto
Bryan Preston
Thor Snilsberg**

**Revised by:
Andre Gratto
Bryan Preston**

Executive Summary:

Corruption has been identified as a major barrier to economic and social development in developing countries, and considerable research has been done into the causes of and the solutions to corruption in these countries. Several factors that lead to or mitigate corruption in developing countries have been clearly identified: Revenue Proximity, Accountability, Information Transparency, Participation, Equality of Power/Wealth and Culture. In contrast, virtually no research has been directed at corruption in the context of the trends toward what is known as the New Public Management, or NPM. NPM is a new pattern of governance associated with the use of a wide range of different “tools” and with a reliance on third parties to manage and deliver government services. However, the factors of corruption identified by international research can be used to provide an environmental design framework to advise planners and public officials about the potential for corruption and how it can be mitigated with the NPM.

The Emergence of New Public Management

New Public Management (NPM) is a public management trend that is gaining popularity throughout the United States. The NPM style of government involves using a wide range of “tools” like grants, loans, contracts, vouchers, and other alternatives to direct government provision. Many of these rely on third party actors to play an active role in delivering government services or to act in the public good. These actors form shifting networks of third parties that work with each other and with government agencies.

New Public Management is perhaps most distinguished by its use of internal competition to accomplish its ends but is multi-faceted. Rhodes (1996) notes that NPM refers to two concepts. The most relevant to this paper is the new institutional economics. "The new institutional economics refers to introducing incentive structures (such as market competition) into public service provision. It stresses aggregating bureaucracies; greater competition through contracting-out and quasi-markets; and consumer choice." (Rhodes, 1996.)

The NPM style of government involves distinguishing between policy decisions and service delivery. Service delivery, proponents of NPM argue, is best left to "entrepreneurial" governments based on principles like competition between service providers, outcome based performance standards, decentralized authority, market mechanisms and other qualities not traditionally found in government bureaucracy. Rhodes notes that "NPM and entrepreneurial government share a concern with competition, markets, customers and outcomes." (1996)

How does corruption relate to New Public Management?

As Salamon notes, “What is distinctive about many of the newer tools of public actions is that they involve the sharing with third-party actors of a far more basic governmental function: the exercise of discretion over the use of public authority and the spending of public funds.” (Salamon, 2002) As such, New Public Management has two major implications for corruption. First, NPM creates the potential for corruption in a wide range of actors and that the *flexibility* of these networks makes it more difficult to maintain accountability and oversight. Secondly, and perhaps more importantly, the line between the government and private actors becomes increasingly blurred in NPM.

Unfortunately, there is very little empirical research into the relationship between corruption and NPM. Most of current research focuses on developing countries where development agencies like the World Bank focus most of their attention. There is also a substantial amount of cross-national studies that compare the level of perceived corruption across many countries. Neither of these sources looks at corruption at the sub-national level in developed countries, and this is where NPM strategies are most common.

This paper attempts to move past the lack of empirical research specifically aimed at corruption in NPM environments by using common themes, lessons and issues taken from the international corruption research. Hopefully, these factors will help policy makers mitigate corruption in NPM environments by providing an environmental design framework that reduce the potential for corruption.

What is corruption and why is it bad?

The literature review produced several definitions of corruption. Harrison & Huntington define it as “...efforts to secure wealth or power through illegal means – private gain at public expense” (Harrison & Huntington, 2001) However, this defines corruption in terms of legality, which makes it difficult to talk about corruption across different legal systems. A better definition is “the misuse of public power for private profit.” (Joseph Senturia, as quoted by Smelser, 1971) This definition encompasses a wider range of activities, but there was concern that it did not require intentional misuse (as opposed to accidental or unknowing uses of public power that benefit individuals at the expense of the public). This paper ultimately took these definitions and defined corruption *as the intentional abuse of public power for private gain*. This includes all cases where an organization or individual abuses government authority, influence or funds for private benefit or the benefit of another private actor.

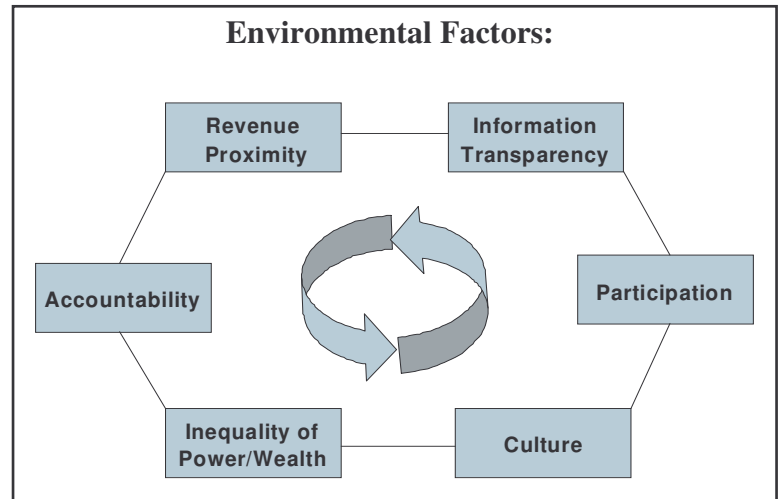
Empirical research into the effects of corruption shows that it is not simply a moral concern or a matter of principal. Rather, corruption has a very negative effect on government performance and on the well being of individuals without money or power. International research has shown that a .78% increase in the rate of corruption leads to a decline of the income growth among the poor of 7.8% (Lipset and Lenz in Harrison and Huntington, 2001). It is no surprise, then, that the World Bank called corruption the “single greatest obstacle to economic and social development.” The perception of corruption also has negative consequences as citizens are likely to grow cynical of government when they feel the government does not work on their behalf.

Why does corruption occur?

The temptation to abuse public power for private gain is a natural result of peoples' self-interest. This temptation can be reduced by creating an environment where corruption is difficult and does not pay. Planners and policy makers can create such an environment by understanding the environmental factors that influence corruption.

Environmental Factors of Corruption

As mentioned earlier there is very little research focusing specifically on corruption within New Public Management. There is, however, a fair amount of international research that has been done on corruption in general and by studying this we hope to identify environmental factors of corruption that can be used in any municipal context. Examining case studies and other research, primarily done by the World Bank, this

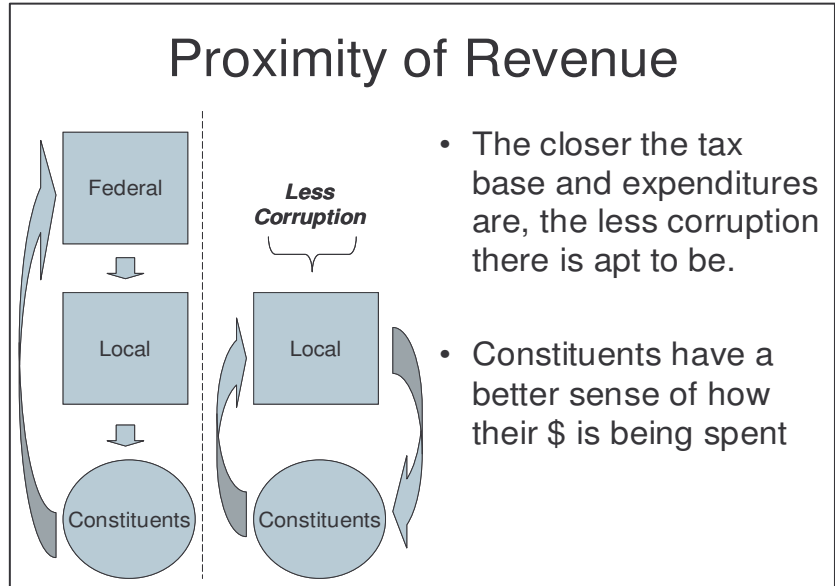


report identifies six environmental factors that have an impact on corruption in international contexts. They are: Revenue Proximity, Accountability, Information Transparency, Participation, Inequality of Power/Wealth and Culture.

Although each has its own drivers, these factors are closely related to each other and tend to reinforce one another. Focusing on any one factor at the expense of the others will not effectively curb corruption. Each factor has to be dealt with individually and as a set.

Proximity of Revenue

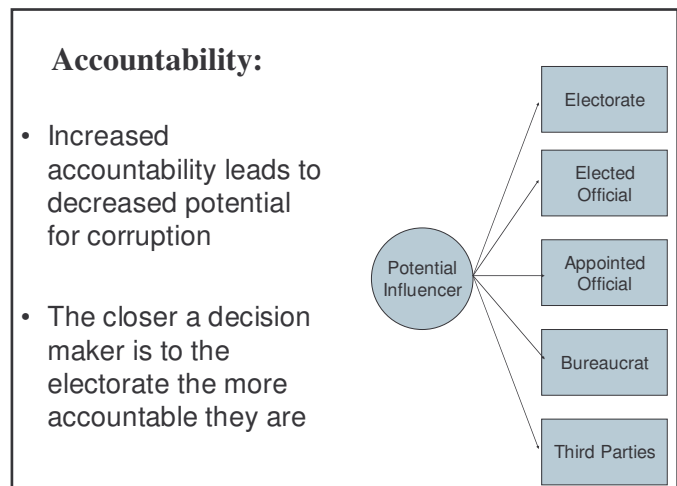
Proximity of revenue is how close tax revenues are to their respective expenditures. The further removed the source of funds is from those who decide how the money will be allocated, the greater the potential for corruption. (Fisman & Gatti, 1999.) Take two different



situations: In the first, the Federal government allocates a portion of its total tax revenues to a certain state with the understanding that the state will then allocate this money appropriately. In the second, the state taxes its own citizens and then returns that money to those same citizens in the form of services, etc. In the second example, the citizens receiving the services will hold the provider more accountable as they seek to “get what they pay for.” Whereas in the first example the state intermediary could opt not to forward federal money at all or could redirect monies from the intended allocation without the citizens missing the intended services .

Accountability

Accountability is similar to proximity of revenue but instead of dealing with money it concerns power. The idea here is that the closer a decision maker is to the electorate the less potential for corruption . If the electorate



does not approve of the actions of an elected official they can vote him/her out of office. If the electorate does not approve of the actions of an appointed official or third-party agent, they have much less recourse.

This dynamic is especially important given the trend in the United States toward NPM. Under NPM there is an increasing reliance upon third-party providers which are even further removed from the electorate than civil servants and as a result are even more susceptible to corruption. Long-term contracts that lock in third parties for extended periods of time may further increase the potential for corruption.

*“Local elites often take leadership roles... this can result in the hijacking of resources unless transparency and accountability are somehow enforce.”
(Litvack, Ahman, Bird, 1998)*

Information Transparency

Informational transparency is the third environmental factor. It contributes to the reduction of corruption in two ways. The first is that it helps identify those who are currently engaging in corrupt activities. This could be through audits, open budgeting processes or contracting and bidding that is open to the public and the media. The second is that informational transparency creates environments which are unappealing to those tempted by corruption. Nobody wants to get caught and so creating environments where the “lights are always on” makes those who might be tempted by corruption to think twice.

“one way to improve local participation and accountability is through transparent budgeting processes and public procurement procedures.” (Litvack, Ahman, Bird, 1998.)

The preponderance of third parties – particularly in the private sector – with the movement toward NPM has important implications with regard to information transparency. For profit concerns

often view certain types of information as proprietary. This means that they deem this information necessary for them to maintain a competitive advantage in their respective markets. There may be times when a public entity may need access to this proprietary information in order to make effective decisions about the continuation of contracts. In situations like these, information transparency may conflict with the private proprietary information of the third party. Sacrificing transparency for the sake of relationships with third parties will increase the potential for corruption.

Participation

Closely linked with information transparency is participation. All the information in the world is useless unless citizens engage and act upon that information. The opposite is true as well. Participation, regardless of how well intended, is blind without transparency. To truly mitigate corruption, municipalities need *informed* participation and this comes from transparency. In addition to intuitively making sense, research has shown that democracy (participation) is positively correlated with reducing corruption internationally. (Lipset and Lenz in Harrison and Huntington, 2001)

Inequalities of Power and Wealth

The fifth environmental factor which contributes to corruption is inequalities of power and wealth. As the difference between the “haves” and “have-nots” within a municipality increases there is a tendency for those with money and power to not only hoard and increase their shares, but also to strengthen their positions. This makes it more difficult for those without money or power to engage in the

“Often, corrupt opportunities arise from discrepancies of power between public officials or community leaders who have control over a good or service and the poor who lack education, knowledge, access to information, the financial resources as well as good connections.” (Teggemann, 2002.)

civic process and have a voice. This is an especially dangerous factor because it can become self-perpetuating as those in power institute structural changes to discourage real transparency, participation and accountability. The result can be a viscous circle leading to even greater discrepancies in power and a greater potential for corruption because corruption tends to slow economic growth in the lower strata.

Inequality also increases the opportunities for what Smelser (1971) calls “crossing-over.” This occurs when those with wealth or political power, but not both, use one to gain the other. Typical examples include a police officer using his political power to receive bribes or a business man using bribes to influence government policy.

Cultural Norms

Robert Merton, in his book *Social Theory and Social Structures* (1968) details the final environmental factor – cultural norms. Merton puts forward what is called a “means-ends” schema that suggests corruption is more prevalent in those cultures that place a high premium on financial achievement or success but which lack the means to attain these goals. Empirical data bears out this hypothesis in countries such as Russia, South Korea and Turkey which are relatively low in terms of affluence but which have relatively high cultural norms of achievement. (Lipset & Lenz. 1998.)

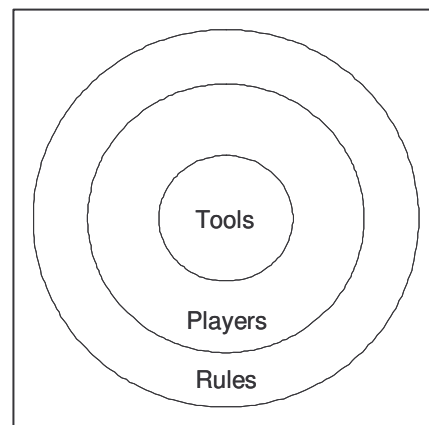
But how are cultural norms and their impact on corruption relevant to NPM? Although there is no data to support this, there is a striking similarity between the rise of NPM in the United States and the means-ends schema. As the Federal government continues to pass responsibility for the provision of public goods and services to the state and local levels there is an increasing expectation of success placed on local governments to solve problems and provide a growing array of services. However, local

governments have limited powers to raise revenue. They are entirely dependent upon the monies they receive from the state and federal governments, property taxes, user fees, and other sources of revenue . This is, in effect, creating the same disequilibrium between expectations for success and the means to achieve them in local governments in the United States as Merton observed in individuals in other countries. The result will, in all likelihood, be an increased potential for corruption within local governments as they try to “do more with less.”

How can corruption be mitigated at the local level?

Mitigating corruption at the local level revolves around taking a proactive approach to designing the decentralized networks that make up the backbone of new public management. These networks consist of three key components: *tools*, *players* and *rules*.

Municipalities can best address the environmental factors of corruption by designing the right balance of these key components. Like the factors of corruption each has its own primary elements but they all work together to influence and reinforce each other. Designing an effective system requires equally diligent attention to all three.



Tools

While tools are often determined by a higher level of government in the process of policy development, a deep understanding of the tool is critical at the local level. Tools are the heart of any decentralized system. Tools determine the type of intergovernmental transfer, the vehicle of that transfer and the delivery system or agency responsible. While tools can be classified in many ways, it is

important to understand that tools have different degrees of directness and automaticity. These characteristics often determine how and what types of corruption a system is susceptible to.

Direct tools can be less corrupt because they shorten the distance between policy and public administration and make it easier to define the agency accountable for administration. However, as local officials know, indirect tools such as grants, loan guarantees and vouchers have become increasingly common. As third-parties gain greater control over the spending of public monies and the operation of public funds, local officials must be keen to potential principal agent problems and emphasize relationships between organizations. (Salamon, 2002.)

“Automaticity measures the extent to which a tool utilizes an existing administrative structure to produce its effect rather than having to create its own special administrative apparatus.”

“Visibility measures the extent to which the resources devoted to a tool show up in the normal government budgeting and policy review processes.”
(Salamon, 2002.)

Tools with a high degree of automaticity are often popular with local governments decentralizing the provision of public services. By utilizing preexisting administrative structures these tools often invite agents with little or no experience providing public goods to the table (Salamon). Tools that are highly visible are less prone to corruption. By definition, such tools allow for transparency and easy access to information by outside monitors.

Players

Players involve everyone from municipal employees, to elected and appointed officials, to third party contractors or agents. In NPM we see an increasing number of third party agents. These third-party agents often vary between localities and differ in their capacity to deliver public goods. A

principal agent problem often exists between local government and its agents. The principal-agent problem refers to the difficulty employers (the principal) have ensuring that employees (agents) to act in the best interest of the employers. Depending on the number of third-party agents involved in the network and the level of cooperation required among agents, principal agent problems can also arise between agents themselves. Third-party agents may not be accustomed to working with one another and may operate in very different ways. This can make managing the relationships between agents difficult and may open many opportunities for corruption.

Rules

The rules that govern decentralized networks can not be neglected. Rules can establish working relationships between agents, improve transparency of information and establish accountability throughout the provision of public services. Network rules can come from contracts between third parties and municipalities, or they can come from legislatures in the form of laws. When specified in contracts, the contractual relationship should be open to amendment by both principals and agents. Ideally, the relationships between agents can be worked out over time as agencies become familiar with each other's roles. Network rules need to be sensitive to each agency's culture and modus operandi as well as with the intent of limiting the opportunities for corruption.

An example of a very effective rule toward mitigating corruption passed in the Massachusetts legislature is the Pacheco-Manard Act. This act was passed in response to the ineffectual Weld privatization efforts in the early 1990s. It states simply that all contracts must undergo a uniform cost analysis. (Sclar, 2000). Although a seemingly simply law, it has far reaching impact on both accountability and transparency in contracting and as a result also serves to mitigate corruption in the

Massachusetts contracting process. Before the existence of this rule, decisions with regard to awarding contracts could be justified in any number of ways. There was no set accounting standard. With the presence of the Act, however, all parties are measured equally and contracts are a step closer to being awarded to those best able to provide the services truly needed by the municipality rather than those best able to game the system or have influential contacts.

Similar to thinking about the changing roles of the players in new public management, the increase in third party relationships in NPM means that an increasing number of rules that govern an area's ability to govern itself will come from contracts. For this reason a special focus needs to be placed on the short-term and long-term effects contract terms as well as the enforceability of these terms. Much of this will revolve around the ability to effectively monitor and change contractual relationships. Another way to look at protecting against corruption in the contracting process is by analyzing whether or not it makes sense to contract out services at all.

In the case of New Public Management this is a decision that will need to be made continually. This decision becomes a de facto rules question. Do we stick with the current system (whatever that may be) and its rules or do we negotiate a new system through a contract (a new set of rules). In his assessment of this process Sclar offers some important advice on those four things that one should think about continually when making these types of decisions. (Sclar, 2000.)

1. The first is to utilize good accounting practices regardless of whether you are providing services in house or contracting out. This includes understanding the true cost of the services in question through the use of activity-based cost accounting. The other important element here is to always fully account for transaction cost when contemplating a change in service provision.

2. The second rule is to always compare “three” alternatives. Whereas most people think in terms of should I contract a service out or not planners should entertain a third option. Namely, should I continue to provide services in house the way we are now? Should I contract the services out? Or should I restructure internally and continue to provide services in-house. This third alternative tends to yield the best results while at the same time being considered the least.
3. The third bit of advice is to make meaningful participation possible. This important bit simply implies that systems are comprised of people and any rules that are made concerning the development of new rules for the system should include the various people who will be effected by the rules. This may be unions, contractors, constituents or others. Both from an intelligence gathering perspective as well as a buy-in perspective this is crucial to arriving at sustainable solutions.
4. And fourthly, politics needs to be removed from contracting if at all costs. Ideally this would be accomplished by passing a law banning campaign contributions from contractors but in the absence of this strict enforcement of accountability and transparency rules will have to suffice.

Tying it all together – Leadership in New Public Management

Thinking about the components involved in the decentralized networks of new public management in terms of tools, players and rules can be helpful in keeping track of the various forces that may lead to corruption. But simply keeping track of these forces is not enough. To truly mitigate corruption requires a constant attentiveness to the interplay of the myriad forces that manifest

themselves in the forms of tools, players and rules and the ability to react accordingly. This is leadership. For, although one can design systems that help mitigate corruption the new public management, by its very nature of involving so many different parties, will be constantly changing. As a result, the systems will need to constantly change as well.

Leaders in new public management will need to be fluent in their use and understanding of the various tools, players and rules available to them. They are the glue that will enable the systems to work. And they are also the individuals that will need to recognize when the current system is no longer appropriate and needs to be changed – whether this means contracting out a service, changing contractors or making the decision not to contract at all. The ability to both interpret and act on situations these situations takes training and this training takes money. And where does the money come from? It needs to come from the very municipalities that are trying to save funds by contracting out services. The irony here is that in order to make the new public management system of government work -- a system that has gained popular appeal by its purported ability to cut costs through the use of competition -- additional investment in government workers are needed so as to avoid the expensive threat of corruption.

Irony aside, the important thing to keep in mind here is that in order for corruption to be effectively mitigated under new public management it will require a new approach to leadership in the public sector. In order for this to happen effectively norms among the public that have until now not endorsed the types of leadership training that are more commonplace in the private sector will have to change. So, although new public management does create the increased possibility of corruption it can be controlled. But this will require not only a new model of leadership for the public sector but also a

new willingness on behalf of constituents to fund these new models in hopes that in the long run the quality of the services they receive are commensurate with the money being spent.

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[http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/deccorr3/\\$File/deccorr3.pdf](http://wbln0018.worldbank.org/eap/eap.nsf/Attachments/deccorr3/$File/deccorr3.pdf)

This is one of the best empirical studies available that look at how several variables, across countries and within them, relates to corruption. The authors look at variables like CDP, decentralization, civil liberties, and the relative size of federal transfers to states.

Lipset, Seymour M. & Lenz, Salman. "Corruption, Culture, and Markets" in Harrison, Lawrence (editor) and Huntington, Samuel (editor). Culture Matters: How Values Shape Human Progress. New York, Basic Books. 2001.

Culture Matters is a collection of meta-studies on corruption. Lipset et al note the empirical relationship between corruption and poverty that other studies have found, and cite empirical support of Merton's means-ends schema.

Litvack, Lennie, Ahmand, Junaid & Bird, Richard. "Rethinking Decentralization in Developing Counties." The World Bank. Washington, DC. 1998.

This article deals with how to decentralize governments effectively. Corruption is one key concern in decentralization, and the paper discusses several strategies and case studies for increasing participation, accountability and transparency, and why these factors are important.

Merton, Robert King. Social Theory and Social Structure. 1968. New York: The Free Press

Merton's work is a classic of modern sociology, and deals with a wide range of topics. The most useful for those dealing with corruption is his "ends-means" framework. Those societies that stress ends that are beyond the means of most people to achieve will create corruption.

Rhodes, R. A. W. 1996. "The New Governance: Governing without Government." *Political studies* XLIV: 652-667.

Rhodes discusses several conceptions of governance, including the minimal state, corporate governance, the new public management, "good governance," a socio-cybernetic system and others. He defines governance as "self-organizing, interorganization networks" and defends this definition.

Salamon, Lester M. 2002. The Tools of Government: A Guide to the New Governance. Oxford: Oxford University Press.

Salamon surveys about a dozen different government tools, from loans to social regulation, and rates each on several criteria. These include automaticity, directness and visibility, which are strongly related to reducing the potential for corruption.

Sclar, Elliott D. 2000. *You Don't Always Get What You Pay For: The Economics of Privatization*. New York: Cornell University Press.

This is an excellent book that focuses on government contracting. It also deals with the difficulty in writing a good contract, contract enforcement, oversight, and other issues that deal with corruption in government contracting.

Smelser, Neil, J. "Stability, Instability, and the Analysis of Political Corruption." In Stability and Social Change, edited by Barber, Bernard, and Inkles, Alex. Little, Brown and Company. Boston. 1971.

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This is the World Bank's online source for corruption related material. Much of this relates to developing countries, and especially to managing the World Bank's projects in these countries, and their broad recommendations (like an open media, independent judiciary and well-paid civil servants) are also aimed largely at developing countries.

Restructuring Local Government

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Industrial Relations Theory: Lessons from a Private Sector Model for Public Sector Transformation

Lindy Burt, May 1998

According to some experts, private sector industrial relations theory can provide useful information to local officials in their efforts to better understand and restructure the public sector labor-management relationship. Editors of a recent (1996) publication of the Industrial Relations Research Association claim that "Changing constraints on the public sector have created pressure to emulate the changing workplace practices experienced earlier by the private sector...While the public sector used to be a model for the introduction of progressive employment practices into the private sector, the pressure is now in the opposite direction."

The public sector is under pressure to adopt the same types of "production" goals undertaken by the private sector long ago-improved productivity and efficiency at lower cost. Components of contemporary industrial relations theory can be applied to the public sector to provide greater insight into the three levels of the labor management relationship, the influence that environment and choice have on this relationship, and the implications of both for local government restructuring.



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The Nature of the Management-Labor Relationship

Private Sector Model: Management as the Initiator of Change in the Workplace

In contrast to earlier models of industrial relations which did not go much beyond the importance of external factors and management's reaction to them ([see Dunlop's footnote](#)), in the 1990s a new model was devised which places management in the role of the initiator of workplace innovation. Developed by Thomas Kochan, Harry Katz, and Robert McKersie, this model also recognizes that there is often a lack of consensus between management and labor, and that both parties are greatly impacted by the instability prevalent in the economic, technological, political and social environments.

Also different from traditional industrial relations theory, the newer model acknowledges that management does not genuinely accept collective bargaining as a legitimate and permanent element of the labor-management relationship, but is simply making a practical, pragmatic decision in agreeing to participate in collective bargaining.

The Importance of Environment and Choice in Management and Labor Decision Making

Private Sector: Environmental Influences and the Importance of Awareness of Choice

Management is heavily influenced by environmental factors, which include: its values, beliefs and philosophies; the outcomes of previous organizational decisions; the current distribution of power within the organization, and between itself and other organizations; and the values and strategies that influence the behavior and policies of unions and government agencies. Choice and discretion on the part of management, labor, and the government affect the course and structure of the industrial relations system. An understanding of the choices parties make in any period must be informed by an analysis of the structures and history that constrain these choices.

Public Sector: The Influence of Politics and Power Distribution, and Choices about Collective Bargaining

Public sector officials and management are very much influenced by the political process in their decisions. The position of public sector elected officials demands that their actions and decisions be in the interest of the public good, yet they are also potentially compelled to make decisions which will help them to retain their position in office. Management also takes into consideration the political implications of their decisions and actions, as they are often appointed by elected officials and can be impacted by changes resulting from a turnover of administrations.

The distribution of power within the public sector, although structured differently from that of the private sector and subject to different forces, also impacts the behavior and thoughts of management. Public sector power is actually more diffuse than that of the private sector, and can make certain elements of the employment relationship more complicated.

Relating the notion of choice to the public sector, public sector officials and management have choices to make about the legislative environment for collective bargaining and about defining their role as legislator vs. employer. Unions, on the other hand, have a choice over whether to follow a mutual gains bargaining approach, or an adversarial, distributive bargaining approach.

The Three Levels of Decision Making in the Labor-Management Relationship

There are essentially three layers of decision making in the labor-management relationship which capture the interrelationships among activities at different levels of the institutional structure; explain the origins of any prevailing contradictions or inconsistencies among the practices and strategies of the three levels; consider the effects of strategic decisions; and analyze the effects of increased participation by individuals and work groups on the industrial relations system.

- **Level 1: Strategic Decision Making**
It is at this level that major strategies are considered which exert long-run influences on collective bargaining. Examples of such issues are: what businesses to invest in, where to locate work sites, and whether to buy or make various components. The public sector engages in strategic decision-making of the first level in deciding what services and goods it is responsible for providing to the public, and deciding whether to provide goods and services itself or privatize/contract out (i.e. "make or buy").
- **Level 2: Collective Bargaining**
The second layer describes the process and outcomes of contract negotiation, and encompasses such issues as collective bargaining, personnel policy formulation, and development and administration of key public policies governing labor management relations
- **Level 3: Day to Day Workplace Issues**

The third layer describes the process through which policies are played out which effect individual workers, supervisors, and union representatives on a day to day basis. Job and work organization and design, work rules, worker-supervisor relations, and public policy governing individual rights at the workplace are played out at this level.

Constraints of Public Sector Industrial Relations and Their Implications for Restructuring

The environment and contemporary choices available to management and labor in the public sector are having an impact on all three levels of the employment relationship. In the face of increased public resentment toward the public sector (unwillingness to pay higher or more taxes, and perceived inefficiency of services, for example), and decreasing government revenues, public sector management and labor must attempt a restructuring of old goals and methods of operation. Characteristics of the employment relationship, management and labor do have implications for public sector efforts at restructuring.

Multi-Lateral Bargaining: A Diffuse Decisionmaking Structure Makes Bargaining a Complicated Process

Because managerial authority is widely shared in the public sector, collective bargaining is multi-lateral and not bilateral as it is in the private sector. Multi-lateral bargaining is a negotiation process that includes more than two distinct parties. Additionally, "in multi-lateral bargaining, no clear dichotomy exists between union and the management organization (Kochan 1992). It can lead to such bargaining techniques as the union tactic of end running, in which case unions side-step one management party that is part of the bargaining process in order to appeal to another management party. Another possible outcome of multi-lateral bargaining is a case where one decision-making group that is part of the process rejects a negotiated agreement, resulting in a failure of implementation (e.g. City Council fails to ratify a negotiated agreement between the Mayor and employees). Finally, community interest groups can also have a role in, and therefore an impact on the process.

Multi-lateral bargaining complicates the employment relationship. It can undermine the negotiations process and make reaching an agreement on service restructuring a much more challenging endeavor. Any negotiated agreement is subject to reversal, either through rejection of the agreement by a group participating in its negotiation, or because of a change in administration. "The vicissitudes of the political process can be more extreme than the vicissitudes of the market (Belman 1996).

The Decentralized Structure of Public Sector Bargaining

Collective bargaining in the public sector is also highly decentralized; i.e. almost all bargaining is done on a single-employer (particular government or agency) basis, with almost no examples of multi-employer bargaining. Additionally public sector bargaining tends to follow much more occupational lines (e.g. separated amongst police, fire, waste collection, etc.) than in the private sector. Given these traits, collective bargaining can provide a viable arena to negotiate restructuring, or it can hinder it for the following reasons (Belman 1996):

- Unions taking an adversarial stance
- Fragmentation of bargaining units inhibiting unions speaking with one voice
- Unions holding onto narrow job classifications and seniority principles, which may be in conflict with restructuring programs that don't guarantee such provisions, or are trying to eliminate them entirely

Rigidities Imposed upon Public Sector Labor Relations and Restructuring by Unionization

The degree of unionization tends to be higher in the public sector, which has had important effects on the process and substance of employment in the public sector. There has been an increase in the formalization of personnel practices and a decrease in management's ability to decide upon matters of discipline, discharge, promotions, transfers and work assignments (Kochan and Katz 1992).

One expert (Belman) identifies the two main strategies of "new" government (restructured) as:

1. emphasizing efficiency improvement through innovative practices and a movement away from the bureaucratic civil service model, and

2. emphasizing cost-cutting

As a response to unionization, the public sector has become more rigid and more bureaucratic in its workplace practices. For labor, conditions of increased bureaucratization and blocked communication channels as a result of the hierarchical structure, de-personalization, and paternalism in public service has alienated employees and led them to perceive the need for intermediary organizations like unions (Kearney 1992). In summary, successful restructuring will require trust, cooperation, flexibility and a willingness to try non-traditional ways of doing things on the part of both sides. "As in the private sector, the effects of public sector unions and collective bargaining on the economic performance of the employer depend on the effectiveness of the relationship between the union and the employer" (Kochan and Katz 1992).

Notes:

One of the significant theories of industrial labor relations was put forth by John Dunlop in the 1950s. Dunlop's model identifies three key factors to be considered in conducting an analysis of the management-labor relationship:

1. environmental, or external economic, technological, political, legal and social forces that impact employment relationships
2. characteristics and interaction of the key actors in the employment relationship: labor, management, and government
3. rules that are derived from these interactions that govern the employment relationship

The Dunlop model gives great significance to external, or environmental forces, with the key actors being held to respond in a relatively uniform and mechanical manner to a given environmental change. In other words, management, labor, and the government possess a shared ideology, or consensus that defines their roles within the relationship and provides stability to the system.

Dunlop's model worked well to organize the labor-management relationship into a framework in the 1960s and 1970s, but it worked only as long as there existed stability in the environmental forces and a shared consensus of the key actors in the employment.

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Kochan, Thomas and Harry Katz. *An Introduction to Collective Bargaining and Industrial Relations*. New York: McGraw-Hill, 1992.

One of the standard college-level textbooks on Industrial Relations. A basic introduction to labor relations theory.

Kochan, Thomas, Harry C. Katz, and Robert B. McKersie. *The Transformation of American Industrial Relations*. Ithaca, NY: ILR Press, Cornell University, 1994.

This book is thought by some to be one of the most important books on industrial relations of the past 15 years. Kochan, Katz and McKersie present a framework for contemporary trends in unionization, industrial relations systems at the workplace, negotiations, and strategic choices of both management and workers.

Restructuring Local Government

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Transforming Work

Lisa Goldberg, May 1998

Across the nation, workplaces are changing.

In order to increase efficiency, productivity, and quality, employers are moving away from the old hierarchical management systems to more decentralized, flatter ones that give workers more autonomy and include them in decision making. Although the private sector has been the source of most workplace innovations, many of them can be transferred to the public sector to help it achieve its goals of improving productivity and reducing costs while maintaining service quality.

Cooperation between management and labor is important to successful workplace change.

Unions must take on a new role, working with management to help achieve performance goals. In addition to representing traditional worker interests, they must focus on worker skills and participation in decision making as the key to competitive advantage. As local government struggles with fiscal pressures and the demand for more flexible services, it must look toward a new, more cooperative workplace to meet these challenges.



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- [Why Transform Work in the Public Sector?](#)
- [Moving from Hierarchical to Participatory Management](#)
- [Models for Workplace Change](#)
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Why Transform Work in the Public Sector?

While efforts to transform the workplace may have started in the private sector, the public sector is also experiencing enormous pressure to change. Reductions in state and federal funding, tax revolts, and the advent of privatization are leading to reexaminations of how the local government can best meet the public's demand for services. The public sector is unique in that it provides a "public good"; it is removed from the market system and thus receives less feedback on its performance than does the private sector. Yet government agencies are accountable not only to their customers but also to the general public. In addition, the public and private sectors are interconnected, and improving productivity and quality in the public sector strengthens the private sector.

While models for organizational change originated in manufacturing settings, experts agree that they can be applied to all work settings. Evidence indicates that in the service sector, simply adding higher technology has not been effective in achieving long-term productivity. As primarily a service provider, government must examine new ways to meet the growing challenges of service provision in an age of shrinking budgets and increasing mandates. Many of the jobs we expect our local government to perform have become increasingly

complex, and a strategy of automating and routinizing jobs to improve productivity is equally inadequate in today's public sector as it is in the private sector. Successful workplace change must focus not just on cutting costs but also on improving workforce skills and decision-making capabilities.

Moving from Hierarchical to Participatory Management

Worker participation and autonomy are key elements of workplace transformation leading to better performance. Creating a "healthy hierarchy" involves not just removing layers, but fundamentally changing how management operates. Not only should lower-level employees be given decision-making power, but they also need the training that will provide them with the ability to make good decisions. Employees should be rewarded for expanding their capabilities to contribute to the organization.

Practices that have been used in both the private and public sectors to transform the workplace include:

- Increasing worker autonomy
- Flattening hierarchies
- Decentralizing authority
- Creating labor-management committees to address workplace problems
- Instituting quality programs, such as TQM
- Upgrading workers' skills through training
- Increasing flexibility in deployment of labor
- Establishing work teams
- Sharing rewards for increased productivity with workers

Local governments can adapt many of these same strategies to help improve service delivery and overall government functioning. Government agencies and labor need to work together to identify the programs that will help bring about positive change in the workplace and in government's performance.

[More on the key elements of creating a high-performance organization](#)

Models for Workplace Change

Drawn from previous experiences in the United States as well as those from abroad, two distinct but overlapping American models of workplace transformation have emerged. They draw on similar management tools and techniques, but their human resource and industrial relations policies differ, depending on the extent to which they focus on front-line workers as the source of continuous performance improvement.

The Lean Production Model:

- uses a centralized approach
- aims to align the goals of employees with those of the agency
- focuses on quality through elements such as process management and performance measurements
- limits worker participation in decision making to the immediate work process
- involves selected employees in problem-solving committees under the direction of a supervisor or manager

The Collaborative Team Production Model:

- relies on decentralized decision making through collaboration
- allows worker representation in decision making at every level of the agency, through joint labor-management structures
- emphasizes self-directed work

- provides for extensive training of nonmanagerial workers
- offers job security that encourages workers contribute to improving quality and efficiency

Both models seem to result in substantial performance improvements, and in both cases joint labor-management structures play a vital role. Worker participation, however, can have significant effects on productivity, depending on the form and content of the participation. Four features are important to increasing productivity:

1. sharing of gains from productivity improvements with workers
2. employment security
3. measures to build group cohesiveness
4. guaranteed rights for individual employees

[More on international models of workplace transformation](#)

Challenges for Management and Labor

Workplace transformation can be difficult for many reasons:

- In the United States, little institutional support for change exists. Change is likely to occur in response to economic crises, leading to the piecemeal adoption of new strategies.
- Most workplace change is highly dependent on the personalities and commitments of key individuals: directors, managers, and union officials. Those in charge often find it difficult to cede power.
- Cooperative change requires both labor and management to give up their traditional adversarial stance. Entrenched ways of thinking and behaving will need to change.
- The up-front costs of the training necessary to implement tangible change can also be prohibitive. In an era where the focus is on short-term gains, such investments are undervalued.
- Alternative structures for employee involvement may have the effect of undermining or competing with the traditional union system.

Despite the inevitable hurdles, the relative stability of the public sector and its focus on service provision make it a highly appropriate environment for implementing workplace change.

Resources

Appelbaum, Eileen, and Rosemary Batt. 1994. *The New American Workplace: Transforming Work Systems in the United States*. Ithaca, NY: ILR Press.

This book offers an excellent overview of efforts to introduce change in workplaces, describing the major historical models of workplace organization and evaluating current efforts.

Ashekenas, Ron, et al. 1995. *The Boundaryless Organization: Breaking the Chains of Organizational Structure*. San Francisco: Jossey-Bass.

The authors detail the steps necessary to create effective organizations, stressing the need for information sharing, creating competence, decentralizing authority, and performance-based rewards.

Levine, David, and Laura D'Andrea Tyson. 1990. "Participation, Productivity, and the Firm's Environment." In Alan Blinder, ed. *Paying for Productivity*. Washington, D.C.: Brookings Institution.

This article looks at the relationship between different types of employee participation and a firm's productivity.

Marshall, Ray, et al. 1992. *Restructuring the American Workplace: Implications for the Public Sector*. LERC

Monograph Series, University of Oregon, no. 11: 26-27.

The authors describe the changing roles of workers and managers in the new global economy, and how the dramatic changes seen in the private sector can be transferred to the public sector, with a focus on the need for greater employee involvement.

Restructuring Local Government

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The Role of Cooperative Structures in Workplace Transformation

Nicole Blumner, May 1998

Cooperative structures have been used in the public and private sector with varying degrees of success for the past 70 years, with a revival of their use in the last two decades. The overall goals of cooperative structures fall into two major categories: improving productivity and increasing employee satisfaction. Cooperative programs may take form in several venues: those within an organization, those within an industry, and finally those covering a variety of establishments in an area or region. These programs most typically include labor-management committees, productivity sharing plans, and quality of worklife programs. Although cooperative structures offer many benefits to organizations, there often exist various internal and external barriers that limit their implementation and effectiveness. Examples from New York State illustrate the role that these structures can play in improving service delivery in the public sector.



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Structural Changes

Labor-Management Committees

The focus of labor-management committees is often on problem-solving activities and building trust. Committees typically deal with issues including workplace safety, work hours, training, personnel issues, and daily workplace concerns. Although committees may initially focus on less controversial issues, such as safety, over time they may build a level of trust between labor and management that allows them to deal with more complex problems. Management and labor may use these committees to avoid bringing unnecessary issues to the bargaining table, ultimately simplifying the bargaining process. Furthermore, the trust established in committee meetings can have a positive impact on the relationship between management and labor at the traditionally contentious bargaining table.

When establishing a committee, labor and management often write a letter of understanding to establish the committee's jurisdiction as separate from the basic labor agreement. Unfortunately, the letter of agreement may prevent committees from discussing urgent issues covered in the bargaining agreement that arise between negotiations. For instance, committees at Xerox are not allowed to discuss vital issues such as: salaries, union grievances, the union contract, benefits, company policy, working hours, rates, breaks, classifications, overtime, personalities, the payroll, discipline, problems on which shop chairs were working, and production standards. Although this measure protects workers in one sense from losing ground on vital issues during the course of a contract, it limits the ability of committees to solve workplace problems outside

of the bargaining table when they may be capable of doing so.

Quality of Worklife Programs

Quality of Worklife Programs provide opportunities for workers to participate in organizational decisions that directly affect their jobs. These structures may be known as quality circles, employee-involvement teams, or by other terms. These programs function not only to improve quality of the product, but also to enhance the productivity and work life of employees and to further labor-management relations. Quality circles may consider implementing initiatives to improve job tasks, job stress, scheduling of work hours, social relations, career development, and control over the work environment.

Productivity Gainsharing Plans

Gainsharing combines worker participation an incentive plan for productivity gains. Incentives are provided in the form of cash, a deferred bonus paid into a trust fund for later use, or a combination of the two. However, this form of cooperative structure has had limited use in the public sector, where "profit" is traditionally not the paramount motivation of the organization. Gainsharing was implemented in New York City after the fiscal crisis of 1976, although in a more punitive and unpopular form: workers received pay raises only if they increased productivity levels.

Barriers to Cooperative Structures

Despite its numerous benefits, worker participation often faces limits and barriers. First, participation is often limited by the fact that some decisions, such as corporate financial planning, must be made by management alone. In fact, most of the participation that takes place involves the employee's immediate workplace environment. Management may resist cooperative structures for several reasons. Citing loss of authority and the fact that workers don't have much to offer to improve productivity, managers often believe that workers will bypass and inhibit middle management and slow the decision-making process. Fundamentally, it is questionable whether labor-management committees actually increase productivity. However, this is partly because it is difficult to isolate and measure committees' role in improving productivity. The clearest indicators that have been documented are reduced absenteeism, accidents, grievances, improved collective bargaining relationships, and increased overall job satisfaction.

Union opposition to cooperative structures may also limit worker participation. Unions may construe cooperative structures as a management ploy to weaken labor and divert attention from basic issues such as wages, job security, and workplace health and safety. Other union objections include the argument that the economic benefits go only to management. Furthermore, unions may fear that increasing workplace efficiency can lead to employees putting themselves out of a job. Unions may argue that participation does not give workers any real power and will undermine the union's strength at the bargaining table. Finally, unions have even argued that the responsibility for increasing productivity lies with only with management, and not with labor.

Cooperative structures also raise legal questions. For instance, do the presence of labor-management committees violate the union's exclusivity to collective bargaining? The National Labor Relations Bureau has on several occasions invalidated labor-management committees as violating U.S. labor law as interfering with the union's exclusive bargaining power. However, most of these cases also involved charges of unfair labor practices against the corporation. It therefore appears that the committees have rarely invalidated on a purely categorical basis.

Fortunately, productivity gain sharing plans are cooperative structures that may spark less controversy than labor-management committees or quality programs. Furthermore, gainsharing is cost-free, since salary increases are paid from productivity increases. Gainsharing has not been widely used in the public sector, but it should be considered for its potentially positive impact on labor-management relations.

Overcoming the Barriers

Despite the obstacles, there are certainly proven tactics that can be used to overcome some of the barriers to cooperative structures.

- Invite union participation early in the process to adopt committees. This can prove essential to later successes.
- Serious management problems that exist prior to the establishment of a cooperative structure may severely limit its effectiveness and need to be resolved beforehand.
- Real commitment to the structure must be communicated to all the stakeholders and then proven by the later actions of both labor and management.
- Training must ensure all stakeholders have a clear understanding of the process. In particular, managers and supervisors must understand and be ready to accept their new roles. Middle managers may block implementation if they feel threatened by the loss of their traditional role in areas such as quality control and workplace improvement.
- Workers may justifiably believe that gains in productivity may lead to lay-offs. Management needs to ensure that there are safeguards for current employees to avoid this barrier to change.

Successful Examples of Workplace Transformation

National Survey of Workplace Transformation

In 1992, Paul Osterman published a survey of the incidence of innovative work practices in 694 U.S. manufacturing establishments. Innovative practices observed in the study included the use of self-directed work teams, job rotation, quality circles, and Total Quality Management (TQM) practices. This study has several implications for the practice of workplace transformation in local government. First, firms undertake transformation not only to save costs, but also to improve service level and quality. Second, competition is a significant factor in firms' decision to adopt innovative practices. In the public sector, the threat of privatization may be a strong motivator in improving service provision. Finally, organization size plays a role in firms' ability to implement new structures. For smaller governments, this implies that they may have limited resources and need assistance to undertake restructuring efforts.

The study found that only 35% of private sector establishments with 50 or more employees made substantial use of innovative work practices in the study year. The remaining organizations made limited or no use of such practices. Of the firms making substantial use of programs, worker teams appear to be most common (54%), followed by job rotation (43%), TQM (33%) and quality circles (40%). 21% of responding firms used none of these measures.

Factors associated with adoption of new practices included the presence of competitive global markets, the use of technology in the workplace that requires high levels of skill. Other factors include a competitive strategy emphasizing product over cost, human resource practices which emphasize training and innovative pay systems. The size of the organization was also key as large organizations were more likely to have the financial and human resources to initiate change that might not pay off immediately.

Workplace Transformation in New York State

Several studies have cited examples of cooperative structures in local government in New York State. A 1983 U.S. Department of Labor survey found 37 examples nationally of labor-management committees on a local government or authority level, two of which were from New York States. Jamestown, NY, a labor-management committee for the public school system involved both AFSCME and other union representatives. Two management representatives meet with 25 labor representatives each month, with an executive group of 3 people developing each meeting's agenda. The committee, founded in 1977, worked on issues such as education, work improvement, communication, service quality, training. Among other accomplishments, this committee won awards for its cost-saving recommendations.

Onondaga County also implemented a labor-management committee with CSEA, the New York State Nurses Association, and other unions in the area of health care services. This committee of 5 managers and 5 union representatives meets monthly to discuss issues of scheduling, automation, training, productivity, waste, safety and health, overtime, absenteeism, quality of work life, etc. Its accomplishments include reduced grievances, increased productivity, and reduced waste and costs.

A 1997 survey provides many examples of current restructuring efforts in New York State. All town and county governments in New York State outside of New York City were surveyed. Twenty-one of twenty-six counties responding cited at least one case of restructuring in their jurisdiction. Factors such as fiscal pressures for greater cost efficiency, increasing responsiveness of government and increasing the quality of service were all cited as motivations for restructuring local government. Several counties used cooperative structures in implementing change, including Genesee, Ontario, and Tompkins Counties, all of which are profiled in a Special Report on labor-management cooperation found at this web site.

- [Go to Special Report](#)
- [Go to Survey Results](#)

The Ulster County Example

Ulster County is an excellent example of the effective use of labor-management committees. The U.S. Department of Labor profiled Ulster County, New York, in its [Task Force Report on Workplace Innovation](#). In 1977, a joint labor-management committee was established in the collective bargaining agreement between Ulster County, New York (with a work force of about 1,600) and CSEA Local 856. The relationship became a truly productive problem-solving team effort in 1985-86, when the county, the union and the New York State Public Employees Relations Bureau jointly received a grant to improve the effectiveness of the existing committee. The grant provided for training, the hiring of a full-time facilitator, and the adoption of consensus decision-making as standard county practice. The county-wide committee has joint co-chairs and 10 members each from labor and management. There are also four departmental committees at the county's largest agencies: mental health services, social services, the residential health care facility, and the Community College.

Since 1986, these committees have addressed many issues of mutual concern. Cost containment, training needs, scheduling of work (including implementation of flexitime), fair administration of a furlough program, as well as safety and security concerns of employees are all issues that have been successfully addressed by these committees. Currently, the county is establishing a network of safety committees to address unique safety issues at each county work site. Also recently, a quality management initiative has been undertaken and implemented in Ulster County.

A significant benefit of establishing a more cooperative relationship between labor and management has been the improvement of the collective bargaining process. While the 1992 agreement took 24 months to reach, the 1995 contract took only "a few days." Both labor and management attributed this improvement to increased trust, better communications, and improved problem-solving skills that had developed in the cooperative process.

Other Examples of Cooperation

Other counties in New York State have implemented workplace improvement using cooperative structures. In particular, Tioga County has successfully used mutual gains bargaining to smooth the process of contract negotiation. However, Tioga has not used other forms of cooperation, hence the effectiveness of the cooperative relations established by mutual gains bargaining has been limited to the contract negotiation process only. Genesee, Ontario and Tompkins Counties have all implemented several forms of cooperative structures, which are all profiled in detail in the case study section of this web page ([HOTLINK to case studies](#)). In addition, many counties have entered into cooperative agreements on an intermunicipal level, including Dutchess, Ulster, Suffolk, Putnam and Tompkins.

Lessons

The above discussion should make clear that cooperative structures are not without their flaws and difficulties. Their recent resurgence and growing incidence in the public sector may indicate their usefulness as a tool for both labor and management to accomplish their objectives. In an age of fiscal uncertainty and increasing demand for limited government budgets, the public

I believe that both labor and management must take a fresh approach to worker-management relations. The old,

sector is using the innovative tool of cooperative relations to improve the quality and efficiency of government service. By working together, labor and management can achieve mutual goals, forging a cooperative relationship where benefits easily outweigh costs. The models presented here are examples of current and past successful cooperative structures. As the public sector continues to innovate in service delivery, new examples will emerge, and should be documented for labor and management alike to examine and adopt in future initiatives.

The Minnesota Example

The Minnesota "Strive Toward Excellence in Performance" (STEP) Program is a well-documented example of innovative practices on a state-wide level in the 1980's. In 1989, over 50 workplace innovation programs had been initiated in individual Minnesota state agencies through the STEP program. STEP's basic concept is as a process for planning and managing "long-term fundamental changes in...government's management values and practices." To develop the STEP initiative, a top-down approach was initially used-an appointed steering committee established goals and objectives. The committee then solicited pilot projects from individual agencies. Then, STEP staff provided support to agencies through training, advice, and cutting through red tape to implement these project ideas.

STEP provides several lessons to local governments considering re-structuring services. First, STEP is a state-wide program; thus it has more financial and human resources available to it than a local government program might typically have. This is not a fundamental obstacle, as many local governments have found special funding and additional resources to undertake workplace transformation. Second, STEP is fundamentally a project-oriented program that does not necessarily involve making structural changes to each agency participating. If government is truly interested in instituting structural change, STEP may not be the best model to follow.

A Historical Note

The history of labor-management committees in the United States began in 1918, when the National War Labor Board (NWLB) first developed shop committees and work councils in the defense industry. These structures provided a democratic alternative to a unionized workplace, but they were also used in combination with unions. Examples of successful cooperative structures were first found in the public sector in 1940, when the Tennessee Valley Authority initiated cooperative committees in its workplaces.

Remaining strong during the two world wars, committees dealt with such issues as safety, absenteeism, training and personnel. However, few committees continued after the war, with the dismantling of the NWLB. More recently, there has been a resurgence of public sector labor-management committees across the country. Training to establish and support these structures has also been institutionalized. Since 1982, the Program for Employment and Workplace Systems at Cornell has helped both the private and public sectors develop such committees.

Resources

Gold, Charlotte. *Labor-Management Committees: Confrontation, Co-optation, or Cooperation?* Ithaca: ILR Press, Cornell University, 1986.

This book examines the history and current role of labor management committees as well as other cooperative structures in improving service delivery and generating organizational transformation in both the private and public sectors.

Hearing of the Committee on Labor and Human Resources U.S. Government Printing Office, Washington,

adversarial approach squanders resources and increases worker and management frustration with the system. ...More and more these days, we are seeing that cooperation is taking the place of confrontation. Both workers and supervisors are beginning to realize that they are on the same team."

U.S. Senator Nancy Kasserbaum, Committee on Labor and Human Resources Hearing, February 9, 1995.

1995.

This hearing, first in a series focused on the role of labor management cooperation in improving American industrial competitiveness, focuses on the benefits of cooperative structures. The goal of the hearing was to provide a rationale for relaxing the current legal restrictions that protect the bargaining power of organized labor but inhibit the creation of cooperative structures.

Resource Guide to Labor-Management Cooperation. Washington: U.S. Government Printing Office, 1983.

This resource guide provides several hundred examples of cooperative structures of all kinds on a national level in both the private and public sectors.

Osterman, Paul. "How Common is Workplace Transformation and Who Adopts It?" *Industrial and Labor Relations Review* (Vol. 47, No. 2) Ithaca, New York: Cornell University.

This article provides a survey of private sector use of innovative workplace practices and attempts to correlate a number of variables such as global competition with the adoption of more flexible workplace practices and structures.

Hale, Sandra and Mary M. Williams, eds. *Managing Change: A Guide to Producing Innovation from Within*. Washington: Urban Institute Press, 1989.

This book describes the improvements and service innovations that have taken place since the 1980's under the auspices of the Minnesota "Strive Toward Excellence in Performance" program.

U.S. Department of Labor. Website:

http://www.dol.gov/dol/_sec/public/media/reports/worktogether/append_e.htm, 1998.

This website provides an inventory of local governments implementing workplace transformation through cooperative structures. This site also includes a task force report on the role of flexible and cooperative practices in the improvement of government service delivery. Suggestions are made for further research on determining barriers to restructuring in order to develop better methods for overcoming these barriers.

Warner, Mildred and Robert Hebdon. "Restructuring Local Government Service Delivery Among Towns and Counties in New York State." Unpublished survey, 1997.

This study examines local government restructuring in New York State (outside of New York City) and the relative importance of variables such as workforce unionization, cost concerns, political and legal concerns and other issues in restructuring efforts. Several examples of cooperative structures are featured in the survey responses, but there are also many examples of more adversarial labor-management relations in government restructuring.

Other Useful Sources on Cooperation

American Federation of State, County and Municipal Employees. Website: <http://www.afscme.org>, 1998. This site includes information on this large public sector employee union's research on improving labor management cooperation on a variety of workplace issues.

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"Best Practices" for Promoting Cooperation Among Multiple Stakeholders

Jon Gans, May 1998

Labor-Management Committees

The benefits of cooperation between labor and management are increasingly becoming obvious to governments in New York State. The labor-management committee is an effective tool to promote communication and cooperation. The dynamics of labor-management committees are complex due to the diversity of viewpoints represented. Analyzing other efforts at cooperation between multiple stakeholders may yield insights that will enable these committees to be more successful. For labor-management committees, the following "best practices" are recommended:

- Establish a central, guiding committee to oversee the endeavor.
- Integrate committees into the organizational structure.
- Define expectations and parameters for decision making.
- Include as many stakeholders as possible and necessary.
- Communicate and foster a shared understanding of goals and objectives for both the committee and the organization.
- Address issues that are easy to reach consensus at the outset in order to build momentum to tackle more difficult topics.
- Be cognizant of power differentials and the effect these may have on communication.

Working in groups is often difficult when there are many stakeholders with diverse points of view involved in the process. Two models which provide insights that are relevant to efforts in labor-management cooperation are Quality of Work-Life (QWL) programs and Search Conferences. In terms of labor-management cooperation, these insights may be helpful to enable communication, develop trust, and identify potential obstacles to success. Developing mission statements creates a shared understanding of the goals for an organization based on the activities and values that have guided the organization in the past. One tool that is useful in creating mission statements is concept mapping. A review of these tools highlights key elements of multiple stakeholder cooperation in decision making.

- [Quality of Work-Life](#)
- [Search Conferences](#)
- [Mission Statements](#)
- [Concept Mapping](#)

Quality of Work-Life

The Quality of Work-Life experience reveals three points for both labor and management to consider in establishing committees:

1. Integrate committees into the organizational structure.
2. Define the parameters of decision making authority.
3. Communicate objectives and goals clearly.

Quality of Work-Life programs show the usefulness of a central administration, with the inclusion of as many stakeholders as possible, to coordinate the effort. In addition, considering how power differentials influence the committee process is important. One limitation is due in part to the committee structure of QWL.

Committee Structures in Quality of Work-Life Programs

One mechanism that has been implemented to enhance labor-management cooperation in the private sector is referred to as Quality of Work-Life (QWL). Edward Lawler is one proponent of QWL who asserts that cooperation results in more effective organizational performance. QWL projects seek to not only improve productivity but all aspects of life at work. While QWL initiatives have many drawbacks, such as limited authority to implement ideas and poor communication flows, there are several elements of the framework that might contribute positively to discussions of labor-management cooperation in the public sector.

Joint Committees

The committee is the centerpiece of QWL and they form the link between labor and management. Administratively, these joint committees are parallel to the formal organizational structure. The hierarchical nature of this structure turns out to be one of the major shortcomings of QWL initiatives. The ability for committees to effect change is limited because there are no formal mechanisms that provide the necessary authority. The committee must convince management to implement any ideas that emanate from the process.

Shared Goals

The implementation of QWL has led to several important lessons regarding labor/management cooperation. One insight is to overcome obstacles that are relatively easy to address in order to create momentum to tackle larger, more difficult issues. Every committee drafts a letter of agreement specifying the framework and objectives of the group. Once the framework is established the letter is signed by both parties and disseminated throughout the organization. The objectives are summarized into a few general statements to create a shared understanding of the overall goals. For management, these may be improved quality, productivity and labor/management relations. Unions may seek to provide a better environment for membership.

Training

Training in cooperative problem-solving initiates relations between labor and management and serves to build trust. It also shows the commitment of both union and management to the process. In order for QWL programs to be successful both parties must be committed to the idea. One strategy to overcome this obstacle is to approach the union and determine which organizations are most willing to attempt using the model. Implementing QWL becomes easier when management is assured of the unions' commitment to the idea.

Search Conferences

Search Conferences (Weisbord and Janoff, 1995) recognize the value of considering both internal and external factors in decision making. Expanding the scope of committee discussions to incorporate the entire system within which the organization operates helps the group develop a shared understanding of the goals and objectives. This provides managers and employees with a sense of their larger purpose in the organization. Search conferences also focus on the history of the group in order to foster this sentiment. Perhaps the most influential exercise in a Search Conference is an evaluation of what will likely happen if the organization maintains its present course. This 'Do-Nothing' evaluation enables conference participants to recognize the organization's vulnerabilities.

Search conferences attempt to deal with problems that are multi-dimensional in nature and require coordinated strategies with multiple stakeholders to be dealt with effectively. The ultimate goal of a search conference is to map where a group has come from, where they would like to go, and what resources they have to get there. This past, present and future mapping of resources and goals develops a shared

understanding of the direction the organization is heading toward within the context of a larger system.

The Search Conference Process

There are typically three modules in a search conference spread out over three consecutive days. The first day is oriented toward building timelines of past events to identify trends, influential people and other factors both internal and external to the organization that have affected its historical development. Once this task is accomplished, every participant has a shared understanding of the history of the organization. The second day is spent identifying and articulating a vision for the future of the group. A scenario of what will likely happen if the group continues along its present course is developed. This 'do-nothing' evaluation enables the conference participants to recognize where the organization is vulnerable and contributes to the overall expression of an ideal future. The third day is devoted to planning a course of action for achieving the ideal future. Operationalizing the strategic plan involves identification of the individuals or groups linked to available resources and the key relationships between organizations to build networks.

Shortcomings of Search Conferences

Although the search conference is meant to blur or eliminate traditional power differentials they remain in place inhibiting open communication. Individuals may be fearful of expressing ideas that may compromise their relationships with their superiors once the conference is over. In addition, traditional conflicts and biases toward individuals present obstacles that are not easy to overcome.

Insights from Search Conferences

The recognition that problems are multifaceted and due, in part, to structural, systemic factors is an important insight. Likewise, creating a shared understanding of the historical elements enables participants to understand the broader context of their involvement with the group as well as foment a common vision for the future. Search conferencing, like QWL projects, recognizes the value of knowledge that resides in all facets of the organization or association. The importance of this last point cannot be understated. Accessing the expertise of individuals on the 'frontline' is crucial to successful efforts at labor-management cooperation.

Mission Statements

Developing a shared understanding of purpose in the context of labor-management committees may be achieved through Mission Statements. Indirectly, creating a mission statement develops a foundation for relationships that enhances future committee work.

Developing Consensus

A mission statement is a clear formulation of an organization's 'reason for being'. It is an expression of the functions and processes that an organization uses to fulfill a purpose. For employees a mission can provide 'an understanding of how what they do is tied into a greater purpose' (Goodstein, 1993). Ideally, a mission statement should indicate the scope and direction of an organization's activities based on the values that have guided the organization in the past.

Labor and management committees should, at some point, articulate the mission for their group and, if necessary, the overall organization they serve. The advantage of creating a mission statement lies in the creation of a shared understanding between labor and management for the goals of a committee. It also serves to develop relationships that will likely enhance future committee work. Mission statements bring focus and energy to an organization and its members because of the need to reach a consensus on the specifics of the document. For these reasons, developing a mission statement is worth the effort.

Concept Mapping

Concept Mapping is one tool that can be used to define the mission of an organization. The strength of Concept Mapping lies in its ability to visually represent a set of ideas that the group creates itself. Reaching consensus in this manner is easier because the map is a fair representation of the opinions of the group.

The idea of charting out ideas that relate to each other is a common practice in many strategic planning

discussions. Concept mapping provides a framework to structure ideas in such a manner as to recognize patterns or clusters of ideas that are related to each other and represent them visually (Trochim, 1997). Concept mapping has proven to be a valuable tool in planning for public, private and not-for-profit organizations alike and could enhance efforts at labor-management cooperation.

The concept mapping process starts by identifying and selecting a focus for the conceptualization, for example the overall mission of an organization, with the input of as many relevant stakeholders as possible. Once a focus is established each group member generates statements that attempt to capture their individual understanding of the concept.

Individual cards that have each statement printed on them are distributed to the participants as a set. The individuals are asked to create piles by distributing the statements in a way that makes sense to them. Every statement is also ranked, usually on a scale of one to five, for its importance to the overall concept.

The next step is to define clusters of ideas that each participant has determined are linked through the sorting process. This can be done with a computer or by simply using the index cards. A map of the statements is produced and the process is complete. Plans of action and strategies may now be undertaken to fulfill the goals and visions generated by the participants in the concept map.

Concept mapping is a very flexible tool used to identify common ground in strategic planning. Labor-management cooperation efforts could benefit from such a framework because it visually represents ideas in clusters that have been created by both parties; concept mapping is particularly useful for reaching consensus on difficult issues between multiple stakeholders. Most importantly, perhaps, is the ability of a concept map to create a shared vision of the future direction of the organization that is comprehensible to all participants; a prerequisite for developing mission statements. (For more information on concept mapping visit: <http://trochim.human.cornell.edu/research/epp1/epp1.htm>)

Conclusion

Labor-management committees have the benefit of learning from past attempts at multiple stakeholder cooperation. Quality of Work-Life initiatives reveal the value training can add to the functioning of committees. Likewise, commitment on behalf of both management and labor is required for success. Search conferences provide a rationale for incorporating labor in decision making given the value of knowledge that resides in frontline employees. Power differentials play an important role in limiting search conferences and this awareness should be considered in labor-management committees. Developing a mission statement is one way to foster a shared understanding of committee goals and represents an opportunity to develop important relationships between labor and management. Concept mapping is a tool that can facilitate the development of a mission statement. Labor-management committees can be successful when both parties understand some of the shortcomings of other attempts at multiple stakeholder cooperation.

Resources

Goodstein, Leonard, Timothy Nolan, and J. William Pfeiffer. 1993. *Applied Strategic Planning*. New York, NY: McGraw-Hill.

This publication gives a detailed framework for strategic planning in various types of organizations. Several tools are discussed for developing an effective strategic planning environment in organizations.

Lawler, Edward. 1990. *High-Involvement Management: Participative Strategies for Improving Organizational Performance*. San Francisco: Jossey-Bass.

This text provides insights into the effectiveness of many concepts related to 'Quality'. Self-managing work-teams, gainsharing, and employee involvement ideas are presented and evaluated using many examples.

Trochim, William. 1998. *An Introduction to Concept Mapping for Planning and Evaluation*.
<http://trochim.human.cornell.edu/research/epp1/epp1.htm>

The full text of this article describes all of the steps for using concept mapping and enables the visitor to use a simulation of a computer program based on the tool.

Weisbord, Marvin and Sandra Janoff. 1995. *Future Search: An Action Guide to Finding Common Ground in Organizations and Communities*. San Francisco: Berrett-Koehler.

Some very practical information on the process of conducting a Search Conference with examples.

Restructuring Local Government

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Mutual Gains Bargaining

Darth Vaughn, May 1998

"The smartest strategy in war is the one that
allows you to achieve your objectives
without having to fight."
--Sun Tzu, 500 BC

Mutual Gains Bargaining (MBG) is preventative medicine. It helps to circumvent many of the ills associated with traditional labor-management interaction, and allows for healthier more productive cooperation. MGB is a method of bargaining designed to dramatically improve the quality of solutions, and increase the likelihood of compliance between labor and management, ultimately benefiting their constituents. The philosophy behind the process is that through in-depth discussion with an emphasis on side by side problem solving (as opposed to face to face confrontation), you can get what you need, and I can get what I need. This is a much more effective approach compared to the traditional adversarial process.

Mutual Gains is about becoming a more effective negotiator by recognizing and avoiding those behaviors that intensify conflict. This review gives a basic introduction into the philosophy behind the concept and process of using MGB. In addition, this site lists the keys to success with MGB, and the resources to get more information on, and training for, Mutual Gains Bargaining.



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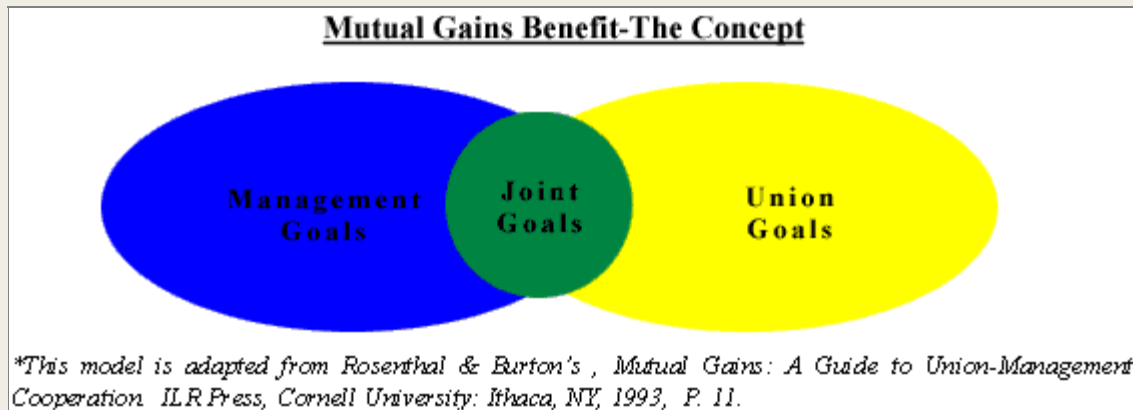
- [The Concept](#)
- [The Process](#)
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The Concept

Public management has a responsibility to promote taxpayers interests, and labor unions have a duty to represent workers' interests, but often times unions and management find themselves distracted from their intended purposes and engaged in ideological fights with each other. Too many bargaining situations are resulting in bad contracts both from the point of view of management and the unions, with neither side really getting what they needed.

With traditional bargaining, groups enter the negotiations with their own preferred solutions and then haggle over whose proposal is best. Labor and management will develop their positions on issues, submit overblown

proposals to each other, and argue emphatically. Arguing on positions leaves both sides with one of four options; "I win, you lose," "You win, I lose," "We both compromised, and lost", or "No deal." Eventually the outcome is determined by a series of power struggles concentrating on personalities and anecdotal data rather than the issues. Traditional bargaining is adversarial, the approach is to beat the other guy. Mutual Gains Bargaining, on the other hand, is a different way of thinking.



With MGB both sides understand the need to focus on interests before their positions. It's not to beat the other guy, but rather to get the best for what you need and the other side as well, because their interests are linked to your interests. Labor-management cooperation is supposed to be an affirmation of the leadership in both the union and management with the goal of seeking better ways of working and new avenues to success. This cooperation in no way compromises or denies the identity of either party. It is also not an answer to all ills. Conflict may still arise, as it should for if handled correctly it sparks creativity and change. This cooperation, is rather a process that can provide a better way to get things done.

The mutual gains process focuses negotiating teams on interests rather than positions. MGB is a simple concept that unions and management can identify at least one goal in common and find ways to jointly accomplish that goal.

As simple as the concept might be, it's critical that labor, management, and legislation go through a formal training process before they decide to embark on mutual gains. Often times, too much distrust exists between the groups not to. Legislators are often ignored, but it's important that they be pulled on board so they understand and support the process.

The Process

There are various approaches and techniques to Mutual Gains Bargaining. This approach is used by Cornell University's Program for Employment and Workplace Systems (PEWS).

- *Opening Discussion: The Big Picture*
This is the preparation phase where each side constructs a list of interests instead of constructing positions. Union and management team members sit dispersed around a table (as opposed to traditional negotiations where parties sit across from each other) and openly and honestly discuss their interests and concerns regarding an issue. Lists of interests should be made separately at first, although ultimately you may be able to construct the lists together.
- *List the interest underlying the positions*
This is a pre-bargaining phase in which each side exchanges their interests and concerns. This is not a wish list or a list of outcomes wanted. Team members analyze all interests, and focus in on those that are mutual. Many times both parties are surprised by how many common interests they have. The parties then agree on the process for bargaining.
- *List options (Inventing not deciding)*
You have now entered the bargaining process. The parties will find an outside facilitator useful, until confidence in the process develops. In this context the facilitator is a facilitator to the process, not to

either party. Once both parties are familiar with the process, team members can take turns serving as facilitators and recorders of information if desired.

Once interests have been identified and examined, the parties participate in a brainstorming process to develop a series of potential solutions and options for each interest. The information is shared openly among both bargaining teams and the potential solutions and options are listed without assessing their feasibility. A list is then compiled of both parties' interests.

- *Try to arrive at some standards*

Once options are developed, the groups agree upon a set of objective standards to use in evaluating the options. It is during this phase that the parties decide what data they need to analyze issues or concerns, and gather the data jointly. The parties then brainstorm again to compile another list of interests, which is refined and polished through discussion until a consensus is reached.

- *Evaluation Options (DECIDING)*

Finally, through open discussion, the teams begin to apply the objective standards and identify those potential solutions and options on which team members can reach consensus. The groups also identify what is clearly unrealistic and eliminate those options. This is a process for distinguishing the options that meet your interests. As options are agreed upon, together union and management team members draft contract language and a bargaining history for final review and consensus approval by the full team.

Labor-management cooperation is the key to having an effective relationship between unions and management while keeping the public sector competitive and viable. Mutual Gains bargaining is not a cure all solution, and does not prevent the different parties from disagreeing with each other on issues. Under this process, however, disagreements neither affect the overall relationship, or the ability to resolve other issues. The parties can agree to disagree, but disputed issues will be resolved through the MGB process. For labor-management cooperation to result, two powerful institutions (union and management) must respect each other and work together to achieve mutual interests whenever possible.

Mutual Gains is more than just a process. It is a cultural change in philosophy that cannot occur without careful preparation. As an organization begins to implement contracts using Mutual Gains to effect changes in working, trained union and management officials will need to jointly train other supervisors, union officials, and employees on the process, contract topic, and key contractual terms. Both parties will need to continue to work together to implement and effectively administer these contracts.

Keys to Interest Based Bargaining Success

There are a number of key factors in making win-win negotiations and labor- management cooperation successful.

- *Stick to the Process.* Labor and management must be committed to MGB. They must communicate with each other, understand each other's needs and interests, and pursue answers that benefit both groups.
- *Share Information to Build Trust.* Sincerity, openness, and honesty are fundamental in building trust between labor and management.
- *Set an Example.* During negotiations, and during day-to-day contract, the administration, union leaders and managers need to set an example of open communication for all to follow.
- *Do What You Say.* Trust and rapport are key for making labor management cooperation work. Labor and management leaders must follow through on their promises and be open and honest with each other.
- *Isolate the Problem from the People.* Often people tend to link the problem with the people, and a conflict of personalities emerges. Some people will not accept a new approach and will be subversive to both groups' mutual interests. These individuals will need to be removed, and concentration should be placed on the majority of managers and employees who prefer the cooperative model.
- *Long-term Partnership.* Partnership does not end when the contracts are finalized. The conclusion of the Mutual Gains Bargaining process is the initiation of a long-term partnership between union and management. Both groups need to develop a system for cooperative change extending beyond the

duration of the contract.

Union and Management's Benefits

For the union and management, the primary question centers on what cooperation will mean for both groups in the short and long run. The union can use MGB as a way to empower workers and their institutions to shape their lives at work. In, *Mutual Gains: A Guide to Union-Management Cooperation*, authors Rosenthal & Burton identify the benefits for unions and management. Union Benefits Include:

- Increased access to information, and prenotification of changes in work arrangements and technology.
- Increased input, which helps management avoid errors or decisions that would hurt union membership.
- Work satisfaction may increase.
- Union may be able to address a broader range of personal concerns.
- Members concerns are resolved more quickly and fully.
- Membership, education and skill levels increase.

In the public sector, management must make the organization as effective as possible to meet the needs and expectations of citizens and their legislative authorities. Authors Rosenthal & Burton also identify the benefits for management. Management's benefits include:

- Improved management effectiveness.
- Increased organizational flexibility.
- Improved working environment.
- Enhanced productivity.

The Mutual Gains bargaining approach establishes that common ground can be located, mutual interests identified, and cooperative relationships between unions and management built.

Resources

American Federation of State, County and Municipal Employees -(AFSCME)

- Interest-Based Bargaining
<http://www.igc.org/afscme/bargtabl/cbr3a.htm>
- Redesigning Government
<http://www.igc.org/afscme/wrkplace/redgo.htm>

Fisher, Roger, & Ury, William. *Getting to Yes*. Penguin Books: New York, New York. 1991.

This is the classic work, where many of the Mutual Gains philosophy originate from.

Flaherty, Benard. "Mutual Gains Negotiating A Skills Workshop." Cornell University.

This is a training manual from a two-day training session offered by Cornell University's ILR Extension department, and conducted by Mr. Flaherty. Because of the initial difficulties involved in starting the MGB process, it is strongly suggested groups interested in Mutual Gains Bargaining engage in some type of formal training.

Kochan, Thomas, & Osterman, Paul. *The Mutual Gains Enterprise*. Harvard Business School Press: Boston, Massachusetts. 1994.

This work brings together the authors recent work on labor market and employment policies with their work on the human resource strategies and labor management practices of individual firms. The book supplies a lot of theoretical and practical approaches to Mutual Gains Bargaining.

Program for Employment and Workplace Systems (PEWS) <http://www.ILR.cornell.edu/depts/extension/PEWS>

To get more information on Mutual Gains and training. The Program for Employment and Workplace Systems (PEWS) works jointly with union and management groups to design and implement organizational changes and work restructuring. PEWS works in the public and private sector on issues such as work flow and job redesign, quality improvement, problem solving and team building, alternative compensation, union-management relationships, and collective bargaining and workplace negotiations. PEWS also works with industry groups, economic development areas, and union internationals on participative design, strategic planning, and problem-solving processes.

Rosenthal & Burton's , *Mutual Gains: A Guide to Union-Management Cooperation*. ILR Press, Cornell University: Ithaca, NY, 1993.

This book is about why and how to cooperate in ways that lead to mutual gains for both the union and management. This work lays out the theoretical and practical aspects of implementing Mutual Gains.

California Teachers Association: <http://www.ctarrce.org/ctaibb.htm>

Schools and the education industry are increasingly becoming huge users and supporters of Mutual Gains. CTA helps public school teachers create the best possible learning conditions for California's children. Through collective bargaining and legislation, CTA is working to create a safe and positive learning environment for all children.

Training

For Access to Formal MGB Training See:

<http://www.ilr.cornell.edu/extension/mgmtprog/LR304.htm>

This is a workshop in Management programs, Labor Relations, and Mutual Gains Negotiation offered by ILR Extension at Cornell University. The goal of this workshop is to teach how to realize bargaining objectives by focusing the negotiation process on interests as opposed to the use of power and rights at the collective bargaining table. It will increase your proficiency in:

- How to avoid taking positions that lead to conflict
- How to explore interests with the intent to realize mutual resolution of issues
- Exploring the possibilities of joint gains for management and unions
- Turning negotiations marked by disputes into a process that emphasizes collaboration and improved relationships

<http://www.research.cornell.edu/VPR/CenterDir/PEWS.html>

Cornell's Program for Employment and Workplace Systems (PEWS) works jointly with union and management groups to design and implement organizational changes and work restructuring. PEWS works in the public and private sector on issues such as work flow and job redesign, quality improvement, problem solving and team building, alternative compensation, union-management relationships, and collective bargaining and workplace negotiations. PEWS also works with industry groups, economic development areas, and union internationals on participative design, strategic planning, and problem-solving processes.

<http://www.ctarrce.org/ctaibb.htm>

Interest-Based Bargaining is a three-day program in which Management and Association bargaining teams are trained together and learn to improve their table skills using the "interest-based" methodology. The program's philosophy emphasizes that successful bargaining rests on the ability of the parties to achieve shared goals without undermining either party's ability to attain their separate goals or protect their traditional rights and responsibilities. It is co-trained by California Teachers Association (CTA) staff and school district

representatives.

Aspiring to Excellence

Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

**A Report from the Department of City and Regional Planning
Cornell University
June 1998**

Authors: Nicole Blumner, Lindy Burt, Jon Gans, Lisa Goldberg, Kristin Guild, Young Sung Kim, Chang Kil Lee, Darth Vaughn, Mildred Warner



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Acknowledgments

This report is the culmination of a graduate-level class in the Department of City and Regional Planning at Cornell University exploring the topic of local government restructuring in New York State. We would like to thank a number of individuals and organizations for their assistance throughout our effort. The New York State Association of Counties, the New York Civil Service Employees Association, and the NYS Department of State's Division of Local Government worked most closely with us on this project and we appreciate their support. Thanks also to the NYS Public Employment Relations Board and the New York State School of Industrial and Labor Relations Extension for providing us with valuable information. We also thank those individuals in Genesee, Ontario, and Tompkins Counties who gave us their time to be interviewed for the case studies. Finally, the students in the class would like to thank our professor, Mildred Warner, for her work and much-needed guidance throughout the semester.

Additional copies of this report and the individual county case studies can be downloaded from the Restructuring Local Government Website maintained by the Department of City and Regional Planning. Other information relating to local government restructuring can also be found at the site. For further information, contact Professor Mildred Warner (email: mew15@cornell.edu, phone 607-255-6816). Support for this project is provided in part by Cornell

Cooperative Extension and by the Cornell Agricultural Experiment Station.

Executive Summary

The public sector, particularly local government, is under pressure to simultaneously improve performance and curtail costs. Reductions in state and federal funding, a continuing demand for efficient and flexible government services, and fear of tax revolts are leading to reexaminations of how local governments can best meet the demand for their services. Governments are utilizing a number of tools for restructuring service delivery to increase efficiency and reduce costs.

In our background research, we identified two types of restructuring: external restructuring, where a government turns to outside organizations to provide services (through privatization or intermunicipal cooperation, for example), and internal restructuring, which seeks to improve service delivery by altering organizational structure and decision-making processes. High levels of public sector unionization in New York State make internal restructuring through labor-management cooperation an especially important alternative. Through case studies of three New York State counties, we examined the use of three specific tools for labor-management cooperation: labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM). Genesee, Tompkins, and Ontario Counties were chosen as cases where at least two of these three internal restructuring tools have been implemented successfully.

We found that these cooperative workplace structures improve communication and broaden participation in decision making, leading to greatly improved labor-management relations and employee morale. They may also reduce costs and improve service delivery. However, limited evaluation in the three counties makes savings and service improvements difficult to document.

These tools appear to fall on a continuum of complexity, investment costs, and comprehensiveness. Labor-management committees provide a foundation for the other tools by building an ongoing forum for communication and trust building. They are flexible, deal with a wide array of concerns, and require minimal training. Mutual-gains bargaining requires more training and, in our cases, a preexisting environment of trust. While there are spillover benefits to other areas, MGB is primarily limited to contract negotiations. TQM is the most comprehensive of the three tools and requires the greatest degree of training and organizational culture change to be effective. It also may offer the greatest potential for service improvement.

The case study counties all enjoyed a preexisting environment of trust, committed leadership, and lack of political or fiscal crisis. Given the investments in training and change in perspective required of labor, management, and elected officials, implementation of these tools may be more successful in counties not experiencing crisis or a recent history of labor-management conflict.

These internal restructuring tools are not designed to address external stakeholders. Service improvements may be limited by higher-level policies and mandates these tools cannot address. Similarly, citizen involvement is not enhanced by these tools. However, by creating new forums for communication and participatory decision making, local government enhances its ability to identify and implement programs for service improvement. Adding mechanisms for citizen involvement and strategies to push for needed policy change at higher levels may further increase local government's capacity to restructure to meet the needs of its diverse constituents.

Introduction

The public sector is under pressure to simultaneously improve performance and curtail costs, and this is particularly true of local government. Reductions in state and federal funding, tax revolts, and the advent of privatization are leading to reexaminations of how local governments can best meet the demand for their services. Keeping taxes down while delivering the quality services that citizens expect is a difficult challenge. Local government must become more efficient and more accountable to the general public.

External Restructuring

External restructuring, which involves privatization or contracting out for services, can create a competitive environment and result in increased efficiency and cost savings (Savas 1987). In New York State, however,

privatization has been limited (Lauder 1992). A 1997 survey of local government restructuring in the state found intermunicipal cooperation to be the most common form of restructuring (45% of respondents). Privatization was the next most common form of restructuring (31%), but reverse privatization (bringing services back into the public sector) was also significant (Warner and Hebdon 1997). This suggests that local governments in New York State recognize the value of both cooperation and competition in improving service delivery.

Privatization can create an uneasy or even hostile environment between labor and management. It can result in lower wages, benefits, and levels of unionization (Hebdon 1995; Chandler and Feuille 1991, 1994) despite government efforts to ensure no layoffs. Some empirical studies have shown the impacts of contracting on unionized workers' pay and employment to be minimal (Pendleton 1997). However, lowered employee morale and fears about job security have significant negative effects on the potential for a cooperative relationship. In addition, public sector unions must fight privatization if they are to retain their membership base (CSEA 1995).

In New York State, public sector collective bargaining is governed by the Taylor Law, which mandates that employers negotiate with the union before contracting out a service that is essentially the same as one union members currently provide. Thus the Taylor Law is often perceived as a roadblock to privatization. However, under some circumstances, New York State's governments may contract out services without negotiating with the union, and they also may downsize when there is no longer the need for a particular service or when financial circumstances demand it. Nonetheless, collective bargaining restrictions under the Taylor Law may limit opportunities for contracting out. This makes the search for other, more cooperative methods for implementing workplace innovations essential for local government restructuring in New York State (Donovan 1990; Lawyers Co-operative Publishing 1982).

Internal Restructuring for Transforming Government

In their well-known book *Reinventing Government* (1992), David Osborne and Ted Gaebler argue that a sweeping overhaul of how government does business can be achieved through internal restructuring. They describe this as a move from a supply-driven system to a demand-driven system. The rigidity of budgeting, service delivery, and the labor-management relationship in traditional supply-driven governments, they argue, must be replaced by flexible, quality-oriented systems that are responsive to customers' needs. Internal competition and more cooperative labor-management relationships can provide an effective alternative to privatization for improving government efficiency.

Decentralization of authority can help government achieve better performance. The private sector has demonstrated that decentralizing authority and flattening hierarchies can be very effective in improving efficiency and product quality (Appelbaum and Batt 1994). Giving decision-making power to front-line workers, who are closest to most of the problems and opportunities, and encouraging employee innovation are important steps (Marshall 1992). Direct citizen participation is also vital to improving government services (Osborne and Gaebler 1992; Osborne and Plastrik 1997).

Total quality management (TQM) is one vehicle for internal restructuring. TQM programs are being used to transform government, especially at the federal level, but also in New York State and in more than 400 municipalities nationwide (Rusaw 1997, U.S. GAO 1995, New York State GOER 1992). TQM emphasizes an organization's commitment to the customer and to continuous improvement of every process through the use of data-driven problem-solving approaches based on empowerment of employee groups and teams. Cooperative processes such as TQM help to create a culture change, perhaps the most important requirement for transforming the public sector.

The Potential of Labor-Management Cooperation

Traditional industrial relations practices relied on the acceptance of a shared ideology among labor, management, and government that defined workplace roles and provided stability to the system. The 1990s saw the development of a new model, one that recognizes there is often a lack of consensus between management and labor, and that both are greatly impacted by the instability in economic, technological, political, and social environments. In this context, methods that focus on building communication and cooperation between management and labor offer considerable promise (Kochan, Katz, and McKersie 1994).

Cooperative labor-management structures such as labor-management committees, total quality management (TQM)

programs, and mutual-gains bargaining can be used effectively in the public sector. While the public sector is distinct in many ways from the private sector, it can learn from the experiences of private firms in implementing some of these progressive labor-management practices (Lawler 1990).

However, resistance to cooperative practices can be substantial. Any of the major stakeholders in the process—management, elected officials, and labor—may resist the change for different reasons, making transition difficult and time-consuming. Managers may resent their loss of authority and harbor doubts that productivity gains can be attained through these methods. Elected officials may be hesitant to accept the political risks of instituting change. Unions may perceive cooperative structures as a ploy to weaken labor and divert attention from basic issues such as wages and job security. They also fear that by increasing workplace efficiency, they are putting their jobs in jeopardy (Gold 1986). In addition, participation may not necessarily give workers any real power.

Cooperative tools are inherently limited, since many fundamental decisions about organizational structure and work processes still remain in the domain of upper management. This is a commonly cited drawback to programs such as TQM (Appelbaum and Batt 1994). But more and more it is being recognized that all interested parties (labor, management, elected officials, customers) should have a voice in decision making, and that valuable production knowledge resides in all levels of an organization, especially with front-line workers (Marshall 1992). Having been implemented in the private sector with success, cooperative techniques are clearly beginning to take hold in public sector workplaces, as evidenced by the many examples profiled in the U.S Department of Labor report *Working Together for Public Service*, better known as the Florio Report (1996).

The literature indicates that effects of labor-management cooperation on the ability of local government to undertake internal restructuring and to improve service delivery are worth examining. While obstacles clearly exist, with effort, many of the barriers to labor-management cooperation can be overcome (Gold 1986). By profiling counties where several tools of labor-management cooperation have been employed successfully, we hope to add to the existing knowledge of how these specific tools can be used to improve local government services.

Methodology

Initial research for this project was conducted in collaboration with the New York State Civil Service Employees Association (CSEA), the New York State Association of Counties (NYSAC), and the New York State Department of State's (DOS) Division of Local Government. Representatives from each of these groups were interviewed for their perspectives on and concerns about local government restructuring. The team found, through these discussions, that public sector management was searching for ways to improve internal and external operations, while labor was interested in exploring ways to prevent privatization of services. We hypothesized that labor-management cooperation can reduce costs and increase service quality, diminishing the impetus for privatization.

Further interviews with key informants helped the team focus on the relevant issues surrounding labor-management cooperation and identify the types of labor-management tools being employed in counties throughout New York State. Key informants included: CSEA, NYSAC, DOS, the Public Employment Relations Board (PERB), the Governor's Office of Employee Relations (GOER), staff and faculty of Cornell University's School of Industrial and Labor Relations, and elected officials from counties which had implemented some form of cooperation (see [Appendix A](#) for complete list).

We found that formal labor-management cooperative initiatives were not widely used in the state, but that a handful of both exemplary and semi-successful cases did exist. In the majority of cases, the most commonly implemented tools were labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM) programs. As a result, the team decided to focus on these three initiatives as tools of the labor-management cooperative process.

A 1997 survey of local government restructuring in New York State provided a preliminary indication of the incidence of privatization and restructuring in NYS counties (Warner and Hebdon 1997)¹. Twelve of the counties that responded to this survey indicated they had used cooperative labor-management initiatives. Key informants provided names of counties which had participated in TQM or mutual-gains bargaining training, or had implemented labor-management committees². The research team then selected three counties—Genesee, Ontario, and Tompkins—which had been

successful in implementing formal labor-management cooperation.

To explore our hypothesis that labor-management cooperative efforts could be an attractive alternative to privatization, the following key questions were formulated for the case studies based on the preliminary interviews and relevant literature:

- What are the basic elements of a cooperative labor-management relationship in county government?
-
- What are the goals that labor, management, and county officials hope to achieve through cooperation?
- What is the impact of a cooperative labor-management program on labor relations, service quality, and cost of service delivery?

These key questions reflect an attempt to describe the *process* of labor-management cooperation. Therefore, the chosen research method for the project is that of a *case study*, a descriptive research tool (Yin 1984).

The case study counties were selected on the following criteria:

- *Utilizing several tools of labor-management cooperation.* Having examined in our preliminary investigation several counties that had implemented one cooperative tool with marginal success, the team hypothesized that several tools may be necessary to substantively change the relationship between management and labor. Thus we chose counties that had implemented more than one of the cooperative tools identified: total quality management, labor-management committees, or mutual-gains bargaining.
- *Key informant recommendations.* The case study selection was also based on the beliefs of key informants listed in [Appendix A](#) that these counties were among the more successful of New York State in implementing cooperative labor-management efforts.
- *Willingness to participate and proximity.* Cases were selected on the basis of the willingness and ability of the counties to provide us with the necessary access to personnel and resources. Geographic proximity to Ithaca was also a consideration due to time constraints.

In each case, every attempt was made to interview one or more representatives from each of the three perspectives: elected officials, management, and organized labor (see [Appendix B](#)). An interview guide (see [Appendix C](#)) was developed to provide consistency and direction across all interviews. However, the interview format also provided flexibility for open-ended responses, so that the elements, advantages, challenges, and lessons of labor-management cooperative initiatives could be fully explored. Interviewees were able to respond to questions and expand on their ideas verbally, in a manner that a survey does not allow.

Face-to-face interviews were conducted with the majority of interviewees. When this was not possible, interviews were conducted by telephone. Interviews were summarized and shared with interviewees for review. Where necessary, follow-up interviews were conducted by telephone.

The research team compared the cases, discussing the commonalities and differences across them. Preconditions, goals, and limitations of the three tools of labor-management cooperation studied were emphasized. The analysis was written as a draft report and shared with the key informants in the case study counties. Their comments were incorporated into the final report. Permission to share the information contained in this report with the public was obtained from all county officials and staff who were interviewed.

Findings

The case study counties—[Genesee](#), [Ontario](#), and [Tompkins](#)—are located in central and western New York State. Genesee County has a population of about 60,000, while Ontario and Tompkins each have about 95,000 residents.

Politically, Genesee and Ontario are governed by Republican-dominated legislatures and Tompkins currently has a Democrat-controlled board. All three counties have an appointed full-time county manager or administrator. This is the most common form of county government in New York State³. The presence of a professional, full-time manager was a control factor across these three counties. The ability to generalize findings to other counties with county executives or no full-time, professional manager may be limited. However, key informants familiar with cooperative efforts across the state indicate that strong leadership and support for change appear to be more important to successful implementation than type of governance structure.

Additionally, the environment between labor and management in all three cases was found to be generally cooperative, or at least noncombative, prior to the implementation of cooperative initiatives. Therefore, this study cannot speak to counties where an adversarial relationship between labor and management is present.

The three labor-management tools were found to exist along a continuum of complexity, with labor-management committees providing the foundation for the other two tools. These committees provide a flexible forum for problem solving and building trust, and they require minimal training. Labor-management committees in all cases predated mutual-gains bargaining and TQM. The interest-based bargaining approach of MGB required substantial training for successful implementation. Used primarily for contract negotiations, MGB appears to have had very positive effects on negotiation processes and outcomes, as well as positive spillover effects to other arenas of decision making. TQM was by far the most comprehensive and complex of the three tools studied. Extensive training of labor, management, and elected officials was required to support the culture change toward shared decision making required for a successful TQM effort.

Key elements for successful cooperation include training, committed leadership, communication, and evaluation. In the case study counties, improved morale, costs savings, and service improvements resulted from the use of these three tools, suggesting they do provide an effective alternative to privatization. However, limited evaluation in the counties prevented definitive analysis of the true costs and benefits of labor-management cooperation.

Labor-Management Committees

Labor-management committees are cooperative structures that focus on problem solving and building trust. They typically deal with issues including workplace safety, work hours, training, personnel issues, and daily workplace concerns. Although labor-management committees may initially focus on less controversial issues, such as worker safety standards, over time they may build a level of trust between labor and management that allows them to deal with more complex problems (Gold 1986).

Labor-management committees may be permanent or they may form around a particular issue and disband once resolution is reached. However, they are not necessarily formed to solve crises. Many are proactive and attempt to improve current work practices. They are flexible and easy to implement, and require minimal training. Labor-management committees are cornerstones of cooperation in each of the counties studied.

Structure

The labor-management committees in Genesee, Ontario, and Tompkins Counties are similar in terms of their goals: enhanced labor-management relations, decreased costs, and improved services. Each county has a central guiding or umbrella committee that oversees the activities of issue-based or departmental labor-management subcommittees. They may facilitate training and provide direction to subcommittees or they may address specific program innovations or daily operations. All three counties implemented labor-management committees before mutual-gains bargaining and total quality management.

There are differences in how each county uses the committees, however. In Ontario County, where such committees have existed since the early 1980s, they operate independently of the TQM program. Ontario County has a countywide committee, committees that operate within departments, and others that address specific issues, such as safety and health.

Tompkins County's labor-management committees, which have existed since the mid-1980s, now function as part of

its TQM program. Prior to the inception of the TQM program, non-union members who volunteered or were voted in by all employees were allowed to serve on labor-management committees. Under the total quality management agreement negotiated between the CSEA and the county board of representatives, now there are more committees, and only union-selected representatives may serve on them (see the total quality management section, below).

Genesee County does not have a TQM program, and their labor-management committees are the main venue for workplace innovation. There is one main committee for the general bargaining unit, which covers most county departments, and a separate committee for the nursing home unit.

Representation

Labor-management committees are composed of representatives of management and the union. Only in Tompkins County were legislators also included. Tompkins County's umbrella committee has 13 members, including representatives from top management, middle management, and labor. In Ontario County, the countywide committee is made up of the county administrator, deputy administrator, director of human resources, and several of the local union presidents. In Genesee County, the general unit committee consists of the county manager, the personnel officer, the CSEA general unit president, and the regional labor relations specialist, as well as two more representatives from both management and labor who rotate onto the committee in three-year intervals. This provides more people an opportunity to be part of the process. Size of the committees varies according to the scope of the issue and the need for stakeholder input. Most have eight or fewer members, but at least one committee in Tompkins County has over twenty members.

Functions

In all counties, labor-management committees address a broad spectrum of workplace concerns. In Genesee County, the general unit committee emphasizes relationships and creating an environment where employees feel their input is valued and decisions are made by consensus. The labor-management committee has introduced policies that create a more family-oriented environment.

Labor-management committees can also be forums for discussing alternatives to privatization proposals. In Ontario County, labor has the opportunity to give their input before a decision to privatize a service is made by the administration. In Genesee County, labor and management formed a special joint action committee to address the threat of possible privatization in the Department of Mental Health Services.

Labor-management committees can impact the delivery of government services by finding ways to reduce costs while maintaining or improving the service itself. While hard data documenting the impact of innovations on cost was difficult to obtain, workers' compensation costs were significantly reduced in Tompkins County as a result of safety measures and training recommended by a labor-management committee (prior to the implementation of TQM). In Genesee County, labor-management committee recommendations and process improvements have led to cost savings through reduced absenteeism, increased productivity, and decreased supervision time. Their nursing home committee has helped the facility improve efficiency and avoid privatization. Client surveys in Ontario and Tompkins Counties have indicated overall improvements in services.

Labor-management committees do not address contract disputes or grievances, although they appear to be effective in defusing potential problems before they reach the grievance stage. All three counties credited labor-management committees for helping to keep the number of formal grievances low.

Role and Authority of Committees

There is great flexibility in how roles are defined for labor-management committees. Tompkins County has a formal agreement defining the roles, expectations, and boundaries of authority for the Leadership Council, which took one year to negotiate and which clearly outlines the scope of the committee process. Genesee County has less formal written guidelines that articulate the goals and procedures of the committee. The authority of the labor-management committee is not written into a contract but is accepted by both parties. Ontario County's labor-management committee is well entrenched and seems to function effectively without a written agreement.

Labor-management committees have varying degrees of authority and power. In some cases, their policy recommendations are binding, while in others they merely offer suggestions that must gain the approval of elected officials. This is often the case when budget or cost decisions are involved. Committees in Ontario County are empowered to draft letters of agreement around issues that would normally be addressed through contract negotiations.

In some cases, the use of labor-management committees may impact traditional lines of authority. Middle managers may lose some of their decision-making authority because employees can voice concerns directly to top levels of management through the committee. In Ontario County this was an issue, but in Genesee and Tompkins Counties, middle managers are included on committees.

Training/Support

Training committee members in conflict resolution and consensus decision making may help committees work more smoothly. Training sessions allow both groups to establish their commitment to the concept and to forge cooperative relationships. For example, in the Genesee County Nursing Home, a half-day training session for the entire staff helped them use their labor-management committee more effectively. In this case, a CSEA facilitator from Albany was used. The Public Employment Relations Board (PERB) and Cornell's Industrial and Labor Relations Extension are other valuable sources of training and information. It is important to recognize, however, that there may be a significant time lag after training before measurable results are seen.

Tompkins and Ontario Counties, which had longer-standing labor-management committees, have invested more in training for mutual-gains bargaining techniques and total quality management than for labor-management committees.

Relationships

Labor-management committees can be contentious because they bring together individuals with diverse points of view. Strong leadership, good communication, and commitment to the process make the difference between success and failure. Without these elements it is difficult, if not impossible, to build the necessary level of trust to make a labor-management committee work. Both Tompkins and Genesee Counties had attempted labor-management committees in the past, with limited scope and success. By focusing on relationships, building trust, and gaining the commitment of leadership they were able to establish the successful committees that operate today. One strategy used was to begin by addressing issues that are less contentious, to build momentum so committees can tackle larger, more difficult problems in the future. This increases the level of trust among committee members and reduces the potential for early conflict.

Employee morale has been greatly improved in the counties studied. There are still conflicts and differences of opinion, but labor-management committees provide a mechanism for giving voice to these problems before they become intractable.

Challenges and Limitations

Several challenges in implementing labor-management committees are evident:

- Time is required to build the trust necessary for effective committees.
- They have limited authority: they are not designed to make decisions about broad structural changes in county operations.
- Defining the appropriate roles and boundaries of committees is important: many problems lie beyond the scope of committees and call for wider participation of elected officials and citizens.

Conclusion

Labor-management committees are excellent forums for communication and workplace problem solving. They are flexible and require minimal training, which also makes them inexpensive. In all three counties, good communication, strong relationships, committed leadership, and trust proved to be the most important factors for committee success.

While the most compelling impact seen was on labor-management relations, committee efforts also led to improvements in county government functioning. Labor-management committees are relatively easy to implement and provide a foundation for incorporating more sophisticated tools, such as mutual-gains bargaining and total quality management, into an organization.

The following are recommendations to consider for labor-management committees:

- Establish a central, guiding committee to oversee the endeavor.
- Integrate committees into the organizational structure.
- Define expectations and parameters for decision making.
- Include as many stakeholders as possible and necessary.
- Communicate and foster a shared understanding of goals and objectives for both the committee and the organization.
- Be cognizant of power differentials and the effect these may have on communication.
- Address issues where it is easy to reach consensus at the outset in order to build momentum to tackle more difficult topics.

Mutual-Gains Bargaining

Mutual-gains bargaining (MGB) is a method of bargaining designed to dramatically improve the quality of contract negotiations and increase the likelihood of compliance between labor and management, ultimately benefiting their constituents. The mutual-gains process focuses on negotiations based on interests rather than positions and on building consensus. Through this process, unions and management identify at least one common goal and find ways to jointly accomplish that goal (Cohen-Rosenthal and Burton 1993). While MGB can be used for many types of negotiations, the case studies focused on its use for contract negotiations. Ontario County has been using mutual-gains bargaining since 1994, Tompkins County since 1995, and Genesee County since 1996.

Preconditions

All three counties had existing cooperative labor-management relationships in place before the initiation of MGB. Tompkins and Ontario Counties indicated they had been using interest-based bargaining techniques informally for years, and that they moved to MGB as a way of formalizing the process. This leads us to speculate that counties that have good labor-management relationships may be more apt to implement MGB because the idea of cooperating isn't very radical to them and there is less distrust between labor and management to overcome. Genesee County, however, was less satisfied with their standard negotiation process and wanted to use MGB to improve the quality of negotiations.

Benefits

Mutual-gains bargaining led to smoother contract negotiations in all three counties. This was especially true in Genesee, where labor and management agreed the new techniques were far more productive than previous negotiations. Perhaps because Ontario and Tompkins Counties already had well-established cooperative structures that resembled MGB in place, the changes were less dramatic, but in both counties labor and management spoke positively about the effects of MGB techniques on the negotiating process.

MGB can be used to empower workers and strengthen their organizations, as well as to shape their lives at work. The benefits include increased access to information, prenotification of changes in work arrangements and technology, and increased input, which helps management avoid errors or decisions that would hurt union membership. There is also an indication that work satisfaction may increase, and the union may be able to address a broader range of members' concerns more quickly and fully. In addition, the literature on the subject indicates that union membership, education, and skill levels increase.

In the public sector, management must make the organization as effective as possible to meet the needs and expectations of citizens and their legislative authorities. Management's benefits include improved effectiveness, increased organizational flexibility, an improved working environment, and enhanced productivity (Cohen-Rosenthal

and Burton, 1993).

Labor and management in the case study counties agree MGB has saved a lot of time. The use of MGB allowed Genesee County to complete their last contract in about a month, whereas it used to take up to six or seven months. The same is true for Tompkins County, where labor and management found the salary issue was on the table faster than ever before, in part because the economy was doing well, but also as a result of MGB.

Neither management nor labor see MGB as a panacea, but both concede that both parties walk away from the negotiating process feeling better. While both labor and management in Ontario County are pleased with MGB, the union appears to favor the process a bit more. CSEA representatives felt that MGB would definitely be used in the future. At least one manager, on the other hand, was of the opinion that MGB was a bit "tedious" and might not be used in the next contract because levels of trust were already high. In Tompkins County, labor felt that the "win-win" solutions that MGB is supposed to create often result in compromises. Management respected the process, but felt it was nothing new in comparison to the way they interacted in the past.

Leadership

The commitment of top management and union leaders to MGB is very important to its success. Some people will find it difficult to accept a new approach and will be subversive to both groups' mutual interests. In some cases, a change in leadership was necessary before a county could effectively implement MGB. In Ontario and Genesee Counties, for example, changes in union and/or management leadership preceded their formal implementation of MGB.

During negotiations, and during day-to-day interaction, the administration, union leaders, and managers need to set an example of open communication for all to follow. Labor and management must be committed to MGB. They must communicate with each other, understand each other's needs and interests, and pursue answers that benefit both groups. Tompkins, Genesee, and Ontario Counties' MGB efforts had the support of top management.

Training

Mutual-gains bargaining requires a change in philosophy that cannot occur without careful preparation. Unlike traditional collective bargaining, mutual-gains bargaining operates on trust and open information sharing, and as simple as the concept might be, it is critical that labor, management, and legislators receive training before they decide to embark on mutual gains. While legislators do not participate in negotiation, it is important they understand and support the process.

In their efforts to implement MGB, Ontario, Genesee, and Tompkins Counties all turned to the New York State School of Industrial and Labor Relations Extension for training. Tompkins County trained 300 out of 720 employees in MGB before its formal implementation in 1995, and had few problems. Now all bargaining units in Tompkins County (except the sheriff's department) use mutual-gains techniques for all terms except salary. In the case of Genesee County, the assistant county manager was trained to facilitate the negotiations, while Ontario and Tompkins used outside facilitators. Although Genesee's general unit contract was successfully negotiated using MGB in a much shorter period of time than was typical, the negotiating process was still very challenging, and the rank and file expressed skepticism about the initial contract. Because of the distrust that traditionally exists between the two groups, it may help to use an outside facilitator at the outset. Even with training, it can take employees and management time to learn to trust and accept the process.

Challenges

MGB can benefit both labor and management, but it can also be risky to both parties. Both union leaders and management are in danger of being perceived as too close to the "adversary"—legislators may fear management is being too easy on the union, while union members may fear their leadership is being "co-opted." Since the union is negotiating the terms and conditions of employment for its members, it has more at stake. The open negotiation process inherently requires each side to relinquish some of its negotiating power and may limit the union's ability to act as a unified group. In Tompkins County, the union has not yet agreed to negotiate salary using mutual-gains bargaining techniques largely for these reasons.

Mutual-gains bargaining is a process that was developed in the private sector to increase labor-management cooperation, but also to aid downsizing efforts. MGB inherently cuts out middle management as the mediators between labor and top management. In Ontario County, for example, middle managers were resistant to MGB, as it appeared to take some of their authority away.

Finally, because mutual-gains bargaining is a tool which is used only during contract negotiation time, it is limited in its ability to have a direct impact on the daily interaction between labor and management. However, there were important "spillover" effects of mutual-gains bargaining training to other venues such as labor-management committees and total quality management teams.

Conclusion

Interest-based bargaining appears to save money and time, and have positive effects on labor-management relationships. MGB resulted in quicker contract negotiation where both parties walked away feeling better about the process and the outcome. However, as with other similar labor-management cooperative methods, it is difficult to quantify the results of MGB. For example, Ontario County tries to quantify cost savings whenever possible but finds it difficult to assign a dollar value to the intangible benefits of their cooperative efforts. The counties studied did not establish evaluation measures to determine what impact (positive or negative) MGB has made.

Total Quality Management (TQM)

While Genesee, Ontario, and Tompkins Counties have all implemented labor-management committees and mutual-gains bargaining, only Ontario and Tompkins Counties have instituted total quality management (TQM) initiatives. Ontario County began to implement total quality management in 1993, Tompkins County in 1994.

Total quality management represents a shift in management philosophy from autocratic, hierarchical decision-making structures to flatter organizational structures and shared decision-making responsibility (Kursat and Calicchia 1994). In the past few decades, following the model of the private sector, local governments have come to realize that top-down management is not always the best way to achieve results and that line workers have valuable contributions to make in identifying strategies for improvement (Osborne and Gaebler 1992).

In Tompkins and Ontario Counties, total quality management has changed the way decisions are made, processes are designed, and labor and management interact. Informants describe total quality management programs as a "visceral change," a "paradigm shift," and a "culture change." Both counties' total quality management programs are new, and therefore conclusions about the programs' impacts and differences between them are tentative.

Three Components: Shared Decision Making, Customer Focus, Management by Fact

Total quality management initiatives have three primary components according to Kursat and Calicchia (1994):

1. Shared leadership and employee involvement

Total quality management programs are based in part on the idea that employees performing the work can create more efficient and effective processes to produce a higher-quality product. Total quality management programs typically establish formal structures such as labor-management committees for sharing decision making between managers and front-line employees.

2. Customer focus and an emphasis on service and product quality

TQM focuses on the needs and wants of two types of customers: "internal" customers—the next people down the line in the work process—and "external" customers—those who purchase or utilize a good or service. TQM seeks to improve the quality of both the product and the process by identifying the type and quality of good desired by both internal and external customers and providing what each customer wants. This can be difficult, since in the public sector, external customers include the people using a good or service but also the people

paying for the good (taxpayers) and their representatives (elected officials).

3. Management by fact and continual improvement

Total quality management encourages steady data collection and rational decision making based on data rather than on impressions or uninformed opinions. Labor-management committees are one way to collect data about many facets of a complex issue. Others include customer surveys and careful tracking and documentation of any cost or time savings. The second component, a philosophy of continual improvement, encourages employees and managers to exceed current standards. Continuous improvement is achieved through constant experimentation, learning from mistakes, and diffusing learning throughout the organization.

Goals

In both Tompkins and Ontario Counties, the goals of total quality management most often articulated by managers and employees were to improve labor-management relations and work conditions, leading to a more smoothly functioning organization. All parties also expressed a desire to improve service quality. This desire is exemplified by Ontario County's slogan for total quality management: "We aspire to excellence." In Tompkins County, elected officials' goals focused primarily on service improvement and cost savings.

Training

Participatory methods of decision making, identifying customer needs, and determining what kind of data to collect and how to collect it require skills of employees and managers that are not inborn or traditionally taught in schools or in the workplace. Thus, to effectively implement a total quality management program and achieve the paradigm shift required for success, training is essential.

Of the two counties, Tompkins has conducted more extensive training and spent more money. Tompkins County's Leadership Council (the labor-management committee charged with planning and managing the total quality management program) has the goal of training all employees, managers, and elected officials in quality methods. Initial training sessions were conducted by consultants, who are still involved in the process. In the fall of 1996, however, the county hired a full-time training coordinator, and now more sessions are conducted by in-house staff.

Between 1994 and 1997, Tompkins County spent just over \$300,000 for outside consultants to conduct training. In 1998, the county will spend an estimated \$170,000 on consultants to complete the bulk of the training. Since 1997, in-house costs have been around \$100,000. These costs will drop dramatically after 1998, when all employees, managers, and elected officials will have been trained in total quality management techniques and only training for new employees and refresher courses will be necessary.

Ontario County appears to have spent significantly less on their training program, particularly on outside consultants. Initially both labor and management leaders as well as county legislators were trained at the Rochester Institute of Technology. Initial training cost \$35,000 for employees and \$50,000 for supervisors, managers, and elected officials. The county gradually built their capacity to do training in-house, and today all county employees have been trained in TQM concepts.

It is important to remember when comparing these figures, however, that we obtained dollar amounts from Tompkins County for both outside and in-house costs, whereas the figures reported for Ontario County's training costs are only initial start-up costs for consultants. Still, there appears to be an appreciable difference in expenditures on consultants.

This difference may be due to the values held by county leaders. Tompkins County leaders are professionally and personally interested in organizational theory and process, and are willing to wait for long-term results. These may be the reasons for the strong emphasis on process and formal training. Ontario County leaders seem less interested in process and more interested in both short- and long-term results.

Support Structures

Individuals, however well trained in new ways of thinking and doing, will not be able to maintain the culture shift without a system of structural supports that devolve authority for decision making to labor-management teams. Supportive structures are probably one of the largest differences between total quality management programs which employees perceive to be "fake" and those which seem more real and effective.

Ontario County's Service Excellence program is structured around a countywide steering committee that acts as a core planning group, setting the direction for the program and coordinating the activities of the subgroups. The four departmental work group committees each have the same organizational structure as the steering committee and coordinate their corresponding functions.

Tompkins County's Leadership Council includes representatives from labor, top management, middle management, and elected officials. The Leadership Council guides the training process and the activities of departmental committees, and facilitates the work of smaller, project-oriented or cross-functional committees.

Another support mechanism is in-house training facilitators. Currently, Tompkins County employs a full-time training coordinator. An additional twenty employees act as facilitators, assuming leadership roles on various departmental and issue-related committees. They lend practical support based on their understanding of TQM and committee concepts. In addition, they are role models for other employees and managers.

Advantages

Total quality management is the most comprehensive cooperative tool for restructuring that the research team investigated. More than labor-management committees, total quality management programs can address inefficiencies in work processes and strive to identify customer needs. Unlike mutual-gains bargaining techniques, which are used primarily for contract negotiations once every few years, total quality management is ongoing and suffuses all work processes. It empowers labor to improve the workplace. In Tompkins County, for instance, labor-management relations had been good for some time, but TQM forced managers to rethink their traditional style to allow greater employee involvement in decision making. Employees and management now work together to solve problems, and by all accounts, both find the new process more productive and rewarding.

The cases studied indicate that total quality management does improve the functioning of the organization, employee morale, and labor-management relations. Based on the suggestions of a total quality management committee in the Department of Social Services, Tompkins County streamlined the intake process for several social service programs. A Tompkins County survey indicates that employee morale in the Department of Public Works improved 22% between 1990 and 1997. Further, since the TQM programs have been implemented, both Ontario and Tompkins Counties have had fewer frivolous grievances as a result of increased communication and trust.

The programs have also reduced costs in both counties, although the cost savings have not always been well documented. Tompkins County representatives believe they have saved a great deal due to improved morale and greater efficiency. Ontario County has documented savings through the efforts of its workplace safety team. The team project began with county safety coordinators identifying high-risk job duties, such as driving and heavy lifting, based on local and national accident and injury data. Employees performing these tasks were then trained in safer driving and lifting techniques, resulting in a 37% reduction of OSHA-recordable injuries in the county from 1994 to 1997. Lost days were reduced by 60% in the same time period. As a result of these safety improvements, a special tax assessment to pay for workers' compensation, to be spread out over five years, was paid off in only three, saving taxpayers \$1.5 million.

Limitations

Both middle managers and elected officials may resist the total quality management culture change because it devolves supervisory and decision-making power to TQM teams and committees. While middle managers and elected officials are formally involved in several levels of the TQM program in Tompkins County, they are absent from the committees in Ontario County, and have understandably been more resistant to the process. Middle managers may also fear for their jobs. Tompkins County is dealing with this issue by retaining middle managers as top-level technical employees and ensuring their representation on the TQM committees.

Another limitation of total quality management as a tool for restructuring is its internal focus. The difficulty in identifying the "customer" for public sector goods and services and the focus on internal work processes make it hard to truly involve citizens in these TQM efforts. Both counties seek to identify external customer needs with surveys, and Tompkins County includes elected representatives on committees, but neither county includes citizens on committees. In Ontario County, citizen involvement in the TQM program is slightly greater than in Tompkins, since it includes an advisory council made up of a select group of local business owners.

Tompkins and Ontario Counties both seem to focus more attention on internal customers, (through surveys and participation in labor-management committees), in the belief that process improvements will result in product and service improvements. This is not an unreasonable assumption, though it can be difficult to document. Customer satisfaction surveys in Ontario and Tompkins Counties indicate external customers are generally satisfied with service improvements generated by total quality management programs.

The substantial cost of total quality management training and implementation as well as the time required to reap benefits are also limitations of total quality management as a tool for local government restructuring. Finally, because total quality management focuses primarily on internal work processes, policy about external factors is outside its purview. The inability to address broader policy issues may limit the ultimate impact of investments in total quality management.

Conclusions

Goals of Cooperative Tools and Processes

Most of our informants articulated their goal as a more smoothly functioning organization, with more creative problem solving and positive interactions between management and labor. Managers and elected officials focused on increased efficiency, cost savings, and improved service quality. Labor representatives expressed goals of increasing employee participation in decision making and improving service delivery by widening employees' stake in the process and product. Thus, improving service delivery was a goal of all parties, but with slightly different emphases. Elected officials valued improved service delivery for its impact on citizen constituents, whereas labor representatives valued increased service quality for its effects on job quality.

Preconditions for Success

Several conditions existed in our counties prior to the successful introduction of formalized cooperative processes. First, the labor-management relationship in all three counties was already cooperative, or at least noncombative, providing fertile ground in which cooperative structures could thrive. Second, all the counties we studied were in relatively stable economic and political positions prior to establishing cooperative structures. We were not informed of any fiscal or political crises in recent memory that might put pressure on leaders to avoid the risk-taking inherent in cooperative initiatives. These three counties made a significant culture change not as a last-resort strategy, but as a means to improve already functional but imperfect processes. However, the cooperative structures have proven useful in dealing with crisis, such as the threatened sale of the nursing home in Genesee County.

We observed several other essential preconditions in our study counties. Committed, supportive leaders are required. This sometimes necessitates a change in the legislature, county administration, or union leadership. The attitudes of those in leadership positions proved crucial to the counties' ability to embrace the new ideas and paradigms of cooperative tools. Furthermore, in order to buy into the new cooperative relations, middle managers and line employees had to trust the intentions of both labor and management leaders. Even in counties where cooperative tools have been used successfully, the departments with a lower degree of labor-management trust have been slower to make the transition to new tools.

Impacts of Cooperation

Internal Process Improvements

The changes seen in government service delivery seem to be primarily internal in nature. Tompkins County, for instance, streamlined its intake processes for various social services. Genesee County instituted several policies that affect employee benefits, encouraging workplace efficiency and increased job satisfaction. The efficiency gains from internal restructuring are thought to "trickle down" to external improvements. The Genesee County Nursing Home, for instance, through its labor-management committee, has addressed staffing issues that are crucial to efficient functioning and effective service delivery.

Employee Morale

The second area where impacts have been significant is employee morale, which was uniformly reported by our informants to have improved under cooperative processes. Again, data for improvements are difficult to obtain, and most employee surveys were completed after new structures were implemented, and therefore lack a comparative benchmark. All counties stated the number of grievances has decreased, and the grievances that are filed are uniformly serious in nature, the less serious problems being resolved in other forums, due to improved communication and trust.

Cost Savings

Though gains and savings have sometimes proven difficult to measure due to a fear of budget cuts to agencies that report cost savings, the overriding sentiment is that cooperative efforts are resulting in real cost savings. Ontario County has documented at least one instance of large financial savings in its reduction of worker compensation costs due to a safety program implemented by a TQM committee. Genesee County's nursing home has become profitable again in part due to the efforts of its labor-management committee.

Key Elements for Cooperation

From the case studies, we have identified a number of elements that are necessary for cooperation to be successful:

Training

First, a substantial amount of time and resources were devoted to training labor and management leaders, and more often than not, legislators and line employees as well, in cooperative structures and processes. In Ontario and Tompkins Counties for instance, all employees are being trained in total quality management concepts. Line employees were less likely to be trained in mutual-gains bargaining, which is used primarily by representatives of labor and management for the contract agreement. In Genesee County, for instance, while the assistant county manager was trained to facilitate the negotiation process, the employees were not trained prior to the switch to mutual-gains bargaining, and perhaps for this reason, the first contract negotiated by this method was voted down by union members. On the other hand, the Genesee County Nursing Home sponsored a half-day training session for the entire nursing home staff with a CSEA facilitator, which helped their labor-management committee become much more effective. Whether or not all employees were trained, training brought about a critical shift in how members of the organization viewed labor-management relations.

Local colleges and universities were valuable resources for training in these methods. Both Tompkins and Ontario Counties made extensive use of nearby educational facilities.

Leadership Commitment and Support

The counties we studied all shared the presence of an appointed, professional administrator to manage the transition to cooperative tools. However, one expert on local government told us that the form of government is less important than the administrator or leader's commitment to the cooperative process. A high level of emotional maturity is essential, as is the ability to work well with people and to get them to buy into the process. The case study counties possessed leaders who were willing to work with, but ultimately hold responsible, resistant managers. The commitment of union leadership was also an important factor. Without the willingness of the union officials in these counties to try new ways of working with management, cooperative processes would not have been possible.

The role of elected officials was significant only to the extent they were generally supportive and did not interfere with

the process. We did not observe a high degree of involvement in cooperative tools on the part of county elected officials, with the notable exception of Tompkins County, where a legislator was actively engaged in developing the TQM initiative.

Additionally, in the three counties we observed a clear commitment to the *process* of implementing cooperative tools. Since gains from TQM, for instance, were not immediate, and could take several years after training to realize, the commitment of leaders to see the process through was essential to its success. Administrators and union officials' commitment to labor-management committees as an effective vehicle for problem solving also seemed to be a significant factor in their success. Tools that yield faster results, such as mutual-gains bargaining, perhaps require less depth of commitment from county leaders. In all cases, however, all parties must buy in to the process. Given the levels of trust required, cooperative efforts are likely to be sensitive to attempts to undermine them.

Communication

Communication of the goals, structure, and roles of key players in cooperative processes is also important, both within the organization and in the larger community. Umbrella or countywide committees play important roles here as the central forums for sharing of information and ideas. Creating public awareness of county efforts also may be desirable but was not emphasized in our case study counties.

Evaluation

Evaluation is essential to assure appropriate and effective implementation of cooperative tools and to create support among elected officials and the public. Better evaluation of the cooperative processes in all three counties is needed. For instance, in Ontario County cooperative relations are so strong that some perceive mutual-gains bargaining as an administrative burden that in and of itself may not add significant benefits. However, county leaders currently have no means to gauge MGB's effectiveness. Management in Genesee County indicated that evaluation was an area they hoped to address in the future. The private sector may be a source for evaluation tools that counties can use to measure the success of their efforts.

Key Differences Between the Counties

We recognized several key differences among the counties in the implementation of cooperative tools. First, the amount of money spent on training varied widely. Tompkins County had by far the greatest expenditures, almost entirely attributable to its TQM program. Tompkins' use of outside consultants on a regular basis also distinguished it from the other two counties. Genesee County, in contrast, only approached outside consultants on an infrequent basis. However, Genesee's labor-management committees required lower levels of training and hence less cost, compared to the formal TQM programs of Ontario and Tompkins. Interest in the process of workplace change rather than a focus on outcomes or products seemed to guide efforts in Tompkins County, perhaps partly because of its close ties to the academic community through Cornell University.

The level of involvement of elected officials and middle managers also varied. In Genesee County, middle managers may participate in the negotiating process and sit on labor-management committees. In Tompkins County, middle managers are well represented on total quality management committees. In Ontario, where the committees create a direct channel from workers to top management, it is less clear that middle managers are adequately incorporated into the structure. Tompkins is the only county in which an elected official sits on the countywide labor-management committee. In Genesee County, county management felt that by not participating in committees, elected officials maintained a beneficial distance from the process. Whether elected officials should be involved may depend on the extent of the changes being implemented; in a more formal and expensive process such as TQM, their participation seems more appropriate and essential, while it may not be necessary for internally focused committees.

Continuum of Cooperative Tools

The three cooperative tools exist along a continuum based on the complexity of the tool, the level of investment required, and its degree of departure from traditional labor-management relations. The following diagram illustrates this continuum:



A government with labor-management committees may not choose to implement a TQM program, but a government without labor-management committees may not be wise to implement TQM as its first cooperative effort. Thus, the diagram may also be viewed as a time line of cooperative structures, indicating a progression from relatively simple tools such as labor-management committees to more complex, formal, costly, and comprehensive processes such as TQM. Other tools we did not observe in our counties could be added to this model, such as gainsharing.

Limitations and Further Questions

As tools for restructuring, the cooperative methods discussed here have several limitations. Their ability to affect the external policy environment is limited, so they are constrained by the political contexts in which they must operate. They also do not afford an opportunity for citizens to become more involved in government. Since public support for its activities is important to local governments, they should come up with ways for creating greater citizen involvement in their restructuring efforts.

Many questions emerged during the course of our study. First, what is the true impact of cooperative tools and processes on middle management? Much has been written about the downsizing of middle management in the private sector. Is this also the case in government? Second, what are the appropriate roles for citizens and elected officials in efforts to restructure government—through both internal and external methods? Finally, our cases only addressed examples of successful cooperative tools and processes in counties that had developed a significant degree of trust between labor and management. What are the outcomes of cooperative initiatives in counties that lacked this precondition of trust?

Notes

1. Conducted by Cornell University in cooperation with the County Legislators and Supervisors Association of New York State, this survey was distributed to all towns (932) and upstate county governments (57) in New York State. Responses were received from 196 towns (21% response rate) and 26 counties (45.6% response rate).
2. The counties initially considered were Chautauqua, Clinton, Columbia, Dutchess, Erie, Genesee, Livingston, Oneida, Ontario, Putnam, Schenectady, Tioga, Tompkins, Ulster, and Westchester.
3. Of the 57 counties outside of New York City, 18 (31.5%) are governed by the county executive structure (elected official), 27 (47.5%) are governed by county managers or administrators (appointed), and 12 (21%) have no full-time manager or county executive.

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Appendix A: Key Informants

Steve Alviene, Deputy Director of Labor Relations, New York Civil Service Employees Association

John Bartow, Director, Division of Local Government, New York State Department of State

Franklin Bassett, Administrator, Livingston County Office of Aging

Kate Bronfenbrenner, Sr. Extension Associate, New York State School of Industrial Labor Relations Division of Extension and Public Service

Marcia Calicchia, Sr. Extension Associate, New York State School of Industrial Labor Relations Division of Extension and Public Service

Ken Crannell, Director of Research, New York State Association of Counties

John Crotty, Deputy Chair and Counsel, Public Employment Relations Board

Ron Dougherty, former County Chair, Tioga County

Kevin Flanigan, Supervising Public Employment Mediator, Public Employment Relations Board

Andrew Goodell, former County Executive, Chautauqua County

Todd Greci, Governor's Office of Employee Relations

Robert Hebdon, Assistant Professor, New York State School of Industrial Labor Relations

Scott Heyman, County Administrator, Tompkins County

Sally Klingel, Director, Programs for Employment and Workplace Systems, New York

State School of Industrial Labor Relations Division of Extension and Public Service

Karen Macintosh-Frering, Labor Management Coordinator, Ulster County

Alan McAdams, Associate Professor, Johnson School of Management, Cornell University

Barbara Mink, Chair, Tompkins County Board of Representatives and four-year member, Tompkins County Leadership Council

Jeff Osinski, Project Director, New York State Association of Counties

David Pilliod, Assistant Director, Department of State, Division of Local Government

Jim Platner, Director, Chemical Hazard Information Program, New York State School of Industrial and Labor Relations Division of Extension and Public Service

Keith Stack, Special Assistant, Department of State, Division of Local Government

Jeff Swain, Assistant Deputy Comptroller, New York State Office of the Comptroller

Appendix B: Case Study Informants

Genesee County

Darlene Acker, CSEA Nursing Home Unit President

Jay Gsell, County Manager

Jack Pease, Administrator, County Nursing Home

Nancy Smith, CSEA General Unit President

Martha Standish, County Personnel Officer

Ontario County

Geoffrey Astles, Deputy County Administrator

John Garvey, Human Resources Director
Edward Grace, County Administrator
Robert Russo, President, CSEA Local 7850

Tompkins County

David Chase, President, CSEA Local 855
Scott Heyman, County Administrator
Barbara Mink, Chair, Tompkins County Board of Representatives

County Case Studies

- [*Genesee County*](#)
- [*Ontario County*](#)
- [*Tompkins County*](#)

Restructuring Local Government

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Executive Summary

[Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State](#)

Authors: Nicole Blumner, Lindy Burt, Jon Gans, Lisa Goldberg, Kristin Guild, Young Sung Kim, Chang Kil Lee, Darth Vaughn, Mildred Warner

June 1998

The public sector, particularly local government, is under pressure to simultaneously improve performance and curtail costs. Reductions in state and federal funding, a continuing demand for efficient and flexible government services, and fear of tax revolts are leading to reexaminations of how local governments can best meet the demand for their services. Governments are utilizing a number of tools for restructuring service delivery to increase efficiency and reduce costs.

In our background research, we identified two types of restructuring: external restructuring, where a government turns to outside organizations to provide services (through privatization or inter-municipal cooperation, for example), and internal restructuring, which seeks to improve service delivery by altering organizational structure and decision-making processes. High levels of public sector unionization in New York State make internal restructuring through labor-management cooperation an especially important alternative. Through case studies of three New York State counties, we examined the use of three specific tools for labor-management cooperation: labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM). Genesee, Tompkins, and Ontario Counties were chosen as cases where at least two of these three internal restructuring tools have been implemented successfully.

We found that these cooperative workplace structures improve communication and broaden participation in decision making, leading to greatly improved labor-management relations and employee morale. They may also reduce costs and improve service delivery. However, limited evaluation in the three counties makes savings and service improvements difficult to document.

These tools appear to fall on a continuum of complexity, investment costs, and comprehensiveness. Labor-management committees provide a foundation for the other tools by building an ongoing forum for communication and trust building. They are flexible, deal with a wide array of concerns, and require minimal training. Mutual-gains bargaining requires more training and, in our cases, a preexisting environment of trust. While there are spillover benefits to other areas, MGB is primarily limited to contract negotiations. TQM is the most comprehensive of the three tools and requires the greatest degree of training and organizational culture change to be effective. It also may offer the greatest potential for service improvement.

The case study counties all enjoyed a preexisting environment of trust, committed leadership, and lack of political or fiscal crisis. Given the investments in training and change in perspective required of labor, management, and elected officials, implementation of these tools may be more successful in counties not experiencing crisis or a recent history of labor-management conflict.

These internal restructuring tools are not designed to address external stakeholders. Service improvements may be limited by higher-level policies and mandates these tools cannot address. Similarly, citizen involvement is not enhanced by these tools. However, by creating new forums for communication and participatory decision making, local government enhances its ability to identify and implement programs for

service improvement. Adding mechanisms for citizen involvement and strategies to push for needed policy change at higher levels may further increase local government's capacity to restructure to meet the needs of its diverse constituents.

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Conclusions

[Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State](#)

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Goals of Cooperative Tools and Processes

Most of our informants articulated their goal as a more smoothly functioning organization, with more creative problem solving and positive interactions between management and labor. Managers and elected officials focused on increased efficiency, cost savings, and improved service quality. Labor representatives expressed goals of increasing employee participation in decision making and improving service delivery by widening employees' stake in the process and product. Thus, improving service delivery was a goal of all parties, but with slightly different emphases. Elected officials valued improved service delivery for its impact on citizen constituents, whereas labor representatives valued increased service quality for its effects on job quality.

Preconditions for Success

Several conditions existed in our counties prior to the successful introduction of formalized cooperative processes. First, the labor-management relationship in all three counties was already cooperative, or at least noncombative, providing fertile ground in which cooperative structures could thrive. Second, all the counties we studied were in relatively stable economic and political positions prior to establishing cooperative structures. We were not informed of any fiscal or political crises in recent memory that might put pressure on leaders to avoid the risk-taking inherent in cooperative initiatives. These three counties made a significant culture change not as a last-resort strategy, but as a means to improve already functional but imperfect processes. However, the cooperative structures have proven useful in dealing with crisis, such as the threatened sale of the nursing home in Genesee County.

We observed several other essential preconditions in our study counties. Committed, supportive leaders are required. This sometimes necessitates a change in the legislature, county administration, or union leadership. The attitudes of those in leadership positions proved crucial to the counties' ability to embrace the new ideas and paradigms of cooperative tools. Furthermore, in order to buy into the new cooperative relations, middle managers and line employees had to trust the intentions of both labor and management leaders. Even in counties where cooperative tools have been used successfully, the departments with a lower degree of labor-management trust have been slower to make the transition to new tools.

Impacts of Cooperation

Internal Process Improvements

The changes seen in government service delivery seem to be primarily internal in nature. Tompkins County, for instance, streamlined its intake processes for various social services. Genesee County instituted several policies that affect employee benefits, encouraging workplace efficiency and increased job satisfaction. The efficiency gains from internal restructuring are thought to "trickle down" to external improvements. The Genesee County Nursing Home, for instance, through its labor-management committee, has addressed

staffing issues that are crucial to efficient functioning and effective service delivery.

Employee Morale

The second area where impacts have been significant is employee morale, which was uniformly reported by our informants to have improved under cooperative processes. Again, data for improvements are difficult to obtain, and most employee surveys were completed after new structures were implemented, and therefore lack a comparative benchmark. All counties stated the number of grievances has decreased, and the grievances that are filed are uniformly serious in nature, the less serious problems being resolved in other forums, due to improved communication and trust.

Cost Savings

Though gains and savings have sometimes proven difficult to measure due to a fear of budget cuts to agencies that report cost savings, the overriding sentiment is that cooperative efforts are resulting in real cost savings. Ontario County has documented at least one instance of large financial savings in its reduction of worker compensation costs due to a safety program implemented by a TQM committee. Genesee County's nursing home has become profitable again in part due to the efforts of its labor-management committee.

Key Elements for Cooperation

From the case studies, we have identified a number of elements that are necessary for cooperation to be successful:

Training

First, a substantial amount of time and resources were devoted to training labor and management leaders, and more often than not, legislators and line employees as well, in cooperative structures and processes. In Ontario and Tompkins Counties for instance, all employees are being trained in total quality management concepts. Line employees were less likely to be trained in mutual-gains bargaining, which is used primarily by representatives of labor and management for the contract agreement. In Genesee County, for instance, while the assistant county manager was trained to facilitate the negotiation process, the employees were not trained prior to the switch to mutual-gains bargaining, and perhaps for this reason, the first contract negotiated by this method was voted down by union members. On the other hand, the Genesee County Nursing Home sponsored a half-day training session for the entire nursing home staff with a CSEA facilitator, which helped their labor-management committee become much more effective. Whether or not all employees were trained, training brought about a critical shift in how members of the organization viewed labor-management relations.

Local colleges and universities were valuable resources for training in these methods. Both Tompkins and Ontario Counties made extensive use of nearby educational facilities.

Leadership Commitment and Support

The counties we studied all shared the presence of an appointed, professional administrator to manage the transition to cooperative tools. However, one expert on local government told us that the form of government is less important than the administrator or leader's commitment to the cooperative process. A high level of emotional maturity is essential, as is the ability to work well with people and to get them to buy into the process. The case study counties possessed leaders who were willing to work with, but ultimately hold responsible, resistant managers. The commitment of union leadership was also an important factor. Without the willingness of the union officials in these counties to try new ways of working with management, cooperative processes would not have been possible.

The role of elected officials was significant only to the extent they were generally supportive and did not interfere with the process. We did not observe a high degree of involvement in cooperative tools on the part of county elected officials, with the notable exception of Tompkins County, where a legislator was actively engaged in developing the TQM initiative.

Additionally, in the three counties we observed a clear commitment to the *process* of implementing

cooperative tools. Since gains from TQM, for instance, were not immediate, and could take several years after training to realize, the commitment of leaders to see the process through was essential to its success. Administrators and union officials' commitment to labor-management committees as an effective vehicle for problem solving also seemed to be a significant factor in their success. Tools that yield faster results, such as mutual-gains bargaining, perhaps require less depth of commitment from county leaders. In all cases, however, all parties must buy in to the process. Given the levels of trust required, cooperative efforts are likely to be sensitive to attempts to undermine them.

Communication

Communication of the goals, structure, and roles of key players in cooperative processes is also important, both within the organization and in the larger community. Umbrella or countywide committees play important roles here as the central forums for sharing of information and ideas. Creating public awareness of county efforts also may be desirable but was not emphasized in our case study counties.

Evaluation

Evaluation is essential to assure appropriate and effective implementation of cooperative tools and to create support among elected officials and the public. Better evaluation of the cooperative processes in all three counties is needed. For instance, in Ontario County cooperative relations are so strong that some perceive mutual-gains bargaining as an administrative burden that in and of itself may not add significant benefits. However, county leaders currently have no means to gauge MGB's effectiveness. Management in Genesee County indicated that evaluation was an area they hoped to address in the future. The private sector may be a source for evaluation tools that counties can use to measure the success of their efforts.

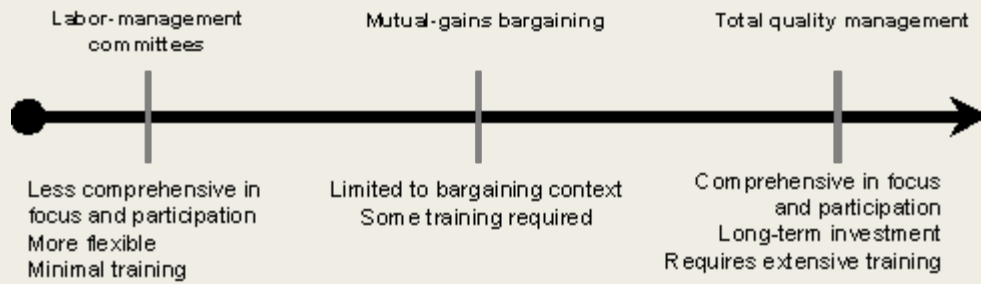
Key Differences Between the Counties

We recognized several key differences among the counties in the implementation of cooperative tools. First, the amount of money spent on training varied widely. Tompkins County had by far the greatest expenditures, almost entirely attributable to its TQM program. Tompkins' use of outside consultants on a regular basis also distinguished it from the other two counties. Genesee County, in contrast, only approached outside consultants on an infrequent basis. However, Genesee's labor-management committees required lower levels of training and hence less cost, compared to the formal TQM programs of Ontario and Tompkins. Interest in the process of workplace change rather than a focus on outcomes or products seemed to guide efforts in Tompkins County, perhaps partly because of its close ties to the academic community through Cornell University.

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Continuum of Cooperative Tools

The three cooperative tools exist along a continuum based on the complexity of the tool, the level of investment required, and its degree of departure from traditional labor-management relations. The following diagram illustrates this continuum:



A government with labor-management committees may not choose to implement a TQM program, but a government without labor-management committees may not be wise to implement TQM as its first cooperative effort. Thus, the diagram may also be viewed as a time line of cooperative structures, indicating a progression from relatively simple tools such as labor-management committees to more complex, formal, costly, and comprehensive processes such as TQM. Other tools we did not observe in our counties could be added to this model, such as gainsharing.

Limitations and Further Questions

As tools for restructuring, the cooperative methods discussed here have several limitations. Their ability to affect the external policy environment is limited, so they are constrained by the political contexts in which they must operate. They also do not afford an opportunity for citizens to become more involved in government. Since public support for its activities is important to local governments, they should come up with ways for creating greater citizen involvement in their restructuring efforts.

Many questions emerged during the course of our study. First, what is the true impact of cooperative tools and processes on middle management? Much has been written about the downsizing of middle management in the private sector. Is this also the case in government? Second, what are the appropriate roles for citizens and elected officials in efforts to restructure government-through both internal and external methods? Finally, our cases only addressed examples of successful cooperative tools and processes in counties that had developed a significant degree of trust between labor and management. What are the outcomes of cooperative initiatives in counties that lacked this precondition of trust?

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Resources

[Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State](#)

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Websites

Local Government Restructuring Website

<http://www.crp.cornell.edu/projects/restructuring/>

This website contains summaries of key literature on local government restructuring: privatization, intermunicipal cooperation, and internal governmental restructuring. Special emphasis is given to labor-management cooperation, including case studies from New York State counties.

AFSCME, American Federation of State, County, and Municipal Employees

<http://www.afscme.org>

AFSCME is the nation's largest public employee and health-care workers' union, with more than 1.3 million members. This site provides useful information on reinventing government and labor-management cooperation.

Civil Service Employees Association (CSEA)

<http://www.cseainc.org/>

CSEA is one of the major labor unions in New York State. One of their goals is to prevent privatization or contracting out of services. They see privatization as a politically popular quick-fix that eventually leaves taxpayers footing the bill. CSEA believes that front-line employees themselves know best how to improve services, and should be the focus of workplace improvement efforts.

Department of Labor, U.S. Government

<http://www.dol.gov/>

This website provides an inventory of local governments implementing workplace transformation through cooperative structures. This site also includes a task force report on the role of flexible and cooperative practices in the improvement of government service delivery.

Department of State, New York State Government

<http://www.state.ny.us/>

The mission of the department is to make state and local governments more efficient and to improve responsiveness to customers. The Department's Division of Local Government Services provides excellent resources on inter-municipal cooperation.

Economic Policy Institute (EPI)

<http://epinet.org/#recent>

EPI, founded in 1986 by a group of economic policy experts, is a nonprofit, nonpartisan think tank that seeks to broaden the public debate about strategies to achieve a prosperous and fair economy. The Institute has published a number of studies exploring limitations of privatization from a labor perspective (Starr, 1987;

Sclar, 1997; Sclar, 1989).

Indianapolis Government

<http://www.IndyGov.org/mayor/comp/indyexp/>

This site describes some of the experiences that Indianapolis city government has encountered as it moves to a leaner, more effective, and efficient organization. It is organized in four parts: a small government philosophy, a community emphasis for policing, stronger neighborhoods for citizens, and a thriving economy for the future. Each section includes a short introduction and a series of "case study" examples.

International City/County Management Association (ICMA)

<http://www.icma.org/resources/index.htm>

Founded in 1914, the International City/County Management Association (ICMA) is a professional and educational association that seeks to strengthen the quality of local government through professional management. ICMA is a leading publisher of in-depth information about local government management. ICMA does regular surveys on alternative local government service provision

New York State Association of Counties (NYSAC)

<http://www.state.ny.us/nysac>

The Association serves all 57 counties in New York State to promote more effective local government and present county concerns on the state and federal levels.

New York State School of Industrial and Labor Relations, Cornell University

<http://www.ilr.cornell.edu>

Research at the ILR school focuses on some of the most important issues in the workplace: protecting jobs, increasing productivity, worker participation, expanding and declining labor markets. Through their extension programs, the school provides training for local governments in mutual-gains bargaining and TQM.

Public Employment Relations Board (PERB) of New York State

<http://unix2.nysed.gov/ils/executive/perb/mission.htm>

PERB is responsible for assisting in resolving labor-relations disputes between public-employee organizations and agencies of state and local government and school districts. PERB provides mediation, fact-finding, and arbitration services in disputes over contract agreements.

Reason Foundation

<http://www.reason.org/privatizationctr.html> The Reason Foundation, established in 1978, provides excellent materials on privatization. Advocating public policies based upon individual liberty and responsibility and a free-market approach, the Foundation turns to practical policy research. Their annual yearbook, *Privatization*, describes recent developments in privatization.

Publications

Ashekenas, Ron, et al. 1995. *The Boundaryless Organization: Breaking the Chains of Organizational Structure*. San Francisco: Jossey-Bass.

The authors detail the steps necessary to create effective organizations, stressing the need for information sharing, creating competence, decentralizing authority, and performance-based rewards.

Belman, Dale, Morley Gunderson, and Douglas Hyatt, eds. 1996. *Public Sector Employment in a Time of Transition*. Madison, WI: Industrial Relations Research Association, University of Wisconsin-Madison.

Published by the Industrial Relations Research Association, this book presents eight papers by various authors on the transitions taking place in public sector industrial relations. Subjects discussed include law, employee attitudes, dispute resolution, compensation, the merit model, and much more.

Cohen-Rosenthal, Edward, and Cynthia E. Burton. 1993. *Mutual Gains: A Guide to Union-Management Cooperation*. Ithaca, NY: ILR Press, Cornell University.

This book is about why and how to cooperate in ways that lead to mutual gains for both the union and management. It lays out the theoretical and practical aspects of implementing mutual-gains bargaining.

Gold, Charlotte. 1986. *Labor-Management Committees: Confrontation, Co-optation, or Cooperation?* Ithaca, NY: ILR Press, Cornell University.

This book examines the history and current role of labor-management committees as well as other cooperative structures in improving service delivery and generating organizational transformation in both the private and public sectors.

Hebdon, Robert, and Hazel Dayton Gunn. 1995. "The Costs and Benefits of Privatization at the Local Level in New York State." Community Development Report. Ithaca, NY: Community and Rural Development Institute, Cornell University.

http://www.cardi.cornell.edu/research_briefs/cdr3-2.cfm

The article describes the arguments surrounding privatization. By subjecting service provision to the rigors of market competition proponents believe efficiency will be increased; however, opponents are concerned that service quality, social equity, and labor conditions may be diminished.

Kochan, Thomas, and Harry Katz. 1992. *An Introduction to Collective Bargaining and Industrial Relations*. New York: McGraw-Hill.

One of the standard college-level textbooks on industrial relations, this volume provides a basic introduction to labor relations theory.

Kochan, Thomas, Harry C. Katz, and Robert B. McKersie. 1994. *The Transformation of American Industrial Relations*. Ithaca, NY: ILR Press, Cornell University.

This book is thought by some to be one of the most important books on industrial relations of the past 15 years. Kochan, Katz, and McKersie present a framework for contemporary trends in unionization, industrial relations systems at the workplace, negotiations, and strategic choices of both management and workers.

Marshall, Ray, et al. 1992. *Restructuring the American Workplace: Implications for the Public Sector*. LERC Monograph Series, University of Oregon, no. 11: 26-27.

The authors describe the changing roles of workers and managers in the new global economy, and how the dramatic changes seen in the private sector can be transferred to the public sector, with a focus on the need for greater employee involvement.

Osborne, David, and Ted Gaebler. 1992. *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector*. Reading, MA: Addison-Wesley.

In order to transform staid bureaucracies into innovative, flexible, and responsive organizations, the authors suggest new models, giving examples of how government can become more community-focused, competitive, mission-driven, and results-oriented.

Savas, E. S. 1987. *Privatization: The Key to Better Government*. Chatham, NJ: Chatham House.

The book, written by an advocate of privatization, describes the theory and practice of privatization and alternative service delivery arrangements.



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Labor-Management Committees

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Authors: Nicole Blumner, Lindy Burt, Jon Gans, Lisa Goldberg, Kristin Guild, Young Sung Kim, Chang Kil Lee, Darth Vaughn, Mildred Warner

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Labor-management committees are cooperative structures that focus on problem solving and building trust. They typically deal with issues including workplace safety, work hours, training, personnel issues, and daily workplace concerns. Although labor-management committees may initially focus on less controversial issues, such as worker safety standards, over time they may build a level of trust between labor and management that allows them to deal with more complex problems (Gold 1986).

Labor-management committees may be permanent or they may form around a particular issue and disband once resolution is reached. However, they are not necessarily formed to solve crises. Many are proactive and attempt to improve current work practices. They are flexible and easy to implement, and require minimal training. Labor-management committees are cornerstones of cooperation in each of the counties studied.

Structure

The labor-management committees in Genesee, Ontario, and Tompkins Counties are similar in terms of their goals: enhanced labor-management relations, decreased costs, and improved services. Each county has a central guiding or umbrella committee that oversees the activities of issue-based or departmental labor-management subcommittees. They may facilitate training and provide direction to subcommittees or they may address specific program innovations or daily operations. All three counties implemented labor-management committees before mutual-gains bargaining and total quality management.

There are differences in how each county uses the committees, however. In Ontario County, where such committees have existed since the early 1980s, they operate independently of the TQM program. Ontario County has a countywide committee, committees that operate within departments, and others that address specific issues, such as safety and health.

Tompkins County's labor-management committees, which have existed since the mid-1980s, now function as part of its TQM program. Prior to the inception of the TQM program, non-union members who volunteered or were voted in by all employees were allowed to serve on labor-management committees. Under the total quality management agreement negotiated between the CSEA and the county board of representatives, now there are more committees, and only union-selected representatives may serve on them (see the total quality management section, below).

Genesee County does not have a TQM program, and their labor-management committees are the main venue for workplace innovation. There is one main committee for the general bargaining unit, which covers most county departments, and a separate committee for the nursing home unit.

Representation

Labor-management committees are composed of representatives of management and the union. Only in Tompkins County were legislators also included. Tompkins County's umbrella committee has 13 members, including representatives from top management, middle management, and labor. In Ontario County, the countywide committee is made up of the county administrator, deputy administrator, director of human resources, and several of the local union presidents. In Genesee County, the general unit committee consists of the county manager, the personnel officer, the CSEA general unit president, and the regional labor relations specialist, as well as two more representatives from both management and labor who rotate onto the committee in three-year intervals. This provides more people an opportunity to be part of the process. Size of the committees varies according to the scope of the issue and the need for stakeholder input. Most have eight or fewer members, but at least one committee in Tompkins County has over twenty members.

Functions

In all counties, labor-management committees address a broad spectrum of workplace concerns. In Genesee County, the general unit committee emphasizes relationships and creating an environment where employees feel their input is valued and decisions are made by consensus. The labor-management committee has introduced policies that create a more family-oriented environment.

Labor-management committees can also be forums for discussing alternatives to privatization proposals. In Ontario County, labor has the opportunity to give their input before a decision to privatize a service is made by the administration. In Genesee County, labor and management formed a special joint action committee to address the threat of possible privatization in the Department of Mental Health Services.

Labor-management committees can impact the delivery of government services by finding ways to reduce costs while maintaining or improving the service itself. While hard data documenting the impact of innovations on cost was difficult to obtain, workers' compensation costs were significantly reduced in Tompkins County as a result of safety measures and training recommended by a labor-management committee (prior to the implementation of TQM). In Genesee County, labor-management committee recommendations and process improvements have led to cost savings through reduced absenteeism, increased productivity, and decreased supervision time. Their nursing home committee has helped the facility improve efficiency and avoid privatization. Client surveys in Ontario and Tompkins Counties have indicated overall improvements in services.

Labor-management committees do not address contract disputes or grievances, although they appear to be effective in defusing potential problems before they reach the grievance stage. All three counties credited labor-management committees for helping to keep the number of formal grievances low.

Role and Authority of Committees

There is great flexibility in how roles are defined for labor-management committees. Tompkins County has a formal agreement defining the roles, expectations, and boundaries of authority for the Leadership Council, which took one year to negotiate and which clearly outlines the scope of the committee process. Genesee County has less formal written guidelines that articulate the goals and procedures of the committee. The authority of the labor-management committee is not written into a contract but is accepted by both parties. Ontario County's labor-management committee is well entrenched and seems to function effectively without a written agreement.

Labor-management committees have varying degrees of authority and power. In some cases, their policy recommendations are binding, while in others they merely offer suggestions that must gain the approval of elected officials. This is often the case when budget or cost decisions are involved. Committees in Ontario County are empowered to draft letters of agreement around issues that would normally be addressed through contract negotiations.

In some cases, the use of labor-management committees may impact traditional lines of authority. Middle managers may lose some of their decision-making authority because employees can voice concerns directly to

top levels of management through the committee. In Ontario County this was an issue, but in Genesee and Tompkins Counties, middle managers are included on committees.

Training/Support

Training committee members in conflict resolution and consensus decision making may help committees work more smoothly. Training sessions allow both groups to establish their commitment to the concept and to forge cooperative relationships. For example, in the Genesee County Nursing Home, a half-day training session for the entire staff helped them use their labor-management committee more effectively. In this case, a CSEA facilitator from Albany was used. The Public Employment Relations Board (PERB) and Cornell's Industrial and Labor Relations Extension are other valuable sources of training and information. It is important to recognize, however, that there may be a significant time lag after training before measurable results are seen.

Tompkins and Ontario Counties, which had longer-standing labor-management committees, have invested more in training for mutual-gains bargaining techniques and total quality management than for labor-management committees.

Relationships

Labor-management committees can be contentious because they bring together individuals with diverse points of view. Strong leadership, good communication, and commitment to the process make the difference between success and failure. Without these elements it is difficult, if not impossible, to build the necessary level of trust to make a labor-management committee work. Both Tompkins and Genesee Counties had attempted labor-management committees in the past, with limited scope and success. By focusing on relationships, building trust, and gaining the commitment of leadership they were able to establish the successful committees that operate today. One strategy used was to begin by addressing issues that are less contentious, to build momentum so committees can tackle larger, more difficult problems in the future. This increases the level of trust among committee members and reduces the potential for early conflict.

Employee morale has been greatly improved in the counties studied. There are still conflicts and differences of opinion, but labor-management committees provide a mechanism for giving voice to these problems before they become intractable.

Challenges and Limitations

Several challenges in implementing labor-management committees are evident:

- Time is required to build the trust necessary for effective committees.
- They have limited authority: they are not designed to make decisions about broad structural changes in county operations.
- Defining the appropriate roles and boundaries of committees is important: many problems lie beyond the scope of committees and call for wider participation of elected officials and citizens.

Conclusion

Labor-management committees are excellent forums for communication and workplace problem solving. They are flexible and require minimal training, which also makes them inexpensive. In all three counties, good communication, strong relationships, committed leadership, and trust proved to be the most important factors for committee success. While the most compelling impact seen was on labor-management relations, committee efforts also led to improvements in county government functioning. Labor-management committees are relatively easy to implement and provide a foundation for incorporating more sophisticated tools, such as mutual-gains bargaining and total quality management, into an organization.

The following are recommendations to consider for labor-management committees:

- Establish a central, guiding committee to oversee the endeavor.
- Integrate committees into the organizational structure.
- Define expectations and parameters for decision making.
- Include as many stakeholders as possible and necessary.
- Communicate and foster a shared understanding of goals and objectives for both the committee and the organization.
- Be cognizant of power differentials and the effect these may have on communication.
- Address issues where it is easy to reach consensus at the outset in order to build momentum to tackle more difficult topics.

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Mutual-Gains Bargaining

[Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State](#)

Authors: Nicole Blumner, Lindy Burt, Jon Gans, Lisa Goldberg, Kristin Guild, Young Sung Kim, Chang Kil Lee, Darth Vaughn, Mildred Warner

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Mutual-gains bargaining (MGB) is a method of bargaining designed to dramatically improve the quality of contract negotiations and increase the likelihood of compliance between labor and management, ultimately benefiting their constituents. The mutual-gains process focuses on negotiations based on interests rather than positions and on building consensus. Through this process, unions and management identify at least one common goal and find ways to jointly accomplish that goal (Cohen-Rosenthal and Burton 1993). While MGB can be used for many types of negotiations, the case studies focused on its use for contract negotiations. Ontario County has been using mutual-gains bargaining since 1994, Tompkins County since 1995, and Genesee County since 1996.

Preconditions

All three counties had existing cooperative labor-management relationships in place before the initiation of MGB. Tompkins and Ontario Counties indicated they had been using interest-based bargaining techniques informally for years, and that they moved to MGB as a way of formalizing the process. This leads us to speculate that counties that have good labor-management relationships may be more apt to implement MGB because the idea of cooperating isn't very radical to them and there is less distrust between labor and management to overcome. Genesee County, however, was less satisfied with their standard negotiation process and wanted to use MGB to improve the quality of negotiations.

Benefits

Mutual-gains bargaining led to smoother contract negotiations in all three counties. This was especially true in Genesee, where labor and management agreed the new techniques were far more productive than previous negotiations. Perhaps because Ontario and Tompkins Counties already had well-established cooperative structures that resembled MGB in place, the changes were less dramatic, but in both counties labor and management spoke positively about the effects of MGB techniques on the negotiating process.

MGB can be used to empower workers and strengthen their organizations, as well as to shape their lives at work. The benefits include increased access to information, prenotification of changes in work arrangements and technology, and increased input, which helps management avoid errors or decisions that would hurt union membership. There is also an indication that work satisfaction may increase, and the union may be able to address a broader range of members' concerns more quickly and fully. In addition, the literature on the subject indicates that union membership, education, and skill levels increase.

In the public sector, management must make the organization as effective as possible to meet the needs and expectations of citizens and their legislative authorities. Management's benefits include improved effectiveness, increased organizational flexibility, an improved working environment, and enhanced productivity (Cohen-Rosenthal and Burton, 1993).

Labor and management in the case study counties agree MGB has saved a lot of time. The use of MGB allowed Genesee County to complete their last contract in about a month, whereas it used to take up to six or seven months. The same is true for Tompkins County, where labor and management found the salary issue was on the table faster than ever before, in part because the economy was doing well, but also as a result of MGB.

Neither management nor labor see MGB as a panacea, but both concede that both parties walk away from the negotiating process feeling better. While both labor and management in Ontario County are pleased with MGB, the union appears to favor the process a bit more. CSEA representatives felt that MGB would definitely be used in the future. At least one manager, on the other hand, was of the opinion that MGB was a bit "tedious" and might not be used in the next contract because levels of trust were already high. In Tompkins County, labor felt that the "win-win" solutions that MGB is supposed to create often result in compromises. Management respected the process, but felt it was nothing new in comparison to the way they interacted in the past.

Leadership

The commitment of top management and union leaders to MGB is very important to its success. Some people will find it difficult to accept a new approach and will be subversive to both groups' mutual interests. In some cases, a change in leadership was necessary before a county could effectively implement MGB. In Ontario and Genesee Counties, for example, changes in union and/or management leadership preceded their formal implementation of MGB.

During negotiations, and during day-to-day interaction, the administration, union leaders, and managers need to set an example of open communication for all to follow. Labor and management must be committed to MGB. They must communicate with each other, understand each other's needs and interests, and pursue answers that benefit both groups. Tompkins, Genesee, and Ontario Counties' MGB efforts had the support of top management.

Training

Mutual-gains bargaining requires a change in philosophy that cannot occur without careful preparation. Unlike traditional collective bargaining, mutual-gains bargaining operates on trust and open information sharing, and as simple as the concept might be, it is critical that labor, management, and legislators receive training before they decide to embark on mutual gains. While legislators do not participate in negotiation, it is important they understand and support the process.

In their efforts to implement MGB, Ontario, Genesee, and Tompkins Counties all turned to the New York State School of Industrial and Labor Relations Extension for training. Tompkins County trained 300 out of 720 employees in MGB before its formal implementation in 1995, and had few problems. Now all bargaining units in Tompkins County (except the sheriff's department) use mutual-gains techniques for all terms except salary. In the case of Genesee County, the assistant county manager was trained to facilitate the negotiations, while Ontario and Tompkins used outside facilitators. Although Genesee's general unit contract was successfully negotiated using MGB in a much shorter period of time than was typical, the negotiating process was still very challenging, and the rank and file expressed skepticism about the initial contract. Because of the distrust that traditionally exists between the two groups, it may help to use an outside facilitator at the outset. Even with training, it can take employees and management time to learn to trust and accept the process.

Challenges

MGB can benefit both labor and management, but it can also be risky to both parties. Both union leaders and management are in danger of being perceived as too close to the "adversary"- legislators may fear management is being too easy on the union, while union members may fear their leadership is being "co-opted." Since the union is negotiating the terms and conditions of employment for its members, it has more at stake. The open negotiation process inherently requires each side to relinquish some of its negotiating

power and may limit the union's ability to act as a unified group. In Tompkins County, the union has not yet agreed to negotiate salary using mutual-gains bargaining techniques largely for these reasons.

Mutual-gains bargaining is a process that was developed in the private sector to increase labor-management cooperation, but also to aid downsizing efforts. MGB inherently cuts out middle management as the mediators between labor and top management. In Ontario County, for example, middle managers were resistant to MGB, as it appeared to take some of their authority away.

Finally, because mutual-gains bargaining is a tool which is used only during contract negotiation time, it is limited in its ability to have a direct impact on the daily interaction between labor and management. However, there were important "spillover" effects of mutual-gains bargaining training to other venues such as labor-management committees and total quality management teams.

Conclusion

Interest-based bargaining appears to save money and time, and have positive effects on labor-management relationships. MGB resulted in quicker contract negotiation where both parties walked away feeling better about the process and the outcome. However, as with other similar labor-management cooperative methods, it is difficult to quantify the results of MGB. For example, Ontario County tries to quantify cost savings whenever possible but finds it difficult to assign a dollar value to the intangible benefits of their cooperative efforts. The counties studied did not establish evaluation measures to determine what impact (positive or negative) MGB has made.

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Total Quality Management

[Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State](#)

Authors: Nicole Blumner, Lindy Burt, Jon Gans, Lisa Goldberg, Kristin Guild, Young Sung Kim, Chang Kil Lee, Darth Vaughn, Mildred Warner

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While Genesee, Ontario, and Tompkins Counties have all implemented labor-management committees and mutual-gains bargaining, only Ontario and Tompkins Counties have instituted total quality management (TQM) initiatives. Ontario County began to implement total quality management in 1993, Tompkins County in 1994.

Total quality management represents a shift in management philosophy from autocratic, hierarchical decision-making structures to flatter organizational structures and shared decision-making responsibility (Kursat and Calicchia 1994). In the past few decades, following the model of the private sector, local governments have come to realize that top-down management is not always the best way to achieve results and that line workers have valuable contributions to make in identifying strategies for improvement (Osborne and Gaebler 1992).

In Tompkins and Ontario Counties, total quality management has changed the way decisions are made, processes are designed, and labor and management interact. Informants describe total quality management programs as a "visceral change," a "paradigm shift," and a "culture change." Both counties' total quality management programs are new, and therefore conclusions about the programs' impacts and differences between them are tentative.

Three Components: Shared Decision Making, Customer Focus, Management by Fact

Total quality management initiatives have three primary components according to Kursat and Calicchia (1994):

1. Shared leadership and employee involvement

Total quality management programs are based in part on the idea that employees performing the work can create more efficient and effective processes to produce a higher-quality product. Total quality management programs typically establish formal structures such as labor-management committees for sharing decision making between managers and front-line employees.

2. Customer focus and an emphasis on service and product quality

TQM focuses on the needs and wants of two types of customers: "internal" customers-the next people down the line in the work process-and "external" customers-those who purchase or utilize a good or service. TQM seeks to improve the quality of both the product and the process by identifying the type and quality of good desired by both internal and external customers and providing what each customer wants. This can be difficult, since in the public sector, external customers include the people using a good or service but also the people paying for the good (taxpayers) and their representatives (elected

officials).

3. Management by fact and continual improvement

Total quality management encourages steady data collection and rational decision making based on data rather than on impressions or uninformed opinions. Labor-management committees are one way to collect data about many facets of a complex issue. Others include customer surveys and careful tracking and documentation of any cost or time savings. The second component, a philosophy of continual improvement, encourages employees and managers to exceed current standards. Continuous improvement is achieved through constant experimentation, learning from mistakes, and diffusing learning throughout the organization.

Goals

In both Tompkins and Ontario Counties, the goals of total quality management most often articulated by managers and employees were to improve labor-management relations and work conditions, leading to a more smoothly functioning organization. All parties also expressed a desire to improve service quality. This desire is exemplified by Ontario County's slogan for total quality management: "We aspire to excellence." In Tompkins County, elected officials' goals focused primarily on service improvement and cost savings.

Training

Participatory methods of decision making, identifying customer needs, and determining what kind of data to collect and how to collect it require skills of employees and managers that are not inborn or traditionally taught in schools or in the workplace. Thus, to effectively implement a total quality management program and achieve the paradigm shift required for success, training is essential.

Of the two counties, Tompkins has conducted more extensive training and spent more money. Tompkins County's Leadership Council (the labor-management committee charged with planning and managing the total quality management program) has the goal of training all employees, managers, and elected officials in quality methods. Initial training sessions were conducted by consultants, who are still involved in the process. In the fall of 1996, however, the county hired a full-time training coordinator, and now more sessions are conducted by in-house staff.

Between 1994 and 1997, Tompkins County spent just over \$300,000 for outside consultants to conduct training. In 1998, the county will spend an estimated \$170,000 on consultants to complete the bulk of the training. Since 1997, in-house costs have been around \$100,000. These costs will drop dramatically after 1998, when all employees, managers, and elected officials will have been trained in total quality management techniques and only training for new employees and refresher courses will be necessary.

Ontario County appears to have spent significantly less on their training program, particularly on outside consultants. Initially both labor and management leaders as well as county legislators were trained at the Rochester Institute of Technology. Initial training cost \$35,000 for employees and \$50,000 for supervisors, managers, and elected officials. The county gradually built their capacity to do training in-house, and today all county employees have been trained in TQM concepts.

It is important to remember when comparing these figures, however, that we obtained dollar amounts from Tompkins County for both outside and in-house costs, whereas the figures reported for Ontario County's training costs are only initial start-up costs for consultants. Still, there appears to be an appreciable difference in expenditures on consultants.

This difference may be due to the values held by county leaders. Tompkins County leaders are professionally and personally interested in organizational theory and process, and are willing to wait for long-term results. These may be the reasons for the strong emphasis on process and formal training. Ontario County leaders seem less interested in process and more interested in both short- and long-term results.

Support Structures

Individuals, however well trained in new ways of thinking and doing, will not be able to maintain the culture shift without a system of structural supports that devolve authority for decision making to labor-management teams. Supportive structures are probably one of the largest differences between total quality management programs which employees perceive to be "fake" and those which seem more real and effective.

Ontario County's Service Excellence program is structured around a countywide steering committee that acts as a core planning group, setting the direction for the program and coordinating the activities of the subgroups. The four departmental work group committees each have the same organizational structure as the steering committee and coordinate their corresponding functions.

Tompkins County's Leadership Council includes representatives from labor, top management, middle management, and elected officials. The Leadership Council guides the training process and the activities of departmental committees, and facilitates the work of smaller, project-oriented or cross-functional committees.

Another support mechanism is in-house training facilitators. Currently, Tompkins County employs a full-time training coordinator. An additional twenty employees act as facilitators, assuming leadership roles on various departmental and issue-related committees. They lend practical support based on their understanding of TQM and committee concepts. In addition, they are role models for other employees and managers.

Advantages

Total quality management is the most comprehensive cooperative tool for restructuring that the research team investigated. More than labor-management committees, total quality management programs can address inefficiencies in work processes and strive to identify customer needs. Unlike mutual-gains bargaining techniques, which are used primarily for contract negotiations once every few years, total quality management is ongoing and suffuses all work processes. It empowers labor to improve the workplace. In Tompkins County, for instance, labor-management relations had been good for some time, but TQM forced managers to rethink their traditional style to allow greater employee involvement in decision making. Employees and management now work together to solve problems, and by all accounts, both find the new process more productive and rewarding.

The cases studied indicate that total quality management does improve the functioning of the organization, employee morale, and labor-management relations. Based on the suggestions of a total quality management committee in the Department of Social Services, Tompkins County streamlined the intake process for several social service programs. A Tompkins County survey indicates that employee morale in the Department of Public Works improved 22% between 1990 and 1997. Further, since the TQM programs have been implemented, both Ontario and Tompkins Counties have had fewer frivolous grievances as a result of increased communication and trust.

The programs have also reduced costs in both counties, although the cost savings have not always been well documented. Tompkins County representatives believe they have saved a great deal due to improved morale and greater efficiency. Ontario County has documented savings through the efforts of its workplace safety team. The team project began with county safety coordinators identifying high-risk job duties, such as driving and heavy lifting, based on local and national accident and injury data. Employees performing these tasks were then trained in safer driving and lifting techniques, resulting in a 37% reduction of OSHA-recordable injuries in the county from 1994 to 1997. Lost days were reduced by 60% in the same time period. As a result of these safety improvements, a special tax assessment to pay for workers' compensation, to be spread out over five years, was paid off in only three, saving taxpayers \$1.5 million.

Limitations

Both middle managers and elected officials may resist the total quality management culture change because it devolves supervisory and decision-making power to TQM teams and committees. While middle managers

and elected officials are formally involved in several levels of the TQM program in Tompkins County, they are absent from the committees in Ontario County, and have understandably been more resistant to the process. Middle managers may also fear for their jobs. Tompkins County is dealing with this issue by retaining middle managers as top-level technical employees and ensuring their representation on the TQM committees.

Another limitation of total quality management as a tool for restructuring is its internal focus. The difficulty in identifying the "customer" for public sector goods and services and the focus on internal work processes make it hard to truly involve citizens in these TQM efforts. Both counties seek to identify external customer needs with surveys, and Tompkins County includes elected representatives on committees, but neither county includes citizens on committees. In Ontario County, citizen involvement in the TQM program is slightly greater than in Tompkins, since it includes an advisory council made up of a select group of local business owners.

Tompkins and Ontario Counties both seem to focus more attention on internal customers, (through surveys and participation in labor-management committees), in the belief that process improvements will result in product and service improvements. This is not an unreasonable assumption, though it can be difficult to document. Customer satisfaction surveys in Ontario and Tompkins Counties indicate external customers are generally satisfied with service improvements generated by total quality management programs.

The substantial cost of total quality management training and implementation as well as the time required to reap benefits are also limitations of total quality management as a tool for local government restructuring. Finally, because total quality management focuses primarily on internal work processes, policy about external factors is outside its purview. The inability to address broader policy issues may limit the ultimate impact of investments in total quality management.

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Cooperative Labor-Management Structures in Genesee County

[Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State](#)

Authors: Lindy Burt and Lisa Goldberg
June 1998



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Genesee County is located in western New York State, between Rochester and Buffalo. It has a population of approximately 60,000. The county functions under a county manager who is appointed by a nine-member legislature. The main tools of labor-management cooperation being used in Genesee County are labor-management committees and mutual-gains bargaining. Through face-to-face and telephone interviews, we examined how these cooperative structures developed in Genesee and their role in helping county government function better.

The following people were interviewed for this study:

- Jay Gsell, County Manager
 - Martha Standish, Personnel Officer
 - Nancy Smith, CSEA General Unit President
 - Jack Pease, Administrator, County Nursing Home
 - Darlene Acker, CSEA Nursing Home Unit President
-
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Labor-Management Committees

The Origins of Labor-Management Committees in Genesee County

There are two main labor-management committees in Genesee County. The general unit labor-management committee includes most county departments, with about 320 CSEA members represented, and the Genesee County Nursing Home labor-management committee, which has about 150 CSEA member employees.

The general unit committee was started in 1991, and the nursing home committee was started during the late 1980s. The nursing home has its own committee because of the special nature of the services it provides. It also operates as an "enterprise fund," which means that its finances are separate from the rest

of the county's departments. As an enterprise fund, the nursing home is able to keep the money it earns, but when it is losing money, it cannot draw on other county revenue. Currently, the home is earning money, which has enabled the county to invest in improvements in the facility.

The two committees operate within somewhat different contexts. In the late 1980s and early 1990s, the nursing home was losing money due to a change in the state's reimbursement policy for Medicare and Medicaid patients. It faced the prospect of being sold by the county legislature if it did not become self-sustaining on its own revenues. It was realized that the home had to change its mode of operating in order to survive, and that the cooperation and involvement of both management and labor would be necessary. The labor-management committee provided a good vehicle for the two groups to work together to try to improve the operations of the home.

With the general unit committee, management saw great potential in improving workplace practices through the more cooperative structure provided by a labor-management committee. The county personnel officer approached the CSEA labor relations specialist, who agreed that establishing a committee was a good idea.

How Labor-Management Committees Work

The labor-management committees in the general unit and the nursing home work in a very similar fashion. They both meet once per month at a set time and day. In the nursing home, the union officers and stewards meet a week and a half prior to the monthly meeting to develop their list of items for the agenda. The union president and nursing home administrator then meet one week prior to the monthly meeting to discuss each other's proposed items for the agenda, and put it in its final form. Issues are not placed on the agenda unless agreed to by mutual consent. During this preliminary meeting, the nursing home administrator and union president are sometimes able to resolve certain issues, which don't require the input of other committee members.

While the authority of the nursing home committee is actually written into the nursing home unit contract, the authority of the general unit committee is not incorporated into the general unit contract, but is mutually accepted by labor and management.

The purpose of both committees is to serve as a forum for discussion and a vehicle for active improvement on management issues, labor issues, program ideas, and operations. The resolution of any issue requires consensus among all committee members. The committees do not address contract disputes or grievances. These matters are dealt with using standard procedure.

The permanent members of the general unit committee are the personnel officer, the county manager, the CSEA general unit president, and the labor relations specialist from the CSEA regional office. Two department heads and two additional union members also sit on the committee; these positions rotate in about three-year intervals to give different people exposure to the process and to the issues being discussed. The nursing home committee is comprised of the nursing home administrator (Jack Pease), the director and assistant director of nursing, the activities director, the officers of the union, including the president, vice-president, treasurer, secretary, and the head nurse.

Members of the county legislature do not sit on the committees or participate in the meetings. By not participating in the committees, the legislators can remain more neutral and objective with respect to the management and labor positions. The legislators are kept aware of the activities of the labor-management committees through meeting minutes.

Through the committees, many more union members are involved in labor-management initiatives than ever before. According to the president of the general unit, currently about 25 percent of the 300+ employees in the general unit participate in some way through subcommittees and various programs. Within the nursing home unit, union members also serve on various subcommittees organized around different program initiatives. Additionally, according to the nursing home unit president, employees are always encouraged to bring their ideas and concerns to the committee representatives.

Creating Solutions to Workplace Problems

One of the greatest concerns of the nursing home is to ensure sufficient staffing 24 hours a day, seven days per week. Its committee has developed such initiatives as an incentive program for attendance and a voluntary work program. Because it is crucial to the operation of the nursing home that there be sufficient staffing at all times, management has the right to mandate employees to work overtime or to come in on their days off when there exists a shortage of staff. The voluntary work program allows the employees to "volunteer" (with pay) to work extra hours at their own convenience. After working a certain number of "voluntary" hours, employees are then eligible to be taken off of the mandate list during the upcoming quarter. The nursing home committee has also served as a forum to discuss worker safety issues during building renovations.

One of the most significant programs developed by the general unit committee is the sick-leave bank. Through the sick-leave bank, employees may choose to donate some of their allotted sick days to the bank, which can be used in the future by any employee who needs to take an extended medical leave. This program serves as a close substitute for long-term disability, which is not provided to employees of the general unit. Other programs initiated by the general unit committee include a volunteer tuition reimbursement program, which grants employees who perform community service tuition credits for their family members at the local community college; a job-share program; and participation in Make-a-Difference Day, a national community service day. The labor-management committee also started a newsletter for county employees, which is partially funded by CSEA.

Through labor-management committees, the management of the nursing home and other county departments represented by the general bargaining unit have worked cooperatively with labor to develop innovative ways to improve productivity, efficiency, and flexibility in the workplace. Such initiatives have a positive effect on the county's ability to deliver services to the community.

Mutual-Gains Bargaining

The Origins of Mutual-Gains Bargaining in Genesee County

Mutual-gains bargaining was first tried in the general unit in 1996. The assistant county manager was trained by Cornell University's School of Industrial and Labor Relations Extension, and he facilitated the negotiating process. Jay Gsell, County Manager, and Nancy Smith, President of the Local CSEA General Unit, had just taken their positions at the county a few years prior, and were very interested in trying a new approach to contract negotiations.

The first tentative agreement negotiated under mutual-gains bargaining was not accepted by the union membership. Many members were very skeptical, and it took time for them to trust and accept the process, which was completely different from the way previous negotiations were conducted. However, employees eventually came to accept the process, and in 1997 the general unit contract was successfully negotiated using mutual-gains bargaining.

The nursing home does not use mutual-gains bargaining. Labor is not yet interested in implementing the process.

How Mutual-Gains Bargaining Works

The mutual-gains bargaining process requires that both parties reveal their true interests rather than defending their positions. After this is done, the specifics are discussed. For labor, the priority is in determining what they need in order to achieve a contract that will provide general satisfaction to the greatest number of people. Management needs to consider the expectations of the elected officials they represent.

Both labor and management agree that the mutual-gains bargaining process was more productive than any previous negotiations. There was more input, openness, brainstorming, and problem solving among the participants. The negotiations were a continuous, open dialogue between the two sides, with no side discussions taking place. Even the lunch break was taken together. Another benefit of mutual gains is that it

greatly accelerated the negotiations process. While typical contract negotiations can take up to six or seven months, the most recent contract was negotiated in about a month. By revealing their true interests, each group comes to a better understanding of the other's position. Participants look for ways to mutually resolve the issues, instead of wondering what they will have to concede. County Manager Jay Gsell also noted that mutual gains helps facilitate identification of the sticking points in the issues.

In coming to agreement on a contract, although not every interest was satisfied, participants came away from the process feeling as though a great deal had been accomplished. Because of the cooperation that is inherent to the process, resentment and hurt feelings are avoided. Agreement is easier to achieve and people feel better, even about the things that did not make it into the contract.

Necessary Elements for a Cooperative Labor-Management Relationship

Trust and Openness

In order for the county to use mutual-gains bargaining and labor-management committees, trust must exist between labor and management. Everyone involved in labor-management cooperation concurs that keeping to agreements once they have been made is one of the most important elements in building trust. For union officials, in a situation where there are preconceived notions about "the union," delivering on promises you've made is key to allaying the suspicions of management and building trust. Nancy Smith used this approach when she became the CSEA general unit president. It took some time, but eventually management started to understand that they could work with her on the basis of trust.

In 1996, new union officers were elected at the nursing home, and they proved to be more willing to hold to agreements than the previous union leadership. Management concurs it is very important that both sides "stick to the course" of whatever has been agreed upon.

Both management and labor must be open about their interests and positions. Maintaining an open-door policy and encouraging employees to approach management when they have concerns is important to fostering labor-management cooperation. County Personnel Officer Martha Standish says she believes that openness and honesty are the best ways to build the trust necessary for cooperation. However, she acknowledges that sometimes this openness backfires. All it takes is one person to make a comment, and it can affect people's trust in you. When you are trying to bring together two groups that have traditionally been very adversarial toward one another, trust is very fragile and takes time to build. Yet she still holds to a policy of being "very available and honest, telling things like they are—even if sometimes people don't like to hear it."

The Role of Commitment and Leadership

People who are involved in these joint efforts must be committed to the county. Both management and labor must think beyond what is beneficial to their own interests and instead think about what is good for the county as a whole and for their total membership. Both labor and management feel that it is difficult to get people to shift to this new way of thinking.

Before efforts at labor-management cooperation can even begin, the key people involved must see the value of these efforts. There must be a commitment on the part of both labor and management to invest time and effort in the meetings and in the initiatives that emerge. Personalities of the leadership can influence whether labor-management committees are adopted. In the nursing home, the turnover of the union leadership from a president who had operated for a long tenure in an adversarial manner to a president with a very different style was very important. Similarly, Nancy Smith has had a very large influence as president of the CSEA general unit.

There must be a willingness to work things out on the part of the key individuals. In Genesee County, the individuals active in labor-management efforts come to the table with a real desire to work together to resolve workplace issues. One indicator of commitment on labor's part is that all the current officers in the general unit plan to run for reelection this year. They all feel very positive about the way things are going and want to stay involved.

In departments where management and staff do not see the value in trying to address issues that fall outside of their contract or outside of day-to-day operations in a nontraditional manner, labor-management committees are difficult to establish. The county went as far as bringing in a PERB mediator to try to help facilitate the development of a labor-management committee in one of their non-CSEA units, but it was unsuccessful. However, this department's management has recently turned over, as has the union leadership, and Martha Standish is hopeful that it may now be possible to start a labor-management committee there.

Changing Perceptions and Attitudes

Labor and management perceptions clearly play a role in how effective cooperation can be. At the nursing home, the belief among unionized workers was that when management spoke to other people, such as the legislature, they were critical of the union. Management's perception was that the labor-management committee was something that they had to do, but not really a useful forum for solving problems. Both of these perceptions needed change before cooperation could occur.

As Nancy Smith says, in today's workplace, "we need to realize that change is inevitable." One of the challenges of cooperation is that people often find it difficult to accept that sometimes things have to change, even if they might prefer the status quo.

The elected officials agree with the concept of labor-management cooperation, but sometimes have concerns about management too often taking the side of labor. Additionally, there is also some degree of dissatisfaction on the part of some union members who are less knowledgeable and enthusiastic about the process.

Goals of Labor-Management Cooperation

The goals of labor-management cooperation in Genesee County are not written down anywhere, and the individuals we spoke with each focused on different goals.

Management describes the goal of labor-management committees as fostering an environment of equality among and between labor and management, encouraging everyone to bring their ideas forward. One important purpose of committees is to empower employees, by letting them know their opinion is valued and encouraging them to share their ideas for improvement. Management strives to have good, functioning labor-management committees, a good understanding with the union officials, and an established basis of trust, so they will avoid grievances, which are time-consuming and costly. However, the county manager notes that the bottom line is the client—the person they're serving. Anything they do must be done with the final product (the service) and the customer (the taxpayer) in mind.

The union has a goal of educating people on the benefits of cooperative efforts. Believing that most employees sincerely do not want an adversarial relationship, the CSEA general unit president is getting more people involved in some way in the union, and in labor-management committees. She also hopes to establish smaller labor-management committees within county departments.

According to Administrator Jack Pease, one of the main goals at the nursing home is to address the issue of interpersonal relationships. Everybody needs to be treated respectfully in order for things to work, so they are going to be looking more closely at relationships in the workplace. The nursing home staff works in a very demanding environment, which puts a great deal of pressure on the employees, and he believes improving work relationships can help improve overall performance.

Impacts of Labor-Management Cooperation

The county doesn't have objective measures of the effects of labor-management cooperation. Measurement of success should be implemented through the cooperative process.

The union leadership believes that cooperative efforts have made workers more productive and have improved relationships between people in the workplace. Because of the programs they have implemented,

the workplace is more family-oriented. For example, you can take a sick day to care for a sick child or spouse.

Not many grievances are filed in Genesee County. When a problem arises, the general unit president will call the personnel officer to discuss it, and they will go from there.

Fortunately, they have not had much downsizing-most of their workforce reductions have occurred through attrition. Privatization has not played a significant role in the county. While some employees have perceived it as a threat, very few, if any, services in the county have been privatized to date.

Currently, however, the county legislature is considering privatization of the county Mental Health Services. Cuts in state aid have put the agency under fiscal pressure. Together, labor and management in the agency responded to the problem by forming a joint action committee to work on alternatives to privatization. The general unit president works at Mental Health Services and has been heavily involved in this effort. The process has not been negative or adversarial; employees have been involved and have agreed to make changes, some of which have been implemented already. While a decision has not yet been made, it is very possible that privatization will be avoided because of this cooperative effort.

The nursing home unit president believes labor-management cooperation enables management and employees to see the "big picture." It broadens everyone's perspective on the functioning of the facility, and is a good forum for bringing people together and getting to the root of challenges in operations.

Service Quality

The county has not implemented formal measurements of customer satisfaction with their services. Service quality monitoring and evaluation is probably one of the next areas that the county will be getting into. County Manager Jay Gsell believes that "it's a priority to understand the needs of the customers. Quality of service, reasonable cost and being treated fairly and equitably are the priorities in service delivery."

Personnel Officer Martha Standish notes that programs like TQM are great, but they take a great deal of time and effort. They have tried instituting quality workgroups in the Department of Social Services, but they have had a difficult time. Right now they have one self-directed workgroup there, with about five to seven people.

Especially in the nursing home, the quality of service delivery is critical. Nursing homes have changed a great deal-they must operate with much more flexibility in service provision than in the past. So workplace change is happening within the context of a very different environment. They need to keep employees involved, and use the labor-management committee. It doesn't work to make changes in a top-down manner.

Every year the state health department surveys the nursing home. They are trying to use the state survey to do their own evaluation, and they are trying to come up with other ways to measure quality internally, using survey of residents or their family and other information.

Cost

The effects of labor-management efforts on cost aren't formally quantified. Martha Standish and Nancy Smith both suggested that the sick-leave bank probably contributes to cost savings, since it encourages people to take fewer paid sick days. There is also a general impression that labor-management cooperation leads to increased productivity and less supervision time, which ultimately lead to cost savings.

In the county nursing home, it is easier to determine costs, as the home's finances are independent from the rest of the county. They are currently making money and are able to pay their bills, so this indicates that the labor-management cooperation has had some positive financial effects.

Lessons and Insights

Training has played an important role in the county's efforts with the labor-management committees and mutual-gains bargaining. People are often skeptical of a new way of operating, and outside assistance can be crucial in resolving such skepticism. Cornell's Industrial and Labor Relations (ILR) Extension and the New York

State Public Employee Relations Board (PERB) are very good resources.

Martha Standish also believes that it's important that people maintain a "cooperative spirit." Disagreements will still occur, yet people must realize that there is a forum for resolving these disagreements. Labor-management committees and mutual-gains bargaining provide excellent vehicles for arriving at these resolutions.

For the nursing home, the support of and flexibility allowed by the county manager and personnel officer were important to the success of the labor-management committee. Training also helped labor and management at the home to use the committee more effectively. For some time, the members seemed to get stuck on the same old issues, meeting after meeting. A trainer was brought in from CSEA who showed them how to run the process in a more productive manner. The union president recommends distributing the monthly meeting agenda to all committee members prior to the meeting. This ensures no one is surprised or caught off guard by the issues that come up at the meeting. It also allows participants time to gather any information they feel might be relevant to the meeting discussion.

Finally, Genesee County is essentially a small community where connections are close. While the county's community service programs developed out of the labor-management committee, they also have served to strengthen the cooperative character of relations between everyone involved in county government.



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Creating "Win-Win" Situations: The Case of Ontario County

[Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State](#)

Authors: Nicole Blumner and Darth Vaughn

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Twenty years ago in Ontario County, labor-management relationships were confrontational, and walkouts during contract negotiations were not uncommon. Ontario County was then one of several New York counties to have legislative determinations (the Board of Supervisors could impose contracts on the bargaining units), a practice that was very unpopular with employees and was later discontinued. Beginning in the 1980s, changes in management and union leadership led to a new interest in building "win-win" situations that characterize today's more cooperative labor-management relations in Ontario County. The County has built cooperation through a variety of structures and tools, including labor-management committees, a "Service Excellence" total quality management program, and mutual-gains bargaining.

The following people were interviewed for this study:

- Edward Grace, County Administrator
 - Geoffrey Astles, Deputy County Administrator
 - John Garvey, Human Resources Director
 - Robert Russo, President, CSEA Unit #7850
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- [Labor-Management Committees](#)
 - [The Service Excellence Program](#)
 - [Mutual-Gains Bargaining](#)
 - [The Right Climate](#)
 - [Privatization, Engaging Labor, and Performance Measurement](#)
 - [Key Lessons](#)
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Labor-Management Committees

Since the early 1980s, labor-management committees have been key for developing successful day-to-day labor-management relations. These committees function at countywide and departmental levels and around specific issues, such as safety and health. The committees provide an opportunity for workers to bring their issues to the highest level of management in the county. Currently, the county administrator as well as the deputy administrator, the director of human resources, and several local union presidents, sit on the countywide committee. However, county administrators say they are gradually decentralizing the work of

these committees so that individual departmental committees handle most of the work.

The committees meet monthly and have dealt with many day-to-day workplace issues, such as work scheduling, flexible hours and overtime, procedures for dealing with employee absences, and treatment of employees by supervisors. They also deal with long-range planning issues related to the workplace. For instance, prior to the recent construction of the new human services building, the countywide committee met with the architects to develop a building program that suited their needs. Committees do not deal with issues formally dealt with in the labor contract, such as compensation and benefits. Agency-wide committees have formed in the Social Service and Public Works Departments, and a committee is currently forming in the County Nursing Home.

County managers laud the committees as being very effective. Although it sometimes takes a couple of months for people to get used to the idea and build trust, both labor and management agree the committees are useful in solving daily issues. Now issues don't build up until contract renegotiation. Instead, a letter of agreement can be issued, ultimately allowing for a smoother bargaining process. In fact, one union leader reported that the existence of the labor-management committee was a form of "preventive medicine" that allowed him to resolve more workplace issues as they occurred. Labor-management relations were so improved by the committees that he did not have to bring many minor issues to the committee meeting. Officials also point to a reduced number of employee grievances filed, which is likely a result of the committees' efforts. For both labor and management, this means increased time to deal with matters other than labor disputes. Furthermore, labor was able to achieve its goal of gaining greater employee involvement in the decision-making process.

One drawback of the committees is that they effect a loss of authority for middle managers that some resent, since employees are now empowered to bring their concerns directly to the highest level of management. Furthermore, the County only trains the top labor and management leaders in the concepts and techniques of labor-management committees, effectively shutting out middle managers from the process. However, despite middle managers' resistance, both labor and management leaders view the committees as successful endeavors. County leaders say they are taking steps to train middle managers in cooperative processes with the goal of getting them to buy into the new structures. However, training is expensive, and so it may not be possible to train every manager unless proven necessary for success.

The Service Excellence Program

Another cooperative initiative that has been successful in Ontario County is the Service Excellence Program (also known as total quality management or TQM). This program was initiated in 1993 with union participation in order to promote "customer satisfaction by continuous improvement through employee involvement." Initially both labor and management leaders as well as county legislators were trained by Rochester Institute of Technology staff. Initial training cost \$35,000 for employees and \$50,000 for supervisors, managers and elected officials. The county gradually built its capacity to do training in-house, and today all county employees have been trained in Service Excellence concepts.

The Service Excellence program is structured around a countywide steering committee that acts as a core planning group, setting the direction for the program and coordinating the activities of the subgroups. Four of the 37 departments have operational workgroups, which have the same organizational structure as the steering committee and coordinate their corresponding functions.

There are currently six subgroups that perform the following functions:

- Trainers and Facilitators: trains new employees in service excellence concepts.
- Training and Development: provides technical tools and training to TQM teams.
- Measurement and Assessment: surveys and measures customer and employee satisfaction; develops measures for performance standards.
- Team Chartering: selects projects for service excellence efforts; provides mentoring and assistance to

teams in improving job performance.

- Communications: shares information and ideas through a quarterly newsletter; publicizes the program, and increases awareness of program success.
- Recognition and Reward: provides rewards for good work, incentives to improve operations, with the goal of better service as a result. Rewards include free dinners at area restaurants, pins for long-serving employees, and engraving employee names on a plaque in the county courthouse.

The Service Excellence initiative has resulted in "win-win" situations for labor and management. It has also saved county taxpayers money. The workplace safety team project, for instance, began with county safety coordinators identifying high-risk job duties, such as driving and heavy lifting, based on local and national accident and injury data. Employees performing these tasks were then trained by professionals in safer driving and lifting techniques. This initiative resulted in a 37% reduction of OSHA-recordable injuries in the county from 1994 to 1997. Lost days were reduced by 60% in the same time period. As a result of these safety improvements, a special tax assessment to pay for workers' compensation, to be spread out over five years, was paid off in only three due to reduced injuries, saving taxpayers \$1.5 million. Furthermore, employees received an important morale-building message-that management truly cares about their safety on the job.

Another example of the benefits of service excellence is the county sheriff's department, one of only two sheriff's departments in the state accredited by CALEA (Commission for the Accreditation of Law Enforcement Agencies), which requires that 800 standards be met before granting accreditation. Managers emphasize that through service excellence, the county aspires to have the highest professional law enforcement standards in New York State, a goal borne out by the fact that the county jail is also nationally accredited. It's a win-win situation for law enforcement and citizens alike, since there is a lessened liability to the community for lawsuits from dissatisfied citizens. A string of deficiency-free state auditor's ratings in the nursing home and in the home health program further illustrate the quality improvements engendered by the service excellence program.

This is not to say that service excellence is without its drawbacks. Training is expensive and the results are not always immediate. The work groups have experienced varying levels of success, according to the human resources director. In particular, there is a need for greater employee-based innovation in both health and social services departments, both of which have experienced greater resistance from middle managers.

Finally, it should be noted that the work of the Service Excellence committees does not overlap with that of the labor-management committees. However, in a small organization such as Ontario County, there is overlap among the key players in the various groups that allows for communication between them.

Mutual-Gains Bargaining

A third tool, mutual-gains bargaining, has been used in the county to negotiate labor contracts since 1994, when the county used this process to re-negotiate four contracts with CSEA. Training, provided by staff from the New York State School of Industrial and Labor Relations at Cornell University, helped to educate both management and labor about the techniques of mutual-gains bargaining. Results were positive, and both labor and management say they would use mutual-gains bargaining again in future contracts. Through the mutual gains process, they both have become more adept at cooperative skills, such as listening to each other and providing information up front.

Union leaders extolled the benefits of mutual gains, although they acknowledged the difficulty of adjusting to providing information up front. Sounding a less satisfied note, one manager noted that mutual gains is a "tedious process" and might not be used in the next contract, now that trust levels are high, making formal processes for information-sharing less necessary. Mutual gains has proven valuable to smooth negotiation contracts, but as another manager put it, "it is the respect and mutual trust developed the other 11 months of the year that really matters."

The Right Climate

There were several pre-existing conditions needed to build cooperative labor-management relationships in Ontario County. Above all, it was willingness of both labor and management to risk upsetting a stable but fundamentally adversarial relationship to move towards a more cooperative, "win-win" model of relations. To do so, county leaders focused on the county's changing needs and saw the value of changing the status quo in order to "be the best", as one manager said.

There was some initial resistance to the Service Excellence program, for example, on the part of the Board of Supervisors. They were skeptical of, in the words of one manager, "another one of those touchy-feely programs". Today the legislators are much more supportive of the program, but as elected officials, ultimately they are most interested in the bottom line. Since improvements are sometimes hard to quantify, this can be a barrier to gaining their endorsement for new initiatives.

Some employees and middle managers have also remained uncomfortable with the new cooperative outlook. Middle managers may rightfully believe they are being cut out of the decision-making loop, and that their jobs are threatened as a result. However, county leaders say this resentment has diminished over time, as people have gotten involved and helped to solve problems. However, some leaders wished they had made more effort to train middle managers before cooperative processes were instituted. Some county officials believe it may take up to ten years for a full transition to a new philosophy of cooperation.

Support from union leadership has been more uniform, especially in regard to safety, which is also a top priority for national AFL-CIO leaders. Service Excellence parameters have even been incorporated into the most recent labor contract. Still, leaders on both sides remark that some people are resistant to change of any kind, and that it takes time to build the trust and teamwork necessary for change.

Privatization, Engaging Labor, and Performance Measurement

Privatization is a contentious issue that can stymie even the smoothest labor-management relations. Ontario County has successfully dealt with privatization issues by bringing labor into the process. When the county receives an unsolicited offer to privatize a particular service, as it has for the county landfill, nursing home, and home health care, both management and labor are involved in making the decision. In the case of home health, employees are giving input to an outside consultant hired to study the costs and benefits of privatization. County administrators consider the input of employees and the consultant alike before making a final decision.

As a result of the decision-making process, the landfill and nursing home have remained county-run, and the study of home health care is ongoing. County officials, however, do make it clear that just because a service is not privatized today does not mean it can't be in the future. If the private sector can provide the service cheaper and better, according to county management, then the service will go private. This belief, in the words of union leaders, is a "constant challenge," but they are glad to have the opportunity to conduct their own research and bring the results to the table to discuss with management in a cooperative setting.

In another effort to engage labor in decision making, Ontario County union (CSEA) representatives serve on the search committees for new county administrators. The present County Administrator was chosen this way, as was the Director of Planning. County management and the union also cooperated in developing a new cafeteria health plan, which, after a year-long education period, now allows workers to choose their own benefits package.

The effects on employee morale and citizen satisfaction of Ontario's cooperative programs have been positive, but have only been quantified to a limited extent. Officials cite the difficulty of finding objective measures of performance quality. The county has obtained some information through a "Citizen Survey" and an "Employee Survey" conducted under the auspices of the Service Excellence program. The results of the surveys indicate that both citizens and employees are generally satisfied with county services and workplaces. However, there was no survey taken prior to implementing the changes. Nor was the data compared to national norms. While

attitude change may be difficult to quantify, the County is able to show clear instances of cost savings in particular departments, such as the workman's compensation tax windfall. However, the County still does not have a way to measure cost savings on an inter-agency level.

Key Lessons

Cooperative labor-management structures have had a short but productive existence in Ontario County. Several key lessons have emerged, according to both labor and management leaders:

- It may be tempting to jump into the latest trendy program, but few people realize the amount of work needed to sustain the effort. Begin by understanding the level of commitment needed to implement these programs.
- It takes time to build a cooperative labor-management relationship. There is no such thing as a quick fix. However, significant success was achieved in Ontario County in just three years of service excellence and mutual gains.
- In any negotiation, it is important to make sure the other side looks good. This mindset can lead to a more productive negotiation process.
- The right people need to be at the table for a successful result. If labor leaders don't represent employee's true interests but defer to management, for instance, the negotiation will be futile. The people at the table also need to have the authority to make a final decision.
- One group can adhere to its principles and still maintain a regard for the other group's interests. There can be mutual gains in the negotiation process.
- Middle management must buy into the process and be trained in the cooperative philosophy. Even if top management buys into the idea, middle managers need to support it. Leaders should not be afraid to make ultimatums if middle managers continue to resist changes.
- Attain small victories like safety improvements, and build on those successes to make broader changes.

Certain resources were especially helpful to both labor and management in getting the cooperative process started. First and foremost, they did extensive background research on each initiative. For instance, county leaders recruited an advisory council of eight business people who use Service Excellence in their firms. This council continues to provide information to the county about private sector innovations that improve performance and service. Managers cited the importance of looking to the private sector to learn about successful methods for building labor-management cooperation.

Area educational institutions were also a valuable resource. The Finger Lakes Community College Business Institute (FLCC), the Rochester Institute of Technology College of Continuing Education, the Cornell School of Industrial and Labor Relations, and the Center for Government Research, a nonprofit public-policy consulting firm in Rochester, all aided the process through information and/or training. The FLCC, for example, houses an Excellence in Government Institute, which offers all county employees free certificate programs in supervision, customer skills, and workplace skills. Course topics include conflict management, problem solving, meeting skills, and tools for process improvement. On a national level, a summer program of the Institute for Local Government at the University of Virginia gave officials a larger perspective on government restructuring efforts around the country.

Conclusion

Instituting cooperative processes involves a culture change, an evolution in the way work systems are designed. It does not occur overnight, nor without careful preparation. In order to effect changes in working relationships and labor-management relations, managers, union officials, legislators, and employees need to be trained on the philosophy behind cooperation. Both parties need to work together continuously to implement and effectively administer change.

Labor-management cooperation in Ontario County is a testimony to the leadership of both the union and

management in seeking better ways of working and new paths to success. Ontario County's example shows that cooperation does not have to compromise or deny the identity of either party. However, cooperative structures are not panaceas. Conflict may still arise, and if handled correctly, can spark creativity and change. Ontario County's example demonstrates that labor-management cooperation can provide a better way for government to function effectively.

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Cooperative Labor-Management Restructuring Tools in Tompkins County

[Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State](#)

Authors: Jon Gans and Kristin Guild

June 1998



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Tompkins County is located in the Finger Lakes region of New York State at the base of Cayuga Lake. It has a population of approximately 95,000, and operates under a county administrator who is appointed by the fifteen-member elected Board of Representatives.

In Tompkins County, the primary focus of cooperative labor-management relations is a total quality management initiative called Partners for Quality. All labor-management committees are implemented under the structural umbrella of the Partners for Quality initiative. Mutual-gains bargaining is another tool used in Tompkins County. However, the scope of mutual-gains bargaining is not as broad as the Partners for Quality program nor as central to day-to-day decision making and service delivery.

The following people were interviewed for this study:

- David Chase, President, CSEA Local 855
- Scott Heyman, County Administrator
- Barbara Mink, Chair, Board of Representatives

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- [Mutual-Gains Bargaining](#)
- [Benefits of Labor-Management Cooperation in Tompkins County](#)
- [Key Lessons and Insights](#)
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Labor-Management Committees

The Origins of Labor-Management Committees in Tompkins County

Labor-management committees have long been implemented in an ad hoc manner in Tompkins County. There was a clause in the standard labor contract which allowed for creating labor-management committees to resolve workplace conflicts or address specific projects, and labor-management committees were occasionally used in that context. There was also an Employee Council (comprised primarily of employees) which served as a venue for communication.

These committees set the stage for implementing a formal total quality management program in the county in several ways. First, they demonstrated to employees, managers, and elected officials that cooperative

structures could be effective. Second, the ad hoc committees on which any employee, union or non-union, could serve and which were beginning to address contract matters such as terms and conditions of employment, represented a threat to the authority of the CSEA Local 855, which bargains for all county employees. Thus, when county managers wanted to formalize labor-management committees and subsume them under a total quality management initiative, it was in the union's interest to work to negotiate an exclusive agreement between the county Board of Representatives and the union. At that time, the other existing cooperative structures such as the Employee Council were disbanded.

How Labor-Management Committees Function Now

Under the total quality management program, there is a nested system of labor-management committees; a hierarchy stepping down from the Leadership Council, to departmental committees, to cross-functional project teams.

The umbrella committee is the Leadership Council which directs the implementation of the program and provides structural organizational support for departmental labor-management committees operating under the program. The large departments in the County, such as the Department of Social Services, the Health Department, and the Probation Department, each have a departmental labor-management committee which addresses general workplace matters and formulates policy recommendations designed to improve the efficiency of the department. Cross-functional project teams are created to work on a particular project such as coordinating intake systems for welfare and other social service recipients.

Partners for Quality

In 1993, county administrators and elected officials decided to formalize the cooperative structures in the county and implement a more comprehensive mechanism for cooperative decision-making: the Partners for Quality program (also known as total quality management or TQM).

Tompkins County Administrator, Scott Heyman, had been interested in the concept of TQM for a number of years, but information about implementing total quality management in the public sector was difficult to find. After some research of successful examples of total quality management in the public sector in Minneapolis, Minnesota, and Madison, Wisconsin, the Board agreed to hire Marcia Calicchia from the School of Industrial and Labor Relations (ILR) at Cornell University and the Program for Employment and Workplace Systems (PEWS) to assist in planning the implementation and conduct employee training. These consultants were chosen due to their jargon-free and labor-oriented approach to TQM. This perspective on total quality management was, and still is, very important to the goals of the county.

Shifting from Autocratic to Cooperative Work Systems

Barbara Mink, Chair of the Board of Representatives, described total quality management as "an absolute visceral change in the way [we] react to problems and the way [we] take initiative for change." As a result of the Partners for Quality initiative, many managers have shifted from an autocratic way of directing operations to one that is more cooperative. This change in management style is beginning to impact all departments. Almost everything that is done in Tompkins County now is done through a labor-management framework. Total quality management has impacted Tompkins County employees and managers in a profound way; a higher degree of communication and cooperation is now part of the culture in Tompkins County.

Structure of the Partners for Quality Program

There are three primary components to Partners for Quality:

1. The Civil Service Employees Association (CSEA) Local 855 and the Tompkins County Board of Representatives spent a year negotiating an agreement establishing the labor-management partnership. The agreement outlines the guiding principles and overall expectations for the initiative. The agreement is still in force.
2. The Leadership Council - a labor-management committee which guides the implementation of the Partners for Quality program and provides structural, organizational support for departmental labor-management committees operating under the program.
3. Every employee, manager, and legislator in Tompkins County is trained in total quality management

techniques and work processes. The goal is to provide training that crosses formal organizational boundaries. Marcia Calicchia and her colleagues have trained twenty in-house facilitators in TQM techniques and several people within the county now have leadership roles with the program.

Tompkins County has invested heavily in training for this program. Between 1994 and 1997, the county spent just over \$300,000 for outside consultants to conduct training. In 1998, the county will spend an estimated \$170,000 for consultants to complete the bulk of the training (for all departments except the sheriff's department which is independent of other county government). Since 1997, in-house costs have been around \$100,000. These costs will drop dramatically after 1998, when all employees, managers, and elected officials have been trained in total quality management techniques and only training for new employees and refresher courses will be necessary.

Successes

Certain projects are ideally suited for joint decision-making. It can be a time-consuming process, but the tangible results are often worthwhile.

Example - Human Services Building

In December of 1997, Tompkins County completed construction on a new building to house the Department of Social Services. The building was planned using TQM methods with a great deal of employee involvement in decision making. The old building had inadequate ventilation and a lawsuit had been filed by employees which prompted the search for a new facility.

When decisions such as these were made in the past, a committee of five legislators was chosen to oversee the project without representation from labor. When the Board announced the formation of this committee, union representatives requested labor's involvement in the design and construction of the facility. The size of the preliminary planning committee grew to twenty-one members and, although it was large, the contribution of labor to the overall project resulted in an extremely functional building.

The process took four years from conceptualization to completion. Most importantly, a lot of the controversy that usually accompanies this kind of dramatic change was eliminated. When the committee was first established, labor expressed some fear and anxiety toward the project. These concerns were largely dealt with in the context of the various labor-management committees that were formed.

There were at least three committees established to construct the building: a stakeholders committee comprised of building occupants (both labor and management) to do the preliminary planning of what was needed in a new building, a building design committee which determined room sizes, color scheme, carpet types, etc., and a building construction committee which organized and supervised construction. Barbara Mink reported: "[I]t was extremely labor intensive, but not agonizingly so, and it resulted in the best building project we have ever had."

Limitations

Labor-management committees and total quality management methods can only function well when committee authority is clearly-defined and consistent.

Example - Downtown Ithaca Parking

A county labor-management committee was formed to address the lack of employee parking in downtown Ithaca, and was charged with the task of making recommendations to the Board of Representatives. The parking committee did not have jurisdiction over expenditures; so the members could not recommend putting up a gate that costs \$20,000, for example, without going through the Board. However, the committee was given the authority to determine the policies for county parking lots. The committee has recommended that several parking spaces currently reserved for Board members be reassigned to other county employees. The Board is poised to reject the committee's recommendations.

The labor-management committee in this case does not have the authority to determine a policy that the

Board of Representatives does not like. Situations like this which give authority only to take it away can undermine cooperative efforts and slowly-developing trust. To prevent failures, the role and authority of committees should be clearly defined from the outset, and elected officials must be as committed to the process as others involved.

Mutual-Gains Bargaining

In Tompkins County mutual-gains bargaining techniques have been instinctively used for many years. In 1995, County administrators decided to formalize a mutual gains approach by training employees in the technique. Bernie Flaherty of the School of Industrial Labor Relations at Cornell University trained approximately 300 of 720 county employees in mutual-gains. Now all bargaining units other than the sheriff's department utilize mutual-gains techniques for all terms and conditions except salary.

Mutual-gains bargaining is not a panacea for Tompkins County. The impact of using this tool depends on the commitment of the participant as the President of the CSEA Local 855, David Chase pointed out:

Mutual-gains bargaining can be whatever you want it to be. Some people don't see [win-win] as win-win. Some people see it as compromise-compromise...There's a contract between labor and management which automatically creates sides. But, that doesn't mean that the two shouldn't look at each other and say: we should do what's best for the both of us (and) for the entity that we serve which is Tompkins County...We realize the reality of the situation; there is X amount of money to be allocated and we need to figure out the best way to move it around.

Mutual-gains bargaining serves to improve the process of negotiations. Through the use of this tool, consensus and agreement can be reached more quickly and with less aggravation in Tompkins County.

Advantages of Mutual-Gains Bargaining

All three interviewees recognized the benefits of mutual gains techniques in negotiations. The fact that interest-based approaches to problem solving have extended beyond the collective bargaining process to committee, and other discussions, is an indication of their usefulness. Chair of the Board of Representatives, Barbara Mink indicated that the Sheriff's Department used the language of mutual gains in the latest discussion of health care benefits.

In collective bargaining, salary remains the only issue that is not negotiated with mutual gains techniques. The county has offered to negotiate salary using mutual gains but the union has resisted. However, the issue of salary was 'on the table' faster than ever before in the latest round of contract negotiations according to David Chase.

Benefits of Labor-Management Cooperation in Tompkins County

There are three broad expectations associated with labor-management cooperation in Tompkins County: to improve labor/management relations, to decrease costs for delivering services, and to keep taxes down. The decision to establish formal structures to share decision-making with labor was not due to particular fiscal or service pressures. TQM is a formalization of the labor-management relationship that has been developing since the 1980s.

Improved Relations Between Labor and Management

The focus of the Tompkins County Partners for Quality (PfQ) initiative is on improved labor-management relations. This reflects the perception that cooperation will directly, and indirectly, result in cost savings and improved service quality. Barbara Mink describes its effects as:

"...a shift in our paradigm; an absolute visceral change in the way we react to problems and the way we take initiative for change...Tompkins County is a good example of how TQM can work...The best evidence for this, in addition to the cost savings and improvements in efficiency, is the change in people's attitudes."

These goals have been articulated through various mission and vision statements. In addition, TQM

orientation sessions, which have occurred since December 1994, are another forum for developing a shared understanding of these goals.

Grievances

One indication of improved relations between labor and management is in the type and number of grievances that have been filed since the implementation of TQM. The grievances that are filed today represent issues that are not resolvable through labor-management committees. In Tompkins County, grievances have been minimized through these new avenues for communication.

Improved Service Quality

In Tompkins County, the focus of labor-management cooperation is on process issues. For instance, the Department of Social Services labor-management committee developed a framework for eliminating excessive layers of administration. Now, there is a single intake system for food stamps and Medicaid. Indirectly, this change is impacting more than service quality. The cost of providing services is being reduced.

Cost Savings from Improved Labor-Management Relations

Management believes the benefits of TQM more than outweigh the costs and has been willing to invest heavily in the process. However, figures documenting these cost savings are hard to come by due to a fear that cost savings will result in budget cuts, punishing successful departments. Coupling total quality management with performance-based budgeting techniques could help to encourage documentation of cost savings. Another strategy would be to simply make it clear at the outset to departmental staff that if funds for training and to sustain the overall initiative were going to continue to flow, documentation of cost savings must be forthcoming.

Key Lessons and Insights

Trust, Leadership, and Defining Roles

The most important factor in developing cooperation between labor and management is people. One of the main reasons for the success of TQM in Tompkins County is that both management and labor were committed to the idea. The degree of trust that existed prior to the implementation of TQM enabled Tompkins County to proceed with the initiative.

Both Barbara Mink (Chair, Board of Representatives) and David Chase (CSEA Local 855 President) acknowledged the role Scott Heyman (County Administrator) played in developing support for the Partners for Quality program in Tompkins County. One concern David Chase has is the impact Scott Heyman's retirement will have on the initiative. Subsequently, one priority of the interview process is to determine whether or not the values of candidates for County Administrator are consistent with the TQM program.

The expectations and roles for labor-management committees must be defined as clearly as possible to limit misunderstandings. Clear roles enable committees to remain focused. Union representatives have played an important role in keeping this focus and pointing out when the committee is getting off track.

Communication and Planning

Communication is paramount to success. Through communication goals are defined, expectations are delineated, and relationships are built. Limiting the use of jargon and terms also facilitates the process, especially during training sessions.

Careful planning will result in a smooth transition during implementation. It is important to make sure the strategy for implementation is clearly defined before presenting it to employees. Tompkins phased in its program and this led to a lot of confusion among union members and employees because of the time lag between the start of training in the Department of Social Services and the full implementation of TQM. Two years have elapsed since the initiative was announced and some people have just begun their training.

Information

The major obstacle was not the will to begin using TQM, but the means by which to implement the program. Tompkins devoted a lot of time and effort to finding the right people to conduct the TQM training. County

Administrator Scott Heyman asserts, "You have to make sure that you get the right people to do the training; that the consultant's conception of TQM is what you want; that it is consistent with what you have been doing." In addition to finding the right facilitators, reviewing the experience of local governments through hands-on practice is important.

Conclusion

This case study has shown that labor-management cooperation is not only possible, but viable in Tompkins County. With the right people to coordinate the effort and the support of labor, management, and elected officials, the TQM initiative in Tompkins County has been, to a large degree, successful. The insights drawn from this case may provide other county governments with information necessary to pursue labor-management cooperation as a tool for service delivery.

Restructuring Local Government

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New York State Taylor Law: Negotiating To Avoid Strikes in the Public Sector

Kristin Guild, May 1998

Governments Look to Labor for Restructuring

As local government officials and agencies seek ways to cut costs and improve efficiency, restructuring and reinventing government have become common catchphrases. Since labor costs are the largest single expenditure of most government agencies, it is natural to turn first to labor in efforts to restructure government. It is tempting for local governments to follow the transformative model implemented by private corporations - i.e. downsize, utilize temporary workers, out-source/privatize, cut wages and benefits, demand longer hours from remaining employees, and increase investment in labor-saving capital equipment. However, government has constraints and responsibilities that the private sector does not face.

In order to restructure government to meet the challenge posed by dramatic changes in the United States economy, local government officials must have a solid working knowledge of their rights and responsibilities with respect to civil service personnel. There is no Federal law targeted specifically at civil service unions or personnel policy, and legislation varies widely between states. New York State government employees are among the most unionized civil servants in the nation, and the State also has strongly-defined employee rights within its statutory Civil Service Law (colloquially known as the Taylor Law) topical case law.

The major points of the Taylor Law and subsequent case law pertinent to local government officials and labor representatives, and the history and development of the law are described below.

No Labor Strike = Strong Bargaining Rights

Due to the potentially severe impacts to citizens of a halt in essential government service provision, New York State law has long prohibited public sector strike. The legal strategy until the 1960s was to apply harsh penalties to striking workers. This strategy did not, however, prevent such serious strikes as the 1966 New York City transit worker strike which effectively crippled the city and cost an estimated \$100 million per day. By the late 1960s, a number of public sector employee strikes in the State pushed the government to shift from a penalty-based system to a prevention-based one.

The Taylor Law

The new law passed in 1967, the Taylor Law, permits union organizing, and provides a system within which to resolve labor-management conflict short of striking. Public employers are required to recognize and negotiate in good faith with the union representatives of a bargaining unit. The law establishes certain mandatory bargaining issues, which public employers must negotiate with union representation. Broadly stated, mandatory bargaining issues are terms and conditions of employment.

The Public Employees Relations Board (PERB) interprets which issues are terms and conditions of employment under the law. PERB is also mandated to facilitate union recognition and labor-management

contract negotiations, and to arbitrate any unresolved disputes.



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The Origin of the Taylor Law

From 1947 to 1967, employees of all levels of government in New York State were governed by the Condon-Wadlin Act which prohibited public sector strikes and assessed harsh penalties to strikers. However, workers continued to strike, despite the prohibition, and penalties were seldom applied because they were perceived to be too extreme. The Condon-Wadlin Act provided no alternative methods to resolve labor-management disputes.

In the 1960s, a series of large public sector strikes, including a transit workers strike which brought New York City to a halt for twelve days, made it clear that the law needed an overhaul. In January of 1966, Governor Nelson Rockefeller created a Public Employee Relations Committee chaired by Professor George W. Taylor of the University of Pennsylvania to make legislative recommendations that became the Taylor Law.

[More detailed history](#)

The Interpretive Role of the Public Employment Relations Board

The Taylor Law created an agency called the Public Employment Relations Board (PERB) to implement and interpret the statute, resolve any negotiating conflict, and conduct research on civil service industrial relations. The PERB board consists of three members appointed by the Governor to staggered six-year terms. PERB employs approximately forty staff to perform mediation, legal and administrative duties. The board is located administratively within the State Department of Civil Service, but is independent of any governmental department.

PERB can be involved in any stage of the negotiation process, upon the request of either party, or on the board's own initiative. The Public Employment Relations Board has "exclusive jurisdiction of labor disputes between public employers and public employees involving the right to organize and the right to negotiate in good faith" (Lawyers Co-Operative Publishing Co. 1982: 199). PERB has broad powers to prevent improper practices of negotiation such as bad faith negotiation by imposing penalties to parties which engage in improper practices. However, the board only has authority over the organizing and negotiating process, not the contracts which are the end result of collective bargaining.

What is the collective bargaining process mandated by the Taylor Law?

The collective bargaining steps required of local governments by the Taylor Law are as follows:

1. Determine the bargaining unit.

A bargaining unit is usually determined based on either a common employer, place of work, or a common job task. For example, all employees of a county may be represented by one union, or the custodial staff by one union and administrative staff by another. The bargaining units are most likely already established, but may need occasional revisions. If there is conflict over designating the bargaining unit,

Public Employment Relations Board mediators can help to resolve the conflict.

2. Determine the recognized employee organization for each bargaining unit.
This organization will represent all employees of that bargaining unit in negotiations with the public employer, whether all employees are members or not. If there are competing employee organizations with nearly equal membership within the bargaining unit, employees will vote to determine which organization will represent them in negotiations. Here too, the PERB can assist with conflict resolution.
3. Determine mandatory bargaining issues.
If there is conflict over what constitutes a mandatory bargaining issue (and there often is), the Public Employee Relations Board determines this based on the statute and case law. The PERB decision can be appealed to New York courts, and decisions have been overruled in the past. Numerous examples appear in Volume 19 of New York Jurisprudence published by the Lawyers Co-Operative Publishing Co.
4. Negotiate in good faith.
If either the public employer or the union do not negotiate in good faith, PERB has the authority to impose penalties. If negotiation reaches an impasse,
 - a. PERB mediates. If mediation is unsuccessful,
 - b. the parties may voluntarily submit to binding arbitration or
 - c. PERB assigns a fact-finding board which investigates the negotiating issues and makes recommendations.
 - d. If the parties refuse to comply with the fact-finders' recommendations, the matter goes to the appropriate legislative body for a hearing. The appropriate legislative body makes the ultimate decision. Which legislative body has jurisdiction over the final decision depends upon the level of government. For example the local school board has jurisdiction over a dispute with educational workers, and the county legislative board would determine the contract conditions of county employees.
 - e. The Taylor Law exempts fire and police services from this process, due to the essential nature of the service, and requires that they go directly to binding arbitration following unsuccessful mediation.
5. The appropriate legislative body approves the negotiated contract.

What are mandatory bargaining issues?

Public employers are required by the Taylor Law to negotiate with recognized employee groups on mandatory bargaining issues, which some call "bargainable" issues. This does not mean that public employers must yield to union demands on the issue in question, but just that it must be a topic of negotiation. The Taylor Law defines terms and conditions of employment as mandatory bargaining issues. What legitimately constitutes "terms and conditions of employment," however, is defined not by the statute itself, but by subsequent decisions by the Public Employment Relations Board, and when the PERB decision has been contested, by the New York courts.

According to case law, any provision relating to payment including wages, medical benefits, sick, vacation, and holiday leave, reimbursement for expenses, or severance pay, or to disciplinary policies and work rules is subject to mandatory collective bargaining (Lawyers Co-operative Publishing Co. 1982, 206-7). Job security, however, is not a condition of employment and is not a mandatory issue for bargaining, nor is the allocation of positions to salary grades. According to the New York courts, class size in the case of educational services is not a term or condition of employment, and thus does not have to be a subject of collective bargaining (ibid.: 207).

When is subcontracting a government service a mandatory bargaining issue?

One major means for government restructuring is subcontracting government services to the private or non-profit sectors. Subcontracting unionized services is sometimes deemed to be a term and condition of employment in New York State and, therefore, a mandatory issue for collective bargaining. Case law and

PERB decisions have established two broad criteria for services proposed for subcontracting which must be collectively bargained:

1. The service is currently provided exclusively by unionized workers, and
2. the work to be subcontracted must be substantially the same as the work conducted by unionized employees.

However, even if these two conditions are the case, the issue may not require negotiation if the public employer can demonstrate that there has been a significant change in the qualifications for service. John Crotty, Counsel to the Public Employment Relations Board and PERB Deputy Chairperson, gives a recent example from Erie County. Medical care to elderly and infirm citizens has traditionally been provided by general practitioners. County officials decided that geriatric specialists would better serve their constituents, and contracted with a private firm of geriatric specialists to provide the service, firing all of the county-employed general practitioners. The employee organization representing the general practitioners claimed that this change in service provision was a mandatory issue of collective bargaining, and the matter went to the Public Employment Relations Board for a decision. While the service was previously provided exclusively by the general practitioners, and while the service to be provided would still be medical care to the same client group, PERB determined that the qualifications for employment, and thus the nature of the service provided, had been substantially changed. PERB ruled that this change was not an issue of mandatory collective bargaining.

Crotty estimates that, of cases of subcontracting brought to PERB, 40% are determined to be mandatory bargaining issues, whereas 60% are dismissed.

Is downsizing government services legal according to the Taylor Law?

Yes. The purpose of civil service legislation is "to protect efficient public employees from partisan control [It] is not designed to prevent reorganization of a department to promote effectiveness and economy (Lawyers Co-operative Publishing Co. 1982: 230). Public service positions can be abolished in good faith when there is no longer a need for the service, or when financial circumstances require government cost-cutting. To legally eliminate a position for economic reasons, the cost savings must be equal, or nearly equal, to the amount that would be paid to the employee. Thus, it is illegal to discharge an employee only to replace them with a newly hired employee to perform essentially the same or similar services. Similarly, it is illegal in New York State to eliminate positions by subcontracting the service if the service will remain essentially the same.

What resources for contract negotiation, mediation, and information are available?

The Public Employment Relations Board employs mediators and lawyers who can help guide local governments through the process and assist in conflict resolution. However, PERB is a small agency with numerous responsibilities, and does not have much time to devote to improving labor-management relations and mediation. PERB has offices in Albany, Buffalo, and New York City.

<http://unix2.nysed.gov/ils/executive/perb/mission.htm>

The United States Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation produced a report in 1996. The report gives numerous examples of cooperation throughout the country. http://www.dol.gov/dol/_sec/public/media/reports/worktogether/toc.htm

The text of the Public Employees' Fair Employment Act can be easily accessed through the internet at <http://www.law.cornell.edu/states/ny.html#codes>. Select Statutes, then Civil Service.

Written resources include:

Donovan, Ronald. *1990 Administering the Taylor Law: Public Employee Relations in New York*. Ithaca, NY: ILR Press Cornell University.

This text describes the events in New York State leading to the passage of the Taylor Law. It describes the role of the Public Employee Relations Board in administering the law.

Kearney, Richard C. 1984. *Labor Relations in the Public Sector*. New York: Marcell Dekker, Inc.

Documents the history and legal environment of public sector collective bargaining in the United States, and notes the proportion of public sector unionization in the states of the union. It investigates the monetary and personnel impacts of collective bargaining, and explores methods to resolve impasses in the negotiating process.

Lawyers Co-operative Publishing Co. 1982 *New York Jurisprudence 2d*. Volume 19. Civil Service Law B347-B404. Rochester, NY: Lawyers Co-Operative Publishing Co.

One in a series of volumes describing important case law pertaining to New York statutes (organized by statute, subject, and keyword) in a readable narrative format which highlights critical aspects of cases and of decisions. This volume contains descriptions of civil service case law.

PRIVATIZATION AND THE MARKET ROLE OF LOCAL GOVERNMENT

**Small growth in contracting underscores
dominance of service provision by public employees**

by Mildred Warner and Amir Hefetz

In the early 1990s, Chautauqua County, N.Y. was pulling out of an economic slump. Keen to maintain services while reducing taxes and building government reserves, the county executive aggressively restructured government services using a mix of strategies — sometimes privatizing services, but at other times bringing previously privatized work back in house. The county also cooperated with other local governments to achieve economies of scale, and introduced performance-based incentives to promote efficiency and investment in new technologies within county departments. By 1997 the county funds were up, the tax rate had fallen, and services had expanded. In the end, the county's officials decided that, barring a few exceptions, neither the private nor public sector offered an inherent advantage, so they found a middle path between those who stress the advantages of privatization and those who advocate for the direct provision of services by government. (For more details on Chautauqua County's experiences, see the case study in Appendix C.)

Successful local governments such as Chautauqua County's recognize privatization as one of a number of available tools for restructuring their operations. Other such tools include inter-municipal

cooperation, performance-based incentives, and cooperative labor-management relations. All of these options can help governments enhance economic and social efficiency. While privatization represents the most widely pursued alternative to public service delivery, local governments use a wide set of restructuring strategies in order to address a variety of market conditions and a broad range of social concerns.

Local governments often find themselves to be the sole buyer of a given type of service, and, as such, must give careful attention to their role in the market. When it comes to interacting with the marketplace, governments can play many roles, acting as regulator, provider, and contract manager. Sometimes governments even create a market simply by their need to deliver a certain kind of service. In these cases governments must ensure competition, acceptable costs, adequate service quality, and stability in service provision.

Our analysis of national longitudinal survey data from the International City/County Management Association (ICMA) for 1982 to 1997 shows that:

- Although local governments employ a broad array of restructuring alternatives, service delivery by public employees remains the dominant form of provision, hovering around an average of 60% when all services are taken into account.
- Despite the increasing political acceptance of private forms of governmental service delivery, privatization to for-profit and non-profit firms has risen only slightly, from 22% in 1982 to 24% in 1997, an increase that has not been steady.
- The next most common alternative form of service delivery—inter-municipal cooperation, which achieves similar economies of scale but keeps work in the public sector—also has risen slightly, from 12% in 1982 to 15% in 1997.
- Ninety percent of all public service restructuring takes one of three forms—privatization to for-profit companies, privatization to non-profits, and inter-municipal cooperation.

Data for this study are based on ICMA surveys of alternative service delivery arrangements of local governments. ICMA surveys have been conducted every five years since 1982 and include all U.S. counties with populations over 25,000 and all cities with populations over 10,000. The ICMA surveys provide a very comprehensive view of the complex mix of services offered by local governments and the array of delivery alternatives employed (see Appendix Table A-2). Conducted in 1982, 1988, 1992, and 1997, the surveys measure the form of service delivery for 64 different services in seven broad areas: public works and transportation, public utilities, public safety, health and human services, parks and recreation, culture and art, and support functions. Forms of contracting out measured by the ICMA surveys include: contracts with other governments (inter-municipal cooperation); contracts with for-profit or non-profit providers; and use of subsidies, franchises, or volunteers. The surveys also measure local government managers' reasons for considering alternative forms of service delivery. The stability in

survey design and large sample size (over 1,500 municipalities) make the ICMA surveys an excellent source of data for comparing governmental restructuring over time.

The persistence of public service delivery

Why does traditional provision of services by government employees persist as the dominant form of service delivery? Past theorizing offers two possible answers: government failure, or quasi-market failure. Government failure may explain why privatization doesn't occur even when it might be appropriate. Such failure may take the form of bureaucratic concerns over loss of control or power (Niskanen 1971). Some studies also suggest that traditional forms of public service provision may persist because of civil service employees' opposition to privatization (McGuire et al. 1987; Savas 2000). Support for this view in our findings, however, is limited.

In theory, privatization attempts to address government failure by separating service provision from service delivery, potentially giving the citizen/consumer more choice. When local governments outsource service delivery, the government remains responsible for the finance and provision of the service, but production and delivery are carried out by private firms or non-profit organizations. These contracts, though, are not always forged in truly competitive markets, a situation that can lead to incorrect service specification—where cost savings come at the expense of service quality—or to a loss of community values (e.g., when privacy is sacrificed in order to contract out tax collection) (Lowery 1998).

Local governments employ several strategies to minimize such problems. They may resort to different levels of contracting in different service areas. They may mix public and private provision in the same service area. Or they may reclaim responsibility for service provision in areas that were formerly contracted out. The availability of these complex restructuring strategies may explain why there has been limited growth in overall privatization trends.

Our research challenges traditional views on service restructuring as a black-and-white choice between only public or private provision, and we provide both a theoretical and empirical basis for understanding the complexity of local government restructuring behavior. Using national statistics, we address the full range of restructuring alternatives and the stability of those choices. We complement the data on trends with examples from the case of Chautauqua County, N.Y. to illustrate the complexity of local government restructuring.

Furthermore, our research shows that ideology does not dictate local service delivery decisions. Rather, as other research has also shown, pragmatic local governments explore a range of options and recognize the need to structure their market for the sake of economic efficiency, service quality, and accountability to community values (Warner and Hebdon 2001).

Why did privatization increase so little?

The privatization movement stemmed from a recognition that the political choices about service provision can be separated from the actual mechanics of service delivery (Boyne 1996; Oakerson 1987). Privatization is advocated as a solution to problems of government failure. Government

monopoly of production, bureaucratic unresponsiveness to citizen needs, and budget-maximizing public officials are typical examples of the kinds of government failure that privatization claims to remedy (Eggers and O’Leary 1995; Savas 2000). The benefits of both public-sector engagement and market discipline can be achieved through quasi-markets that separate provision from production through contracts.

But contracts and quasi-markets also create failures of their own. Lowery (1998) discusses three types of quasi-market failure: failure of market formation, preference error, and preference substitution. The first of these, failure of market formation, results from a lack of competition, which is often due to the limited number of suppliers that can actually provide many public services. If privatization merely substitutes a private monopoly for a public one, then savings will likely disappear after the initial contract. Another kind of market failure is caused by lack of full information and high transaction costs in contract specification and monitoring. Difficulty in contract specification and monitoring can result in service delivery that does not match public preferences. A third form of market failure results when citizen preferences are not in line with collective preference as expressed through government provision. When decisions regarding policy provision are separated from the delivery of the service, “citizen consumers” may exercise choice based on factors such as race or income rather than efficiency or quality, the latter of which government providers intend to be the motivators of citizen choice.

Is the lack of growth in privatization due to government failure?

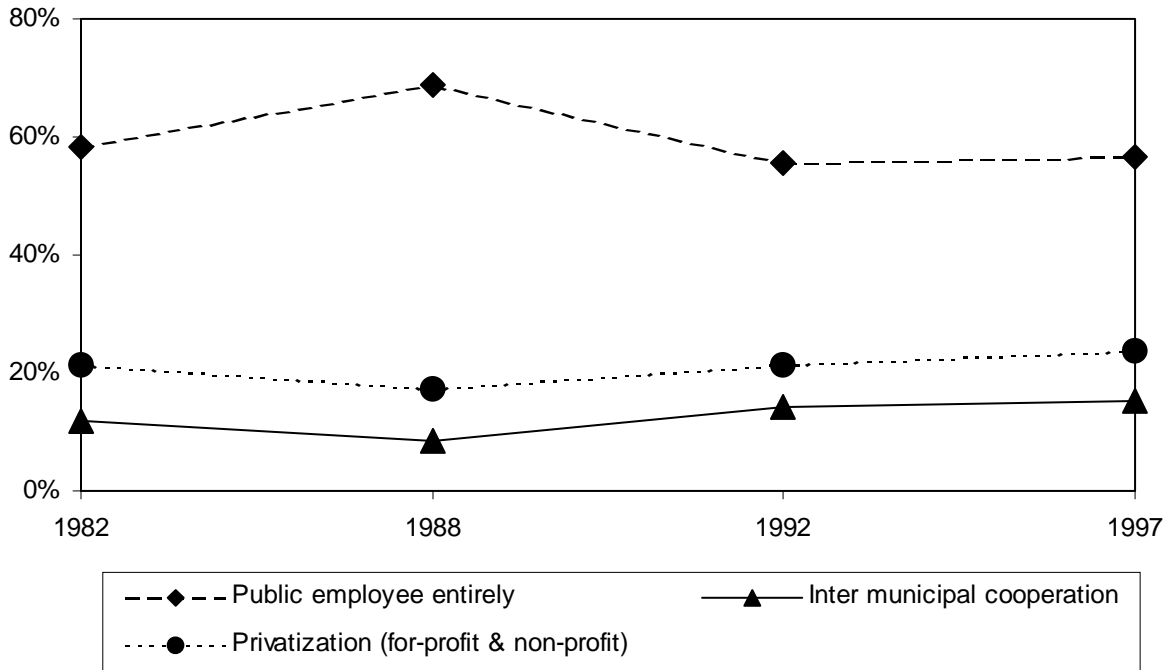
Theory would suggest that the same processes that create government inefficiency, bureaucratic unresponsiveness, government monopoly production, and principal agent problems (Eggers and O’Leary 1995; Savas 2000) also cause governmental reluctance to privatize. However, published research and the ICMA data provide limited support for this view.

Contracting is not new. One reason why there may be so little growth in privatization is that contracting out is not a new phenomenon for local governments. Many services were contracted out in the 19th century and only brought in house as part of the “good government” movement launched to stem problems of corruption (Adler 1999). Henig (1989) argues that contracting by local governments has been a long-standing practice, and that naming these activities “privatization” was part of an effort by public-choice proponents to show empirical support for their propositions. Thus, the trend shown in **Figure 1** is flat because the baseline is 1982, when contracting out was already common.

Fiscal stress was declining. The fact that fiscal stress was declining over much of this period may explain some of the lack of growth in privatization. Pressure to restructure local government service delivery is driven, in part, by concerns with fiscal stress and the notion that private providers, who are subject to the rigors of market competition, will be more efficient than government. So if privatization offers efficiency gains, we might expect to see higher levels of privatization during recessionary periods (e.g., 1982) or times of local government fiscal stress (e.g., 1992). Indeed, the up and down pattern of the privatization trends does appear to mirror the overall economy’s cycles. Beginning in 1988, ICMA tracked local government concerns with fiscal stress, tax pressure, and cost control. However, with the exception of fiscal stress, which rose in 1992, the percentage of governments reporting these factors as important in their decision to restructure shows a steady decline over the period (see **Table 1**).

FIGURE 1

Trends in local government service provision over time



U.S. cities and counties, number: 1982=1675, 1988=1627, 1992=1444, 1997=1460.

Average provision by service delivery alternative as percent of total provision (averaged across all places and all services). Provision level is number of services provided by each place. Privatization includes for-profit and non-profit contracts.

Source: International City/County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data, 1982, 1988, 1992, 1997, Washington, D.C.

Opposition to privatization is stable or falling. The lack of growth in privatization also can't be explained by a strong opposition to the practice. Some argue that privatization reflects a desire for a "smaller" government. While this seems to be the general public's view of privatization, internal opposition to government contracting would be expected from line employees, department heads, and elected officials. But with the exception of line employees, who have the most to lose from privatization, the ICMA data show opposition from department heads and elected officials is declining or stable. Although the percentage of government managers who cite a "change in political climate emphasizing a decreased role for government" as a factor in their decision to restructure has almost doubled since 1988, it still accounts for less than a fifth of all respondents. This may reflect greater public trust in local government and a recognition of the essential nature of the services it provides (Conlan 1998).

Managerial capacity is rising. Lack of managerial capacity does not appear to explain the limited increase in privatization. The restructuring that must occur in privatization requires experience and leadership on the part of local government officials (Bartle et al. 1996; Boyne 1998). It also requires capacity and willingness to take risks (Warner and Hebdon 2001). Almost 70% of all the responding governments report that they are studying the feasibility of private delivery, and over 95% report that they

TABLE 1
Factors affecting local government restructuring

	Survey year		
	1988	1992	1997
Fiscal stress is declining			
External fiscal pressures, restrictions placed on raising taxes	36.5%	37.8%	30.2%
Internal attempts to decrease costs of service delivery	66.0	62.0	59.9
State or federal mandates tied to intergovernmental financing	13.5	11.7	7.3
Opposition is stable or falling			
Has your local government encountered any obstacle in various private alternatives for service delivery?	NA	46.8%	47.0%
Opposition from citizens	18.9%	14.8	14.0
Opposition from elected officials	26.1	18.2	19.5
Opposition from local government line employees	27.2	25.5	28.4
Opposition from department heads	18.4	13.7	15.1
Change in political climate emphasizing a decreased role for government	9.2	13.7	16.4
Concerns about government liability	22.1	10.5	8.0
Insufficient supply of competent private deliverers	23.8	11.6	12.1
Management capacity is rising			
Has your local government studied the feasibility of adopting private service delivery withing the past five years?	NA	69.3%	68.8%
Has your local government undertaken any activities to ensure success in implementing private sector delivery alternatives?	NA	48.6	49.0
Lack of staff with sufficient expertise in contract management	12.5%	7.2	5.9
Allowed government departments to compete with private sector in bidding process	10.9	10.4%	16.5%
Developed programs to minimize the effect on displaced public employees	8.7	10.0	12.9
Kept the service complaint mechanism in-house	14.0	12.5	11.2
Monitoring is not rising			
Does your local government use any techniques to systematically evaluate its alternative service delivery?	47.4%	46.8%	47.7%
Citizen satisfaction	33.4	28.8	27.5
Cost	41.2	41.5	39.5
Compliance with delivery standards specified in contract	36.2	33.6	38.2
Monitoring citizen complaints	34.5	30.9	29.4

U.S. Cities and Counties, Number: 1988=1627, 1992=1444, 1997=1460. Percent places that checked a factor, as a percent of all respondents.

Source: International City/ County Management Association, Profile of Alternative Approaches, Survey Data, 1988, 1992, 1997, Washington DC.

currently contract out for at least one service. The number of governments reporting that they lacked staff expertise in contract management dropped by half from 1988 to 1997 to less than 6%. The percentage allowing competitive bidding between public employees and private providers increased by 50%, and there was a similar increase in governments offering programs to minimize the effect on displaced public employees. However, lack of monitoring and low levels of competitive bidding suggest room for managerial improvement.

Another indicator of rising managerial capacity is the increased use of internal competition — performance-based incentives, merit-based pay and bonuses, performance-based budgeting — to encourage departments and work teams to identify opportunities to increase efficiency (Osborne and Gaebler 1992). These efforts are often characterized by organizational flexibility and increased labor-management cooperation (Appelbaum and Batt 1994; U.S. Department of Labor 1996; Martin 1999). When departments are allowed to reinvest savings into improved technology, further efficiency gains result. These internal forms of restructuring address two of the most serious causes of public-sector inefficiency — outdated technology, and rigid organizational management systems. The ICMA surveys of alternative service delivery do not assess internal restructuring. However, a special 1993 survey of total quality management in local government found 55% of responding cities reported using these principles (West et al. 1994). A 1998 ICMA survey of government managers' support for principles of "reinventing government" (e.g., entrepreneurial government, consumer orientation, internal competition) also showed wide acceptance of these principles (Feldman 1999). Thus, limited growth in privatization may be due to enhanced governmental capacity to achieve service delivery efficiencies internally.

Is the limited growth in contracting due to quasi-market failure?

Public goods are those goods and services for which externalities are high and exclusion of free riders is difficult. Private contracts may help government address important capital, technology, and management constraints. But governments still retain their responsibility for ensuring quality service and addressing the externalities that cause goods and services to be public in the first place (e.g., the public health benefits of frequent garbage collection). Thus, careful attention must be given to the way in which governments structure these contract markets. The sources of quasi-market failure outlined by Lowery (1998) — failure of a market to form, high costs of contracting, and potential loss of community values — are not merely theoretical but are reflected in the ICMA data.

Contracting is a difficult process. What makes service contracting such a difficult process? For services that are easily specified and measured and for which there are many alternate suppliers, privatization should be easy and may yield cost savings (Starr 1987). However, a competitive market of alternative suppliers may not exist in every community. Thin markets of alternative providers can be especially important at the local level (Hirsh 1995) and among rural governments where the benefits of privatization may be short lived (Kodrzyski 1994).

Many local government services are complex in nature, making quality harder to monitor. Even in the private sector the decision to make or buy is a complex one. Just like private firms, governments must carefully assess things like market structure, transaction costs, and the difficulty of contract specification and monitoring before making a decision to contract out (Nelson 1997). For both the private sector and government, timeliness, dependability, and quality often are more important than cost efficiency (Bartle et al. 1996; Poudner 1996). In a study of local government restructuring in New York State, quality concerns were highest among those governments that contracted out more because they no longer held internal control over service delivery (Warner and Hebdon 2001).

In the decision to privatize, governments often fail to include the costs of contracting and monitoring, which can average over 20% of total project costs (Prager 1994; Pack 1989). To overcome difficul-

ties in specifying services and monitoring quality, many local governments develop ongoing, close relations with their contractors. This form of relational contracting may ensure quality, but it also erodes the distance between government and contractor and may lead to rising costs or corruption (Sclar 2000).

The ICMA surveys do not address monitoring costs, but they do ask governments if they monitor service-delivery costs and quality. Although over 95% of governments report some level of contracting, less than half report any monitoring activity at all. Cost was the most commonly monitored item, but it was monitored by only 40% of responding governments. Similarly, contract compliance with service delivery standards was monitored by only 38% of governments. Citizen satisfaction was monitored by less than a third of responding governments. Only 11% of governments reported keeping the service-complaint mechanism in house (see Table 1).

Efficiency gains are hard to secure. Clear evidence of the increased efficiency of private contracts does not exist. Case studies showing increased efficiency under privatization (Savas 2000; Eggers and O’Leary 1995) are counterbalanced by cases showing increased costs (Sclar 2000). Boyne (1998), in his analysis of a range of studies looking at the efficiency of private contracts, finds no clear support for greater efficiency. Other research suggests that the benefits from privatization are overstated (Stein 1990; Ferris 1996). Lack of competition, high costs of contracting and monitoring, and erosion in service quality are commonly cited reasons (Kodrzycki 1994; Prager 1994).

The labor-intensive nature of most public services means that most of the potential savings from privatization are likely to come from wages and benefits or reductions in service quality (Hebdon 1995). Concern about losses in wages and benefits causes many local governments to require that contractors maintain similar wage and benefit levels after privatization (Martin 1999). In these cases, cost savings must come from increased process efficiency or decreased service quality. Because the complex nature of many local government services is hard to specify in a contract, the potential for erosion in service quality is high. This was demonstrated by Sclar (1997) in the case of Albany Fleet maintenance, a case in which costs rose and service quality declined as a result of privatization. Other cases have resulted in improvements, but the key seems to rest in the nature of the market and contract specification (Osborne and Gaebler 1992; Sclar 2000).

Concern about loss of public values. Loss of direct control over service delivery means care must be given to delineate the full range of social benefits included in a service (Lowery 1998). Given the difficulties in contract specification, government contractors must ensure valuable social benefits are not lost once service delivery is contracted (Starr 1987). Some benefits of public provision extend beyond the service itself and include legal rights of redress, freedom of expression, and public access (Sullivan 1987; Moe 1987). In some cases, governmental responsibility remains despite the fact that private parties control service delivery. This enduring responsibility and liability may cause governments to be cautious in relinquishing control over service delivery.

When service provision is separated from delivery, and the “consumer/citizen’s” decision is swayed by factors other than collective well-being, preference substitution can occur (Lowery 1998). One only has to look at the segregated nature of metropolitan areas to understand that “consumer/citizen” decisions about housing and education are often based on race and income rather than efficiency or service quality

(Altshuler et al. 1999). Public services provide the means by which local governments build community (Marmolo 1998; Frug 1998), so if contracting causes these broader community benefits to be lost, then an important public good is also sacrificed. Potential efficiency gains through contracting must be weighed against the community-building mission of local government.

Understanding government restructuring behavior

Local governments recognize the potential for both government failure and quasi-market failure, but the evidence suggests that the limited growth in privatization thus far is not primarily due to government failure. Governments must balance concerns over efficiency with concerns over service quality and community values. Further analysis of the ICMA restructuring data shows an active market-structuring role on the part of local governments. These governments employ a range of restructuring options that vary according to service and local market conditions; they mix public and private provision for the same service, and recognize the dynamic nature of local service delivery by shifting among different delivery alternatives over time.

Governments recognize that their role in structuring the market is critical to ensure competition and true efficiency gains from privatization. As the primary funder of the contracted service, local government is in a monopsonist position and must take care to identify the potential market of alternative suppliers and structure contracts to ensure that quality is maintained and efficiency gains secured. This is why we often see mixed public/private provision where part of the service is provided in-house and part by private contract. A local government plays many roles in the market, including that of regulator, contractor, and direct service provider. Depending on the service in question, a local government selectively chooses which role to play, with an eye to ensuring service quality, dependability, efficiency, and community values.

By longitudinally linking the ICMA surveys, we are able to compare the stability of contracts and in-house provision. Some instability reflects changes in service demands, new technologies, and capital-investment needs that benefit from privatization or partnership with the private sector. But part of the instability in contracts also reflects dissatisfaction with contracted services and the need to bring work back in-house to maintain quality. For services on which public health and safety depend, quality and dependability are often more important than efficiency. The flat privatization trends are not due to lack of governmental effort. Rather, they reflect concerns with quasi-market failure. Pragmatic local governments are cautious innovators. (See Appendix C.)

Governments structure markets to ensure competition

Ensuring efficiency and quality in public service delivery requires attention to both public and private markets. Competition can promote efficiency, and increased attention is being given to external forms of competition. To make effective use of external providers, governments must give special attention to the way they structure contracts in local supplier markets. Competitive bidding has become quite common among local governments and is used to ensure contestability in contract markets (Martin 1999; Osborne

and Plastrick 1997). Many governments compare internal cost estimates with external bids to create benchmarks for efficient costs. The ICMA surveys show that 16.5% of governments report allowing competitive bidding (Table 1.) This benchmarking process often results in mixed provision of services whereby part of the service or service area may be delivered by a private contractor, and part by public employees. This redundancy in service delivery not only promotes cost efficiency, it also creates competition in quality and ensures service dependability in case of contract failure (Miranda and Lerner 1995). Contestability has been widely used in England and Australia and may be achieved through inter-departmental competition as well. The lack of efficiency gains from privatization is attributed, in part, to contestable markets among public bureaucracies (Stein 1990).

There may be a progression from providing services totally in-house, to mixed public/private provision, and ultimately to total contracting out. The ICMA data show that, in 1982, governments were more likely to use mixed provision, contracting out a part of the service while keeping the remainder in house. Mixed provision accounted for 47% of all restructuring in 1982, while total contracting out accounted for 53%. However, after 16 years of experience with privatization, the ICMA surveys still show a third of all restructuring was in the form of mixed public/private provision in 1997. Of the roughly 40% of services that are restructured, services that are totally contracted out accounted for 70% of the restructuring, while mixed public/private provision accounted for 30% in 1997. Thus, while the level of contracting has risen, the level of mixed public/private provision remains significant.

Not surprisingly, mixed provision is most common in service areas where contracting out is high. It is low only in public utilities, where returns to economies of scale (through natural monopolies) would make redundancy too expensive. Even for the areas in which total contracting out has risen, mixed provision has remained stable. Many governments realize they must remain players in the market to ensure competition, service quality, and accountability to citizens.

The persistence of mixed public/private provision confirms Miranda and Lerner's (1995) notion of "benchmarking," a process by which governments intentionally use both public employees and contractors in the same service area to ensure quality and competitiveness. In order to guide provision, governments must have a hand in service delivery, and studies show that this redundancy does not increase costs but rather helps ensure service quality and fair bidding (Miranda and Lerner 1995). Chautauqua County Executive Andrew Goodell describes it this way:

The secret is competition. Whether it is a public or private monopoly, it is still a monopoly and will charge monopoly rents. Local governments must create competition where none exists—even if that means competition between the public and private sectors.

Local government restructuring is a complex process

Given the broad mandate of local government, it is not surprising that a wide range of service delivery alternatives are used. While the most common form of service delivery is public provision with public employees entirely, privatization and inter-municipal cooperation are the most common alternatives.

In the ICMA data, public services are usually provided through the use of public employees except for public works, health and human services, and culture and arts. There has always been a high level of non-profit provision in health and human services and culture and arts — a reflection of the evolution of our social welfare state from non-profit providers. Inter-municipal cooperation and non-profits traditionally have accounted for close to 70% of all service provision in these two areas. The level of contracting in public utilities also has been high traditionally (around 50%), and it has remained at that level. Where the dramatic growth in contracting out has occurred is in public works/transportation, public safety, and support functions — areas where services are more easily specified and where back-office functions (e.g., dispatching, purchasing, etc.) benefit from economies of scale.

Privatization and cooperation are the most popular forms of contracting. Privatization to for-profit and non-profit firms and inter-municipal cooperation are the most common alternatives, together accounting for almost 90% of all restructuring cases. Franchises, subsidies, vouchers, and volunteers account for the remaining 10%. For-profit privatization is the most common alternative and rose from 16% to 19% of all service provision from 1982 to 1997. For-profit privatization is most common in support functions, public works, public utilities, and public safety (**Table 2**). These services are more easily specified, are more likely to have competitive supplier markets, and, in the case of support functions and public safety, include indirect services (e.g., dispatching and back-office processes) not directly visible to the citizen. This makes for-profit privatization viable.

Inter-municipal cooperation is the second most common restructuring alternative. This sort of cooperation accounts for about 15% of service provision. Cooperation is highest in health and human services and culture and arts. These are complex service areas where the social benefit extends beyond the direct-service recipient. Cooperation also is high in the same areas where privatization is high (e.g., public works, public safety, and parks and recreation) because of the benefits of economies of scale. However, governments choosing cooperation over privatization enjoy these scale economies without resorting to private sector provision.

Privatization to the non-profit sector is the third significant restructuring alternative, but it averages only 5% of service provision. Non-profit privatization is most common in health and human services and culture and arts. Non-profits traditionally have provided these services — in fact many of these services began to receive public contracts only after the need overwhelmed non-profit providers and public attitudes shifted toward including these services as public benefits. Although non-profit provision as a service-delivery alternative has not risen, new partnerships between government and non-profit providers create opportunities for improvements in service quality and efficiency.

The level of contracting is falling. Although the level of contracting, when averaged across all places and all services, is rising slightly (as seen in Figure 1), both the percentage of governments contracting out and the percentage using high levels of contracting is dropping. The increase is due to a few governments that do very high levels of contracting and an increase in contracting in public works and support functions, as shown in Table 2.

Most governments have at least one case of contracting out. In 1992, almost equal numbers of governments used for-profit privatization (91%) and cooperation (88%) for at least one service. By 1997

TABLE 2
Trends in local government restructuring by service area

Year	Service area	Inter-municipal cooperation	Private for-profit	Non-profit
1992	Support functions	12.5%	17.4%	1.2%
1997		7.7	20.5	1.4
1992	Public works	17.0%	20.4%	1.8%
1997		14.8	25.3	1.5
1992	Public utilities	9.7%	31.5%	2.8%
1997		7.2	24.1	1.3
1992	Public safety	12.7%	15.5%	3.5%
1997		11.4	14.2	3.0
1992	Parks and recreation	11.4%	7.2%	2.9%
1997		11.2	13.6	4.1
1992	Health and human	40.9%	10.2%	16.5%
1997		33.2	11.3	16.6
1992	Culture and art	28.1%	2.7%	22.0%
1997		25.4	3.6	21.4
1982**	All services	11.9%	16.1%	5.4%
1988**		8.5	17.3*	
1992		14.3	16.2	5.2
1997		15.1	18.7	4.9

U.S. cities and counties, number: 1982=1675, 1988=1627, 1992=1444, 1997=1460. The average use of service delivery alternatives as a percent of total provision, where provision level is the number of cases of service provision across a place.

* Contracting out to for-profit or non-profit firms was not differentiated in the 1988 survey.

** The 1982 and 1988 surveys contain more service delivery alternatives than the 1992 and 1997 surveys.

The analysis includes only the seven major alternatives that appear on all surveys: entirely public, cooperation, privatization to for-profit firm, privatization to non-profit firm, subsidies, franchises, and volunteers.

Source: International City/County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data 1992, 1997, Washington, D.C.

the percentage of governments contracting out actually dropped. The percentage of governments with at least one case of privatization fell to 85%, and cooperation dropped to 73%. Non-profit privatization was less common and dropped most dramatically from 65% of all governments in 1992 to 52% of all governments in 1997 (**Table 3**).

If a government chooses to restructure service delivery, it is likely to do so in several services. In fact, the majority of governments reported at least one case of privatization (for-profit and non-profit) and of inter-municipal cooperation. However, the level of restructuring by place declined from 1992 to 1997. The percentage of governments restructuring three or more services dropped from 74% in 1992 to 67%

TABLE 3
Level of restructuring by local government

Year	Private for-profit		Inter-municipal cooperation		Non-profit	
	1992	1997	1992	1997	1992	1997
Percent places restructuring	91%	85%	88%	73%	65%	52%
One or two services	17	18	13	20	32	26
Three services or more	74	67	75	53	33	25
Avg. no. services provided by form*	6.7	6.4	7.9	5.2	2.2	1.7

U.S. cities and counties, number: 1992=1444, 1997=1460. Percent places restructuring by level of restructuring. All places = 100%.

* The same service may be provided by more than one delivery alternative. Average number of services provided: 1992 = 43, 1997 = 39.

Source: International City/County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data, 1992, 1997, Washington, D.C.

for for-profit privatization and to 53% for cooperation by 1997. Non-profit privatization showed a similar drop from 33% of responding governments having three or more cases in 1992 to 25% in 1997.

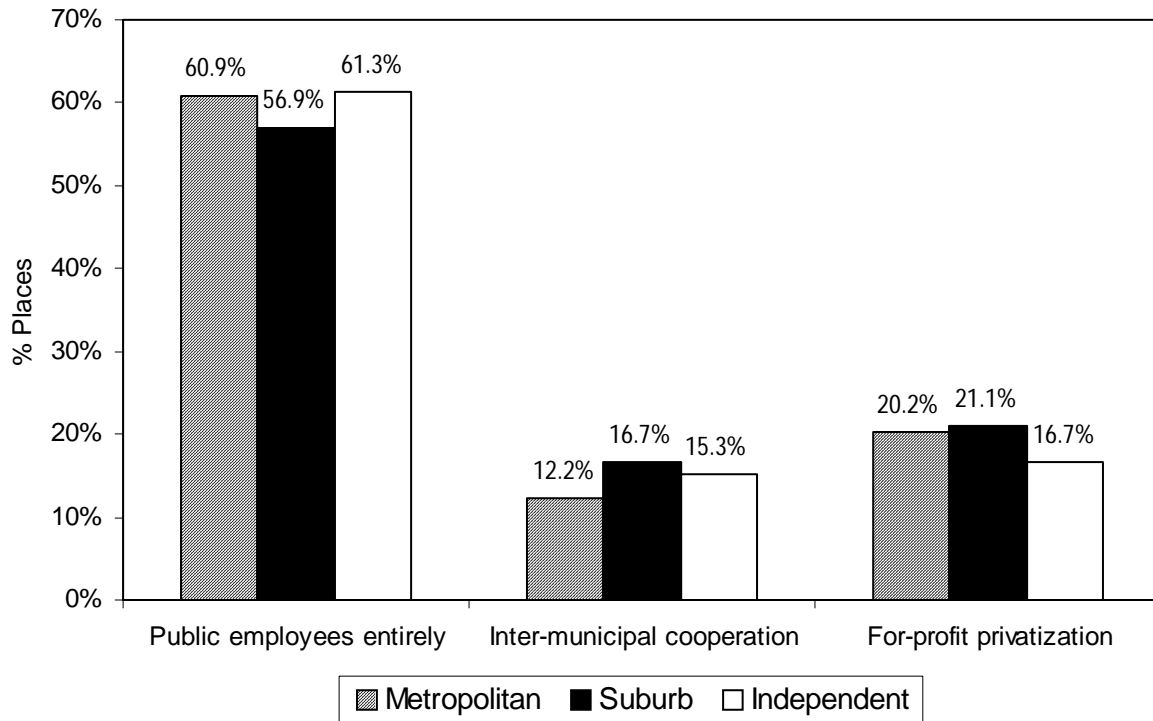
Contracting out is more likely in suburbs. Public choice theory suggests that suburban areas would be the most favored in the market for public goods and services (Boyne 1996). Service demands will be more homogeneous (given a more homogeneous population), and residential choice (mobility) is higher. **Figure 2** shows both privatization to for-profit firms and inter-municipal cooperation are highest among suburban governments. As expected, public provision is highest among metropolitan and independent rural governments. Rural independent governments have the lowest privatization levels (probably due in part to lack of a competitive market of private suppliers), and metropolitan governments have a lower level of inter-municipal cooperation, in part because they are already large enough to enjoy economies of scale (Warner and Hefetz 2001).

Cooperation is highest among both suburbs and independent (rural) areas, where smaller sizes make cooperation necessary to gain scale. Metropolitan places where service areas are already large may realize only limited economy-of-scale gains through increased cooperation. These trends may also be, in part, a reflection of the forces driving suburbanization in the first place. The desire to escape the true social costs of provision of urban services may encourage the isolation of high-need, high-cost urban populations (Frug 1998).

Use of alternative forms of service delivery also varies along income lines. Public provision of all services is most common among areas with lower average incomes, while privatization is more likely as community income levels rise (Warner and Hefetz 2001). If cost savings from privatization were large, we might expect lower-income areas to privatize more. Instead, these data suggest there is something in the nature of supplier markets and transactions costs that makes privatization a less compelling option for low-income areas. Cooperation, by contrast, appears to be income-neutral in its effects. Markets create

FIGURE 2

Restructuring by metro status, 1997



U.S. cities and counties, number 1997=1460 (metro=260, suburb=741, independent=459).

Source: International City/County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data, 1997, Washington, D.C

competitive landscapes. It appears that, by bringing markets into public-service delivery, we see a competitive landscape emerging that favors richer, suburban locales.

Restructuring is a dynamic process

Government service delivery is responsive to changes in citizen demand, technology, and local market conditions. New services, service shedding, new contracting out, and the contracting back in of previously privatized services are all captured in the dynamic nature of the restructuring process. While stability in service delivery may reflect a lack of willingness to innovate on the part of government, the instability in contracts may reflect a lack of dependability of private providers. There is a high cost to switching providers, and one important feature of government service is dependability and stability. Interestingly, the stability of alternative forms of service provision has received little attention in the literature (Lopez de Silanes et al. 1997 is an exception). Warner and Hebdon were the first to measure specifically reverse privatization (contracting back in house of services previ-

TABLE 4
Level of new contracting-out and contracting back in by local governments

Year	New contracting out			Contracting back in		
	1982-88	1988-92	1992-97	1982-88	1988-92	1992-97
Percent places contracting	93%	97%	96%	97%	92%	88%
One or two services	19%	11%	12%	10%	22%	23%
Three to 10 services	74%	86%	84%	87%	70%	65%
Avg. number services contracted in or out	5.7	7.7	7.9	7.1	5.3	4.6

U.S. cities and counties. percent places contracting out and contracting back in. All places = 100%

Paired sample size: 1982 and 1988 = 749; 1988 and 1992 = 638; and 1992 and 97 = 628; Number of common services surveyed: 1982 and 1988 =62; 1988 and 1992 = 65; and 1992 and 97 =64.

Source: International City/ounty Management Association, Profile of Alternative Service Delivery Approaches, Survey Data, 1988, 1992, 1997, Washington, D.C.

ously privatized) in a survey of local governments in New York State. Township and county officials in New York described privatization as just one side of the coin; they also were willing to bring previously contracted work back in house (Warner 2000; Warner and Hebdon 2001). In the New York survey, contracting back in accounted for 8% of all restructuring cases. However, New York, with its exceptionally high levels of public-sector unionization, may have higher-than-normal levels of contracting back in.

To test whether the New York results were similar to local governments across the nation, we paired ICMA survey responses across survey years to track shifts in forms of service delivery for each responding government. Roughly 40% of responding governments were the same in each pair of years, from 1982 to 1988 (749), 1988 to 1992 (638), and 1992 to 1997 (628). (See Appendix B for a fuller explanation of our methodology for pairing survey responses.)

Almost all governments contract out and contract back in. Table 4 shows the percentage of governments engaged in new contracting, both out and in, for the three paired time periods: 1982-88, 1988-92, and 1992-97. Almost all governments engaged in new contracting out (96% in 1992-97 period). New contracting out includes any movement toward more contracting (see Appendix Table B-1). The percentage of governments engaging in at least three cases of new contracting out rose from 74% in the first period to around 85% for the later two time periods. On average across all governments, 7.9 services were newly contracted out between 1992 and 1997. That the level of new contracting out could be so high when the overall level of contracting is relatively stable suggests that new contracts are balanced against contracts being brought back in house.

Indeed, most governments that contract out also contract back in. From 1992 to 1997 88% of governments had contracted back in at least one service, and 65% had contracted back in more than three services. On average across all places, five services were contracted back in from 1992 to 1997 (more than half the level of new contracting out reported above). Although the level and percentage of govern-

ments contracting back in dropped over the three time periods, these data show that dissatisfaction with contracting out is a reality and causes some governments to bring services back in house.

Provision entirely via public employees is the most stable. To determine which forms of service delivery were the most stable, we compared public, cooperative, and for-profit service provision during the most recent period for which data are available (1992-97). **Figures 3 and 4** clearly show that delivery of services entirely by public employees is the most common and the most stable form of provision — more than two-and-a-half times as stable as either alternative. On average, over half of all services provided by public employees were still provided that way in 1997. By contrast, only one-fifth of services provided by cooperation or privatization in 1992 were still provided that way in 1997.

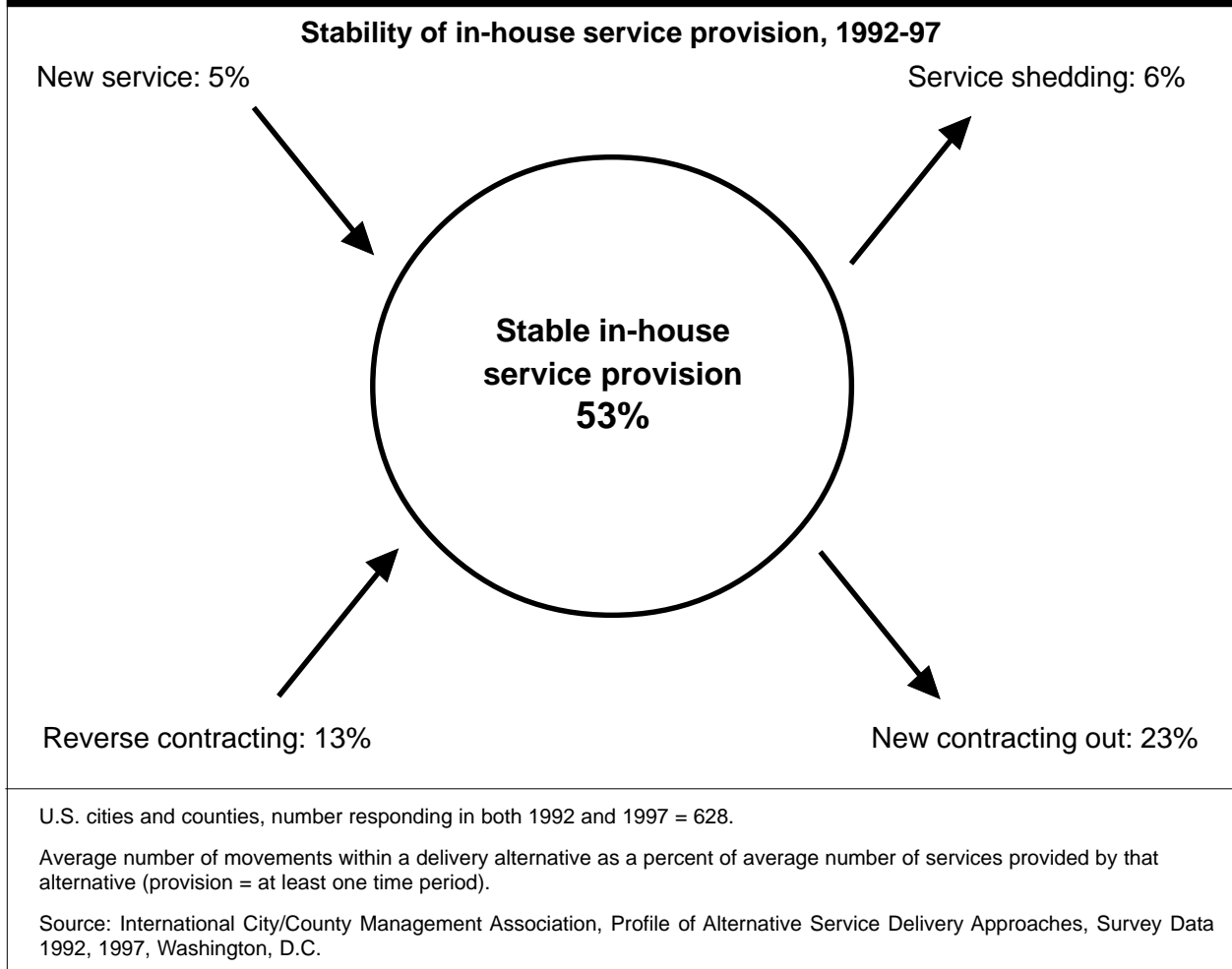
Changes in service delivery may be due to the addition of new services, service shedding, shifts toward alternative forms of delivery, or contracting back in services that were previously contracted out. There are important differences in the movement patterns for each alternative form of service delivery. While public provision is the most stable form of service delivery, the largest movements within public provision (22.6%) are toward some alternative (either cooperation or privatization), which is a reflection of the restructuring process. Service shedding from public provision is quite low (6.2%). Within the privatization alternative, the largest movements are toward privatization (29.0%). However, movements from privatization toward other forms (about 23% for either cooperation or public provision) and service shedding from for-profit privatization (16.1%) are also quite high. This may explain why the overall level of privatization has barely risen despite high rates of new privatization.

When looking specifically at cooperation, there is a balance between movement toward cooperation (15.9%), movement away from cooperation (18.8%), and use of cooperation for the provision of new services (13.5%). But cooperation has the highest levels of service shedding (33.0%) of any of the three forms of service provision. Some of the service shedding may reflect new regional forms of provision, with the responsibility for a service assumed by another government or a special district or authority, thus relieving the local municipality of the responsibility. The ICMA data, however, do not distinguish among types of inter-municipal cooperation.

We can see from these figures that both service shedding and new service provision are highest in the privatization and cooperation alternatives. Part of the instability of these alternatives is due to their flexibility in enabling governments to meet changes in citizen demand for services or changes in local market conditions.

Why are contracts unstable? Stability in form of service provision is important. The significance of contracting back in what had once been a privatized service has been given little attention in the theoretical or empirical literature. More research is needed into the nature of contracting and the reasons for instability in alternative service delivery. Absent a new national survey directly measuring the trends in contracting back in, we cannot know why it occurs nor distinguish competitive bidding from failed contracts. At our request, the National Association of Counties added three questions about the stability of private contracts to its spring 2000 survey of governmental operations. Of the 144 county respondents, 14% (20) reported bringing a previously contracted service back in house during the last three

FIGURE 3

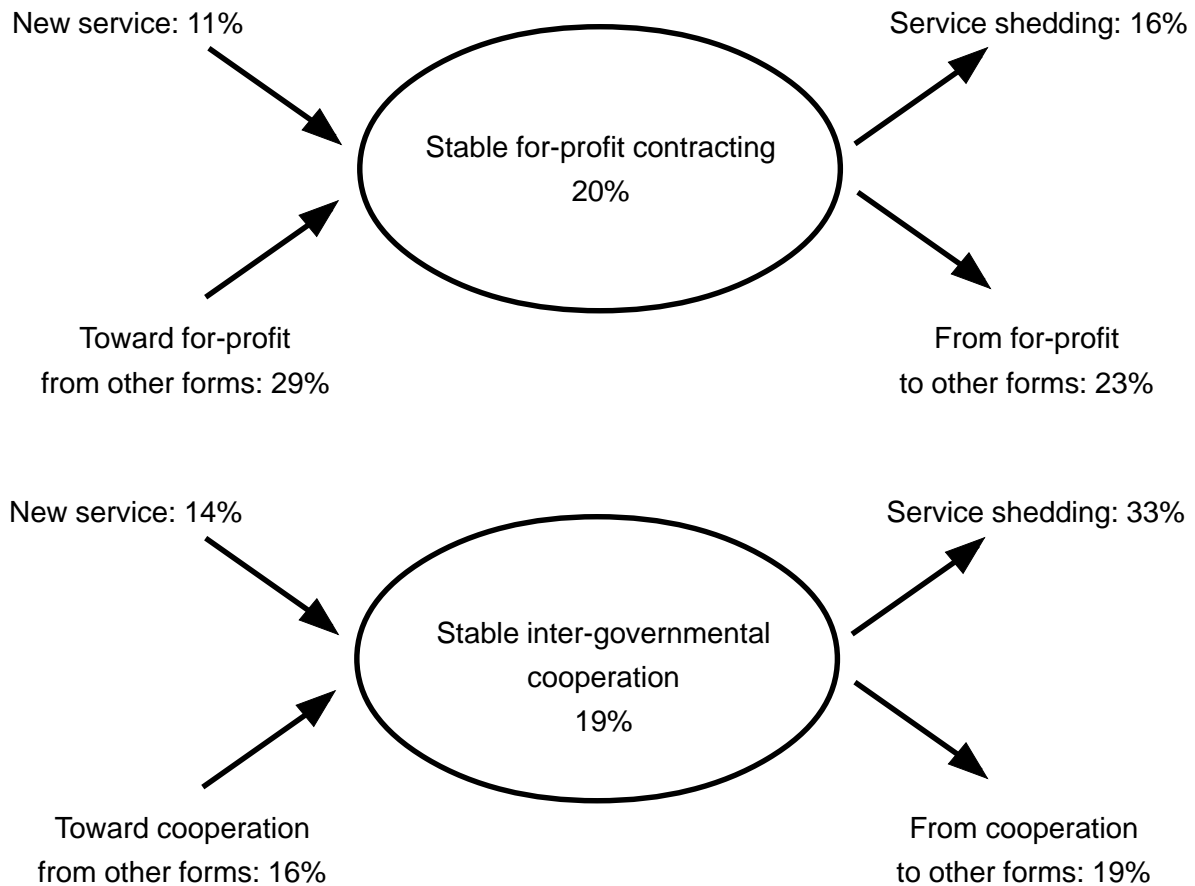


years. Not surprisingly, the highest levels of contracting back in were for services where contracting out was also high: data processing, garbage collection and disposal, building maintenance, and emergency medical service. Respondents indicated factors important in their decision to bring service delivery back in house. Half reported problems with the service provider and economic concerns. A quarter reported problems with contracting and monitoring, and another quarter listed management and labor issues. Only 10% of respondents listed political concerns as a factor (NACO 2000).

Additional evidence from 22 case studies of contracting back in (drawn from the ICMA sample) shows that most governments contract back in because of dissatisfaction with contracts (Ballard and Warner 2000). Difficulty and costs of monitoring, problems with service quality, cost and lack of flexibility in contracting, and failure to realize anticipated savings were commonly cited as reasons for contracting back in. Not unlike the contracting decision in the private sector (to make or to buy), public officials find the need for flexibility, responsiveness to changing citizen concerns, and service quality to be crucial determinants (Nelson 1997). Even simple services that are logical candidates for market-based provision may have important public attributes that are lost when provided via contracts. Decisions to

FIGURE 4

Stability of service delivery alternatives, 1992-97



U.S. cities and counties, number responding in both 1992 and 1997 = 628.

Average number of movements within a delivery alternative as a percent of average number of services provided by that alternative (provision = at least one time period).

Source: International City/ County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data 1992, 1997, Washington, D.C.

bring work back in house are also based on increased efficiency in public sector provision and are often accompanied by cooperation between labor and management. Thus, internal process improvements provide an important and viable alternative to privatization, providing similar efficiency gains with fewer downside risks (Ballard and Warner 2000).

Conclusion

This research provides evidence that the limited growth in privatization over the past 16 years is not due to government failure. Local government service-delivery restructuring is a complex process that requires

keen attention to the relative benefits of both internal production and market-based contracting. The complex mix of restructuring alternatives and new evidence on the stability of service delivery alternatives illustrate the active role of local governments in structuring markets to ensure economic and social efficiency. Far from a retreat of government, increased use of market-based provision requires an expansion of government into the administration of markets both public and private (Blanchard et al. 1998). Pragmatic local officials recognize the complexity of the restructuring process and the importance of ensuring service quality, efficiency, and the preservation of community values. Given the difficulties inherent in contracting and monitoring, it is not surprising that the majority of local government services are still provided by public employees. These trends suggest that the scope for privatization may be more limited than some advocates believe.

While the overall trends show a slight drop in in-house public provision, and slight increases in privatization and inter-municipal cooperation, they mask the significant movement between these categories over the 16-year period under study (1982-97). Most governments that contract out also contract back in. The major restructuring alternatives — privatization and cooperation — are both shown to be highly unstable. This reflects the flexible way contracts are used by local governments to ensure economic and social efficiency. Governments can meet citizen demands for new services first through contracts and later by developing in-house delivery capacity. This is an example of market success. However, instability in contracts also reflects inadequate monitoring and government dissatisfaction with the contracting process. This reflects market failure. For the majority of services, the most stable mode of delivery continues to be provision of services by public employees.

In the end, the evidence suggests that local governments recognize the need for flexibility in determining how services are delivered. Privatization would seem to be an important, but limited, tool. To be effective, privatization requires that local governments increase their role in structuring the market, which they accomplish by giving special attention to contract specification, monitoring, and the nature of competition in supplier markets. For many local government services, conditions for efficient market provision are not present, hence public provision by public employees remains the preferred service delivery option. Even when privatization is possible, governments often must remain providers in the market to ensure competitive contracts and continued cost savings. Osborne and Gaebler, in their popular book, *Reinventing Government* (1992), admonished local government to “steer rather than row.” Our research shows that local governments do what any good captain would, they steer and row. To adequately steer the service delivery process and ensure efficient market functioning, governments maintain direct involvement in service delivery.

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Mildred Warner is an assistant professor and Amir Hefetz is a research specialist in the Department of City and Regional Planning at Cornell University.

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Appendix A

Data sources on local government contracting

The most complete source of data on alternative service delivery arrangements of local governments is provided by the International City/County Management Association (ICMA). Every five years since 1982, ICMA has surveyed all counties in which the population exceeds 25,000 (roughly 1,600 out of the 3,100 total counties in the U.S.) and cities with populations over 10,000 (roughly 3,300 U.S. cities). In addition, a sample is drawn from one in eight of the cities and counties with populations between 2,500 to 9,999 and those under 2,500. Roughly a third of all governments contacted respond (31% for the 1992 survey and 32% in 1997). Cities — which include villages, towns, and townships — vastly outnumber counties. Compared to the Census of Governments, which covers all governments (even those with populations under 2,500), this survey is more heavily weighted to more densely populated places, and the survey subject is limited to questions about alternative forms of service delivery. Thus, the level of restructuring found among survey respondents is expected to be higher than that found among local governments as a whole.

Comparing ICMA and U.S. Census data

There are two national sources of data on local government restructuring: the ICMA surveys and the Census of Governments organization file. While ICMA does not have universal coverage of governments, its broader coverage of services and of service delivery alternatives makes it a more useful source for measuring the complexity of local government restructuring behavior. The consistency in survey design is also helpful (though the 1988 survey causes some problems due to its failure to include a category for non-profit privatization).

One might expect governments that have higher levels of restructuring activity to be more likely to respond to the ICMA survey. To check for such bias, the ICMA results are compared to U.S. Census of Governments organization surveys for the nearest available years, 1987 and 1992 (the Census of Governments is conducted every five years). The Census has wider coverage of governments (roughly 40,000, although complete responses were only available from 34,445) but narrower coverage of services and restructuring alternatives. Thus, the Census data provide limited information for restructuring analysis.

The Census shows a dramatic increase in percentage of governments contracting out from 30.5% in 1987 to 59.4% in 1992. (See Appendix **Table A- 1**.) This increase is due primarily to changes in survey design. In 1992, several services with generally high contracting out potential (recycling, highways, and garbage collection) were added to the Census questionnaire. (The Census of Governments included the following services in 1987 and 1992: airport, water utility/supply, electric utility, gas utility, hospitals, landfills (dump), libraries, nursing homes, public transit, sewage system, stadiums/convention centers, fire protection. Five additional services were added in 1992: ambulance; resource recovery (recycling); refuse collection, streets, roads, and highways; and industrial develop-

TABLE A-1
Restructuring trends: a comparison of ICMA and Census of Governments data

Year	Percent contracting out ¹	Percent cooperation ²	Average number of services provided ^{3,4}	Number of places
Census of government				
1987	30.5%	NA	2.2%	34,445
1992	59.4	21.2%	4	34,445
ICMA				
1988	92.9	75.4	38.4	1,628
1992	97.9	88	43.4	1,444
1997	92.4	72.8	39	1,460

U.S. cities and counties.

¹ Includes all types of contracting (for-profit, non-profit, government cooperation, franchise, and volunteers).

² Percent of those places that answered the question.

³ Out of a possible 12 services listed in 1987 and 17 services listed in 1992 (Census of Governments).

⁴ Out of a possible 71 services listed in 1988, 65 services listed in 1992, and 64 services listed in 1997 (ICMA).

Source: International City/County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data 1988, 1992, 1997, Washington, D.C. Bureau of the Census, Census of Governments: Government Organization Survey, 1987, 1992, Washington, D.C.

ment. We, however, do not include industrial development in our analysis.) Although the level of restructuring reported in the ICMA sample is higher, it is also more stable. This may be due to less dramatic changes in survey design and a wider array of services for which contracting out is measured. Both incidence and level of restructuring reported are affected by actual provision of specified services by responding governments. On average, ICMA respondents provide 40 of 64 services, whereas Census respondents provide four of 16 services. Thus, opportunity to report restructuring activity is higher in the ICMA sample.

Not only does the ICMA track a broader range of services, it also distinguishes a broader range of restructuring opportunities. Specific forms of restructuring include inter-municipal cooperation, privatization to for-profit and non-profit firms, and use of franchises, subsidies, and volunteers. Because it asks about each of these alternatives for each of 64 specific services, the ICMA survey permits analysis of the mix of restructuring options local governments use. The Census, by contrast, only followed 16 different services in 1992 (12 in 1987) and one general provision alternative (contracting out), which doesn't distinguish inter-municipal cooperation from other forms of contracting. The percentage of ICMA governments contracting in this table is higher than presented in Table 3 because it includes all alternative delivery forms. This enables comparison with the Census, which does not differentiate forms of contracting. (For a complete list of services covered by the ICMA surveys, see **Table A-2**.)

Contracting out to for-profit firms and inter-municipal cooperation are the most common restructuring alternatives in the ICMA data. The Census does not distinguish between contracting to public or private providers, but in 1992 it added a question on inter-municipal cooperation. Many governments did not answer this question, but of those that did, only 21% reported any cooperative agreements. The percentage reporting at least one cooperative agreement in the ICMA sample was 88% in 1992 and 73% in 1997. (See Appendix Table A-1.)

Part of the explanation for the very different levels of contracting out and cooperation reported in the two surveys is that the Census reports for all places. Of the 34,445 governments covered by the Census, 28,736 are under 10,000 population, and 76% of these are under 2,500. The level of service provision in such small places is half that of larger places. The effect of so many small governments in the survey biases the average restructuring level downward. The ICMA data, by contrast, with a wider range of services reported, affords more opportunity for respondents (even small governments) to indicate service-delivery restructuring.

Thus, although the ICMA survey may be biased toward governments that contract out more, the greater comprehensiveness of the coverage and stability in survey design makes it a better resource for the analysis of trends over time and complexity of restructuring behavior.

TABLE A-2
Services included in ICMA survey

Service area and service name	Year of survey			
	1982	1988	1992	1997
Public works / transportation				
Residential solid-waste collection	x	x	x	x
Commercial solid-waste collection	x	x	x	x
Solid-waste disposal	x	x	x	x
Street repair (excluding street construction)	x	x	x	x
Street/parking lot cleaning	x	x	x	x
Snow plowing/sanding	x	x	x	x
Traffic sign/signal installation and maintenance	x	x	x	x
Parking meter maintenance and collection	x	x	x	x
Tree trimming/tree planting on public rights of way	x	x	x	x
Maintenance and administration of cemeteries	x	x	x	x
Inspection/code enforcement	x	x	x	x
Operation of parking lots and garages	x	x	x	x
Operation and maintenance of bus transit system	x	x	x	x
Operation and maintenance of paratransit system	x	x	x	x
Operation of airports	x	x	x	x
Water treatment*	x	x	x	x
Water distribution*	x	x	x	x
Sewer collection and treatment*	x	x	x	x
Disposal of sludge*	x	x	x	x
Disposal of hazardous materials*	NA	x	x	x
Public utilities				
Utility operation and management	x	NA	NA	NA
Electricity	x	x	x	x
Gas	x	x	x	x
Utility meter reading (e.g., gas, water, electricity)	x	x	x	x
Utility billing (e.g., gas, water, electricity)	x	NA	NA	x
Utility building	NA	x	x	NA
Operation of street lights	x	x	NA	NA
Public safety				
Crime prevention/patrol	x	x	x	x
Police/fire communications	x	x	x	x
Fire prevention/suppression	x	x	x	x
Emergency medical service	x	x	x	x
Ambulance service	x	x	x	x
Traffic control/parking enforcement	x	x	x	x
Vehicle towing and storage	x	x	x	x
Health and human services				
Sanitary inspection (e.g., inspection of restaurants and food outlets)	x	x	x	x
Insect/rodent control	x	x	x	x
Animal control	x	x	x	x
Operation of animal shelters	x	x	x	x
Operation of day care facilities	x	x	x	x
Child welfare programs	x	x	x	x
Programs for the elderly (e.g., recreation, transportation, health)	x	x	x	x

(cont.)

TABLE A-2 (cont.)
Services included in ICMA survey

Service area and service name	Year of survey			
	1982	1988	1992	1997
Health and human services (cont.)				
Operation and management of public/elderly housing	x	x	NA	NA
Operation and management of hospitals	x	x	x	x
Public health programs	x	x	x	x
Drug and alcohol treatment programs	x	x	x	x
Operation of mental health and retardation programs/facilities	x	x	x	x
Prisons/jails	NA	x	x	x
Parole programs	NA	x	NA	NA
Operation of homeless shelters	NA	x	x	x
Food programs for homeless	NA	x	NA	NA
Parks and recreation				
Recreation services	x	x	NA	NA
Operation and maintenance of recreation facilities	x	x	x	x
Parks landscaping and maintenance	x	x	x	x
Operation of convention centers and auditoriums	x	x	x	x
Cultural and arts programs				
Operation of cultural and arts programs (e.g., fine arts, music, drama)	x	x	x	x
Operation of libraries	x	x	x	x
Operation of museums	x	x	x	x
Support functions				
Buildings and ground maintenance	x	x	x	x
Building security	x	x	x	x
Fleet management/vehicle maintenance	x	NA	NA	NA
Heavy equipment	x	x	x	x
Emergency vehicles	x	x	x	x
All other vehicles	x	x	x	x
Payroll	x	x	x	x
Tax bill processing	x	x	x	NA
Tax assessing	x	x	x	x
Data processing	x	x	x	x
Delinquent tax collection	x	x	x	x
Legal services	x	x	x	x
Secretarial services	x	x	x	x
Personnel services	x	x	x	x
Labor relations	x	x	NA	NA
Public relations/public information	x	x	x	x
Title record/plat map maintenance	NA	x	x	x

NA – Not included in that year's survey.

* Listed under Public Utilities in 1982 and 1988.

Source: International City/County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data 1982, 1988, 1992, and 1997, Washington, D.C.

FIGURE B-1

Service provision over time – movements by service-delivery alternative

		LATER SURVEY			
		Public	Mix public/ contract out	Totally contract out	Not Provided
		<i>Toward private →</i>			
FORMER SURVEY	Public	Stable Public-public	New contracting out Public-mix	New contracting out Public-contract	Shedding service Public-not provided
	Mix public/contract out	Contracting back in Mix-public	Stable Mix-mix	New contracting out Mix-contract	Shedding service Mix-not provided
	Totally contract out	Contracting back in Contract-public	Contracting back in Contract-mix	Stable Contract-contract	Shedding service Contract-not provided
	Not provided	New service Not provided- public	New service Not provided- mix	New service Not provided- contract	Stable Not provided- not provided
		<i>← Toward public</i>			

Matrix based on ICMA survey design.

Appendix B

Methodology for studying stability of service delivery alternatives

Average levels of a particular form of service delivery may obscure movements between alternative service-delivery options. ICMA surveys ask only how the service is provided currently — not whether this is new privatization or long-standing procedure. To determine how much movement between alternative service delivery forms was actually occurring, we tracked changes in form of service delivery for every service for each government. Although the ICMA surveys were not designed to track movements among forms of service delivery over time, by pairing the survey years, we were able to track shifts in form of service delivery for each responding government. Roughly 40% of responding governments were the same in each pair of years, 1982-88 (749), 1988-92 (638), and 1992-97 (628).

The data were recoded to track movements among four broad service-delivery options (public, mixed (public/contract), contract, not provided) for each service and each responding government. These movements were then averaged across all services and governments, resulting in an average picture of movements among different forms of service delivery over time. Appendix **Figure B-1** presents a matrix of all possible movements among these four service delivery options. The movements can be divided into three major parts:

- stability in provision, with form of service provision not changing between the two time periods (the center diagonal of the matrix),
- toward private provision, which includes new privatization and service shedding, including those governments that listed a service as not provided in 1997 but had listed that service as provided in the prior survey year (the upper right hand corner of the matrix)
- toward public provision, which includes “reverse privatization” and new service provision (the lower left hand corner of the matrix).

This matrix method allows us to compare stability in provision regardless of service delivery alternative and to assess shifts in the direction of provision — toward public provision or toward private provision. What was of

TABLE B-1
Stability of service delivery alternatives, 1992-97

Entirely public employees		Inter-municipal cooperation		Privatization for-profit	
Stable: public - public	52.9%	Stable: coop. - coop.	18.8%	Stable: for-profit - for-profit	20.4%
Toward public from other forms	13.1%	Toward coop. from other forms	15.9%	Toward for-profit from other forms	29.0%
From public to service shedding	6.2%	From coop. to service shedding	33.0%	From for-profit to service shedding	16.1%
From public to other forms	22.6%	From coop. to other forms	18.8%	From for-profit to other forms	23.4%
New service added to public	5.1%	New service added to coop.	13.5%	New service added to for-profit	11.1%
Percent all movements	100.0%	Percent all movements	100.0%	Percent all movements	100.0%
Relative importance of form - 1997 ¹	50.0%	Relative importance of form - 1997 ¹	13.0%	Relative importance of form - 1997 ¹	17.0%

U.S. cities and counties, number for 1992 and 1997 = 628.

Average number of movements within a delivery alternative as a percent of average number of services provided by that alternative (provision = at least one time period). See Appendix B for more on methodology.

¹ Percent services provided by that delivery alternative in 1997 as percent of total provision.

Source: International City/County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data 1992, 1997, Washington, D.C.

special interest here was the relative stability of provision by each major alternative — public provision, for-profit privatization, and inter-municipal cooperation. To determine relative stability by delivery alternative this matrix process was conducted separately for each alternative. If a government provided a service by one of these alternatives in either of the two time periods (1992 and 1997), then it was included in the analysis. In this analysis, the number of services provided by a specific delivery alternative and movement is summed across all services provided by a place. The average is then calculated across all places.

Using this method for each alternative allows us to compare the relative stability of each, but we must be careful to note that the magnitude of use of the three alternatives is not equal (see Appendix **Table B-1**). Public provision by public employees entirely accounts for over half of all service provision but has trended slightly downward from 53% in 1992 to 50% in 1997. Cooperation, which accounted for almost 18% of service provision in this paired sample in 1992 had dropped to 13% by 1997. Privatization to for-profits moved in the opposite direction, growing from 15% of all service provision in 1992 to 17% by 1997. Percentages for the paired sample are slightly different than the percentages for the full sample but track the general trends for the full sample shown in Figure 1.

Appendix C

Local government's market structuring role: The case of Chautauqua County

To achieve efficiency gains from market-based provision, local governments must be skillful contract negotiators and show a clear understanding of local market conditions. Chautauqua County, N.Y. (population 140,000), provides an interesting case study of the way in which local governments use a complex range of strategies to ensure service quality and respond to dynamic changes in market conditions and citizen demand. Led by Republican County Executive Andrew Goodell from 1990 to 1997, Chautauqua County used a wide range of both internal and external strategies to increase service quality and efficiency. Privatization to for-profits and non-profits as well as inter-municipal cooperation were used alongside new strategies designed to increase in-house performance.

Mixed public/private strategies were common. For example, printing, cleaning, and computer-support services were all put on a contract basis. While the county print shop, computer services, and cleaning staff had the right of first refusal on the work, if the requesting department could obtain better or less expensive service from the private sector, it could contract out for the service. Not only did this cause department heads to look closely at their printing, computer, and cleaning needs, it also encouraged these departments to look carefully at their private sector competition and determine ways to reduce costs. In the end, some government offices were served by county service providers, others by the private sector.

Goodell was keenly aware of the market-structuring role of local government and used the county's position as provider and funder to influence the behavior of other players. When declining reimbursement rates and increasing paperwork made Medicaid service delivery unattractive to private doctors, the county agreed to pay primary care physicians a flat rate per patient and eliminate all of their Medicaid paperwork. The Medicaid patients obtained higher health care coverage, and the county saved on its total Medicaid costs when the use of emergency room services fell.

Continued competition is key to ensuring long-term efficiency gains. In the early 1990s, Chautauqua County considered selling its landfill. Situated near the border shared by New York, Pennsylvania, and Ohio, the county could benefit from competition among national waste-management companies that were vying to consolidate control in the region. Chautauqua County could use its market position to lock in competitive rates but also understood the need to demand a long-term contract that would buffer the county against future price increases certain to occur when one of the national firms gained monopoly control in the region. Interestingly, the political debate then shifted to the value of the local landfill as a public resource, and ultimately the county legislature voted not to privatize.

Contract specification is extremely important and requires a high level of sophistication. Recognizing that private providers are motivated by profit, government contractors must ensure that cost savings are not at the expense of service quality. For services that are complex and for which quality is difficult to measure, government must take care to structure its contracts to achieve necessary performance goals. For example, Chautauqua County was careful to structure its contracts with a local job-placement program to ensure that appropriate emphasis was given to job training and long-term job placements with career potential. Rather than pay for training and job preparation services, the county paid the contractor for actual job placements. To avoid the "churning" typical of many job placement providers, the county structured the contracts so that payments were made incrementally — at initial placement, after six months, and after a year on the job. Premiums were paid for placements to jobs with higher wages, skill levels, or career potential.

Restructuring is a dynamic process. Government may move in and out of the market for service provision to stimulate a more socially efficient market response. During the mid-1980s, Chautauqua County was facing a severe shortage of pediatricians, so the county health department opened its own prenatal care unit. It recruited local pediatricians, provided office staff, liability insurance, administrative support, and a reasonable stipend. The county handled all the Medicaid reimbursement paperwork and provided the physicians with a much higher net reimbursement rate paid directly by the county. After additional pediatricians relocated to the county, competitive market forces eliminated the need for the county-operated clinic. It was then closed, allowing the private sector to provide all the prenatal care services.

Once governments recognize a market of providers, both public and private, they must be careful not to subsidize for-profit providers by allowing them to serve only the least costly customers. In New York State, for example, most nursing homes operated by county governments lose a substantial amount of money every year because they take greater than their share of indigent or Alzheimer patients. Chautauqua County operated its nursing home in a profitable manner by competing for private-pay patients, who pay a higher rate than typical Medicaid patients. To compete, the county nursing home was forced to dramatically improve its physical facility by adding air conditioning, new carpets, new wallpaper, private telephones, and other amenities, which resulted in a substantial improvement for all patients. The county also had to use its position in the local nursing home market to insist that area hospitals refer indigent and Alzheimer patients equitably to all nursing homes, both public and private.

Goodell was a great proponent of the principles of *Reinventing Government* (Osborne and Gaebler 1992), and internal-efficiency improvements, such as the ones cited in the nursing home example above, were common throughout county departments. Using both external and internal restructuring resulted in dramatic improvements to the county's fund balance, while the tax rate actually dropped. Goodell's pragmatic approach to service delivery included both external restructuring and internal process improvements. For local governments whose goal is enhanced service quality and efficiency, a complex approach that takes advantage of the potential for both internal improvement and market engagement makes the most sense.

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Understanding Privatization of Local Government Services

Presented to

Privatization: Trends, Issues and Alternatives
Economic Policy Institute Conference
Washington, DC
January 11, 2001

Mildred Warner and Amir Hefetz
Cornell University

Outline

Privatization Trends - ICMA Data

Complexity of Local Government Restructuring

Local Governments Structure Markets

Major Trends

- Level of privatization among local governments relatively stable.
- Government restructuring is a complex process.
- Local government service delivery is dynamic.
- Local governments structure markets to ensure competition and service quality.

Data

International City County Management Association
Surveys of Alternative Service Delivery 1982, 1988,
1992, 1997

Sample Frame:

All cities over 10,000

All counties over 25,000.

Response rate 31% (roughly 1500 municipalities).

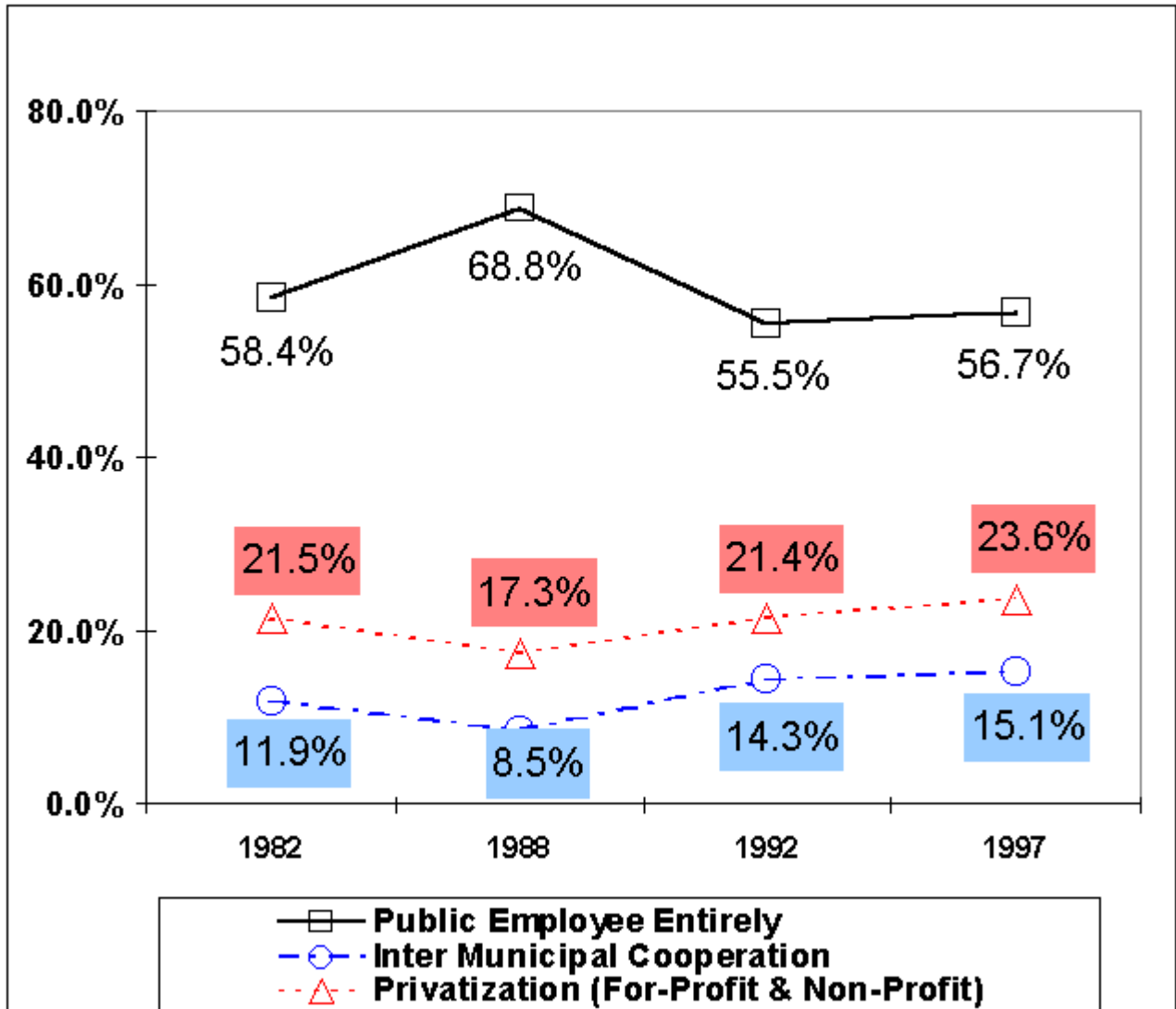
Scope:

64 specific services

6 service delivery options

Factors motivating restructuring

Trends in Local Government Service Provision over Time



Form of service delivery as percent of total provision across all places and all services.

U.S. Cities and Counties, Number: 1982=1675, 1988=1627, 1992=1444, 1997=1460.

Source: International City/ County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data, 1982, 1988, 1992, 1997, Washington DC.

Level of Restructuring by Local Government

	Census		ICMA		
	1988	1992	1988	1992	1997
Contracting Out	31%	59%	93%	98%	92%
Cooperation	-	21%*	75%	88%	73%
No. Services Measured	12	17	71	65	64
Sample Size	34,445 ¹	34,445 ¹	1628	1444	1460

Percent places restructuring. All places = 100%.

*Of those places, which answered the cooperation question. Many did not.

¹ Common respondents for both time periods. 83 % of respondents under 10,000 in population.

Source:

International City/ County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data, 1992, 1997, Washington DC.

US Census of Governments Organization File 1988, 1992.

Why So Little Growth in Privatization?

Theoretical basis for privatization - Public Choice
separate service provision from service delivery

- Privatization addresses government failure and gives more consumer choice.

I. Is the lack of growth in privatization due to government failure?

1. Local governments have always contracted services.
2. Fiscal stress is declining.

	Survey Year:	
	1992	1997
External fiscal pressures, restrictions on raising taxes	38%	30%
Internal attempts to decrease costs of service delivery	62%	60%
Change in political climate - decreased role for government	14%	16%

3. Opposition is stable.

Opposition from citizens	15%	14%
Opposition from elected officials	18%	20%
Opposition from local government line employees	26%	28%
Opposition from departments heads	14%	15%

4. Managerial capacity is rising.

Allowed government to compete in the bidding process	10%	17%
Programs to minimize effect on displaced public employees	10%	13%
Insufficient supply of competent private deliverers	12%	12%
Lack of staff with expertise in contract management	7%	6%

II. Is lack of growth in contracting due to quasi-market failure? (Lowery)

Failure of a market to form

High cost of contracting - preference error

Loss of community values - preference substitution

1. Contracting Is a Difficult Process

- Services hard to specify or measure.
- Lack a competitive market of alternative suppliers.
- Cost of contracting is high.
- Monitoring is difficult and expensive.
- Less than half governments report monitoring.

	1992	1997
Cost	42%	40%
Compliance with delivery standards specified in contract	34%	38%
Citizen satisfaction	29%	28%

2. Efficiency Gains Hard To Secure

- Labor intensive services. Savings come from: increased process efficiency or reduced service quality.
- Case study evidence inconclusive.
- Quantitative studies show benefits overstated.

3. Concern about loss of public values.

- Loss of public control and accountability
- Loss of service quality
- Loss of social benefits

By separating provision decision from service delivery “citizen consumers” may exercise choice based on race or income rather than efficiency or service quality.

Local Governments Structure Markets

Government is a major market player:
regulator, provider, contractor

Governments structure markets

- to ensure competition
- service quality
- cost savings
- public values

Restructuring is a Complex Process

- Privatization to for-profits
- Privatization to non-profits
- Inter-municipal cooperation
- Mixed public/private provision
- Reverse privatization
- Governmental entrepreneurship
- Internal process improvements

Trends in Local Government Restructuring By Service Area

Year	Service Area	Inter-Municipal Cooperation	Private for Profit	Non-Profit
92	Support Functions	13%	17%	1%
97		8%	21%	1%
92	Public Works	17%	20%	2%
97		15%	25%	2%
92	Public Safety	13%	16%	4%
97		11%	14%	3%
92	Health and Human	41%	10%	17%
97		33%	11%	17%
82	All Services	12%	16%	5%
88		9%	17%*	
92		14%	16%	5%
97		15%	18%	5%

U.S. Cities and Counties, Number: 1982=1675, 1988=1627, 1992=1444, 1997=1460.

The average place probability to provide a service by alternative restructuring form as percent of provision level

*Contracting out to for-profit or non-profit firms was not differentiated in the 1988 survey.

Source: International City/ County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data, 1992, 1997, Washington DC.

Mixed Public/Private Provision

- ensures competition in service quality and cost
- enhances internal efficiency
- ensures dependability in the case of contract failure

Year	Service Area	Public Entirely	Mix Public/ Contracting Out	Totally Contracted Out
92	Public Works	53%	24%	23%
97		43%	21%	36%
92	Health and Human	28%	16%	56%
97		31%	15%	54%
92	Support Functions	65%	19%	16%
97		56%	19%	25%
92	Public Safety	60%	11%	29%
97		54%	9%	37%

U.S. Cities and Counties, Number: 1982=1675, 1988=1627, 1992=1444, 1997=1460.

Stability and Reverse Contracting

Stability in overall trends masks considerable movement - in and out and among alternatives.

Most governments which contract out also contract back in.

From 1992-1997 (ICMA Data)

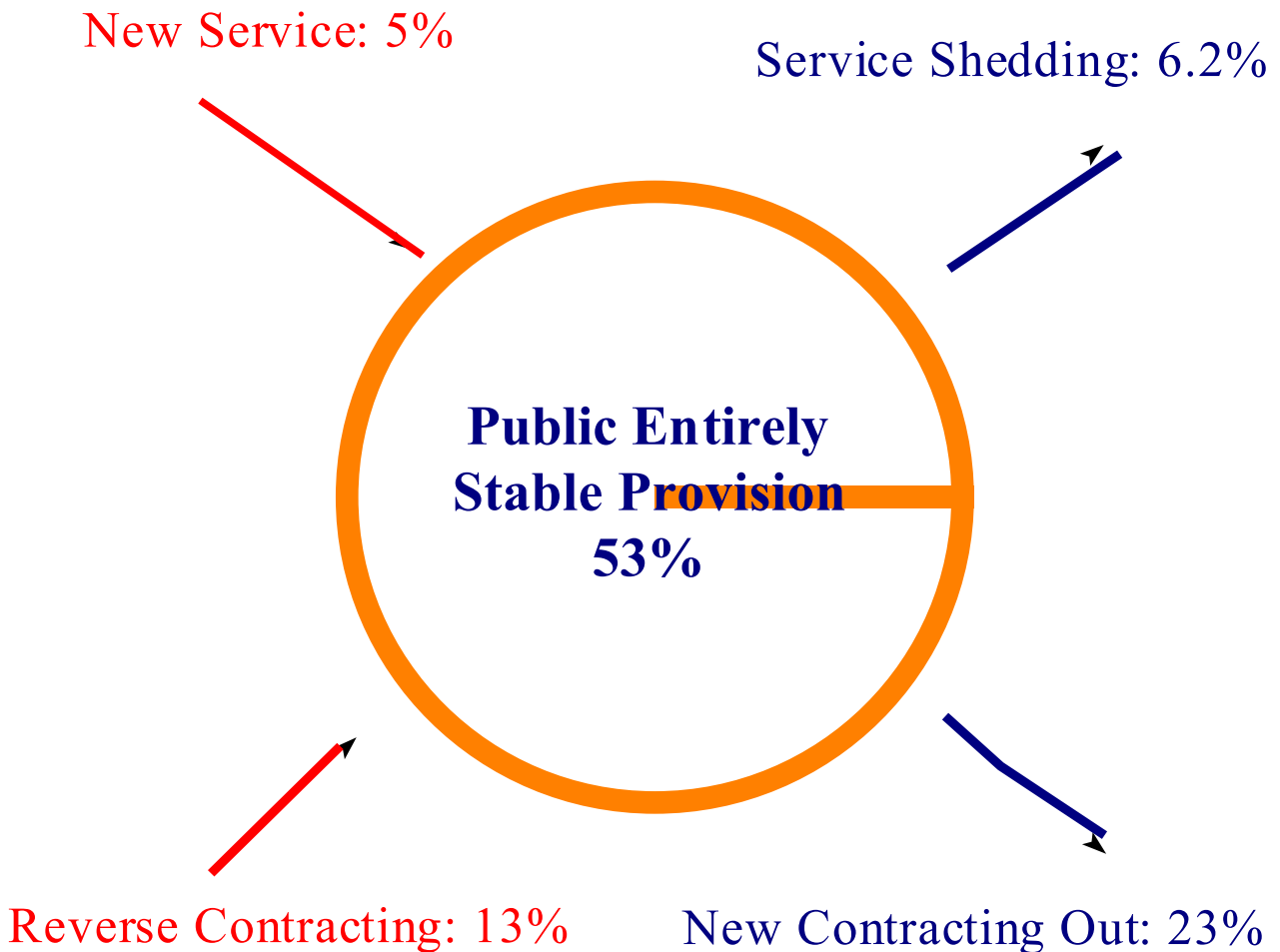
New Privatization - 90 % of all responding governments
(on average 8 services)

Contracting Back In - 86% of all responding
governments
(on average 4.5 services)

Reverse contracting is:

- Highest where contracting is also high.
- Driven by problems with service provider.
- Substitute for monitoring

Stability of Service Delivery Alternatives 1992 to 1997

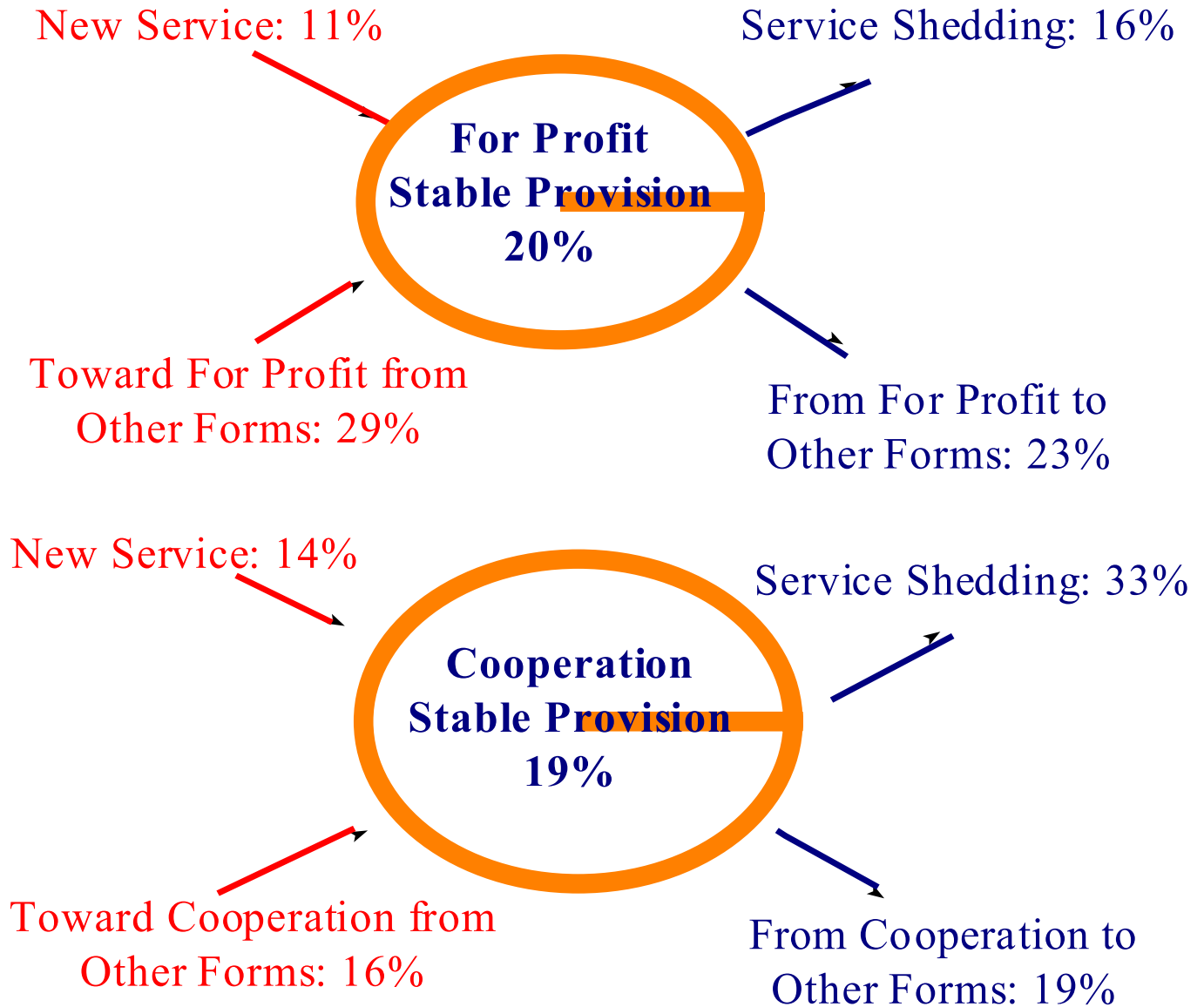


U.S. Cities and Counties, N for 1992 and 1997 = 628

Average number of movements within a delivery alternative as a percent of average number of services provided by that alternative (provision = at least one time period).

Source: International City/ County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data 1992, 1997, Washington DC.

Stability of Service Delivery Alternatives 1992 to 1997



U.S. Cities and Counties, N for 1992 and 1997 = 628

Average number of movements within a delivery alternative as a percent of average number of services provided by that alternative (provision = at least one time period).

Source: International City/ County Management Association, Profile of Alternative Service Delivery Approaches, Survey Data 1992, 1997, Washington DC.

Conclusion

Overall privatization trends mask considerable instability in contracts.

Local government service delivery is complex.

Governments structure markets as provider, contractor and regulator to ensure efficiency and service quality.

Public choice should balance consumer choice with community choice

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Chapter Summary

Savas, E. S. 1987. *Privatization: The Key to Better Government*. Chatham, NJ: Chatham House.

Chapter 1: Introduction

Savas defines privatization as 'the act of reducing the role of government, or increasing the role of the private sector, in an activity or in the ownership of assets.' Privatization takes both generic and specific forms: generic forms include contracting out to private or nonprofit firms and volunteer provision of services. Specific forms include food stamps, housing vouchers, and volunteer fire departments.

Savas notes the general confusion today over the meaning of the word 'public', varying from 'government ownership' to 'widespread ownership' or 'widespread access'. He notes that in this book 'public service' refers to a wide range of government activities, from trash collection to national defense.

Savas cites several pressures or reasons that are compelling privatization across the country. These reasons divide into four categories: pragmatic, where people define a need for government to improve services; ideological, where there is a desire for less government; commercial, where the private sector sees opportunities for profit by performing government services; and populist, where people justify privatization in the name of a better society.

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Chapter Summary

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Chapter 2: The Growth of Government

Savas discusses four pressures that cause government to grow. First, demographic changes cause increased public demands. Second, public desire to ratify social ills or to preserve existing social programs. Third, demands of service providers such as government itself, caused by political imperatives, government monopolies, employee voting. Fourth, as a consequence of inefficiency such as overstaffing, overpaying, overbuilding. Because government caves in to these pressures, Savas concludes that its actions can no longer be synonymous with serving the public interest.

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Chapter 3: Basic Characteristics of Goods and Services

Overview

The nature of goods and services is investigated in this chapter to determine the role, if any, government should play in the provision of goods with special characteristics. Goods and services may be categorized by their exclusivity and consumability. These definitions enable the classification of goods and services into four broad categories; 1) Private goods, 2) Toll goods, 3) Collective goods and, 4) Common-pool goods. The degree to which a good is excludable and the ability for a good to be consumed individually or jointly, without diminishing the quality of the good, determines each categorical association.

Exclusion

Exclusion refers to the ability of a supplier to limit or deny access to a potential user of a good unless certain conditions are satisfied. Specifically, the buyer and seller must agree on the terms for exchange. Usually this occurs by exchanging money for the product. Excluding consumers from utilizing the good or service in this case is fairly easy simply raise the price. Exclusion is feasible or infeasible to the degree "that the cost of enforcing exclusion is relatively low or high" (p. 36). The other case is the classic economic example of a lighthouse. A lighthouse beacon is nearly impossible to make available to only those that pay for it. Thus, it is infeasible to exclude anyone from using the service.

Consumption

Goods and services share another defining characteristic based on the ability of consumers to utilize the product. Some may be consumed jointly and/or simultaneously while others may only be consumed by an individual at a single point in time.

Goods and services may be classified according to the degree to which they possess the two properties of excludability and consumability. The matrix below summarizes the four cases that result when the categories are combined:

	Easy to deny access	Difficult to deny access
Individual consumption	Private goods	Common-pool goods
Joint consumption	Toll goods	Collective goods

- Private Goods

Private goods are individually consumed and it is relatively easy to exclude consumers from using the

product.

- Common-pool Goods

Common-pool goods are individually consumed but nearly impossible to exclude others from using the good. Air and water are two examples of common-pool goods.

- Toll Goods

Toll goods are consumed jointly but it is feasible to exclude consumers from their use. A toll bridge is an example of this type of good. Users must pay for the opportunity to cross the bridge. Depending on the price charged for the privilege of using the bridge individuals may be excluded.

- Collective Goods

Collective goods may be thought of as those goods which are jointly consumed and infeasible to exclude consumption. National defense is the classic example of this type of good. The protection offered by the armed forces is jointly consumed but one person's consumption of this service in no way detracts from the ability of another person to benefit from national security.

Classification of Goods and Services

Why are goods and services classified in this manner? The main reason lies in the provision of these goods and services. Some goods are provided without encouragement. Private goods, especially, are produced to meet demands of consumers without too much concern for market failures. However, collective goods, by their inherent properties pose a serious problem in terms of provision. Because it is nearly impossible to exclude consumers of collective goods, and the fact that they are consumed jointly, leads to a supply dilemma. No individual has an economic incentive to pay for the service and, hence, there may be "free-riders" of the good. Likewise, no producer is willing to supply the good or service. This is the rationale for government intervention in the marketplace.

Discussion

These abstractions are useful for definitional purposes but it should be pointed out that most goods may be classified into more than one category depending on the transformations they undergo. For instance, air is a common-pool good until it is pressurized into a canister. At this point, it becomes a private good. Similarly, private goods may be transformed into collective goods and this poses the greatest problem for society. As the responsibility for providing goods in the marketplace shifts from private suppliers to the collective, the role of government should, theoretically, increase. Savas' point is that this is not happening. Without collective action a continued supply of goods with common-pool and collective good characteristics is jeopardized. Another element of his argument is that more and more goods with private and toll good characteristics are increasingly being deemed worthy and are being treated as collective and common-pool goods. A basic principle arises from this discussion with respect to who should pay for these products: "the smallest collective unit that embraces most of the beneficiaries should provide the collective good" (p. 50). In addition, because it is impossible to charge directly for the use of collective goods, payment is unrelated to demand (p. 49). Thus, a political process of some kind must be employed to answer the questions of how much to provide and which individuals should receive a discount for using the service. In this sense the quantity and quality of the good is subject to the outcome of the political process.

Conclusion

Increasingly, governments are providing goods that are deemed worthy but do not have common-pool or collective characteristics. Indeed, as Savas points out, government growth in the provision of goods with private and toll-good characteristics has surpassed the expenditures for common-pool and collective goods. There are societal costs associated with this trend. When these goods are subsidized, underpriced, or given away the result is overconsumption and waste.



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Chapter Summary

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Chapter 4: Alternative Arrangements for Providing Goods and Services

Savas argues that there are three parties to service provision: 1) the consumer who directly receives the service, 2) the producer who directly provides the service to the consumer, and 3) the arranger or provider who selects the producer and assigns producers to consumers. These three parties should be thought of as roles played by different agents depending on the service provided. The consumer can be an individual, a household, or a business. The producer role can be played by the government, a private firm (either for profit or nonprofit), or by the consumer herself. The arranger role is, in the case of public goods, played by a government agency. In the case of goods from which people can be excluded and thus money charged, the arranger is often the consumer herself. Savas outlines ten ways in which goods and services are provided, identifying which party plays each role.

▪ Government Arranges

▪ *Government produces*

- Government service - The government provides the service directly to the consumer, acting both as an arranger and a producer. The consumer pays for the service either indirectly through taxes or directly with a user fee.
- Intergovernmental agreement - The government, acting as an arranger, contracts with another government to provide a service. This strategy is frequently employed by small communities. Services commonly provided in this way are schools, road maintenance, libraries, recreation facilities, and fire-protection.

▪ *Private sector produces*

- Contract - The government selects, authorizes, and pays a private firm to provide a service. Tangible goods such as public works, public safety, and support functions are most commonly contracted to for profit private firms, whereas health and human services and parks and recreation are commonly contracted to nonprofit firms.
- Franchise - Government awards monopoly privileges to a private firm to supply a service, usually with regulated prices. Utilities such as electricity, telephone service and heating gas are often supplied in this way by private firms with rates either determined or carefully regulated by government.
- Grant - This is one strategy used to provide goods whose consumption is to be encouraged, such as housing, education, and health care. In this case, the government and consumer act as co-arrangers, and usually both the government and the consumer make payments to the producer. For example, a non-profit organization providing affordable housing may receive some operating and development funds from local, state, or national government agencies, but will also collect rents from residents.

All situations where the government arranges and the private sector produces assume that government has the capacity to select contractors and monitor contractors.

▪ Private Sector Arranges

▪ *Private sector produces*

- Voucher - This is another strategy used to provide goods whose consumption is to be encouraged. In this case, the government subsidizes the consumer rather than the producer, and the consumer is the arranger. The consumer is not limited to firms subsidized by the government. Food stamps are an example of a voucher system. Food stamps are given directly to the consumer and can be used to purchase almost any type of food in most grocery stores.
- Market - The consumer arranges service and pays the producer. The government is not involved other than in a regulatory mode. This is the dominant arrangement in the US for many types of goods and services ranging from haircuts to stereo equipment.
- Voluntary - A voluntary association either acts as arranger and producer, providing a service directly to consumers (such as a church which operates a shelter for the homeless) or acts as an arranger by contracting with a private firm to provide a service (such as a non-profit organization contracting with a hotel to provide temporary shelter for the homeless).
- Self-service - The consumer provides services directly to him or herself such as taking his/her own garbage to the landfill.

▪ *Government Produces*

- Government vending - In this case, the private sector arranges to purchase a good or service from a government agency. Examples include purchase of water, mineral, or logging rights to government-owned land, or hire of government agents for a private purpose such as hiring police services for a private event.

There are also hybrid combinations of these ten fundamental types of goods and services provision. For example, government may give a grant to a day care provider to provide service to low income families, and give day care vouchers to low income parents.

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Chapter Summary

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Chapter 5: An Analysis and Comparison of Alternative Arrangements

In chapter 5, Savas summarizes and analyzes the appropriate institutional arrangements for different types of service delivery. His analysis includes an examination of the inherent properties of different types of goods, the arrangements which work best in delivering those goods, and factors to be given careful consideration in evaluating the utilization of different arrangements. He concludes his analysis with a summary of the characteristics of privatization alternatives.

According to Savas, the nature of goods determines which arrangement is most appropriate for their delivery. Private goods can be provided by any arrangement, while toll goods can be provided by any arrangement except self-service. Collective goods can be provided by government, intergovernmental agreement, contract or by voluntary arrangement. Common-Pool goods, although supplied by nature, can be created by government action and then supplied through government service, intergovernmental agreements, contracts, grants or vouchers.

Savas describes, in detail, eleven different attributes and characteristics of goods and the arrangements which are important in determining the suitability of a particular arrangement for supplying a good:

1. Service specificity: How easy is it to specify the services provided and needed? The progress of the services? The success of those provided?

- Services that can be specified to a great degree can be provided by any arrangement.
- Services that cannot be specified to a great degree cannot be readily provided by intergovernmental agreement, contract, franchise or grant.

2. Availability of producer

- If there are many producers to choose from, the most appropriate arrangements are contract, market, and voucher.

3. Efficiency and effectiveness

The three fundamental criteria of service performance are: efficiency, effectiveness and equity. The degree of competition determines the amount of efficiency and effectiveness: the greater the amount of competition permitted by an arrangement, the greater the efficiency.

- Market, contract and voucher systems are most conducive to foster competition.
- Franchising, grants, intergovernmental contracting, governmental vending and voluntary arrangements promote less competition.

- Self-service yields no competition.

4. Scale: the scale of service affects its efficiency.

- Government service is likely to be inefficient because the production unit must, by definition, be the same size as the consumer unit without regard to its optimal size.
- All of the arrangements (except govt. service and self-service) can achieve economies of scale by allowing the size of the producer to be independent of the size of the arranger.
- Those arrangements most able to take advantage of economies of scale are contracting and franchising. Voucher and inter-governmental service, to some small degree, can realize economies of scale.

5. Relating costs and benefits

- Efficiency is more likely to be achieved when there is a direct link between paying for the service and realizing its benefits, and the consumer has economic incentive to shop wisely. Such a relationship is only possible for private and toll goods.
- Those arrangements which allow for a direct link between the paying consumer and service producer are: market, voucher, grant and franchise.

6. Responsiveness to consumers

- More responsive service is achieved when the consumer is the arranger, as in market, voucher, self-service, and voluntary arrangements, and in arrangements where there exist multiple grantees and franchises.

7. Susceptibility to fraud (types of fraud include bribery, collusion, and extortion.)

- Each arrangement is susceptible to some degree of fraud.

8. Economic equity: the difference in the ability of each arrangement to provide services in a fair and equitable manner with regard to financial means.

There are two opposing viewpoints on the relationship between the market mechanism and equity. The first viewpoint says the market mechanism is inherently equitable in that all people are treated equally and everyone pays the same amount of money for the same thing. The second believes the market is inherently inequitable because incomes are distributed unequally and, therefore, rich and poor cannot buy the same things (i.e. ability to obtain services and goods is based on income.)

Savas believes that opposition to privatization on the grounds that it is unfair to the poor is unfounded, as privatization does not require a pure market arrangement. A combination of arrangements may be employed. In summary, however, the arrangements clearly do differ in their ability to redistribute.

9. Equity for minorities

- Privatization does not necessarily mean a decrease in the availability of jobs for minorities. The private sector is subject to the same laws and regulations of anti-discriminatory hiring practices as the public sector. Additionally, the public sector has not been without problems in

discriminatory hiring. Privatization can also create entrepreneurial opportunities for minorities.

- Because of the inefficiency of the public sector, contracting can often result in greater efficiency and therefore eliminate the bias in service provision where the quality of services has been worse for minorities. Any arrangement that results in better-quality or more cost-effective public services is likely to benefit minorities more, as they are more dependent on private goods that have been collectivized.

10. Responsiveness to government direction

- Direct Government service arrangement is not very responsive to public policy, as the elected chief executive or local official has very little control over the agency that is under his or her nominal control.
- Private firms can actually be more responsive to public policy than government agencies.
- No arrangement, however, stands out as being significantly more responsive to government direction or control than any other.

11. Size of government

- The size of government is greatest under government service and least under market, franchise, voluntary and self-service arrangements.
- Contracts, grants, and vouchers result in smaller number of government employees, but can result in larger government expenditures due to an increase in demand by the consumer and a resultant increase in prices (especially under the arrangements of vouchers or grants.)

Savas compares different arrangements with a chart, which shows that:

- Market system and voucher system have the greatest number of positive attributes.
- Government service, government vending, intergovernmental agreements have the fewest number of positive attributes. (note: These conclusions are influenced heavily by the values that are inherent in the table. Different results can be obtained by weighing each arrangement against a different set of values.)

Characteristics of the Privatization Alternatives

▪ Contracting

- Privatization of public services that supply collective goods is most successfully achieved through contracts, voluntary action and vouchers.
- Privatization of nationalized or state-owned enterprises that supply private and toll goods is most successfully achieved through the market mechanism.
- Summary of the literature on theoretical differences in motivation and performance of public and private organizations:
 - There is less incentive to perform in the public than in the private sector (the private sector can use raises, promotions, demotions and firings more readily.
 - In the public sector, operating and capital budgets are arrived at through two separate processes, and it is therefore difficult to trade-off between them.
 - The budget in the public sector can grow even if the customer is dissatisfied. Therefore, the public sector lacks motivation for "satisfying the customer."

▪ Vouchers

- Conditions under which a voucher system will work well:

There are widespread differences in people's preferences for the service, and these differences are recognized and accepted by the public as legitimate.

- Individuals have incentives to shop aggressively for the service.
- Individuals are well informed about market conditions, including the cost and quality of the service and where it may be obtained.
- There are many competing suppliers of the service, or else start-up costs are low and additional suppliers can readily enter the market if the demand is there.
- The quality of the service is easily determined by the user.
- The service is relatively inexpensive and purchased frequently, so the user learns by experience.

- Good ways to use vouchers: transportation, child care, legal services, health insurance, housing and food.
- Bad ways to use vouchers: medicaid and medicare

▪ Voluntary Action

- Requirements for a voluntary organization to successfully provide services:
 - the need or demand is clear and enduring
 - enough individuals are motivated to try to satisfy the need
 - the service is within the technical and material means of the group
 - the results are evident to the provider group and provide psychic rewards and re-inforcement.

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Chapter Summary

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Chapter 6: Applications in Physical and Commercial Services

Savas examines various studies to show the ability of the private sector to deliver services that make up the "physical amenities of modern life" in a more efficient and effective manner than government can, especially when government has a monopoly with regard to those services. Savas uses the following criteria to analyze the relative merits of public versus private service provision: efficiency, effectiveness, and equity. He defines efficiency as the economically appropriate allocation of resources. Effectiveness has to do with the arrangement whose output satisfies the need. Equity has to do with the fair distribution of the service.

Savas breaks down his analysis by citing studies and specific examples in the following categories:

- **Solid Waste Management:**
Studies found municipal workers were less efficient due to government monopoly of this service. Privatization saved costs, but cities should seek competitive bids from both private sector and their own solid waste departments.
- **Street Services:** Private sector had lower costs yet paid higher wages. Firms could do so due to greater knowledge of the work which led to more efficient and cost-saving practices.
- **Transportation:** Urban buses and subways are transport modes where privatization reduces costs, although competitive bidding is the key to this. Studies in US, UK and Germany have shown that subsidies to public provision of these services produces inefficiency and private firms can save costs without sacrificing quality.
- **Water Supply and Treatment:** Again, private firms can provide this traditionally public service at lower cost.
- **Electric Power:** Public providers had higher costs due to lower user rates. Private firms charged more but worked more efficiently.
- **Commercial and Administrative Activities:** Traditionally taboo area for privatization (printing, secretarial, janitorial, etc.) Many government activities in this area could be effectively privatized. Reduced worker salaries and fringe

benefits contribute to the savings.

- **State-Owned Property:** Studies show government can manage its land assets more effectively and efficiently by privatizing the management of forests, range land, etc.
- **State-Owned Enterprises:** Privatization can turn around inefficient and/or heavily subsidized enterprises including: power utilities, railroads, postal service, airports, consumer and business loan services, etc. Many developing countries have established these as state-owned enterprises, only to privatize then later because they were so inefficient.
- **Miscellaneous and Prospective Applications:** Savas cites such examples as weather forecasting, bank deposit insurance, even money supply as candidates for privatization.

In sum, Savas states that government in general should no longer own, operate, and franchise monopolies in the services listed above. Instead, he sees government's role to facilitate, coordinate, purchase contract or market services, and to inspect and enforce the provision of these services by the private sector.

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Chapter Summary

Savas, E. S. 1987. *Privatization: The Key to Better Government*. Chatham, NJ: Chatham House.

Chapter 8: How to Privatize

In this chapter, Savas lays out the ways in which government can undertake privatization of services. The first and most basic strategy for privatization is "load shedding," the partial or complete withdrawal of government from an activity, in favor of this activity being provided by the for-profit, nonprofit, or voluntary sector. He offers examples of how load shedding has been occurring for some time, resulting in both improved services and lowered costs, even as government itself has grown. One major method of load shedding is divestiture, or the selling of state-owned enterprises, such as bus services or utilities.

Other options for privatization include limited-government arrangements. These involve limiting the role of government to making grants or supplying vouchers to facilitate the provision of a service through the private market, or devolving responsibility to a lower level of government, closer to the people being served. Savas believes this method may be appropriate for services that are paid for collectively.

User charges are a third strategy, one that can be applied to goods and services provided directly by government, by intergovernmental agreement, or by contract arrangement. Although this is not strictly "privatization," it reveals hidden subsidies and requires users to pay the true cost of services.

Finally, competition must be introduced and government monopolies must be broken up. Savas believes that despite the many efforts to improve government services, as long as they remain monopolies, they will continue to perform poorly. With competition, citizens can and will express their choices, and as a result, ineffective, expensive, or unneeded services will be revealed and discontinued.

In the final section of this chapter, Savas discusses the requirements for effective contracting out of government services. He argues that the costs for government provision of services are greatly underestimated, in part because governments often do not include capital expenditures, overhead costs, supplies, and other items in the cost of a particular service, but rather in the operating budget of the agency. When actual costs are measured, government's cost for providing a service rarely compare favorably to costs in the private market. The existence of multiple suppliers leads to better performance and provides a yardstick for measuring government's performance in providing that same service. Contracting must be undertaken carefully, however, with clear specifications, a fair bidding process, and monitoring to ensure satisfactory performance once a contract is in effect. Savas makes no mention, however, of how fiscal resources can restrain citizen choice and impact social equity.

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Chapter Summary

Savas, E. S. 1987. *Privatization: The Key to Better Government*. Chatham, NJ: Chatham House.

Chapter 9: The Problems with Privatization.

As one might expect, if a man writes a book about privatization being the key to better government he most likely won't find many problems with it. Chapter 9 is about the problems associated with privatization. Savas claims that the first problem is the use of the word turns people off. "Public" denoted brotherhood, sharing, and community and people mistakenly interpret private to mean the negation of the important values. Savas believes that as a means privatization can be employed effectively by the welfare state (through vouchers), and as an end it is inimical to the welfare state. Another problem Savas identifies is fulfilling the necessary conditions for successful privatization. These conditions are pretty much the same conditions for a successful free market. There must be a large number of suppliers, well spelled out specifications for the services, and well informed consumers. There are also issues in regard to hard and soft services. Contractors for soft services (human services) have their performance evaluated according to their adherence to rules, not their output. This stifles innovation. In all, Savas doesn't see problems with privatization, but he does see obstacles. User charges (price discrimination), opposition to deregulation of franchises, halting ribbon cutting, the contracting out of human services to receive federal funds, and cream skimming (taking most profitable patients or services, leaving government services to provide residual care) are all seen as obstacles. While Savas discusses the effects (or lack of) of privatization on minorities (for hiring) in chapter 4, he doesn't see it as a problem.

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Chapter Summary

Sclar, Chapter One, "The Urge to Privatize" Chapter 1 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press.

In his introductory chapter, Elliot D. Sclar suggests that we strike a balance between privatization, primarily the use of contracts for services, and internal reform of government entities. His first chapter examines the strengths and weaknesses of privatization through a systematic analysis and explanation of economic theory as well as the specific problems with contractual competition.

First, Sclar tracks the historical change in the prevailing view of the role of government. At the turn of the century, people viewed government as the key to solving the great social problems created by capitalism. After the collapse of many socialist governments, capitalism became deeply entrenched as the solution to the social problems created by massive, sluggish governments.

Sclar then explains the standard market model and its underlying assumptions. In this model, the cost of anything is determined by the expense of its production. Producers work to reduce costs in order to sell at the lowest price so that consumers will purchase their product. Sclar points out the many ludicrous assumptions required to make this model work, emphasizing the model's inability to account for inequality. He then explains that the contract market doesn't fit this model because market barriers are too high.

Economic power tends to concentrate with certain sellers in what Sclar describes as mountain peaks among the more plateau-like competitive markets. Most sellers don't like these competitive markets because they are not sustainable over the long term. He uses the analogy of the "good guy" against all the "bad guys" to illustrate the level plateau. Through illustrations and examples such as these Sclar disproves the assumption that markets are a level playing field, and therefore, calls for a more realistic view of the market to better comprehend the potential benefits and drawbacks of privatization.

Several factors limit contractual competition. Most contracts are made for multi-year periods, thus eliminating competition. Many services, such as water and sewer treatment, are inherently monopolistic. Furthermore, contractual relationships are more efficient when sustained over long periods of time.

Finally, outsourcing can become a problem for governments. The contractors do not have ownership of the particular service they provide. Sclar uses the example of a jet crash due to improperly handled hazardous material. The contractor wanted to get rid of his/her responsibility of the material and return it to its owner. Governments must use the "spot market" to buy specialized services. The very fact that the government has entered the market will affect the price of those services, especially over a long term.

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Article Summary

Sclar, Elliot 2000. "What is the Public Buying? Identifying the Contracted Public Good." Chapter 2 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press.

In the second chapter of his 2000 book entitled *You Don't Always Get What You Pay For: The Economics of Privatization*, Elliot Sclar examines the characteristics of public services that may complicate their privatization and develops criteria that should govern contracts extended by the public sector to provide public services through private suppliers. Sclar argues that accurately quantifying the complete public service to be privatized is very difficult. Most publicly provided services generate externalities, which reverberate beyond the direct buyers and sellers. Furthermore, the complexity of many of the government provided services makes a true cost accounting nearly impossible. He illustrates his theoretical points through case studies.

Sclar offers the example of a low-cost, reliable postal system. Sclar argues that our market economy and democratic society derive important benefits that private niche players, such as FedEx, could not duplicate. Sclar argues that private providers could not offer the range, price, and security of the post office's services without a public subsidy.

Sclar also examines highway privatization efforts in Massachusetts in order to illustrate the problems that arise when contracting out a complex service. Although isolated road projects are routinely bid out, Sclar maintains that efforts to privatize the coordination and administration of highway maintenance fell far short of the proclaimed successes. Most importantly, policymakers never understood, or accurately accounted for, everything that the Massachusetts highway department had done. For example, public road workers routinely sealed road cracks because it helps roads last longer, thus keeping long-term repair and capital improvement budgets under control. On the other hand, while private contractors had to fill potholes, they were not responsible for the less noticeable road cracks.

Sclar notes that this privatization effort was ideologically conceived. Subsequent reviews found that state contracts were written to hide or defer many of the contractor's expenses, making privatization seem cheaper. Investigators also found that policy makers overstated the costs of the original service provided by public workers, while unfairly criticizing the quality of their work. Policymakers moreover failed to realize that the Massachusetts Highway department had a lot of experience taking care of its roads whereas outside contractors faced a steep and expensive learning curve.

In his conclusions, Sclar proposes three preconditions to successful public contracting:

- 1) Carefully specify and delineate the services to be privatized.
- 2) Conduct a thorough pre-privatization cost accounting of the work to be contracted out to ensure that privatization makes economic sense not just political sense.
- 3) Consider the "learning curve" costs of privatization by accounting for the expertise already developed in the public sector but not necessarily held by potential private providers.

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Article Summary

Sclar, Elliot, 2000. "Public vs. Private Production: Is One Better and How Would You Know?." Chapter 3 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press.

In the third chapter, Sclar questions the simple assertion that the private sector can provide public services more efficiently. Economic arguments for privatization claim that the public sector can save money by moving away from direct production and relying on private providers. Sclar, however, argues that comparative cost studies often fail to fully consider the complex character of the services that they claim to analyze.

For Sclar, the proper way to compare public work with privately contracted work is on the basis of avoidable costs. What are the costs that the public organization can truly avoid through privatization and what are those incurred by extending the contract? Three kinds of costs are crucial when deciding between private contracting and direct public production:

- The direct costs of publicly supplied services,
- The costs of the outside service contractor,
- The internal costs brought upon by a contractual arrangement.

A comparative analysis of the cost of public versus private production must include an account of the transaction costs even if the private sector is more efficient than the public sector at production. What matters is whether the sum of both the contract price and the transaction costs is less than the cost of directly provided public services.

To test the assumption of private provider cost savings, Sclar examines several case studies in order to demonstrate that *context matters*. Differences in and the complex nature of specific services in specific locations affect costs. Sclar, for example, analyzes all Canadian transit systems, and his findings failed to show any statistically significant (that is, clear and meaningful) difference between the cost of private service and public service. He suggests that one needs to consider productivity and cost issues in the context of specific market conditions and their specific organizationally complex environment.

Arguments for privatization often hinge on the potential to capture labor-cost savings, always the largest part of any public-service operating budget. It is impossible to create meaningful savings without somehow lowering personnel costs. Privatization advocates stress that public employees are greatly overpaid. The author contends however, that privatization arguments need to move away from arguments about differences in public/private wages. Instead they must examine [1] the extent to which private contractors can create higher *output* per worker and [2] the degree to which private suppliers are forced to pass productivity gains along to the public buyer in the form of lower prices.

Sclar concludes that the question should not be "to privatize or not to privatize." Instead the task should be to determine how public and private strengths (e.g. capacity for technological innovation, existing expertise,

market structuring power, etc.), might be leveraged in order to provide more value for the tax dollar.

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Chapter Summary

Sclar, Elliot 2000. "Restructuring Work: The Relational Contract," Chapter 6 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press.

In the sixth chapter, Sclar examines a specific case study in order to illustrate a successful alliance between labor and management and to highlight the features of relational contracting. The author analyzes the attempted privatization of the Indianapolis Fleet Services [IFS] department, a division responsible for providing upkeep, fueling, procuring and disposing of all city vehicles. The department had previously been created by merging many different city departments' fleet vehicle maintenance divisions including social services and fire departments. The merger, however, resulted in a bloated department that exceeded its budget and failed to provide timely maintenance for city vehicles.

The 1991 mayoral election signaled a turning point. The citizens of Indianapolis elected Stephen Goldsmith as new mayor, a candidate who had run on a privatization platform. The new mayor singled out IFS (then known as the Central Equipment Management Department -- CEMD) as his first privatization effort. However, three factors helped the CEMD fend off privatization: 1) due to years of internal management-labor conflicts, line workers had developed a sense of solidarity, 2) after the elections the manager stepped down and was replaced by a forward thinking division head, John McCorkhill and 3) a cooperative union President, Dominic Mangine, struck an alliance with management.

The internal alliance of workers and the new management convinced city hall to desist from immediately dissolving the division. Goldsmith received this combination of bold leadership and union support favorably. The mayor approved the following steps in order to give CEMD both the time and power to restructure itself: 1) to dismiss ineffectual managers, 2) to develop an implementation and reorganization plan, and 3) to allow CEMD to bid for the contract along with other private companies. An outside consulting firm requested bids for the city. The CEMD now as IFS was chosen.

In his conclusion, Sclar remarks that most would laud this case as an instance where the public sector was successfully forced to compete with the private sector, as a "salutary example of competition" (143). Sclar, however argues that the real lesson is about relational contracting. The genuinely constructive relationship that developed between city hall, CEMD management and line workers, he argues, facilitated the restructuring of the department and fostered an environment in which privatization was not a forgone conclusion. The alliance made trimming politically appointed managers possible, resolved internal worker-management conflicts and improved the quality of the service. Consequently, the CEMD, transformed into the IFS, became a financially viable business.

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Article Summary

Sclar, Elliot, 2000. "The Privatization of Public Service: Economic Limits of the Contract State," Chapter 7 of *You Don't Always Get What You Pay For: The Economics of Privatization*. Ithaca, NY: Cornell University Press.

The concluding chapter of his 2000 book entitled *You Don't Always Get What You Pay For: The Economics of Privatization*, opens with examples of privatization from New York to illustrate the limitations of private contracting out public services. Sclar then offers a list of eight rules to improve the public sector. The brief history of New York City corruption dating from the Boss Tweed days of the 1850's to Gulliani's administration, Sclar notes, serves to illustrate that while a wide variety of reforms have followed these abuses of public money and trust, "no one [has] found a way not to pay the contractors when the work was shoddy or nonexistent"(154). One of the main problems in contracting remains the inability to ensure public accountability through the terms of a contract.

Sclar, in this chapter briefly outlines his critiques of the standard economic model, on which the arguments of privatization proponents rest. Advocates of privatization, he notes, make several unrealistic assumptions: 1) existence of a competitive market for a given service, 2) presence of a large number of buyers and sellers with equal access to information and expertise to use this, 3) zero transaction costs, and 4) a social, economic and institutional environment that does not cause friction. Contracting, as the case-studies in this book illustrate, occurs in environments characterized by a high degree of uncertainty in which actors (buyers and sellers) have differential access to information and in which a competitive market for the service has not and may not form.

Sclar, furthermore, argues that privatization advocates are often ideologically blinded and therefore dismiss the possibility of public sector reform. Sclar, however, hones in precisely on this option in his conclusions. He offers eight rules to restructure and improve public sector contracting, rules that do not foreclose the option of public sector provision.

1. Carefully specify the product and the service rendered. Many public sector products have social components to them. The post office in small towns serves a much greater purpose than the simple delivering of the mail.
2. Use activity based accounting when figuring the actual cost of providing a service. There can be no comparison between in house work and outsourced work unless there is a reliable accounting of what it costs to provide a service.
3. For the actual cost comparisons use "avoidable cost accounting" because it does not include overhead and direct operating costs.
4. Transaction costs are not zero and must be addressed when figuring the costs of privatization. There will always be public management of the private provider.
5. Acknowledge that public contracting is different from private contracting. Public contracts have different standards of accountability, flexibility, and are often more problematic.

6. Review more than simply all private or all public alternatives when judging the merits of either system. Sometimes governments find other permutations or rearrangements that work well.
7. Allow employees to make contributions to the process of reorganizing the provisions of services.
8. Remove politics from contracting.

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Chapter Summary

Savas, E. S., ed. 1992. *Privatization for New York: Competing for a Better Future*. The Lauder Report; A report of the NYS Senate Advisory Commission on Privatization. New York.

Chapter 1: Introduction (E. S. Savas)

Overview

This chapter outlines some broad reasons for privatization and indicates the stance of the Commission on the subject. There are some relevant discussions of the general impact privatization will likely have on service delivery and the gains which may be expected. As well, the impact on employees is addressed and some ideas for ameliorating the consequences of privatization on this group are offered. Perhaps the most important statement in this chapter contributes to the overall theoretical debate: "Public agencies and public firms should have to compete for the privilege of providing public services and earning the taxpayers' money" (p. 9). Generating tax revenues to provide services is not a right of governments and its agencies, it is a privilege which should be questioned and evaluated regularly.

Rationale for Privatization

The Commission would like to see more competition take place for the opportunity to provide public services. There are many reasons for this that pervade the literature on privatization, taxation thresholds and demands for better services to name two, but, perhaps the most compelling reason is organizational:

...government services are so often costly and poor ...not because the people who work in government are somehow inferior to those who work in the private sector; they are not. It is because monopoly is generally inferior to competition in providing high-quality, low-cost goods and services, and most government activities are unnecessarily organized and run as monopolies. (p. 3)

Thus, encouraging an environment where competition is central to organizing the delivery of services will result in several measurable benefits and an overall improvement in productivity.

Sources of Improvements from Privatization

Several methods or techniques are discussed to achieve improved productivity from privatization; contracting, franchisement, subsidization, vouchering, deregulation, and the selling of government assets are proposed. However, the notion that productivity gains are a result of lower wages is misleading according to the authors. The observed improvement in output per employee is a result of:

- less paid time off
- the use of part-time and lower-skilled employees
- a managers' ability to hire and fire employees
- the use of incentive systems

- a reduction in the overall use of labor

While this raises many concerns for public employees and administrators, several approaches may be integrated into the privatization process to ameliorate the consequences of privatization on certain groups of individuals. Some of these methods take the form of controlling the implementation of the process while others are related to hiring practices, retraining, early retirement and severance packages.

The goal of privatizing government services is increased productivity but the method for achieving this goal has to come from more efficient organizations.

Conclusion

The authors are careful to point out, several times, that prudence and caution should inform every discussion on privatization. Their recommendations are essentially that the New York State Legislature should enact legislation that introduces more competition into the delivery of government services.

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Savas, E. S., ed. 1992. *Privatization for New York: Competing for a Better Future*. The Lauder Report; A report of the NYS Senate Advisory Commission on Privatization. New York.

Chapter 2: What Other States Are Doing (Keon S. Chi)

Overview

This chapter, as the title suggests, provides a summary discussion of how some states are involving themselves in privatization activities. Chi categorizes the privatization activities of states into three categories: 1) implementation states that have implemented or are implementing privatization, 2) study states that are looking into the feasibility of privatization, and 3) reluctant states that have made little or no use of privatization. This chapter essentially discusses the accomplishments of those governments that could be characterized as implementation states.

Areas for Privatization

Chi identifies broad categories where privatization has already taken place in the United States. Among the more prominent categories are human services, corrections, transportation, and education. In addition, the use of contracting is discussed in delivering support services to government agencies such as computer system design and telecommunications.

Benefits of Privatization

The key issues for engaging in privatization activities are stated to emphasize the rationale for pursuing such an agenda. Cost-savings, lack of technological expertise, the short-term nature of some projects, and the need to meet deadlines imposed by courts are some that are cited. Employee opposition and legal barriers were identified as the two most frequently cited obstacles to privatization. This is particularly important for New York State as they have more of these impediments than any other state in the country.

Examples of Privatization

Activity in privatization has taken place in many fields across the United States. In the delivery of social services contracting has occurred to improve hospital operations, mental health facilities, child care, day care and employment training.

Prison management has benefited from privatization in five main areas: 1) services, 2) construction, 3) management, 4) take-over, and 5) operation. Responding to court orders to expand prison capacity, relieving financial burdens to jurisdictions that lack capital budgets, and unloading responsibility for non-violent inmates have all been cited.

Private sector involvement in transportation has been equally diverse. Administration, construction, maintenance, and operation of highways, toll roads, and public transportation facilities have taken place across the United States.

In education, states have utilized vouchers, private managers, private funds for teacher education, and

private, contract teachers on an extremely limited basis.

Support services have also been an area where governments have been willing to experiment with contracting. Some examples include custodial services, maintenance, trash removal, security, snow removal and grounds maintenance.

Cost Savings from Privatization

A lengthy and detailed discussion of the nature and extent to which states have saved money by privatizing is contained in this section. The sources of these savings are varied and different in each case. The nature of the service, the degree of contract monitoring, the larger economic conditions at the time of privatization, and, most importantly, the method of comparison used between the private and public service providers are all factors that may contribute to an assessment of cost-savings. The Colorado Auditor's Office developed a practical guide to estimate the potential for cost savings for its agencies. Among the factors considered important to this assessment are market strength, political resistance, quality of service, impact on employees, legal barriers, risk, resources, and control.

Obstacles to Privatization

Some major obstacles are identified here in order to provide a rationale for why states may be reluctant to engage in privatization. Loss of control and inconclusive feasibility studies appear to be the most common reasons. Chi states that the majority of these barriers are either legal or administrative in nature which is characteristic of New York State. State constitutions, regulatory restrictions, federal grant conditions, and state purchasing practices are some of the obstacles cited by Chi.

Conclusion

This chapter provides an overview of some of the privatization activities states across the country are currently involved in. While there is very little depth provided in the examples, they do indicate the breadth of applications state governments have found appropriate for investigating privatization opportunities.

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Savas, E. S., ed. 1992. *Privatization for New York: Competing for a Better Future*. The Lauder Report; A report of the NYS Senate Advisory Commission on Privatization. New York.

Chapter 3: Medicaid (Edwin S. Rubinstein)

Medicaid is a federally mandated program under which states provide health services to low-income and disabled people. New York State's Medicaid costs have escalated rapidly in recent years; the estimated expenditure in 1992 was \$14 billion. These costs are shared by the federal, state, and local governments. New York spends much more on Medicaid than any other state in the country, largely because it has chosen to deliver more optional services than most other states, has fewer limitations on services, and has less stringent eligibility requirements than many other states. In addition to those who qualify under income guidelines, New York includes people considered "medically needy," meaning those who are not poor but face extraordinary medical bills. These cases represent 52 % of the total cost of New York's program. Unlike in most other states, more money goes to long-term care—nursing homes and home health care—in New York and less to physician visits, prescriptions, and outpatient clinics.

The reasons for the higher costs of New York's Medicaid program are primarily:

- longer nursing home stays
- higher labor costs
- higher pay for nurses' aides
- extensive use of home health care services for personal care services
- more outpatient mental health care visits are allowed
- inpatient stays are longer

In addition, fraud is estimated to cost \$2 billion per year, mostly due to corrupt *providers*, not recipients of Medicaid.

The author believes that privatization techniques can be effectively used to control the spiraling costs of Medicaid, without reducing services, tightening eligibility requirements, or lowering reimbursement rates. He describes efforts to privatize some or all Medicaid services in states across the country, including California, Texas, Indiana, Arizona, Florida, Illinois, Wisconsin, Ohio, and Nevada. Many, but not all, of these efforts have been successful. The main techniques recommended for New York are:

- *managed care*: requiring all Medicaid recipients to enroll in HMOs, which receive a fixed per-capita payment for providing services. Regulation should be reduced and doctors'; payments should be raised (they are now lower than in many other states). For example, Arizona assigned all Medicaid recipients to HMOs, saving 6 % a year in the first five years of the plan. In contrast, New York operates under the fee-for-service plan, which encourages costly and sometimes unnecessary tests and procedures.
- *abolish CON program*: a CON (Certificate of Need) is required before any public or private hospital or

clinic expands its facilities or equipment; this prevents supply from expanding in response to need and inhibits competition. Nursing homes in particular need to increase capacity.

- *cost sharing*: small co-payments should be required of recipients, especially for prescriptions, non-urgent emergency room care, and home personal-care visits.
- *selective hospital contracting*: for example, California was successful in contracting out its Medicaid hospital services to private hospitals, paying a flat monthly fee.
- *competitive bidding*: some services, such as lab work, can be purchased under this approach, or using volume discounts.
- *long-term-care tax credit*: this is a tax credit allowing middle-income earners to deduct a portion of their premium from their tax return when they purchase long-term-care insurance; it would shift some of the expense of long-term care to private insurers.
- *strengthen asset test for eligibility*: to help eliminate abuse by those who spend down their assets in order to qualify as "medically needy."

Other recommendations include improving data management, possibly through outside contracting, reestablishing the post of Welfare Inspector General to coordinate anti-fraud efforts, and introducing photo ID cards for recipients to help prevent fraud (mostly a New York City problem). Through these measures, Rubinstein estimates that New York could save at least \$1.2 billion a year. The recommended approach is a combination of several privatization techniques, such as introducing competition, relaxing regulation, implementing cost-sharing, and moving some of the costs of care onto those who can afford it. The ultimate goal is to provide Medicaid recipients with more choices and better access to medical care, while lowering costs.

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Savas, E. S., ed. 1992. *Privatization for New York: Competing for a Better Future*. The Lauder Report; A report of the NYS Senate Advisory Commission on Privatization. New York.

Chapter 6: Bus Service (Wendell Cox and Jean Love)

Bus service in the United States began in New York City in 1827. In New York State it has grown to account for over one quarter of all transit miles operated in the country. Initially, bus service was administered and operated by the private sector, but was eventually turned over to the public sector to ensure the provision of low fares and adequate routing - something that the public believed the private sector could not achieve. However, public subsidization of the transit system is actually the cause of increased transit costs and declining productivity.

Since 1979, bus fares in New York State have risen at rates that are 2.5 times that of the contracted bus industry and greater than inflation. Additionally, although ridership is down, unit costs have increased by forty-two percent, after adjusting for inflation. The increase in fares and costs is a result of unreasonably high wages paid to bus service employees. These problems are not, however, the fault of the management or employees of public transit service; they are behaving as one normally would under the incentives of a monopoly system. By definition, a monopoly produces less service at a higher cost than competitive enterprises. Therefore, improvements in the bus industry will only come with a change in its structure. In other words, the public sector's monopoly on bus service in New York State should be broken up.

Competition is the key to improving mass transit service in New York State. Two practices that will ensure competition in the industry are:

1. competitive contracting and
2. allowing smaller commercial operators to enter the market where they do not duplicate or divert revenues from publicly sponsored operations.

At this time, only 8% of bus service in the U.S. is provided by competitive contracting, however, where it has been implemented, in cities like San Diego, L.A., and Denver, savings of between 30-60% have been achieved. Free entry of commercial services has been implemented in countries such as the U.K, New Zealand, and South Africa through legislation, separation of the policy makers from the operators, and, in South Africa's case, simply opening up the market to small operators. Each case has yielded successful results.

Barriers to competitive contracting in New York State are of a political, legal and bureaucratic nature. Politically, transit management and organized labor present the greatest opposition. Legally, competitive contracting is prohibited either directly or indirectly through the labor bargaining process. Additionally, "public prerogative" legislation (legislation which could determine that citizens of New York do not have the right to negotiate for services at market rate), and Section 13C of the Urban Mass Transportation Act of 1964 (guaranteeing up to six years severance pay for an employee whose job is eliminated due to economies or efficiencies) serve as legal obstacles to implementation of competitive contracting. All of these should be

removed and replaced with well-designed competitive contracting legislation and the amendment of existing laws.

Bureaucratically, the bidding process in competitive contracting has, in many cases, been improperly evaluated, awarded, and/or administered. These problems can be overcome through disallowing a public transit agency to both oversee and participate in the bidding process. A separate entity should be created to oversee transit policy processes such as bidding.

The most daunting barriers to competitive contracting are merely perceived. Concerns over access to, safety, and quality of service can be disputed by examining cases where privatization has occurred and successfully maintained, and in some instances improved, the levels of safety, quality of service and routing. Fear of increased corruption, under-handed cost increases by contractors, lay-offs, and union-busting can all be avoided through careful monitoring, contract provisions, and limiting the rate at which privatization occurs.

To reverse the trend in increasing costs and decreasing services in New York State, the author recommends that competition be introduced at the rate of attrition. Additionally, awarded contracts should be limited in both scope and length in order to ensure that the benefits of competition are realized. Both measures can be accomplished through legislative actions and the establishment of and adherence to rigid standards for competitive contracting.

Expected costs and benefits of such action include a projected ten-year cumulative savings of approximately 30% or more, an increase in service quality, and the transformation of public policy concerning the bus industry from that which has traditionally served the "private interests" of managers and employees of public transit agencies to serving public interest as it should. In the end, the winners of competitive contracting will be the riders, the taxpayers, the unemployed, and communities. The only losers will be future (not present) transit employees who will receive market-rate compensation instead of the above-market wages they've received for years.

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Savas, E. S., ed. 1992. *Privatization for New York: Competing for a Better Future*. The Lauder Report; A report of the NYS Senate Advisory Commission on Privatization. New York.

Chapter 7: Infrastructure (Steve Steckler and Lavinia Payson)

This chapter illustrates the benefits of privatization as it relates to the infrastructure of local areas. Our nation has a history of privatization in infrastructure, particularly during the colonial period and the first 150 years of independence. As Eastern cities grew governments thought infrastructure should be a subsidized government responsibility due to their tax-exempt status, leaving electric power, gas, and water utilities to private interests for the most part. During the 1950s, 60s, and early 70s, federal infrastructure grant programs further killed any chance of privatization because almost no private firms were awarded these grants. Today, a tax-exempt status of government property, income, and debt gives New York State and local government a subsidy of over 40% compared to a private firm. Users pay less, but taxpayers pay more. Currently, much of New York's infrastructure is in much needed repair and rehabilitation, for example New York needs \$856 million more a year just to maintain state highways and bridges.

The authors, Steve Steckler and Lavinia Payson who work for Price Waterhouse's Privatization Infrastructure Finance Group, contend that privatization holds a number of positive possibilities; Privatization will provide new private capita; Facilities will be built more quickly, more efficiently and operated more cost-effectively. New sources of tax revenue are created, and greater customer satisfaction is likely due to the financial interest of the private operator.

Steckler and Payson propose the government sell or lease existing infrastructure to private interests for the purpose of repairing, expanding, or otherwise enhancing the value of the facility. This will work best when: The facility is already financed with direct user fees. When the facility has relatively little outstanding debt compared to market value of the facility. When there is relatively little obligation to repay state and federal grants, and when substantial opportunity for a new owner to expand the revenues of the facility and otherwise increase its commercial value through changes in type, quality, and quantity of services. The idea is for these private sector developers to finance and operate facilities, collecting revenue from users. They also propose the government contract with and pay private firms to operate the facilities.

This appears to be the right time to take such action. In addition to the Federal Transportation Bill (Dec. 1991), there are many other opportunities to take advantage of. Of the 17,350 bridges that are in need of repair many should be turned over to private interests. The Thruway could be sold (for \$1 billion) or operations and maintenance could be contracted out with reduced tolls. Private interests should also develop land along the canal system, develop a high-tech. MAGLEV rail system, and build wastewater treatment plants and correctional facilities. The authors also propose the selling of state buildings as well as the selling or contracting of street lighting to unbundled ownership, and provide better maintenance and electric power.

To achieve these goals NY legislation will have to take some steps. First they should promote private sector involvement in many areas. Legislation should require reports on surpluses and reserves in state-chartered infrastructure authorities. There should be tax exemptions of the interest on project debts by private firms,

and there should be conditional state infrastructure grants to private projects where the profits and user chargers are strictly regulated.

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Chapter Summary

Savas, E. S., ed. 1992. *Privatization for New York: Competing for a Better Future*. The Lauder Report; A report of the NYS Senate Advisory Commission on Privatization. New York.

Chapter 8: Solid Waste Management (Barbara J. Stevens)

Municipal solid waste (MSW) is defined as the materials discarded by household, business, and institutions (not include industrial process waste). The process of handling MSW includes collection, disposal, and processing. There are four types of arrangements for MSW collection:

1. Municipal: city employees, paid by government entity
2. Contract: provided by a private firm selected by local jurisdiction, paid by the local jurisdiction
3. Franchise: provide by a private firm selected by local jurisdiction, customers are billed directly for service, price determined by the community
4. Private: provided by a private firm, licensed by local jurisdiction, customers are billed directly, price determined by market

Collection Arrangements in New York State

- Residential service (% of cities): municipal (54%), private (42%), contracts (4%), franchise (0%). [U.S. as a whole: municipal (33%), private (37%), contracts (23%), franchise (8%)]
- Commercial service (% of cities): municipal (25%), private (71%), contracts (4%), franchise (0%). [U.S. as a whole: municipal (16%), private (59%), contracts (15%), franchise (8%)]

Processing and Disposal Arrangements in New York State

- Landfill: Public ownership and public operation (82%), private ownership and operation (18%). However, with respect to permitted landfills: public ownership and public operation (26%), private ownership and operation (74%)
- Incineration: public ownership and public operation (15%), public ownership and private operation (23%), private ownership and operation (62%)
- Material Recovery facilities (MRF's): public ownership and public operation (38%), public ownership and private operation (28%), private ownership and operation (34%) (MRF's are less dominated by the private sector than is incineration.)

Estimated Savings from Contracting Collection

Contracting and franchises with exclusive territory are most efficient, with costs that are 22% - 25% less than municipal collection. In New York, fewer than 1% of arrangements are exclusive contracts. If New York City used private contracts or franchises, 25% would be saved in residential service (\$70 million annually) and costs would be reduced by 10% in commercial service (\$62 million annually). In New York State, \$60 million in residential service and \$34 million in commercial service would be saved by contracts and franchises

annually. Disposal and processing are also less costly when privatized than when operated by the public sector.

Responses to Concerns About Privatization

Anti-competitive behavior: Some fear that private sector firms will increase price once they have procured a contract, "when they've got us over a barrel." Proponents argue that this can be prevented by a properly constructed procurement.

Environmental problems: It is also feared that private firms would not satisfy environmental regulations for solid waste disposal; for example, they may attempt to dump illegal wastes at landfills. This possibility would be eliminated by careful prequalification of the firm and its principals, based on legal records.

Inflexibility: With regard to recycling, it is noted that it may be preferable not to contract with private firms for a long period, because it is not certain how soon the economics of recycling will develop. On the other hand, proponents believe that flexibility can be acquired through a flexible contract.

Service disruption: There is a concern that private firms are apt to abruptly cease service delivery, leaving municipalities without vital services. Proponents argue that there has recently been no example of such case, despite the thousands of contracts in effect.

Low-quality services: Some fear that private firms would provide lower-quality services compared to public sector. However, proponents point out that "a national study found that private collection received the highest ranking, with 93% of customers ranking it as good or excellent, followed by municipal service with a good or excellent ranking from 90 percent of respondents, and contract service, with a good or excellent ranking from 89 percent of customers."

Loss of control: Some argue that under privatization jurisdictions will not have control over equipment, manpower, or resources, so they will be unable to act when problems arise. But proponents argue that this fear can be eased by careful preparation of a procurement document and by discussions with officials who have successful experience with privatization in solid waste collection, disposal, and recycling.

Examples of Successful Privatization

- *Fort Worth and Newark:* By means of contract, Fort Worth saved 36% (or \$861,000 per year) and Newark realized savings of 18%.
- *Seattle, Washington:* Seattle realized a \$1 million savings on refuse collection by enhancing competition among private firms.
- *Town of Babylon, New York:* Service levels increased with no increase in cost through a change from a private arrangement to a contract arrangement.
- *Rochester, New York:* A comparative analysis between Rochester and Utica, which had similar circumstances, shows that contract employees collected more than five times as much waste per worker as did the municipal employees. In order to prevent the awarding of the contract to a private firm, the city's labor union agreed to change its work practices, which more than doubled the output per crew.

Implementing Privatization

To succeed in privatization of solid waste services, first, competition among private firms must be generated. Second, appropriate governmental involvement is needed to regulate the rate charged by disposal facilities in order to make entry easy. In addition, if there is local opposition to siting a new facility, the government must regulate this sector in order to prevent an existing private owner from having monopoly power. Labor concerns about privatization can be allayed by measures such as no-layoff policies.

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Chapter 9: Housing in New York City (Jack Richman)

Richman's chapter addresses several aspects of government involvement in the New York City housing market: rent regulation, public housing, housing vouchers, housing owned by city government due to tax arrears foreclosure, and housing the homeless.

The discussion of rent regulation is pertinent only to New York City, and is not germane to this audience. Briefly, Richman argues that rent regulation has limited housing revenue, preventing routine maintenance and stifling new housing construction. Further, rent control subsidizes middle and upper class tenants more than more mobile low-income residents. He recommends eliminating rent regulation for high-income households, when subsidized residents vacate the dwelling, and for apartments that rent for \$1,000/month or more.

Other topics are pertinent to housing markets in other parts of New York State and the nation. Richman recommends tenant screening by public housing residents to increase safety and rent payment rates. As an alternative to public housing, he recommends vouchers to subsidize housing consumers rather than producers. Vouchers provide freedom of choice to residents and introduce market competition into subsidized housing provision, which may help to alleviate the housing shortage which is the only limit Richman sees to housing vouchers in New York City.

One of Richman's primary goals for housing in New York City is to keep it on the tax rolls. When housing is owned by government due to tax foreclosure or by a not-for-profit cooperative housing agency, it is not yielding property tax revenues to the city. He advocates two measures to minimize city ownership of housing due to foreclosure: 1) conducting realistic tax assessments of properties including reassessing properties in marginal areas already owing back taxes, and 2) selling at public auction all housing obtained through foreclosure to return the property promptly to the tax rolls. Richman also supports eliminating legal barriers to residents of public housing purchasing their units.

Because not having shelter is often a function of other very broad problems such as alcohol or drug abuse or mental illness, homelessness cannot be solved through housing alone. However, encouraging privately-owned and operated shelters and Single Room Occupancy (SRO) dwelling units through tax policy, zoning ordinances, and building codes can ameliorate the problem.

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Chapter 11: Privatization in Britain (Peter Young)

Privatization has played a key part in economic reforms in Britain since 1979. More than 800,00 jobs in state sector have been transferred to the private sector. More than 1.2 million public housing units have been sold to their tenants. In addition, many public services have been contracted out to the private sector.

Mandatory competitive bidding for local services went in effect in 1988. Six services were to be subjected to competitive bidding: refuse collection, street cleaning, cleaning of public buildings, vehicle maintenance, ground maintenance, and catering services. Further services are being added. Local authorities and the private sector were required to compete fairly and equitably to provide their services. As a result, by 1990, after two years of contracting out services to the private sector through competitive bidding, savings were 42 million pounds a year. One interesting change has been management and employee buyouts in local government. A management buyout frees local managers from the major constraints on public organizations, such as capital control and the restriction on trading with private customers.

Bus services, which were largely state-owned and monopolized, took the first step to privatization in 1980. The deregulation of local bus services allowed maximum competition and satisfied various interest groups. Those routes that were thought to be unprofitable but socially necessary became profitable. The amounts of subsidies were decreased, compared with the previous publicly operated system.

Before 1987, airports in Britain were owned by the national government. They were privatized by the creation of the BAA (British Airport Authority), through a public stock offering. BAA as a private sector organization could access private capital markets. Therefore it enabled the company to construct a new airport and to develop new lines needed for business travelers.

Private funding of transport infrastructure is a well-established and expanding practice in the UK. The first privately funded scheme was the Dartford Bridge over the river Thames. The largest such project is the Channel tunnel which is 32 miles in length and cost over 7 billion pounds. The project was financed by individual investors and investment institutions from various countries. Such projects can be undertaken more speedily and efficiently by the private sector than the public sector.

Privatization in Britain started twelve years ago in a hostile political and ideological climate. As the policy went from success to success, opposition decreased gradually, the possibilities expanded, and proponents multiplied. The experience shows the broad range of public services that can be privatized for better service and lower cost.



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Chapter Summary

Graham, Carol. 1998. *Private Markets for Public Goods: Raising the Stakes in Economic Reform*. Washington DC: Brooking Institute Press.

Chapter 2: Markets and Public Goods in Chile: Schools, Pensions, and Popular Capitalism

In this second chapter of her comprehensive book examining how market incentives can deliver public goods in developing countries, Carol Graham focuses on Chilean social service restructuring in social security and education during Pinochet's authoritarian regime (1973-90) and through the 1990s. Based on private sector participation, market-based incentives, and on new opportunities for individual choice, Chile's public sector restructuring broadened the base of stakeholders in a new model for delivering public goods and services. Graham emphasizes the context for social policy reform in Chile before examining the politics and economics of social security and pension reform, the implementation of a voucher-based education reform, the privatization program of "popular capitalism", and the effects of these reforms on equity.

Chile's extensive social welfare system, relatively efficient public sector institutions, and strong administrative capacity aided the implementation of the substantial and initially, highly controversial, social service restructuring. Adequate regulation, far-reaching dissemination of information, an extensive stakeholder constituency, and effective competition, all contributed to the success and political sustainability of the market incentive approach in the Chilean social security reforms.

While in general, Graham finds that new market incentives and increased competition improved the performance of *both* public and private sector institutions, she nevertheless maintains that at times it may be impossible sometimes to avoid trade-offs between efficiency and equity improvements. Graham concedes that the most disadvantaged people are more likely to lose out in a system with increasing market incentives and broadening individual choice. However, the extent to which the state should correct for inequitable market outcomes, who should be eligible for assistance, and how much assistance they should receive is highly debatable. She raises concerns related to equity about application of the Chilean reform model to nations with much higher poverty and much weaker administrative capacity than Chile. The problems with the introduction of market incentives into the public sector were especially evident in the less successful voucher-based education reform.

In the 1990s Chilean policymakers have focused on equity reforms because the 1970s macroeconomic reforms and the 1980s social policy reforms failed to incorporate the poorest sector of the population as full participants, leaving them with limited access or inferior quality public services. However, more attention can now be focused on the lower income groups because most of the middle and higher-income groups receive their social services from the private sector – a result of the privatization efforts during the 1980s.

Social Security Reforms

The Chilean social security reform is internationally considered

one of the most highly successful efforts in the privatization of pension programs. The reforms have five major goals: 1) Introduce uniformity into the social security program; 2) Create better incentives for the workers to contribute to the fund, such as individual retirement accounts; 3) Permit workers to choose their own fund managers; 4) Use government subsidies to help with the poorest workers; and 5) Introduce efficiency through competition between different fund managers.

The pension system reforms were largely successful and politically sustainable because of a high level of worker participation. The increased choice within the social security system heightened competition between pension funds and thus created incentives to improve performance. The reforms raised the overall level of savings, avoided taxing the young for the benefit of the old, and increased pensions for the poorest workers. However, the new system's choice-based approach introduced new equity problems. Less-educated, low-income workers are more likely to make poorly informed decisions and take riskier, high return options.

Voucher-Based Education Reform

The educational reforms gave people the right to choose public or private school education by issuing government-subsidized vouchers. Private schools could receive government subsidies in exchange for relinquishing the right to charge fees. In alignment with the reform's aim to generate competition between public and private schools, allocation of state funding was shifted to a per-pupil basis for both public and private institutions. The reforms reduced the size and power of the Education Ministry and transferred the responsibility for management of primary and secondary schools to municipalities. Two implicit objectives of the reforms were: 1) To diminish the power of the teachers' union; and 2) transfer resources from higher education to basic education, thus benefiting lower-income groups.

Although private schools are still associated with a better quality of education, the introduction of competition did generally encourage the public schools to improve performance. In spite of this trend, the education reforms were largely ineffective in the effort to benefit low-income groups. Even though all the participants were offered new choices and opportunities, the participation of the poor was often precluded by the lack of adequate information, logistical access, and admissions selection processes to private or improved public schools. Since the private schools could be more selective about the students they chose to admit, they tended to accept wealthier children. Moreover, key actors such as rural communities, parents, and teachers were not properly consulted nor incorporated into the model. For instance under the reforms, almost 10,000 teachers were dismissed when they lost their status as civil servants. Indeed the teachers' union's opposition considerably hindered the effectiveness of the stakeholder-based reforms, thus demonstrating how the political priorities of the government can sometimes undermine policy reforms.

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Chapter 3: Social Services, Social Security, and Privatization in Peru

Despite President Fujimori's successes with resolving Peru's economic problems, the reform of public sector institutions that provide basic services remains on Peru's agenda. Reducing poverty and improving the average Peruvian's capacity to participate in market-oriented growth are necessary objectives. Graham explores how attempts to create new stakeholders in market reform in Peru can provide a basis for reform of public sector institutions. She concentrates on reform in three kinds of public institutions: education and healthcare services, social security, and state-owned enterprises.

Graham reveals the difficulties in reforming main line public agencies such as [education](#) and [healthcare](#) due to fear of political opposition and unwillingness to devolve authority. Subsequently, Graham reviews the successes in reforming semi-public institutions such as [social security](#) and [state-owned enterprises](#) which had the President's support and were based on dividing the goods among citizen stakeholders.

Graham asserts that the reforms of the pension program and the Citizen Participation Program (a program encouraging participation in share buying of state owned enterprises) were successful because the public goods involved were divisible among the citizens, who then became stakeholders and investors in those services. The semi-public institution reforms were also politically feasible for the Peruvian government because they had little political opposition due to the small numbers the institutions served. It is important to note that while these programs achieved the most success, they did not serve extremely poor Peruvians. Major reform efforts of main line ministries, such as education and healthcare, did not succeed because they serve the majority of the population and provide social welfare benefits, as opposed to direct financial benefits. As a result, these reforms conjured up a large amount of political opposition and Presidential support evaporated. The contrasting experiences of the three reform efforts reveal that reforms in semi-public institutions are easier to implement but cannot substitute for reforms of public institutions that offer basic services to the majority of the population, including the poor. It is the latter reforms that are crucial to the longer-term sustainability of market-led growth and will improve the capacity of the poor to participate in growth as stakeholders.

Education: Fugimori backed away from any proposals dealing with the privatization or decentralization of education after his proposed comprehensive reform of the education system almost cost him the October 1993 referendum. The reform was based on Chile's municipal administration policy and voucher-based subsidizing of both public and private schools. (See Chile). Since then, progress in education reform in Peru has been limited to infrastructure improvements.

Healthcare: Reform of healthcare was implemented at the local level through Committees for Local Social Administration (CLAS), which were given legal and financial responsibility for administering the health posts in their jurisdiction. They were provided with public funds to pay for the personnel and this allowed the facilities

to contract with other doctors and remain open longer hours. All revenues collected from service fees are kept in the CLAS rather than sent to regional authorities. Their success reveals the vitality of community initiative in Peru and the strong potential for creating local-level stakeholders in reform. A drawback is that CLAS's influence is limited to the local level because it has no point of entry into the larger public health system. It also has not reached the poorest of the population.

Social Security: Both pension reform and privatization of state owned enterprises increased the number of stakeholders in the reforms, encouraged savings and investment, and provided valuable experience with participation in newly emerging capital markets. Ultimately, these actions contributed to the political sustainability of reform. The pension program (based on private alternatives) was largely successful because the President supported it and because it covered only 2 million workers (1 million who stayed with the public plan and 1 million who switched to the private plan). Because the pension program only covered a small part of the total work force, rather than an entire population, opposition was limited to weak labor unions. As a result, reform was politically feasible. The public plan was "pay as you go" while the new plan administered individual accounts based on investment. It offered no minimum and the contribution rates were higher which resulted in younger and richer people switching to the new plan. Advantages of the new plan were having life insurance, being able to contribute to one's own retirement, and being able to retire earlier than the official age. Those who stayed with the public plan did so mainly because of lack of experience with savings and/or lack of access to information. The new plan was reasonably successful in attracting workers from one forced saving plan to another, but 70% of the work force in the informal sector remains outside either system.

Privatization of State-owned Enterprises: Similar to the pension reform program, the Citizen Participation Program, designed to encourage participation in share buying of state owned enterprises, received immense support from the President. Executive commitment provided sufficient resources to attract a good technical team for the Citizen Participation Program and the President provided important publicity for the program. The program was designed to reach lower-income investors by pricing the shares inexpensively. The minimum purchase was 515 soles, or US \$234, and the maximum was 3,090 soles, or US \$1404. An aggressive marketing campaign targeted low-income investors, especially in provinces outside of Lima. Over half a million investors participated in the Citizen Participation Program which made the reform more politically sustainable.

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Chapter 4: The Capitalization and Popular Participation Programs in Bolivia

Introduction

The capitalization and Popular Participation programs in Bolivia addressed inefficiencies in the government. The highly centralized system could not adequately meet local needs or address major social problems such as a 60% poverty rate. Bolivia privatized its government-owned industries to increase productivity and capital investment. It reformed its social security system, rescuing it from bankruptcy and expanding it to cover most of the population. It also decentralized functions to local government and greatly enhanced citizen political participation.

Capitalization

The capitalization program (1993) had three objectives- privatization, social security reform, and creating more stakeholders in the program. The program was designed to attract foreign investment in Bolivia without giving up ownership.

Bolivia did not have the money to invest in its own industries and foreign investment was the solution, increasing economic growth by 6-8% per year. When the government privatized its businesses, it required the foreign investors to buy half of the shares of the company by investing that amount of money in Bolivia instead of paying the government for the shares.

The government invested the other half of the shares in the new social security program. The old social security program was almost bankrupt and only covered 11% of the workforce. The new system covers more employees and allows workers to retire upon accumulating a pension based on 70% of their average salary. Upon retirement, a person buys an annuity to pay out his benefits and there is no guaranteed minimum benefit. The new pension system increased national savings from 2% of GDP to 5% of GDP.

The public could purchase government-issued shares in privatization at book value with only 5% down. Many people who could not ordinarily afford to purchase shares were able to because the shares were sold at book value (cheaper than the market price) and only a small downpayment was required. These shareholders were directly involved in privatization, creating widespread public support for the program. The poorest people could not afford shares, which increased inequality.

The dividends from the shares, called bonosols, were invested to pay \$200 per year to all Bolivians 65 and older. This measure helped poor Bolivians and increased equality among the elderly.

Popular Participation

The Popular Participation program (1994) decentralized the government and devolved responsibility and resources to the local level. The changes resulted in the creation of 250 new municipalities and recognition of 19,000 community and grassroots organizations, compared to 100 before the program, that could oversee and help direct local resource use.

The local governments received a larger proportion of tax revenues for their new responsibilities and community groups had a voice in what investments they would like the government to make. These groups helped to create a municipal development plan (PDM) to coordinate local interests with investments. Then, the mayor, municipal council, and vigilance committee look at the PDM and formulate an annual operating plan. The plan is then examined by the vigilance committees and the Finance Ministry for approval.

Vigilance committees (VCs) were formed to supervise the spending of funds and ensure accountability. They could get Congress to freeze local funds if they were misused. This program created a huge change in the way the country was run. Instead of top-down dictation of projects, communities could design their own projects and only had to get the central government to approve the financing, which was just a technicality.

The program also reformed education, allowing more local control in financing schools, evaluating teachers, textbooks, and curriculum. More control needs to be devolved in the school system, such as hiring and firing control.

Conclusion

Bolivia is an interesting case because it was successful. The reforms resulted in increased investment, productivity improvements, and citizen participation despite the extreme poverty of the country. The reforms could have gone further by giving the citizens a voice that carries more weight and by devolving more power to the local government over the school system. VC members are not paid and they do not have significant resources. Some mayors have tried to influence VC members through bribes or threats, and some VCs are not truly representative because the mayor ordered their formation. Despite shortcomings in the reforms, other countries used Bolivia as a role model in implementing their own reforms.

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Graham, Carol. 1998. *Private Markets for Public Goods: Raising the Stakes in Economic Reform*. Washington DC: Brooking Institute Press.

Chapter 5: Voucher Privatization in the Czech Republic

Over the last decade, the Czech Republic has emerged as one of the most successful of the eastern-European transition societies in building a market-based economy. With its comparatively high per capita income, low poverty and unemployment rate, and stable political party system, this egalitarian society has demonstrated a strong capacity to embrace rapid free market reform programs. At the forefront of public policy initiatives was the voucher privatization program, beginning in 1992, which enabled all adult citizens of the republic to purchase vouchers and use them to bid on stocks of state-owned enterprises which were in the process of privatization. One of the primary goals of this program was to expand public participation in the market economy and build public support for privatization and economic reform in general, by making individual citizens stakeholders in newly privatized entities.

Ostensibly, voucher privatization was successful. The rapid transfer of billions of public dollars into private hands brought in nearly 75% of the eligible public to purchase these vouchers. A closer look, however, at the distribution of shareholders in the Czech Republic reveals that the results of the voucher privatization program were not nearly as equitable in redistributing responsibilities and ownership as it seemed at the outset. Despite the democratic design and relatively even income distribution of the society, the responses of citizens were nevertheless determined largely by income and education levels. Smaller investors, especially those who lacked the financial and information resources to make longer-term investments, had more incentive to sell their shares immediately to make quick profits, rather than hold onto their stakes in privatization. The more privileged members of society who chose not to immediately sell their shares were able to reap much larger profits that were close to thirty times the nominal value of each stock. Individuals who were a part of the former communist *nomenklatura*, were some of the quickest to embrace these business capital initiatives, utilizing their social networks to maintain a privileged position in the new market economy.

Early on in the process of voucher privatization large investment funds emerged which bought out smaller investors, and quickly began to dominate the entire process of privatization. Instead of private citizens holding on to these shares, by the mid 1990s such funds possessed nearly two-thirds of the vouchers in circulation. Collusion with banks was a common practice. Czech banks, which owned over half of these investment funds, were inclined to provide open lines of credit and, in turn, exert a considerable amount of control over enterprise shares and implicitly support potentially risky acquisitions on the part of the funds. The funds, which were restricted from purchasing more than 20% of shares on any enterprise, were prevented from having a majority stake in privatization, and therefore were little concerned with the responsibility of ownership, corporate restructuring, and managerial reform. This became a huge liability for the long term success of privatization, as foreign investors shrank from what they saw as risky acquisitions, and consequently, the market value of voucher privatization began to diminish.

The initial "success" of voucher privatization can be attributed largely to the way the government

was able to market the program with an inherently egalitarian pitch. The majority of citizens in the Czech Republic recognized the opportunity to make money at little cost – the price of vouchers were cheap enough that even those in the lower income brackets could participate. The degree to which participants were to remain stakeholders, however, was linked intrinsically to levels of wealth and education among citizens. Most small investors with less available resources did not develop a sense of ownership or responsibility as a result of their investments, and hence, gained relatively little in the long-run from voucher privatization. Like most countries experimenting with the stakeholder approach, the Czech Republic was ultimately unsuccessful in achieving an equitable system in which participation was even and gains were equitable. Most citizens lacked the means of access to truly learn and profit from privatization, and were quickly swallowed by much stronger and more capable forces.

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Graham, Carol. 1998. *Private Markets for Public Goods: Raising the Stakes in Economic Reform*. Washington DC: Brooking Institute Press.

The case of Zambia illustrates the limitations of a market approach in the context of an impoverished post-colonial country. In 1991, Zambia began a program of privatization of parastatal enterprises and decentralization of government services. External pressures from the IMF and internal pressures to end corruption, along with a real decrease in social spending due to debt service, drove decentralization. However, these very pressures also decreased the viability of reform. The largest devolution was in the health sector. Local health personnel took over management and resources of clinics, and service delivery was reinvigorated because the health workers became stakeholders. In particular, provision of drug and linen supplies were greatly improved. A system of user fees for services was implemented, with the goal of decreasing public expenditure and empowering citizens to direct their own care. Theoretically user fees should give citizens a voice to force change. In such a poor country, however, the poorest citizens cannot shift to private alternatives, and neither can they pay public user fees. As a result of fees, many of the poorest citizens lost all access to health care. Although certain citizens qualified for exemptions, such as mothers and those with HIV, the government did a poor job of communicating this to the population. Reduced access resulted in declining health despite improvements in local clinics.

The political feasibility of health care reform stemmed from the HIV crisis, which cut across all economic classes. In contrast, education reform was less successful because few stakeholders could bring effective pressure for change. The middle class uses private education, and many poor citizens lack access to education because of fees and distance from schools.

Devolution moves control into the hands of local workers, but user fees imposed on poor citizens hindered the provision of basic needs. For market reform to work, the government must be responsive to people's needs and capable of administering programs effectively. Government capacity, crippled by a legacy of colonialism, corruption, and macroeconomic pressures of the world economy, was not sufficient. Graham concludes that the potential for market reform is limited in cases where poverty is high and government capacity weak, but is there an alternative?

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Graham, Carol. 1998. *Private Markets for Public Goods: Raising the Stakes in Economic Reform*. Washington DC: Brookings Institute Press.

Chapter 7: Private Markets and Public Goods: Efficiency Gains and Equity Tradeoffs

The central objective of Graham's work is to explore what has made public institutions perform better, and how these improvements can make market-led growth more sustainable and equitable. Graham asserts optimistically that private market incentives such as competition and choice can broaden the base of participation and substantially improve institutional performance. The sustainability of reforms is greatly enhanced as a consequence of wider stakeholder support.

A closer look at the case studies, however, reveals more diverse and perhaps less optimistic realities. While in some instances, new market incentives successfully resulted in an increased role for beneficiaries and an increased capacity of public institutions to deliver essential services, in other cases, certain sectors of society were unwilling or unable to respond to new incentives, and reforms met with little success. The results of reform depend on a complex interaction of market forces, pre-existing infrastructure, political economy and the nature of civil society. Thus, there can be no single, failsafe reform model which will be optimal in every context. It is possible, however, to glean more general guiding principles from the studies presented, particularly with respect to issues of equity and government responsibility.

Considerations for Poverty and Equity

Graham makes four overarching observations with regard to poverty and equity considerations:

- (i) Equity problems can limit the potential of reforms. To the extent the poor are unable to participate in markets for public goods, both the growth potential of these markets and the political sustainability of reforms are compromised.
- (ii) Success of the stakeholder approach relies in part on the pre-existence of basic institutional infrastructure and a public sector which can serve as a default provider. The countries most likely to be deficient in these respects are the poorer ones which are most in need of reform.
- (iii) The ideal solution for poorer countries, where poverty related constraints are near prohibitive, is to gradually introduce private incentives while simultaneously introducing complimentary policies such as cross-subsidies in order to improve the ability of the poor to respond and participate in reforms. Even gradual improvements in institutional efficiency are likely to have significant marginal returns in poorer countries with lots of room for improvement.
- (iv) Failure to improve equity in the short run may be justified by improvements in institutional performance and sustainability. To the extent that governments are committed to future equity improvements, stronger, more efficient government

institutions may serve as a more substantial foundation on which to build equity improvements in the long term.

The Role of the State

Private market approaches to the provision of public goods do not replace the state. Most unsuccessful market reforms have not stemmed from market failure, but rather from the government's failure to fulfill its responsibilities. Graham identifies several important functions which governments must perform in the interest of facilitating successful reform.

- (i) Governments need to be committed to reforms. Organized opposition from well established groups with vested interest in maintaining the status quo, (as was the case with education in Peru), will be difficult to override without strong commitment from government.
- (ii) Governments must provide and enforce the laws which regulate political and economic interactions.
- (iii) Flexibility is very important. Governments need to be monitoring reforms closely and be **willing to correct and adjust policy as problems emerge.**
- (iv) Governments must be able to offer the administrative capacity to ensure the availability of basic physical infrastructure.
- (v) Governments must be able to finance the provision of the more basic essential goods and services.
- (vi) Governments must ensure a coherent set of macroeconomic policies in place, for the logic behind privatization and market reform is contingent upon market-led growth.
- (vii) **Communication and public education programs are critical to achieving broad participation. Governments need to disseminate information effectively and provide channels for making demands and resolving conflicts.**

Using criteria such as political sustainability and institutional efficiency, Graham is optimistic about the potential embodied in the reforms discussed. She acknowledges that equity concerns can be ignored or even exacerbated by reform, but takes comfort in the notion that in the long term, market reform will be the best means for reducing poverty

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Osborne, David, and Ted Gaebler. 1992. *Reinventing Government: How the Entrepreneurial Spirit Is Transforming the Public Sector*. Reading, MA: Addison-Wesley.

Introduction: An American Perestroika

"Perestroika" is a recent enough addition to the American lexicon from the Russian language that it is not in dictionaries over ten years old. The direct translation from a Russian-English dictionary is "rebuilding, reconstruction, reorganization," adaptation, or changing one's views. This is precisely what Osborne and Gaebler argue is occurring to the American system of governance.

In the introduction to their book documenting this reconstruction, Osborne and Gaebler demonstrate structural reasons for the shift from bureaucratic government to entrepreneurial governance. They argue that the American bureaucracy, which was appropriate to the industrial era and times of economic and military crisis during which it was created, is not the best system of governance for the post-industrial information age. During the Great Depression and two World Wars, people wanted stability and security from government. Further, in response to political graft of the late 1800s and early 1900s, the nation wanted regulation of government to prevent corruption. The rigidly hierarchical bureaucracy which emerged provided this stability and control. While national tastes were somewhat uniform, and the emphasis was on stability rather than quality, this system worked reasonably well. By focusing on regulating the process, however, the bureaucracy lost sight of the results, and by making it difficult to steal public money, it became difficult also to manage public money.

Since the 1960s, the American public wants increased quality and choice of goods and services, and efficiency of producers. Slowing income growth has caused taxpayers to demand tax cuts and more services for their tax dollars. Quality and choice are not what bureaucratic systems are designed to provide, nor is efficiency possible in a system of complex rules and drawn-out decision-making. Due to redirected allocations of federal funds, by 1982 state and local governments had lost nearly 1/4 of the federal funds that they had received just four years earlier. That trend has continued. This abrupt change in revenue, coupled with continued citizen demand for services, and increasing expectations of quality, choice, and efficiency has led state and local governments to change the ways they provide services from the bureaucratic model to a more entrepreneurial one characterized by flexibility and creativity as well as a conscious effort to improve public sector incentive systems.

The authors emphasize two points: 1) that government cannot simply be "run like a business" because business and government serve fundamentally different purposes, both of them valuable and necessary; and 2) that the question is not how much government we have, but what kind of government.

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Chapter 1: Catalytic Government: Steering Rather Than Rowing

Drawing from the last main point of the introduction, Osborne and Gaebler explore the issue of what kind of government we need. They argue that different sectors of the economy (public, private, and nonprofit) should provide the goods and services that each system produces best separately or as a collective effort. Because it is broad in scope and capacity and run democratically, government is best at providing policy, social equity, direction to the economy, and preventing discrimination. Due to the flexibility of the market and to the forces of competition, the private sector is best at providing quality goods and services and choices to consumer. The nonprofit, "voluntary," or "third" sector is best at providing human services and goods that do not yield a profit due to the generally small scale and local focus of nonprofit organizations. In other words, "steering," or providing guidance and direction, is what government does best, whereas "rowing," or producing goods and services, is best provided by the private or nonprofit sectors. Osborne and Gaebler give numerous examples of these three sectors working together in innovative ways to provide more to citizens at lower expense.

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Chapter 2: Community-Owned Government: Empowering Rather Than Serving

In chapter 2, Osborne and Gaebler describe efforts to improve government performance by including communities in the process of service delivery and giving them more control, sometimes even turning responsibility for service delivery over to communities themselves. Their examples show how bringing communities into the picture empowers the people who are the intended recipients of services and results in better performance. For example, community-oriented policing, through which police collaborate with neighborhoods to address their most pressing concerns, has been very effective in many places. Involvement of parents, community leaders, churches, and volunteers has led to improvements in services ranging from recycling to public schools.

Osborne and Gaebler discuss how community members can add special knowledge and experience that professionals and bureaucrats don't have. They quote John McKnight of Northwestern University, who believes that by pulling services out of communities into centralized bureaucracies, we have weakened our communities and undermined the people in them. McKnight feels that since communities are closer to their problems than government professionals, they are better able to understand and address them; they are also more committed, flexible, and creative, and can often accomplish tasks more cheaply than service professionals.

Public agencies can nurture community control by removing existing barriers; encouraging communities to take control of services; providing seed money, training, and technical assistance; and creating citizen advisory boards. However, government is still ultimately responsible for making sure services reach those who need them. The structures must be in place to identify corruption and ensure that decentralized programs are working properly.

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Chapter 3: Competitive Government: Injecting Competition into Service Delivery

Osborne and Gaebler believe competition is perhaps the most important element for improving both the quality and cost-effectiveness of government services. Introducing competition does not necessarily mean that a service will be turned over to the private sector; rather, the crucial function of competition is ending government monopolies. While we decry private monopolies, we have long permitted monopolistic structures in our government. When service providers are required to compete, they keep their costs down, respond quickly to changing demands, and strive to satisfy customers. Monopolies, on the other hand, stifle innovation, since an entrenched bureaucracy and the politically powerful often have control over them. Competition can actually boost morale among public sector workers, because they receive public recognition when they are successful.

Competition can come in various forms, including allowing public agencies to compete with private firms, having private firms compete with each other, even fostering competition among public agencies. Not only services provided to the public, but also internal services such as printing, accounting, purchasing, and repair services, can be made more efficient and responsive by introducing competition. Most often, competition comes in the form of contracting out for services in the private sector. There are pitfalls, however. Contracting can be difficult because it requires skill in writing and monitoring contracts. In many cases, the possibility exists that a contractor will eventually develop a monopoly; if this occurs and the public sector no longer has the capacity to perform the task, they are at the mercy of the private firm should it decide to raise its prices. Contracts can also be unfairly awarded to political patrons. Osborne and Gaebler believe that corruption can be avoided if four criteria are met:

1. if bidding is truly competitive;
2. if competition is based on hard information about cost and quality of performance;
3. if contractors are carefully monitored; and
4. if a relatively nonpolitical body is set up to perform these tasks.

Finally, the government must create the market rules that ensure equity and monitor service providers so that they remain accountable for their performance.

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Chapter 4: Mission-Driven Government: Transforming Rule-Driven Organizations

The authors in this chapter argue that public organizations should be driven by their mission, not by their rules and their budgets. Rules on operations, budgets, personnel, procurement, and accounting are embedded in rule-driven systems, resulting in wasted time and inefficiency in government. On the other hand, mission-driven organizations free their employees to pursue the organization's mission, resulting in systems that are more efficient, effective, innovative, and flexible.

To create mission-driven governments, the authors argue that the dead weight of accumulated rules, regulations, and obsolete activities should be scraped off. Governments have so far tried some methods, including sunset laws, review commissions, and zero-based budgets. Two major areas, budgeting and personnel, are especially important to overhaul. Budgeting procedures should be changed to give employees an incentive to save money, free up resources to test new ideas, give managers the autonomy they need to respond to changing circumstances, create a predictable environment. Simplifying the budget process would save millions of dollars on auditors and budget officers and free legislators to focus on the important issues.

Personnel systems should also be changed. In current systems, pay and status are based on longevity, not performance. Promotions are controlled by personnel department, not managers, and ineffective employees cannot be fired while capable ones may be subject to unfair layoffs. Personnel systems should be restructured to offer broad job classifications and pay bands, market-rate salaries, performance-based pay, promotions and layoffs by performance rather than seniority, hiring systems that allow managers to recruit and hire the most qualified people, and a streamlined appeals process for employees who are fired.

Government agencies should create mission statements, and then create a culture around the mission. In order to achieve this, the authors argue government should overcome the "We've always done it this way" mindset and the desire by some elected officials to retain control.

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Chapter 5: Results-Oriented Government: Funding Outcomes, Not Inputs

The authors argue that governments have focused on inputs but ignored outcomes, words like accountability, performance, and results. Under traditional systems employees are likely to protect their jobs and pursue larger budgets, larger staffs, and more authority. The authors recommend results- or performance-oriented government, which call for new ways of measuring and rewarding outcomes in various fields, such as job training, vocational education, housing, highway construction, even courts.

Sunnyvale, California, is introduced as an example of a government that focuses on performance. Managers in that city measure the quantity, quality, and cost of every service they deliver in terms of four categories; goals, community condition indicators, objectives, and performance indicators. The switch to a new system has led to the elimination of many rules and budget line items. This system brought high productivity; smaller staff levels (35 to 45 percent), higher salaries, and lower costs.

The authors suggest several themes for result-oriented government:

1. What gets measured gets done; after performance measures are established, people begin to ask the right questions, to redefine the problem, to diagnose that problem, and to think about organizational goals.
2. If you don't measure results, you can't tell success from failure; when government lacks objective information, decisions depend largely on political considerations.
3. If you cannot see success, you cannot reward it; by rewarding successful managers, Sunnyvale has increased its productivity.
4. If you cannot reward success, you are probably rewarding failure; In practice, if you are failing , you qualify for aid. When the crime rate rises, we give the police more money.
5. If you can't see success, you can't learn from it; unexpected success may be an important lesson to be learned.
6. If you can't recognize failure, you can't correct it; no one outside the bureaucracy can tell if these agencies do anything worthwhile, because no one measures the results of their work.
7. If you can demonstrate results, you can win public support; we can compare Florida Taxwatch with Florida DOT.

The authors suggest three approaches of performance measurement. First, use pay-for- performance systems to reward high-performing employees rather than traditional approaches such as Management By Objective (MBO). Second, manage for results rather than management by guesswork or MBO. Total quality management (TQM) is introduced as a key approach for this. Third, budget for results. Budget systems should fund outcomes rather than inputs. In order to achieve this, output (quantity) and outcome (quality)

goals are defined to mission-driven budgets. In conclusion, a modern budget system must be not only mission-driven, decentralized, and result-oriented, but also customer-oriented (see [Chapter 6](#)).

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Chapter 6: Customer-Driven Government: Meeting the Needs of Customer, Not the Bureaucracy

In this chapter, the authors argue that government services often fail to meet the needs of their customers, because funding for services comes not from customers but from elected representatives like legislatures and city councils. As our society become more complex and diverse, the needs and preferences of customers are no longer homogeneous, yet governments still provide standardized services.

The authors argue that government must make a greater effort to perceive the needs of customers and give them a choice of producers. In order to learn the needs and preferences of its customers, government should give them a voice through methods such as surveys, customer contact, customer interviews, customer councils, and ombudsmen.

To respond to the needs of customers, however, it is not sufficient to know about their needs. It is also necessary to let them have a choice of providers by putting resources in the customer's hands' through vouchers and cash grants, for example. This "customer-driven system" approach has many advantages:

1. It makes service providers be accountable to their customers: if customers can choose their providers, providers should meet customers needs.
2. It can prevent political influence from choosing the service providers. If the public agency select providers, politicians may interfere with the decision. In this case, the providers with the largest constituencies will be selected, regardless of the quality of the service they can provide.
3. It stimulates more innovation. Competition will make providers pursue the most efficient way of providing service, so that they will invest in innovation.
4. It makes it possible for customers to choose the service that they want.
5. This approach wastes less, because the quality and quantity of service are determined when supply meets what consumers want, rather than when supply meets what legislatures or city councils want.
6. It makes consumers commit themselves to the service. For instance, students are more committed to education in schools they have chosen.
7. It provides the opportunity for greater equity. For example, if government funds institutions rather than individuals, on the one hand, institutions that are targeted at the poor will deteriorate and the poor will be stigmatized. On the other hand, the institutions not limited to the poor will promote inequality, because the most intensive users of the service are the affluent. In contrast, through this approach, governments can equalize the funding for each individual and get rid of the stigma of the poor.

There are some limitations to this approach. It cannot be applied to the regulatory sector, because in this case the primary customers are not individuals but the community as a whole. This approach is best applied to service delivery. The other drawback is that it cannot be applied when market is dominated by a monopoly

situation, and when competition for a service would result in inefficiency, as is the case with garbage collection routes.

The authors point out that in addition to putting resources in their customers' hands, governments need to restructure the existing bureaucracy. Because the traditional public systems are designed for administrators and service providers, it is difficult to expect public managers to serve customers. According to them, the bureaucracy should be transformed from the old systems to new systems that are both "user-friendly" and "transparent." Customers should not be faced with a confusing maze of fragmented programs, conflicting eligibility requirements, and multiple forms to fill out; and they should be able to sort through their options without having to sort through the complex bureaucracy behind them.

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Chapter 7: Enterprising Government: Earning Rather Than Spending

Government is under constant pressure to keep local taxes down. In this chapter, Osborne and Gaebler describe how some state and local governments have used innovative methods to actually *earn* money that would otherwise need to be raised from taxes. These enterprising governments have learned to recognize their assets and generate revenue from them. They have done so in four main ways:

1. *Making use of the profit motive.* Government rarely thinks in terms of raising money. But government often owns land and provides other services that can be turned into profit-making ventures. Sale of land for development or of public services that only benefit some individuals, such as golf courses or marinas, are examples of ways government can raise money.
2. *Charging user fees.* User fees are already fairly common, for services such as garbage collection and parking. However, in some cases public services that benefit affluent individuals, such as golf courses and tennis courts, are subsidized by all taxpayers. A simple and fair alternative is to charge user fees to those who benefit from a service. User fees are appropriate as long as the services provided are private goods, not collective goods, which benefit society at large, such as police services. In addition, special arrangements may be necessary to ensure lower-income people have access to services.
3. *Making investments based on expected returns.* Government traditionally focuses on minimizing costs, but enterprising governments pay attention not only to cost but also to potential returns on expenditures. This requires thinking over a longer term, which can be politically difficult. But several examples illustrate how initial spending by government—such as to protect land under intense development pressure that will later require massive government investment—can pay off with savings later.
4. *Turning managers into entrepreneurs.* There are several techniques for allowing managers to operate in a more entrepreneurial fashion. By reforming traditional budget systems to allow departments to keep the funds they save or earn, government provides managers with incentives to save and make money. Introducing a loan pool against which managers could borrow automatically, up to a certain limit, would give managers access to capital that they could use for innovational purposes.

Governments can, and often do, create enterprise funds to operate certain services. In contrast to agencies funded from general revenues, enterprise funds are self-supporting. While they are not appropriate for all services, they can be effective for those services that are expected to support themselves either fully or partially, such as water and sewer services. Because any funds they earn or save are returned to the fund, enterprise fund managers are encouraged to spend less money and make more money than other managers.

Amazingly, public managers are often unaware of the true costs of the services they provide. Budget figures often exclude indirect costs such as overhead, capital costs, and employee benefits. If they don't know how much they are spending, they cannot pursue profits. Determining their true costs helps entrepreneurial

governments discover what services are being subsidized and make decisions about how to turn costs into earnings.

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Chapter 8: Anticipatory Government: Prevention Rather Than Cure

Osborne and Gaebler detail several examples where city, state and federal governments have incorporated mechanisms into their decision-making processes to plan for the future. Many of these cases simply projected out budget considerations into the future. By doing this, governments are better able to integrate costs that will arise in the future with those short-term decisions that politicians make to maintain the approval of their constituencies. The central idea that is driving this trend is the realization that prevention costs less and is much easier than suppression.

Prevention vs. Crisis Management

At the present, public institutions are geared towards crisis management. Fire departments, for example, spend significantly more time putting out fires than they do preventing them. Slowly, these institutions are recognizing the superiority of preventative, rather than reactive, solutions to society's problems. By creating and enforcing building codes, installing sprinkler systems, and working closely with developers on building plans and construction, fire departments are beginning to enjoy tremendous savings. Changing the orientation from suppression to prevention is being accomplished in many ways.

Futures Commissions

Governments have turned to the community for input by creating organizations called "Futures Commissions." A Futures Commission can take on a variety of forms but ideally they are comprised of citizens from within the community who are charged with the task of identifying and developing goals. Once the goals have been established, subcommittees are organized to prod the relevant public and private agencies into achieving them.

Strategic Planning

Strategic planning is another method being used to incorporate foresight into the decision-making process. A practice used in the private sector for years, strategic planning is a process of "examining an organization's or community's current situation and future trajectory, setting goals, developing a strategy to achieve those goals, and measuring the results."

Long-Term Budgeting

Perhaps the most important realization is the impact of short-term budgets on community and organizational planning. Many governments budget on an annual or bi-annual basis, causing most decisions to be made with little regard for the long-term financial impact. Governments are beginning to recognize the benefits of predicting costs and revenues as many as ten years in the future.

Accrual vs. Cash Accounting

Another way to incorporate a long-term focus into the budget is to include the costs of future obligations as expenses. Most governments rely on the practice of cash accounting, in which expenses are not recorded until they have actually been paid. By incorporating accrual accounting techniques, which counts the future financial commitments of an organization as expenses, governments will be better positioned to assess their abilities to meet those commitments given the projected revenue flows.

Cross-Departmental Budgeting

Governments are also beginning to view the impact of a budget decision in one area on other departmental and institutional funding streams. Cross-departmental budgeting, as this practice is commonly called, is one way to identify when spending cuts in child care, for example, drive up costs in welfare transfers.

Regional Concerns

Long-term planning has been incorporated into the decision-making process in ways beyond budgeting. Recognizing the impact of decisions made in neighboring jurisdictions and anticipating regional problems have proven to be beneficial for some governments. In addition to this orientation toward the intergovernmental system, governments have realized that constituencies can be created to monitor plans and react as any other special interest group might. Organizations such as BUILD Baltimore and the Greater Indianapolis Progress Committee have become, in essence, stakeholders of the future in the system of public affairs. They assess government policy for its long-term practicality and lobby decision makers.

Conclusion

These are just some of the many ways governments are building preventative methods into their decision-making processes. Changing the environment in which governments make decisions is difficult but necessary given today's fiscal, economic and political realities. One place to start is by transforming the budget process and projecting costs beyond the standard one or two years. Anticipating upcoming obligations and recognizing the impact of short-term decisions in the future builds yet another mechanism into the governmental decision-making process that will enable public institutions to be successful in pursuing their goals.

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Chapter 9: Decentralized Government: From Hierarchy to Participation and Teamwork.

One of the principle tenets of entrepreneurial government is the free flow of information from the field. In this chapter, Osborne and Gaebler discuss the many advantages of flattening the traditional organizational hierarchy. Centralized decision making has crippled the ability of organizations to respond to various challenges. In a centralized system, knowledge accumulates at the top of an organization where decision makers are far removed from the reality of the 'frontline'. Decentralized organizations seek to empower those individuals who are in the best position to develop effective and innovative solutions to problems. Generally, these individuals are at the bottom of the organizational hierarchy.

Advantages

There are many advantages to decentralizing authority. Organizations become more flexible. They are better able to respond to changing environments and customer needs when those people who understand the intricacies of a situation are able to make decisions. This also makes institutions more effective. Improvements to the organization and problem solving occurs quickly with the added advantage of engendering some ownership among employees of the solution. Thus, decentralizing enables innovation. Entrusting employees with some degree of decision making authority improves commitment and morale which also leads to increased productivity.

Insights

One important insight to come out of the discussion is the observation that managers present the greatest obstacle to entrepreneurial government. One perception of organizational change would portray unions as the greatest threat to participatory management. Indeed, unions are concerned for their membership. However, managers, especially middle managers, prevent the free flow of ideas up and down the hierarchy because their instinct is to intervene.

Teamwork

One element of decentralization is the notion of teamwork. Government institutions are task-oriented and, as such, must be fluid. Their goal is to achieve results. As tasks change, so too must their structures and procedures. One way to do this is to build teams that coalesce around a particular problem, work out a solution, and disband only to reform when another problem arises. This serves to accomplish the immediate goal of solving a problem but it also obscures metaphorical boundaries that exist in many hierarchical organizations. Different perspectives are incorporated into solutions and, more importantly, networks across departments are developed that enhance the ability of an organization to respond to future challenges.

Implications for the System of Government

One goal given the difficulties the federal government has recently had in dealing with societal problems should be to apply this framework to our system of government. This is not to say that there is no longer a need for the federal government, just that state and local governments are in a better position to develop more effective and innovative solutions to many of society's problems. The federal government would assume a directive role setting goals and allowing the most appropriate mechanisms, state and local government institutions, to make the decisions to reach those goals. Osborne and Gaebler suggest a competitive funding environment whereby a mission is defined by the central government with the proposed outcomes clearly identified and institutions would bid on funding for their programs. They envision the replacement of categorical and block grants with this approach.

Conclusion

Much of this discussion centers on the degree to which employees and 'frontline' personnel have knowledge which may improve the ability of institutions to deliver services. A centralized bureaucracy inhibits innovation and flexibility because information must first flow upwards to decision makers who know little about the situation before a decision is made. Often these decisions are misguided and inappropriate. Transferring decision making authority to those individuals and organizations who address problems on a regular basis will result in more effective and innovative solutions.

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Chapter 10: Market Oriented Government: Leveraging Change Through the Market

Osborne and Gaebler view cities as markets – "vast, complex aggregations of people and institutions, each constantly making decisions and each adjusting to the other's behavior based on the incentives and information available to them" (p. 282). According to the authors, the most effective way for government to meet the public needs of this local 'marketplace' is not through central control, but by steering the decisions and activities of its players through restructuring the marketplace. Government can use policy to leverage the decisions and behavior of individuals, instead of attempting to directly control them through administrative programs.

Osborne and Gaebler believe government does not have the resources to fulfill all of the public's needs. However, by intervention in the market, government can create incentives for the public to find alternative ways to meet these needs. The authors believe the market can play the same role for social and economic activity as computers do for information, using prices as a signaling mechanism to "[process] millions of inputs efficiently and [allow] millions of people to make decisions for themselves."

Osborne and Gaebler identify eight problems associated with the programs that government employs to meet society's needs:

1. Programs are driven by constituencies, not customers
2. Programs are driven by politics, not policy
3. Programs create turf, which public agencies defend at all costs
4. Programs tend to create fragmented service delivery systems
5. Programs are not self-correcting
6. Programs that are obsolete rarely die
7. Programs rarely achieve the scale necessary to make a significant impact
8. Programs normally use commands, not incentives

In order to utilize a market mechanism in substitute of an administrative program in providing goods and services to the public, the good or service to be provided must possess several characteristics: there should be an adequate supply of the good/service and many providers; customers must have adequate purchasing power and a desire to exercise that power; sellers must be easily accessible to buyers, while buyers must have sufficient information about price, quality and risks; and finally, the government should establish rules of the marketplace and adequately police the participants in the market to enforce those rules.

The authors give many examples of ways in which government can restructure the market place – many of these have been practiced for some time. Through such activities as setting rules in the market place,

facilitating the provision of information, augmenting demand, catalyzing private sector suppliers and new market sectors, creating market institutions, risk sharing, and regulation through the application of market-oriented incentives, government can reinvent itself to implement any agenda - an agenda that should be determined not only by government, but also by the community.

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Chapter 11: Putting It All Together

Osborne and Gaebler suggest that the ten principles of government, as outlined in the ten chapters of the book, can serve as a checklist to unleash new ways of thinking and acting for any public organization. To test the list as an analytical tool, they take three of the most challenging public problems faced by American society and apply their principles of entrepreneurial government.

Health Care is the first problem tackled. The authors cite many problems with the industry, and conclude that government has abdicated its steering role in health care and has allowed the private sector to dictate policy. The government has reduced itself to a reactionary role in the health care sector. In adopting a more market-oriented strategy, government should set the rules and limits, but leave practicing to the private sector. Government should ensure that all citizens have health insurance, and help provide healthcare to the poor and elderly. It should work to encourage competition, and at the same time make sure citizens have sufficient information about providers in order to make well-informed choices. Government to provide incentives in order to make healthcare preventive instead of reactive. And finally, the government should push for less hierarchy, advocating for a shift of duties that are inefficiently reserved for highly trained doctors to nurses and physicians assistants.

Education is the second challenging public issue to which the authors apply their principles of entrepreneurial government. They see the educational system as a perfect example of a monopoly and believe much can be done to improve it. Schools have failed to implement progressive change in their methods, and as a result, the system has been on the road to failure over the years and is largely out of synch with the changing family structure.

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Article Summary

Reinventing Government. Reading, MA: Addison-Wesley. Chapter Six, "The Customer Strategy: Putting the Customer in the Driver's Seat" pp. 157-202.

The Customer Strategy and Competitive Choice Model

In this chapter, Osborne and Plastrik outline the key elements of a successful customer strategy, drawing primarily from Minnesota's experience with open enrollment and structured school choice. The authors argue that an organization built strategically around accountability to customers leads to systematic improvements in quality, diversity and public responsiveness and can be applied as much in the delivery of public goods as private. Critical to Osborne and Plastrik's *competitive choice* model is the need for carefully crafted protections for the public interest as market choice is introduced. Government does not abdicate its watchdog role to the "invisible hand"; nor are consumer preferences absolutely sovereign. "Competitive choice" demands that the government play an active role structuring the market, monitoring the outcomes, and remediating gaps in access, equity or erosion in the integrity of public goods.

The customer strategy starts with empowering service recipients to choose among competing service providers. Consumer demand can be effective only if two conditions are met. First, consumers need to have free access to information about choices and second, they need the buying power to create consequences for providers on the supply side. To meet the first condition, governments can measure the performance of service providers and make that information accessible to citizens by way of brokers. As for the second condition, dollars must follow consumers' preferences. In Minnesota, tax dollars follow students to the public school districts where their parents choose to send them. Often, a government needs to provide vouchers to supplement incomes of those least prepared to "buy" according to their preferences. Citizens are given control of their own resources and can take them to competitive service providers, but public units do not become enterprises able to set their own prices.

Balancing Consumer Demand with A Concern for Equity

On the one hand, government has the obligation to ensure that effective demand—that consumers are able to demonstrate their preferences through their purchasing power. Government has an equal obligation to ensure that manifestations of consumer demand do not distort the civic nature of the public goods. For example, in Minnesota, the courts and the legislature have made explicit the requirement that school choice cannot lead to further segregation of the schools by race. Concretely, Minneapolis children of color can leave the school district for other districts, but this is not a prerogative open to the white students of Minneapolis. Similar principles underlie rules that prohibit "creaming" by public schools in an especially good competitive position and thus overenrolled. In such cases, government may require, as Minnesota's school system does, that all potential entrants be chosen by random lottery. In this way, public goods like education, health care, or social services retain their public character and do not become yet more aggravated expression of the inequalities in the economic marketplace.

Dual Accountability

Osborne and Plastrik justify such limits on consumer sovereignty on grounds of dual accountability. Public organizations are accountable not only to the *primary customers*, service recipients, but also to *secondary customers*, communities which share an interest in the enterprise the government is undertaking. In Minnesota's open enrollment program, school officials have a *primary* responsibility to respond to students' and parents' needs. In addition, they carry a *secondary* responsibility to the legislature, courts, and elected officials. Consumer sovereignty must defer to public policies established by democratically elected officials. As the authors put it: "Elected officials, who represent the citizens at large, set the overall rules of the service delivery system. Within those rules, providers should be accountable to customers and customers should be king. But customers must obey those rules" (198).

Effective Supply

In addition to demand, there must be an effective *supply* for a customer strategy to work. Without a diversity of choices, the well-structured market is moot. Governments can often play a supportive role to encourage the development of service providers. First, governments may choose to participate financially by subsidizing startup costs of new service providers. In health care, this might mean subsidy of rural health care providers or scholarship moneys reserved for rural family practitioners. Second, a government can choose to authorize or license new service providers or make flexible historically rigid requirements. Minnesota's open enrollment program grew out of the post secondary program, which opened community colleges and universities to any high school students looking for a different type of education or challenge. Alternative programming and creation of charter schools exploded with legislation authorizing teachers to start their own schools to meet the needs of at-risk students and students with special interests.

Conclusion

Competitive choice, then, is often the best choice for goods that are at least partially public in nature, meaning that benefits accrue to more than the individual consumer. We all have a vested interest in ensuring high quality education, as we do in health care. To ensure equal access, the service can be delivered for free, consumers can receive vouchers or the price can be fixed so that the service is affordable. Public officials also have to intervene to prevent "creaming", deceptive marketing, and increased race or class segregation, using techniques outlined above. In this way, public officials bring market advantages to the consumer while the ugliest of market inequalities are not recreated in public good delivery.

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Chapter Summary

Tendler, Judith, 1997. Chapter 1 in *Good Governance in the Tropics*. Maryland: Johns Hopkins University Press.

Tendler lays out the purpose and central theme of the book, which is to highlight examples of good government in developing countries, especially Latin America. She says that the literature is full of examples of self-interested government servants, clientelism, bloated and inefficient bureaucracies. This has further led most think tanks and donor institutions to advise developing countries to trim their government, privatize, contract out and subject public agencies to market-like pressures and incentives. She points out that flaws in the literature on poor performance can be divided into **four** categories:

1. Emphasis on poor performance rather than on good performance in these countries.
2. Examples of success are from the industrialized countries, which the developing countries are expected to 'import'.
3. Preoccupation with regional models, neglecting the country specific contexts.
4. Overwhelming belief in markets and minimal government intervention.

She sees as a crucial failing in the literature on governance the neglect of the literature on industrial performance and workplace transformation (**IPWT**), which discusses the importance of worker motivation as an important determinant of productivity. Factors like autonomy, worker discretion, team spirit have raised productivity in large firms. The donor community has not drawn on these lessons to 'complement' measures required to increase performance of governments. Instead they have thought of downsizing and decentralizing government as the only solution. Ironically, the belief about the need to include the 'user,' which has driven the policies to encourage Civil society participation in the restructuring process but no similar policies have been applied to public servants or public sector unions.

Tendler then discusses how the book uses **case studies** of successful good performance of governments in developing countries to highlight changes that work and those that go wrong. The examples are from Ceara, a poor and small state in **Brazil**, where 87% of state receipts were being spent on payroll until a reformist governor in 1987 came into power. In the decade of reforms Ceara grew at 3.4%. Tendler delves into the reasons for their success in preventive health, public procurement, and public works and agriculture productivity. There were **5 broad reasons** behind this success:

1. Government workers showed unusual dedication in all of these cases.
2. The state government contributed in developing a new sense of recognition and mission among the public servants.
3. Workers did a large variety of tasks and had the discretion to customize.
4. Larger autonomy did not create accountability problems due to simultaneous trimming of the bureaucracy along with higher community pressure to perform.

Tendler argues that this example does not support the necessity to downsize government. Instead, she asserts, a three way dynamic between an activist state government, local governments as well as civil society produces positive outcomes. Government promoted citizen advocacy and played an activist role, **not** supporting

decentralization as a solution.

She sums up with two **caveats**: 1) while success stories are mixed and appear unintentional, it possible to draw lessons from them. 2) good performance cases should outlive the leader that initiates them.

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Chapter Summary

Tendler, Judith, 1997. Preventative Health: The Case of the Unskilled Meritocracy," Chapter 2 in *Good Governance in the Tropics*. Maryland: Johns Hopkins University Press.

In Chapter 2, Tendler explores replicable lessons in the Ceará's Health Agent Program. The program began in 1987. Within five years of its inception, the program produced tremendous improvements in child health indicators. Tendler proposes several mechanisms to explain how a large number of low-paid, unskilled, public health workers are able to perform exceptionally well. Tendler emphasizes the role of the "central in the decentralized." She argues that the success of the program is not a triumph of local government, but rather that of the state government, which involved itself in the health sector by:

(1) Quelling fears of clientelism and potential opposition.

The state retained control over certain aspects of the program. During early years, it kept funds for health agent salaries from the municipal government and the Department of Health. The state also retained responsibility for hiring in order to prevent hiring through informal patronage at the local level. This quelled potential opposition from medical professionals by turning nurses from "potential resisters into ardent advocates." The Department of Health left the nurse-supervisors with substantial control over the way they ran the program. They then became champions of the program.

(2) Creating a sense of mission, or "calling," to the program and to its public servants.

Through massive publicity campaigns, state officials declared that all those involved in the program would be taking part in the " 'noble' mission of bringing the community 'into the 20th century' by reducing infant mortality and disease" (33). Health agents would not only contribute to this mission, but their involvement would come with added prestige, free training/education, and a decent wage. To be chosen for the job of health agent was like "being awarded an important prize in public" (29).

(3) Strengthening pressures for accountability.

The state government held massive publicity campaigns to instruct citizens on their rights to quality public services. They told citizens to pressure their mayors with the threat of voting non-participating or corrupt mayors out of office in subsequent elections. During the hiring process, they explained to those who were not chosen for the job that they were still motivated community leaders with the ability to monitor those who were chosen. The state created an informed group of public monitors through the hiring process and through publicity campaigns.

(4) Providing agents and nurse-supervisors, with more autonomy, discretion and control over the program and thus encouraging in them existing predilections to "do good."

Workers engaged in a broader set of tasks than that formally proscribed. Some complemented curative with preventative health activities. Others engaged in community-wide activities to reduce public health hazards. Many helped overburdened mothers with housework and child care. Workers were allowed to *customize their services* to their

clients/community.

Ultimately, the Health Agent Program decreased infant mortality and the prevalence of disease in rural communities by enabling an environment conducive to worker dedication. Workers, with a certain level of autonomy, built relationships of mutual respect and trust with their clients which created internal pressures for accountability. Concomitantly, public messages to teach citizens that they had a right to demand better health care created external pressures. What emerged was an informed public with close relationships to its public servants based on ties of trust and respect. These explanations, Tendler argues, are much more useful to the planner than any description/proscription for good performance based on a notion of "good leadership."

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Chapter Summary

Tendler, Judith. 1997. Chapter 3 in *Good Governance in the Tropics*. Maryland: Johns Hopkins University Press.

Among the states in the Northeast of Brazil, Ceará is the most severely affected by drought. These droughts routinely trigger relief in the form of employment-creating public works projects and supplies of food and drinking water. Historically, the drought relief programs were administered through clientelism and benefited the region's large landowners, private contractors ("drought industrialists") and suppliers of relief more than those needing jobs, food and water. In 1987, Ceará was hit by a drought that greatly damaged its rural agricultural economy and left a large part of the rural population without work, food, and drinking water. This chapter focuses on the successful emergency relief program that was put in place after the 1987 drought. This success hinges on its radical departure from prior programs in Ceará and other states in that it was able to overcome the deeply entrenched tradition of clientelism in the allocation of works projects, jobs and relief supplies.

How was de-clientelization and improved public performance of drought relief achieved?

Tendler identifies several factors that are not necessarily in congruence with dominant mainstream development paradigms as contributing to this success including:

- The central state developed new projects and procedures that attempted to introduce decentralization and democratic decision-making while at the same time wresting control of the program from other local actors (such as mayors and local elites).
- Agricultural extension field workers were key to this success. The 1987 drought relief program gave direct responsibility in the field to the Extension Services rather than building agencies for supervising the large share of the construction. Demands and rewards of this program and the managerial presence of the central government elicited strong commitment from these workers.
- Contrary to previous programs, the 1987 program focused on smaller community-based and less equipment-based projects.
- State presence vis-à-vis the municipality was strengthened: the new director of the Department of Social Action made his presence felt at the local level in a way that made field workers feel appreciated and shielded them from local politics; the state government's directions regarding how the program should operate locally created conditions for a greater heterogeneity of opinion to emerge among local elites and for a more public-minded voice to develop among some elite actors; the state government surrounded rural communities and towns with public messages about the program that created some constraints on rent-seeking behavior by elites and government workers.

With respect to these tactics, Tendler points out that, contrary to this program, "Most current discussions of how to improve public service focus on increasing the power of local actors over service providers—as consumers of these services." (64) While she believes this view is progressive, she states "it has resulted in a

neglect of the darker side of 'consumer sovereignty' – the side that wields influence in a way that undermines public-minded goals of equity and efficiency." (64) Tandler sees that the focus on local actors has kept the development field from understanding the strong and innovative moves that central government must make if decentralized programs are to be successful.

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Chapter Summary

Tendler, Judith, 1997. "Frontline Workers and Agricultural Productivity," Chapter 4 in *Good Governance in the Tropics*. Maryland: Johns Hopkins University Press.

The chapter, drawing on the example of three farmer cooperative in Santana, Brazil, describes a set of customized and client-driven arrangements that have sprung up informally in various countries between extension agents and farmers. The author describes how the above arrangement produced good results in terms of agricultural productivity, and suggest that though the approach is not very popular among public extension offices, it is superior to the standardized service delivery characteristic of many extension agencies.

Throughout the chapter, the author makes interesting comparisons between the performance of the public agricultural extension services and farmer-driven services.

Notable among the points raised are the following:

- The case of the Santana cooperative dispels the assumption that extension services provided by nongovernmental entities tend to perform better. The Santana farmers performed better than other farmers, and yet the association was served by public extension services
- The case also illustrates that switching from public sector service provision to private sector service provision does not necessarily cure the ills viewed to be inherent in the public provision.
- Based on the accounts from the three farmers cooperatives, the author argues that public officials and their workers pursue their own private interests rather than those of the public good
- Issues of lack of consultation by public sector need to be reviewed and examined.

However, it is not easy to change attitude of public officials in the interest of the public good. More research is needed to find ways of changing the public official's attitude towards the issues of public and private service provisions.

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Chapter Summary

Tendler, Judith, 1997. Chapter 6 in *Good Governance in the Tropics*. Maryland: Johns Hopkins University Press.

In Chapter six Tendler reviews different aspects of the cases discussed in this book that led to their success. She argues that much of the advice offered to developing countries has not taken into account the "the evidence of good government in the countries being advised"(135). Tendler states that all programs discussed in the book presented signs of high performance and impact.

The cases described in the book "reveal that government can be a remarkably strong moral presence"(141). Tendler argues that the experiences described in the book do not confirm theories that local government and non-government agents are better suited to provide good services at the local level. First, she suggests that improvement local governments government performance was less a result of decentralization, but more a result of an active central government promoting good governance standards to citizens and pressuring local government through publicity to be a part of these programs. Second, she points to a two-way dynamic between civil society and government, "government was causing civil society to form, then, at the same time civil society was acting "independently" from the outside to challenge its wisdoms and its actions, or to demand better services."(146). Third, the cases discussed do not support the assumption that non-governmental organizations are inherently more flexible and client friendly than government. Tendler gives the example of the preventive health program and suggests that the state department of health delivered in a more decentralized, flexible and client friendly fashion than the existing NGOs.

Tendler also argues that to the extent that the cases in Ceara reflected the assumed benefits of decentralization, these cases revealed a different dynamic. In fact central government took power away from the local government, "even though its actions ultimately contributed to strengthening the capacity of local government" (147). Furthermore, contrary to the theoretical assumptions about decentralization, the state (Central) government was more active, doing things that it had never done before. The local government and civil society were also more active with these new programs than they were prior to it.

According to Tendler proponents of the decentralization and privatization would argue that the case of Ceara is not a case of "genuine decentralization," given that the state government is playing a central role in these programs. But in this chapter, Tendler challenges these proponents to recognize the limitations of their theory and advises them to develop premises that can explain the good government practices in Ceara. She suggests that even though this might not be a case of genuine decentralization, the results achieved through these programs were in accordance with the results supposed to be achieved through decentralization: "stronger local institutions in the form of more capable government, and a more developed and demanding civil society" (148).

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Chapter Summary

Katz, Michael (2001). "The American Welfare State," Chapter 1 in *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books

Michael Katz delineates the current state of social policy in the United States, focusing on the political and economic trends that limit welfare and its ability to alleviate poverty and inequality. He discusses inaccurate views Americans hold of welfare, the ascension of conservative political theory, the devolution of power to the states, and the increased use of private markets to provide social goods.

Architecture of the American Welfare State

Katz argues that US citizens, blinded by the belief that welfare disproportionately benefits the "undeserving poor," fail to recognize the full spectrum of public welfare sources. Katz outlines two main types of welfare provision: 1) public sector and 2) private. Public provision includes a) public assistance (such as Aid to Families with Dependent Children), b) public insurance (such as Social Security and unemployment insurance) (10) and c) taxation, such as the Earned Income Tax Credit. Private sector provision comes from independent (soup kitchens and religious charities) and private providers (employer subsidized health care and pension funds).

Welfare and the Conservative Agenda

Perceptions of public assistance have been shaped by the ascension of political conservatism during the 1970s and 1980s. Business interests' opposition was grounded in the argument that the welfare state increased their costs by raising taxes and wages. Concurrently, middle class [white] Americans experienced falling real wages and saw the implementation of desegregation and affirmative action policies. Katz writes, "[i]nstead of directing anger at the wealthy and powerful, the fusion of race and taxes deflected the hostility of the hard-pressed lower-and middle-class Americans toward disadvantaged minorities – and, in the process, eroded support for the welfare state" (19). Demographic and political trends, the growth of the suburbs and the Sunbelt, and the entrance of religious fundamentalists into the political arena helped catapult conservative politicians into office (20). Finally, the creation of conservative think tanks, such as the Heritage Foundation, provided the research to refine and disseminate the conservative agenda.

The conservative ideology put in place during the Reagan Administration brought together three intellectual strands - economic, social and nationalist, which reversed the federal assistance programs, devolved power to the states, and placed more emphasis on private sector delivery of public goods (26). Welfare and public assistance became recast as privilege to be earned. The culmination of this effort came when President Clinton, a Democrat whose election signified that the center of America's political spectrum had moved to the right, signed the welfare reform act in 1996, vowing to, "end welfare as we know it." As Katz writes, "The republicans may have lost the battle in the 1992 and 1996 elections, but they won the war" (26). Katz, however, argues that the misguided focus of conservative public policy has sought to address the symptoms of our society's problems, rather than its causes. The introductory chapter delineates the current structure of the American welfare state and provides the background knowledge for the critiques of current welfare reforms he presents in the following chapters.

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Chapter Summary

Katz, Michael (2001). "Poverty and Inequality in the New American City," Chapter 2 in *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books.

Katz presents the post-industrial spatial development of American cities. Katz argues that revolutions in economy, demography and space have shaped the new American city, reinforcing inequality and creating new forms of poverty. He asserts that economic changes shaping the American city transformed labor markets in ways that heightened the risks faced by the poor that the welfare states should have helped to reduce. (33)

Labor Market Restructuring: After presenting a brief history retracing the roots of the new American city, Katz points out that the negative impacts of deindustrialization on labor market were not realized until the 1960s as businesses competing in the global economy reduced the workforce, wages, and benefits. Large cities increasingly assumed new responsibilities in housing, social services, medical care, and education (34). At the same time, a new generation of urban economists argued, the people and services essential to commerce and finance continued to concentrate in cities (35). Y, the most dynamic sectors of the economy increasingly generated poorly paid jobs that lack benefits and lead nowhere (36). This has resulted in the informalization of labor market undermining job security (37).

Demography: Deindustrialization was accompanied by increasing income inequality. Gains in productivity were accompanied by falling real wages. Those reaping the benefits of growth were shareholders and senior management. Growing income inequality also translated into the growth of poverty (38). Black migrants and Hispanic immigrants, disproportionately represented in low-wage jobs were especially hard hit. These trends, in conjunction with the devolution of welfare program responsibilities to the states placed increasing pressures on the ability of states to provide adequate assistance (41). While whites moved out enticed by inexpensive suburban housing, cheap government-backed mortgages, and the interstate highway system (40), black migrants and immigrants stemmed the population flow out of the American city.

Space: Municipal governments devised policies, such as urban renewal and highway construction, to spur economic development. Highway instead of channeling traffic downtown, gave further impetus to the growth of suburbs. Furthermore, highway construction in conjunction with urban renewal destroyed poor minority communities, displacing residents and disrupting lives (50).

Politics: Finally, the reorganization of space changed the balance of political power. Suburbs are now where most Americans live; and since 1975, they represent the largest voting bloc in Congress. As separate jurisdictions, they act as mini-governments empowered to define land use, organize institutions, and tax residents. The subsequent disparities between suburban and city tax bases have translated into dramatic inequalities and spatial economic and racial segregation (45). This demographic and political spatial shift in the end supported the rise of conservative politics. The new American city, Katz argues, is the result of political choices as well structural transformations. (56).

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Chapter Summary

Katz, Michael (2001). "Governors as Welfare Reformers," Chapter 4 in *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books.

Katz recounts the aggressive role that state governors played in the 1990s in gaining control over and transforming public welfare, focusing on Republican Governors John Engler of Michigan and Tommy Thompson of Wisconsin as leaders in the devolution and reform of welfare. He argues that "in the name of free-market reform Engler and Thompson increased welfare bureaucracy and intruded further into the lives of citizens" (83).

Engler, elected in 1990, set out to end welfare dependency. He sought to uproot federal welfare programs and return power to the local level. Under his leadership, Michigan greatly reduced spending on AFDC and other poverty-related programs. He virtually eliminated Michigan's General Assistance (GA) program. His initiatives were aimed at forcing able-bodied individuals into jobs. Despite protests, other states followed Michigan's lead, eliminating GA, restricting eligibility and cutting other social services; thereby, shifting costs to local hospitals, jails and other facilities. Influenced by Catholic social thought and a free-market economics, Engler increased contracts to faith-based agencies to move away from government assistance. Michigan's former General Assistance recipients, however, fared poorly, most did not find the jobs anticipated, most were poorer, developed chronic illnesses, and homelessness rose.

Engler also engaged in national policy debates, relentlessly lobbying the Clinton Administration to alter the AFDC waiver process, enabling states to innovate in administering and delivering services. In the late 1980s waivers began to be used to curtail benefits and limit entitlements. Clinton, sympathetic to governors' desire for increased power over welfare reform, eased the approval process for waivers in 1995; and by the time the 1996 federal welfare legislation was passed, forty-three states had been granted waivers. Clinton also announced state welfare experiments and changes in regulations.

Governor Tommy Thompson of Wisconsin also led the campaign to devolve public assistance to the states and instituted radical reforms. One of Thompson's policies, Learnfare, limited AFDC eligibility by tying the size of family benefits to school attendance by the family's teenagers. Learnfare failed to increase school attendance; yet, other states followed suit. By February 1996, thirty-four states were permitted to link welfare benefits to school performance. The emphasis on "personal responsibility" became the hallmark of welfare reform. Taking advantage of bipartisan anti-welfare sentiment, Thompson instituted the W-2 program. It rejected entitlements and family size as the basis of support and replaced it with the criterion that for those who can work, only work should pay. Benefits were also tied to strict time limits for finding jobs. W-2 resulted in an increase in poverty and homelessness in Milwaukee, lower quality and increased cost of child-care, negative effects on ordinary workers and union wages as the supply of low-wage workers grew. Despite these problems, Wisconsin became a model for welfare reform.

As governors responded to a national bipartisan anti welfare consensus, however, caseload reduction rather than poverty alleviation became the sole measure of success. Until the 1990s, the federal government took the lead in ensuring the welfare of vulnerable US citizens. Aggressive governors like Engler and Thompson redefined America's welfare state and helped to transform the nature of American federalism.

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Article Summary

Katz, Michael 2001. "Urban Social Welfare in an Age of Austerity," Chapter 5 in *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books.

In this chapter, Katz chronicles funding changes that have affected America's largest urban areas. In the 1980s and 1990s, Federal cutbacks forced mayors to look for alternate ways to manage their cities' finances. The new wave of mayors in the 1990s slashed programs and froze wages to balance city budgets. They also initiated market-driven approaches to address the needs of their cities. In the cases of both Mayor Rendell in Philadelphia and Mayor Goldsmith in Indianapolis, these measures were successful in privatizing municipal functions, but did not deal with the larger problems of homelessness and poverty. The Federal government took this marketization to heart and used it to promote an urban agenda of housing vouchers, Empowerment Zones, and an attempt to privatize federal housing projects.

Urban Fiscal Crisis

During the 1980s, cities began a slow slide into fiscal crisis. There were five contributing factors: cuts in federal funding, heightened poverty, increased homelessness, the emergence of AIDS, and rising costs associated with hard drug use. These factors pushed some cities to the edge of bankruptcy and many considered drastic measures to maintain solvency. These measures were modeled after those used by New York City during its near bankruptcy in the mid-1970s: cutting services, freezing or cutting wages and general pork cutting. Two mayors, Rendell and Goldsmith, were heralded as the vanguard of a new group of city leaders equipped and willing to make the hard choices necessary to steer their cities through tough times.

A Tale of Two Mayors

Ed Rendell in Philadelphia, after stabilizing city finances, promoted a "new economic agenda" that balanced budgets but did not directly deal with the standard social welfare and public health issues. Instead, he hoped that his plan would bring back jobs that would "have a dramatic effect on everything-crime, drugs, housing, all of the ills of the cities." Unfortunately, Rendell's \$2.2 billion Economic Stimulus Program was not enough to overcome the serious problems of urban flight, job loss, and homelessness.

Stephen Goldsmith, the Indianapolis mayor and privatization booster, took a similar tack, relying on fiscal austerity to strengthen his city while hoping that social welfare would follow. His goal was to "marketize" city services and inject competition into public services. His political detractors brushed the successes aside, claiming favoritism and non-competitive bidding.

Proof of success for these mayors will only be seen in the long run. Katz implies that the "supermayors" of the 1990s reached the limits of their abilities when it came to meeting the needs of their poorest citizens.

Urban Policy Returns

The Federal government slowly accepted the marketization strategy. The Clinton administration saw the role

of government as a complement to, not competitor with, the market. Ideas such as vouchers and enterprise zones that were discussed in the 1980s became reality. HUD continued to focus on rent vouchers, homeownership, and reinvesting in inner-city markets. HUD also increased funds available for development in neglected areas as well as creating networks of CDCs. All of these attempts cost little and were very hands-off for the Federal Government.

Affordable Housing

Similar to suggestions made by Reagan in 1982, Clinton's plans for housing included devolution of authority, deregulation, strict oversight, and businesslike practices. Clinton's plan, however, was put into action through block grants, vouchers, mixed income housing projects, and tenant purchase plans, paired with tough crime policies.

Unfortunately, all of these practices were emergency responses to a nationwide housing crisis and did little to address the underlying causes of the lack of affordable housing. This was also the case with regard to homelessness. Leveraged funds increased 3,000 percent to \$1.1 billion, but were spent on the immediate problems of the homeless and not on causes of homelessness. Consequently, homelessness continued to increase. Cities were also at a loss as to how to alleviate the problem of homelessness within the vague paradigm of market solutions. Katz notes this as an example of the limitations of markets as a universal solution to public problems.

By the late 1990s, the cities and the national economy had turned around. Thanks to their fiscal austerity, many cities were in the black and complaining of being unable to fill the needs of their growing class of affluent citizens. Yet the duality of cities remained; both rich and poor citizens were left with unmet needs.

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Article Summary

Katz, Michael 2001. "The Independent Sector, the Market, and the State," Chapter 6 in *The Price of Citizenship: Redefining the American Welfare State*. Henry Holt and Company, New York.

American charity and social services have traditionally been provided by a complex blend of private organizations and public agencies. Despite this fact, many conservatives propagate the myth that welfare traditionally has been provided by private individuals and organizations, especially religious ones. In fact, in the early years of the United States, the majority of social welfare services in small communities was provided by private individuals and/or organizations. In cities, where problems such as disease, homelessness, poverty, hunger and infirmity were more common in a proportional absolute sense, aid was more often provided by the government. However, there was still a mix of both public and private provision of welfare services in both rural and urban areas.

During the New Deal of the 1930's and the Great Society programs of the 1960's, there was a drastic increase in the provision of services by the federal government. This included the establishment of Social Security, AFDC, and public housing provision. However, beginning in the 1970's and through to the present, there has been a backlash against federal provision of social services in particular and government provision of social services in general. In some cases, the government has completely cut funding for services and hoped that private entities would fill the void. In other instances, such as in the case of health-care aid and homeless shelters, the government has partnered with private organizations who provide the services and receive at least partial funding from the government. For the remainder of their needs, these organizations depend on donations and/or volunteerism, which are not dependable and often inadequate.

Many social services have been delegated to religious groups. In many cases, churches have proven inadequate at providing social services because they do not have expertise in the area, or may proselytize rather than provide services, or face declining membership and money and cannot afford an expanded social role.

Katz concludes that non-profits cannot substitute for the state.

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Chapter Summary

Katz, Michael (2001). "The Private Welfare State and the End of Paternalism," Chapter 7 in *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books.

The private welfare state refers to work-related benefits, mainly those offered by employers to their workers. Since it began, private welfare has provided a huge amount of security to American workers and their families, but because it is not universal, it has intensified inequalities. The degree of protection provided by employers is constantly changing, the trend in most recent decades being a general rollback of benefits. This is due to the decline of manufacturing employment, lower benefits, reduced union strength, massive layoffs, and increased part-time jobs. Also, corporations have ended the paternalistic relationship with their employees that existed for most of the 20th century by offering fewer benefits, and shifting the burden of paying for benefits onto the employees themselves.

Origins

The private welfare state began in the late 19th century when employers started to offer pensions to their employees, as a means of stabilizing the workforce. The national government also promoted the spread of pensions with tax incentives.

From pensions, private welfare expanded into comprehensive programs. These industrial strategies included improved safety and conditions, plans to help workers buy property, save at high interest rates, earn bonuses and purchase stock. Insurance against accidents, illness, old age, and death was added. These plans transformed the management of labor and created the specialty field of personnel management.

In the 1950s and 60s, the growth of private welfare led to a public-private trade-off. Unionized workers enjoyed protection, and this undermined support for universal public benefits that would go to all.

Scale

According to one estimate, pension plans hold about one-quarter of national wealth. They are supported by a web of federal regulations, but are provided voluntarily by firms. The private welfare state is vast, decentralized, complex and chaotic.

Trends

The inequalities built into the employer benefit structure are constantly widening. The new global economy has shifted firms' focus from the goal of keeping employees long-term, to focus on short-term ventures. Small firms and organizations with network cultures ("highly flexible, innovative, and transitory") offer the least benefits, and the number of these firms is increasing. Part-time and low wage workers fare the worst. Employer benefits once helped to close part of the pay gap between workers, but by the 1990s they reinforced growing wage inequality.

The End of Paternalism

Corporate philosophy has changed from paternalism, or the desire of a firm to take care of its workers for the purpose of maintaining them and their productivity, to shifting responsibility for their welfare to the workers themselves. The goal is to end the “entitlement mentality.” Increasingly, benefit programs are changing from “defined benefit” to “defined contribution,” in which employees contribute to their own pensions and insurance. One example is a 401(k) plan, in which employees can deposit some of their earnings for investment. Katz emphasizes that using such a market model introduces the element of risk, which is contrary to the very idea of security in pensions.

This shift is often referred to by corporations as fostering a more “adult relationship” with their employees. Concludes Katz, “the end of paternalism helped employers design flexible new strategies for competition in the global market-place; it also left employees increasingly vulnerable to the insecurities of unemployment, sickness, and old age.”

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Chapter Summary

Katz, Michael B., 2001. "New Models for Social Security," Chapter 9 in *The Price of Citizenship: Redefining the American Welfare State*. New York: Henry Holt.

Katz examines Social Security in the United States and the question of whether or not government should privatize this system. He believes that though flawed, Social Security will continue to exist and to serve senior citizens in America indefinitely. It is central to the maintenance of the welfare state, and it would be a mistake to change the fundamental structure of Social Security to a market based model.

Social Security was created to address the poverty fears of senior citizens after retirement and was implemented through the Economic Security act of 1935. FDR advocated the importance of keeping the program self-sustaining by basing it entirely on individual contributions versus a broad-based tax. This debate continues to be an issue for the Social Security system. Social Security is a social insurance program, distinct from public assistance and private insurance. It is "compulsory, sponsored and regulated by government, financed through earnings-based contributions, redistributive- and its benefits are prescribed by law."

Though Social Security has effectively decreased the poverty level of senior citizens without adding to the national deficit, it is still criticized. One of the major fears is that the program will run out of money. Critics also feel Social Security will not repay a fair proportion of contributions to US citizens. Katz evaluates the financial instability of the program as stemming from the 1970's, when the oil crisis led to inflation and prices increased more rapidly than wages. As a result, the cost of Social Security increased more than the taxes that supported it.

The Libertarian Cato Institute advocates privatizing Social Security, in order to end the paternalism of government in favor of choice and to promote a free market and reduce labor tensions. Criticisms of the privatization of Social Security include increased costs due to transition and administration and individual ignorance about financial markets. Efficiencies gained as a national system could be lost through privatization. There also is fear that citizens would perceive private institutions as ones from which they could withdraw their funds before they are due, undermining the system.

The question of whether to privatize remained until the economic surplus in the late 1990s that enabled Clinton to stabilize Social Security. Clinton ultimately addressed both camps by maintaining the system as it stands but incorporating elements of privatization by creating "universal savings accounts" for low and middle income citizens whose investments would be matched in proportion to income. Clinton's plan incorporated the important elements of not raising taxes, lowering debt and utilization of the stock market and is described by Katz as a "reasonable and painless reform of America's premiere domestic program." It was decided that the Social Security reserves should be invested in less risky federal bonds, and not the stock market.

George W. Bush reintroduced privatization of Social Security in his campaign by recommending investing a percentage of payroll tax into separate retirement accounts. His plan was found to be

economically inefficient, especially for young employees, but revived the continuing debate as to whether or not to privatize social security.

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Article Summary

Katz, Michael (2001). "The Assimilation of Healthcare to the Market," Chapter 10 in *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books.

In this chapter Katz recounts the development of the U.S. healthcare system and notes its chronic inability to provide reasonable coverage at reasonable costs to those most in need of public assistance. Throughout its development, America remained the only developed country that did not consider healthcare a citizenship entitlement. This was partially a consequence of linking the welfare state to employment (257).

Forms of health insurance with enduring significance developed in the 1930s and 1940s. By the 1950s, America had a nascent system of health insurance; however, it tied benefits to employment because medical care was considered in terms of rights rather than citizenship (259). In the 1960s public policy created a dual system private insurance for the working population and public insurance for the needy. The 1964 Democratic victory ushered in Medicare and Medicaid, which were created as public assistance rather than social insurance programs. This dual system resulted in cost inflation; at the same time it excluded millions of Americans. Yet, by 1980, Medicaid was often the largest program in state budgets, and by the 1990s, Medicaid had broadened into a program that assisted a broader range of people. In some states it cost six times as much as AFDC (262-263). With the ascendance of conservative politics in the 1980s, Medicaid and Medicare came under fire along with other social spending programs. Katz argues, that the Reagan administration ran up an enormous deficit in order to justify cutting these programs.

Consequently, the Clinton administration was faced with the imperative to restructure health insurance. At a time when public trust in government was low and anti-tax sentiment flourished, Clinton had to assert a stronger role for government (267). Clinton devised a system of "managed competition" through which private health plans would compete under terms set and supervised by the government. This system, Clinton believed, responded to new labor market conditions, based on labor mobility rather than job security. Yet, business interests feared that the generous benefits required under the plan would be too expensive. At the same time, the general popular sentiment swung against the plan as people feared losing their own unrestricted access to care or higher costs. The program never passed. As a result universal coverage was sacrificed.

Instead the 1997 budget bill changed Medicare along the lines of a 1995 Republican proposal 1995, which promised to introduce savings by scaling back payments to providers and by increasing premiums for beneficiaries. The legislation reduced Medicare spending faster and more sharply than expected and the budget office revised projected spending downward for the next four years. Katz cites a 1998 study, which found that 2 million persons who lived at or below the poverty line spent more than 50 percent of their income on medical expenses not reimbursed by Medicare.

The politics of Medicare reform in the 2000 election reflected the public anger at health insurers and managed care. Popular sentiment expressed waning support for a healthcare system radically restructured by powerful corporate interests, which had aggressively limited the authority of providers and the choice of individuals. Industry consolidation had furthermore reorganized hospitals, insurers, and physicians into vast regional systems that controlled markets for health care. Katz concludes that the close election results in 2000 left the resolution of the health care issue ambiguous and less likely to be resolved soon (292).

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Chapter Summary

Katz, Michael (2001). "The End of Welfare," Chapter 12 in *The Price of Citizenship: Redefining the American Welfare State*. New York: Metropolitan Books.

This chapter addresses the reasons why the AFDC model of public assistance had become unpopular by the 1990s and analyzes the debate surrounding the passage of the 1996 Temporary Assistance to Needy Families (TANF) bill. The chapter concludes with an evaluation of TANF up to the publication of the book in 2001. Katz presents two sides of the debate: 1) conservatives focused on ending dependence on and entitlement to federal funds through the application of market based welfare reform as well as on the devolution of authority and responsibility to state, and in some cases, local governments; the opposing view was rooted in a concern for the poor, particularly children, that would be forced off public assistance, and for the deepening divide between cities and suburbs, and blacks/Hispanics and whites.

Attitudes toward AFDC

Katz argues that opposition to AFDC emanated from both the Republican and Democratic parties. According to these opponents of welfare, AFDC was encouraging dependence on welfare and provided disincentives to work. Of the negative consequences, Katz argues, it was out of wedlock birth that led both Republicans and Democrats to attack AFDC in the 1990s (318). At the same time that these negative attitudes towards AFDC were becoming politically mainstream, conservative State Governors were calling for the devolution of authority regarding welfare programs from the federal to the state level. These Governors argued that the AFDC rules limited their ability to innovate and to combat poverty (321). Tired of the federal bureaucracy that stifled their best intentions and forced them to seek handouts from Washington, these governors advocated for a local level approach to welfare provision.

Expectations of TANF

Thus, the passage of TANF signaled a move away from government provision, and the victory of conservative advocacy of private market provision and personal responsibility. Under the new TANF program, states had the latitude to decide how public assistance would be provided, whether through "private providers, non-profit, faith-based, or for profit, either directly or through vouchers" (324). Some of the provisions, Katz notes, did attempt to address the shortcomings of the private market approach. These included subsidies for single parents that left the welfare rolls for employment, such as, child care, health insurance, job training, and child support enforcement (326).

Results of TANF

Katz concludes with a discussion of TANF's short-term results. He notes four points: 1) the rapid decline in welfare rolls, partly due to a booming economy but also to stricter eligibility rules 2) the differential effects on cities and suburbs, due to concentrated poverty, lack of jobs in the inner city 3) the lack of oversight and monitoring, due to a failure to include clear standards and tracking mechanisms in the legislation and 4) and the effects on America's poor, due to low-wage jobs which has trapped many former welfare recipients in a cycle of low-wage poverty.



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NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

March 1, 2002

The Honorable Max Baucus, Chair
Senate Finance Committee
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley, Ranking Member
Senate Finance Committee
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Stephen Saland
*State Senator
New York
President, NCSL*

Ramona Kenady
*Chief Clerk of the House
Oregon
Staff Chair, NCSL*

William T. Pound
Executive Director

RE: The Bipartisan Trade Promotion Authority Act of 2001 (H.R. 3005)

Dear Senators Baucus and Grassley:

The National Conference of State Legislatures (NCSL) has consistently supported international trade agreements that adequately protect the U.S. constitutional principles of federalism. Further, NCSL supports trade promotion authority that empowers the President and the U.S. Trade Representative (USTR) to negotiate sound and mutually beneficial trade pacts. However, we write to express concerns that the Bipartisan Trade Promotion Authority Act of 2001, H.R. 3005, does not adequately and explicitly guarantee that trade agreements negotiated under this authority will respect state sovereignty, provide open and transparent proceedings for the resolution of disputes, assure a level playing field for U.S. and foreign firms, nor incorporate well-defined and constitutional Fifth Amendment takings principles. Recognizing these concerns, we stand ready to work with you to ensure that sufficient and proper guarantees are put in place.

The National Conference of State Legislatures believes that international agreements that liberalize the world trading and investment system can and must be harmonized with traditional American values of constitutional federalism. In particular, NCSL recognizes that reservations can be made to trade and investment agreements that limit the unnecessary preemption of state law and preserve the authority of state legislatures. Implementing legislation also can be crafted that includes protections for our constitutional system of federalism.

Great care must be exercised to protect state laws from unjustified challenges that will predictably result from the broad language of trade agreements. In general, federalism protections consistent with NCSL's policy on Free Trade and Federalism, attached for your review, must be included in the agreement and its implementing legislation. The Uruguay Round Agreement's implementing legislation and accompanying Statement of Administrative Action also provide an excellent model.

Denver
1560 Broadway, Suite 700
Denver, Colorado 80202
Phone 303.830.2200 Fax 303.863.8003

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org
Email info@ncsl.org



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NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

AFI AGRICULTURE & INTERNATIONAL TRADE COMMITTEE

FREE TRADE AND FEDERALISM POLICY

The National Conference of State Legislatures (NCSL) believes in the principles of free trade and efforts to expand U.S. exports through international agreements. NCSL also believes that these agreements to liberalize the world trading and investment system can and must be harmonized with traditional American values of constitutional federalism. In particular, NCSL recognizes that reservations can be made to trade and investment agreements that limit the unnecessary preemption of state law and that preserve the authority of state legislatures. Implementing legislation for trade and investment agreements also can be crafted that includes protections for our constitutional system of federalism.

The states are committed and prepared to treat foreign firms that do business within their borders in a nondiscriminatory fashion, under a standard based on the broad protection afforded by the Commerce Clause and the Foreign Commerce Clause of the U.S. Constitution. What the states are not prepared to accept, however, is a challenge to their sovereignty and to state authority based on an arbitrary and unreasonable standard of discrimination against foreign commerce, similar to that employed by the GATT panel in the so-called Beer II decision.

Therefore, reservations must be made to trade and investment agreements to “grandfather” existing state laws that might otherwise be subject to challenge. Particular care must be exercised to ensure that state tax laws and revenue systems are not subject to unjustified challenge under international agreements, and they generally should be “carved out” of such agreements. Provisions must also be made in federal implementing legislation that so far as possible commit the federal government to protect state lawmaking authority when it is exercised in conformity with accepted U.S. constitutional principles of nondiscrimination against foreign commerce.

Provisions must be made to deny any new private right of action in U.S. courts or before international dispute resolution panels based on international trade or investment agreements,

especially if it could result in foreign firms gaining an advantage in terms of their tax and regulatory treatment over U.S. firms. Neither the decisions of international dispute resolution panels nor international trade and investment agreements themselves must be binding on the states as a matter of U.S. law. Implementing legislation for any agreement must include provisions that promote effective and meaningful consultation between the states and the federal government related to any dispute involving state law or any dispute that could prompt retaliation against states. These provisions should include a timetable for prompt notice to states of a potential state issue, as well as the right of attorneys for the state to participate as part of the “team” defending a state law before international tribunals. States must also be given the right to file amicus briefs before international dispute resolution panels, both independently and



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May 17, 2002

The Honorable Gordon Smith
United State Senate
404 Russell, Senate Office Bldg.
Washington, D.C. 20510

The Honorable Ron Wyden
United States Senator
516 Hart, Senate Office Bldg.
Washington, D.C. 20510

Dear Senators Smith and Wyden:

We are writing to express our concerns about the potential impact on Oregonians of granting Fast Track Authority to the President.

Last year, the Oregon State Legislature approved Senate Joint Memorial 2 with only one dissenting vote. In SJM 2, we noted that "within the United States federal system, the states are the units of government closest to and most representative of the people of the United States." We respectfully call your attention to provisions in U.S. trade agreements that appear to conflict with the lawmaking authority of the 50 state legislatures.

Trade negotiations are ever expanding. A new U.S.-Chile agreement is nearing completion, and numerous other bilateral agreements are in the works. The Free Trade Area of the Americas (FTAA), which would cover 34 nations of the Western Hemisphere, is a broader agreement than the North American Free Trade Agreement (NAFTA). The World Trade Organization (WTO) Ministerial in Doha recently authorized several global negotiations that could undermine the intentions of state and local municipalities.

We are alarmed at the potential impact these negotiations may have on the traditional authority of state and local governments to purchase, promote development, provide services and regulate public interests. For example, the rules on services being negotiated in the FTAA and the WTO's General Agreement on Trade in Services (GATS) would affect 75 percent of the economy, including issues crucial to working Oregonians such as health care, education, water and natural resources, energy, transportation, and land use. If negotiated as U.S. delegates desire, these rules will require state and local governments to notify all 144 WTO members every time a services regulation is proposed and then take their comments into

consideration before passing the law. These rules would create an undue burden on state and local governments by unnecessarily prolonging the legislative process.

Under the federal political structure established by the U.S. Constitution, regulation of services is, and always has been, primarily under the jurisdiction of state and local governments. Yet the current version of Fast Track lacks any mandate to protect traditional authority of states to protect public interests.

NAFTA's investment provisions are even more troubling because they empower private corporations to challenge state and local measures behind the closed doors of international tribunals. NAFTA is the model for investment negotiations in the U.S.-Chile agreement and the FTAA. The first four NAFTA claims against the United States are all against state or local actions, and they total \$1.8 billion. We agree



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Minnesota Senate

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BY: ~~stricken~~ = old language to be removed
underscored = new language to be added

OTE: If you cannot see any difference in the key above, you need to change the display of stricken and/or underscored language.

[Authors and Status](#) ■ [List versions](#)

F No. 3468, 2nd Engrossment: 82nd Legislative Session (2001-2002) Posted on May 17, 2002

- 1.1 A resolution
 1.2 memorializing the President, Congress, and the
 1.3 Governor to ensure that international trade agreements
 1.4 respect the traditional authority of state and local
 1.5 governments to protect the public interest.
 1.6 WHEREAS, the Minnesota legislature supports the benefits of
 1.7 fair trade for local economies; and
- 1.8 **BACKGROUND**
 1.9 WHEREAS, the United States Trade Representative (USTR) is
 1.10 negotiating with 34 countries in the western hemisphere to
 1.11 extend the North American Free Trade Agreement (NAFTA) to those
 1.12 countries, thereby creating a Free Trade Area of the Americas
 1.13 (FTAA) that would eliminate barriers to trade, investment, and
 1.14 services, while creating a single set of trade rules among
 1.15 member countries; and
 1.16 WHEREAS, the USTR negotiated the World Trade Organization
 1.17 (WTO) General Agreement on Trade in Services (GATS), which went
 1.18 into effect January 1, 1995; is currently preparing for
 1.19 negotiations, due to begin June 30, 2002, to expand GATS
 1.20 coverage and relinquish additional local regulatory authority;
 1.21 and is anticipating the possible beginning of WTO negotiations
 1.22 on investment and procurement; and
 1.23 WHEREAS, trade agreements pertaining to services,
 1.24 investment, and government procurement constrain the exercise of
 1.25 state and local government authority to protect the health and
 2.1 welfare of its citizens; and
 2.2 WHEREAS, the traditional local authority of state and local
 2.3 officials to develop and implement necessary policies for their
 2.4 constituents must not be jeopardized by provisions of the FTAA;
 2.5 and
 2.6 WHEREAS, the USTR has declined to hold local hearings to
 2.7 inform the public about the potential impact of the FTAA and
 2.8 GATS negotiations on local communities; and
 2.9 WHEREAS, the National League of Cities, National
 2.10 Association of Counties, Council of State Governments, National
 2.11 Conference of State Legislatures, and National Association of
 2.12 Attorneys General have all adopted resolutions or otherwise
 2.13 taken positions similar to the concerns expressed in this
 2.14 resolution; and
- 2.15 **SUBSIDIES, TRADE IN SERVICES, AND PUBLIC PROCUREMENT**
 2.16 WHEREAS, the FTAA chapter on subsidies includes subsidy
 2.17 rules that potentially conflict with state or local lawmaking to
 2.18 promote economic development; and
 2.19 WHEREAS, the risk of conflict between proposed FTAA and
 2.20 GATS rules on trade in services and state or local law is

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ENROLLED SENATE
CONCURRENT
RESOLUTION NO. 71

By: Muegge of the Senate

and

McCarter of the House

A Concurrent Resolution memorializing the President and Congress that the United States Trade Representative preserve the traditional powers of state and local governments while negotiating international investment agreements; and directing distribution.

WHEREAS, the United States government, through the United States Trade Representative, is negotiating to create or interpret investment agreements under the proposed Free Trade Area of the Americas (FTAA), bilateral agreements such as the United States-Chile agreement, the investment chapter of the North American Free Trade Agreement (NAFTA), and potentially under the World Trade Organization (WTO); and

WHEREAS, investment agreements affect state and local powers, including, but not limited to, zoning, protection of ground water

and other natural resources, corporate ownership of land and casinos, law enforcement by courts, public services, and sovereign immunity; and

WHEREAS, investment rules under these agreements deviate from United States legal precedents on takings law and deference to legislative determinations on protecting the public interest; and

WHEREAS, investment rules do not safeguard any category of law from investor complaints including, but not limited to, laws passed in the interest of protecting human or animal health, environmental resources, human rights, and labor rights; and



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GARY LOCKE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington, 98504-0002 • (360) 753-6780 • www.governor.wa.gov

November 7, 2001

The Honorable George W. Bush
President of the United States
1600 Pennsylvania Avenue NW
Washington, D.C. 20501-0005

Dear Mr. President:

I am concerned about the investor-state dispute resolution provisions contained in Chapter 11 of the North American Free Trade Agreement (NAFTA), and the possibility that similar stipulations might be included in the Free Trade Area of the Americas (FTAA) and bilateral trade agreements with Chile and Singapore. I am writing to urge the federal government to substantially revise its position on investments.

Investors can currently seek monetary compensation from a NAFTA government for actions "tantamount" to expropriation, as well as for "physical takings." As a result, companies can seek damages when their business interests are negatively impacted by regulation, even when it relates to environmental, health and safety issues entirely under the scope of traditional government authority. This overly broad language allows for litigation outcomes against the United States that would not be possible in domestic courts. Therefore, it appears that investors from other countries have greater rights than U.S. citizens. It also reflects a troubling shift of regulatory oversight over environmental safeguards and matters of public interest to international tribunals operating behind closed doors.

I believe the United States must change its position on the investor-state dispute resolution mechanism. Unless this is done, future trade and investment agreements may undermine our nation's ability to enforce our environmental, health and safety laws without running the risk of foreign lawsuits.

Sincerely,

A handwritten signature in black ink that reads "Gary Locke".

Gary Locke
Governor



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Spring Meeting
March 20 B 22, 2002
Washington, D.C

RESOLUTION

WHEREAS, in the past many of us have joined together to protest efforts in Congress to invade state sovereign prerogatives with regard to takings claims issues; and

WHEREAS, state and local governments are by law uniquely situated to provide the best safeguards for their citizens in many areas involving consumer and environmental protection; and

WHEREAS, we strongly support the promotion of international trade, including elimination of unfair and discriminatory barriers to the importation of foreign products and foreign investment; however,

WHEREAS, H.R. 3005 as currently drafted may allow trade negotiators to grant foreign investors new and greater rights to seek financial compensation based on state, local, or federal governmental regulatory actions; and

WHEREAS, implementation of the standards in Chapter 11 of the North American Free Trade Agreement (NAFTA) raises serious concerns over its potential impact on the power of state or local governments to protect the welfare and environment of their citizens; and

NOW, THEREFORE BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL:

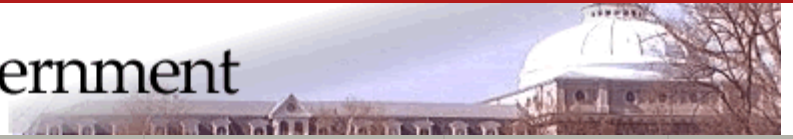
1. Encourages Congress to ensure that in any new legislation providing for international trade agreements foreign investors shall receive no greater rights to financial

compensation than those afforded to our citizens;

2. Authorizes the Executive Director of the National Association of Attorneys General to transmit these views to Members of Congress, and to work with appropriate Federal government officials on initiatives consistent with this resolution and with the needs of the Attorneys General.



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HR 3005 Summary of Concerns

Although NAFTA provides many benefits, certain provisions have raised concerns for the continued ability of state, local, and federal regulatory authorities to protect consumers and the environment. The language in question is fairly innocuous, however, its implications are not. NAFTA's investor protections are the first in any multilateral trade agreement to give foreign private investors the capacity to challenge host governments on their compliance, and to recover compensation in such actions for "measures" amounting to direct or indirect expropriation, or actions "tantamount" to expropriation.

The contemplated actions can be brought by minority investors who may not necessarily represent their companies. To date, on the basis of the authority granted them under these trade agreements foreign entities have asserted rights to compensation for the imposition of such traditional health and safety measures as the prohibition of gasoline additives to protect groundwater and regulations restricting the placement of toxic waste dumps. Even the exercise of governmental immunity as a defense in local real estate disputes has given rise to claims. In many cases, the claims go far beyond what these entities could recover under American constitutional takings law. Of further concern, these claims are determined in closed proceedings by arbitrators not bound by precedent or the procedural safeguards to which parties have a right under the American system of justice.



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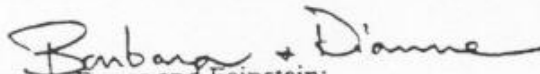
STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

April 3, 2002

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Bldg.
Washington, D.C. 20510

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Bldg.
Washington, DC 20510

Re: H.R. 3005 - Threat to State and Local Regulatory Programs


Dear Senators Boxer and Feinstein:

I wanted to let you know that on March 22, 2002, the National Association of Attorneys General, representing 54 states and territories, passed the attached resolution expressing concern over the inclusion of provisions in international trade agreements granting individual foreign investors new rights to challenge and seek compensation for state, local or federal government regulatory actions as "expropriations." I believe that similar provisions may proliferate in future trade agreements enacted under the pending "fast track" legislation unless Congress amends H.R. 3005 to ensure that foreign investors receive no greater rights than those afforded U.S. citizens under our constitutional guarantees.

As you know, I strongly support the promotion of international trade, including elimination of unfair and discriminatory barriers to the importation of foreign products and to

foreign investment. However, the potential in H.R. 3005 to create an expansive new international law of takings is unnecessary and, ultimately counter-productive to achieving the goals of promoting free trade and increased foreign investment.

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WILLIAM H. SORRELL
ATTORNEY GENERAL
J. WALLACE MALLEY, JR.
DEPUTY ATTORNEY GENERAL
WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY GENERAL



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FAX: (802) 828-2154
TTY: (802) 828-3665
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<http://www.state.vt.us/atg>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER
05609-1001

April 17, 2002

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jim Jeffords
United States Senate
728 Hart Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Jeffords:

I wanted to communicate with you briefly about H.R. 3005, the so-called "fast-track" trade legislation, that is presently pending in the Senate. The National Association of Attorneys General recently passed a resolution (a copy is attached) expressing concerns about a section of H.R. 3005 that deals with "investor protection" provisions in future international trade agreements. As presently drafted, H.R. 3005 may authorize U.S. trade negotiators to grant foreign investors new and greater rights to seek financial compensation based on state, local, or federal regulatory actions. I share the concerns expressed by the nation's Attorneys General. I also believe that this issue is important to Vermonters, who are justifiably proud of their State's commitment to environmental protection.

As you may know, a similar investor provision is found in Chapter 11 of the North American Free Trade Agreement (NAFTA) and has already presented problems. Under Chapter 11, for example, foreign corporations have sought to undermine attempts by state and local governments to regulate hazardous chemicals. Events such as these raise serious concerns over the potential impact of new "investor protection" provisions on the power of state or local governments to protect the welfare and environment of their citizens. The vague standards found in Chapter 11 invite expansive claims by disappointed foreign investors who challenge state and local environmental protections as



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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY
NEW YORK, NY 10271

ELIOT SPITZER
Attorney General

(212) 416-8050

May 9, 2002

Senator Charles E. Schumer
SH-313 Hart Senate Office Building
Washington, D.C. 20516-3202

Senator Hillary Rodham Clinton
SR-476 Russell Senate Office Building
Washington, D.C. 20510-3203

Dear Senators Schumer and Clinton:

I write to share with you my concern about the threat that H.R. 3005, the "Bipartisan Trade Promotion Authority Act of 2001," poses to the federal, state and local governments' authority to protect public health and the environment, and to offer some ways to address this threat. This concern should not derail efforts to expand fair and free trade. My staff has spoken with your staffs and I know that you are both following this issue closely.

H.R. 3005 is intended to facilitate international trade agreements by establishing a fast track procedure whereby a trade agreement submitted to Congress for approval must be voted up or down and cannot be amended. To advance this end, the bill creates framework principles for U.S. trade negotiators to follow in negotiating bilateral or multilateral agreements with foreign countries.

One of the proposed provisions, which is intended to protect foreign investments from expropriation, is so broadly drawn as to potentially grant foreign, *but not U.S.*, investors compensation rights far *greater* than those available under American constitutional takings and due process law. Such a provision in the North American Free Trade Agreement ("NAFTA"), which was enacted under "fast track" legislation comparable to H.R. 3005, has resulted in claims alleging expropriation by federal, state or local regulation. These claims, which total in the billions of dollars, are adjudicated in closed proceedings conducted by arbitration panels that are not bound by U.S. judicial precedent or the rulings of other arbitration panels. The panels' determinations are not subject to appeal on the merits and any compensation award is payable directly from the U.S. Treasury. Finally, public policy concerns of NAFTA's signatory nations



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G. STEVEN ROWE
ATTORNEY GENERAL



Telephone: (207) 626-6600
TDD: (207) 626-6665

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES:

84 HAWLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
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FAX: (207) 941-3075

44 OAK STREET, 4TH FLOOR
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8600

128 SWEDEN ST., STE. 2
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

April 25, 2002

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington DC 20510-1903

The Honorable Susan M. Collins
United States Senate
172 Russell Senate Office Building
Washington DC 20510-1904

Re: H.R. 3005 – Threat to State and Local Regulatory Programs

Dear Senators Snowe and Collins:

I recently joined my colleagues at the National Association of Attorneys General in passing the attached resolution expressing concern over the inclusion of provisions in international trade agreements, by which foreign investors are granted new rights to challenge and seek compensation for state, local and federal government regulatory actions. Similar provisions may proliferate in future trade agreements enacted under H.R. 3005, the "fast track" trade legislation now pending before Congress, unless the bill is amended to ensure that foreign investors receive no greater rights than those afforded U.S. citizens under our Constitution.

Please know that this issue has no bearing on the promotion of international trade. However, the potential in H.R. 3005, as currently written, to create an expansive new international law of takings, having no derivation in our Constitution, is contrary to our Constitution's principles as well as to promotion of even-handed trade.

My concerns arise from real experiences encountered by state and local governments with similar investor-protection provisions in Chapter 11 of the North American Free Trade Agreement (NAFTA). These provisions have raised serious problems with the ability of state and local governments to take constitutional actions to protect public welfare and the environment.



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ATTORNEY GENERAL STATE OF MONTANA

Mike McGrath
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

May 14, 2002

Senator Max Baucus
511 Hart Senate Office Building
United States Senate
Washington, D.C. 20510-2602

Dear Max:

I am writing to express my concern about the evolving language of H.R. 3005, the "Bipartisan Trade Promotion Authority Act of 2002." I understand that you intend to offer an amendment to your bill that would direct United States trade negotiators to adopt, as one of the trade negotiating objectives, ensuring that "foreign investors in the United States are not accorded greater rights than U.S. investors in the United States." I applaud this positive change in the bill, but remain concerned that the amendment would not be adequate to protect U.S. sovereign interests and preserve the authority of the U.S. government at all levels to enact and enforce reasonable measures to protect the public welfare.

The fundamental difficulty lies in the fact that United States' law itself is subject to a variety of conflicting interpretations. Assuming foreign arbitration panels would be willing to attempt to enforce U.S. legal standards, as opposed to international legal rules, the question remains: how would they interpret U.S. law and what would be the remedy if they misinterpreted U.S. law? Foreign arbitrators commonly would not be U.S. citizens and would not be trained in U.S. law and, therefore, would not likely be competent to interpret and apply U.S. law. In addition, panel members would possess none of the basic attributes of judicial independence which we demand of judges on

United States federal and state courts; arbitrators would apparently be selected on a case by case basis and, unlike federal judges, for example, could maintain extensive private legal practices while serving as arbitrators. Whereas federal judges are selected by the President with the advice and consent of the Senate, panel members would presumably be chosen, as under NAFTA, through a combination of selections by the foreign claimants themselves, mid-level officials in the federal agencies, and international institutions such as the United Nations or the World Bank.

TELEPHONE: (406) 444-2026 FAX: (406) 444-3349 E-MAIL: contactdoj@state.mt.us





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TOM REILLY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1698

(617) 727-2200

May 17, 2002

The Honorable Edward M. Kennedy
United States Senate
315 Russell Senate Office Building
Washington, DC 20510

The Honorable John F. Kerry
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

Dear Senators Kennedy and Kerry:

I enclose a resolution passed in March, 2002 by the National Association of Attorneys General concerning the impact of international trade agreements on state laws that protect "the welfare and environment of their citizens." The resolution is directed at H.R. 3005, which would authorize "fast track" consideration by the Congress of future trade agreements. The bill is pending in the Senate.

I am concerned that the future trade agreements covered by the bill will increase the exposure of the Commonwealth to actions by foreign companies challenging state laws. Under agreements such as the North American Free Trade Agreement (NAFTA), compensation is

awarded by international arbitration panels without public disclosure of their proceedings. The States are now the subjects of at least three cases brought by foreign companies under NAFTA.

In Massachusetts, a Canadian developer (Mondev International Ltd.) has invoked NAFTA in a challenge to a decision of the Supreme Judicial Court that upheld action by the City of Boston allegedly adverse to the developer. The Canadian company seeks \$50 million in compensation against the United States. The case is scheduled for hearings before a panel of



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STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

May 13, 2002

The Honorable Bill Nelson
United States Senator
716 Hart Senate Office Building
Washington, DC 20510

The Honorable Bob Graham
United States Senator
524 Hart Senate Office Building
Washington, DC 20510

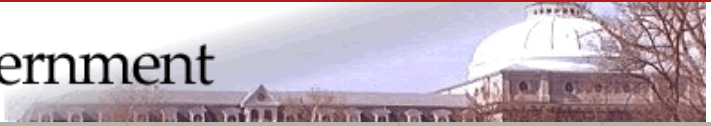
Dear Senators Nelson and Graham:

The purpose of this letter is to express my concerns with H.R. 3005 known as "fast track" trade legislation. This legislation is presently pending before the Senate and will be deliberated in the very near future.

Attached you will find a resolution passed this Spring by the National Association of Attorneys General expressing concerns with the section of H.R. 3005 that addresses "investor protection" provisions in future international trade agreements. Many States Attorneys General are concerned that the legislation as currently drafted may allow trade negotiators to grant foreign investors greater rights to seek financial compensation than would apply to American citizens when based on state, local, or federal governmental regulatory actions. The previous implementation of standards in Chapter 11 of the North American Free Trade Agreement (NAFTA), raised serious concerns over its' potential impact on the power of state and local governments to protect the welfare environment of their citizens. While I strongly support the promotion of international trade, and the elimination of barriers to the importation of foreign products and foreign investment, I do not believe it is necessary to create different legal standards for foreign investors when it comes to the protection of Florida's environment.



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awagner@dcca.state.dc.us

May 15, 2002

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Supreme Court of Idaho

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FAX: (703) 841-0206

Honorable Thomas A. Daschle
Senate Majority Leader
United States Senate
509 Senate Hart Office Building
Washington, D.C. 20510-4103

Honorable Trent Lott
Senate Minority Leader
United States Senate
487-Senate-Russell-Office-Building
Washington, D.C. 20510-2403

Re: H.R. 3005

Dear Senator Daschle and Senator Lott:

On behalf of the Board of Directors of the Conference of Chief Justices (CCJ), I write to express CCJ's concerns about aspects of H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002, which is before the Senate as part of H.R. 3009, the Andean Trade Preference Expansion Act. As you may know, CCJ is an organization comprised of the chief justice or chief judge of the highest court of each state, the District of Columbia and several territories, working to improve the administration of justice in the United States. Our issues relate to the impact of the implementation of the bill on the integrity of state and federal courts.

Specifically, we are concerned that the bill does not protect adequately the traditional values of constitutional federalism and that its implementation poses risks to the finality of judgments, so important to our system of justice. Issues arising under similar investor protection provisions in Chapter 11 of the North American Free Trade Agreement (NAFTA) have demonstrated that such concerns are well-founded.

We are aware that various state and local organizations such as the National Association of Attorneys General, the Conference of

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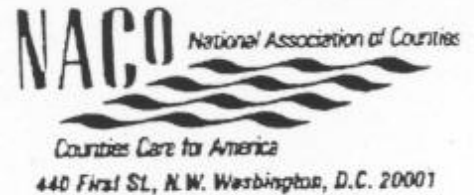
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COMMUNITY AND ECONOMIC DEVELOPMENT STEERING COMMITTEE
AGRICULTURE AND RURAL AFFAIRS STEERING COMMITTEE
ENVIRONMENT, ENERGY AND LAND USE STEERING COMMITTEE
FINANCE AND INTERGOVERNMENTAL AFFAIRS STEERING COMMITTEE

RESOLUTION ON TRADE AGREEMENTS

Issue: Opposition to provisions of trade legislation that would dilute local government statutory and regulatory authority.

Adopted Policy: NACO is a strong supporter of free trade activities that enhance the economic base of local governments and promote county participation in the global economy. However, NACO opposes the adjudication of disputes arising out of trade agreements in a manner that preempts local government authority, circumvents domestic judicial processes, and grants greater rights to foreign investors than those guaranteed to U.S. citizens by federal, state and local law.

Background: As the voice of county government, NACO supports trade activities that enhance and expand local economies and allow units of local government to effectively compete in the marketplace. However, provisions in pending legislation in the Senate interpret the adjudication process of disputes arising out of certain trade agreements in a manner that threatens the autonomy and sovereignty of units of local government. Chapter 11 of the North American Free Trade Agreement (NAFTA) allows foreign investors to sue the U.S. government in disputes arising out of trade agreements negotiated under NAFTA. NACO is concerned that a broad interpretation of this feature of NAFTA may have a chilling effect on local decision making, subrogate legal protections of U.S. citizens to foreign investors, and result in the ultimate nullification of local government laws or regulations under Chapter 11. NACO supports an adjudication process that ensures accountability to citizens and that is consistent with existing domestic law.

Fiscal/Urban/Rural Impacts: County governments may encounter significant financial risk under broad interpretations of foreign investor rights under NAFTA Chapter 11.

Community and Economic Development Steering Committee

Adopted by Community and Economic Development Steering Committee
Adopted by Agriculture and Rural Affairs Steering Committee
Adopted by Environment, Energy and Land Use Steering Committee
Adopted by Finance and Intergovernmental Affairs Steering Committee
Unanimous
March 2, 2002

Adopted by the NACo Board of Directors
March 4, 2002



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THE UNITED STATES CONFERENCE OF MAYORS

1620 EYE STREET, NORTHWEST
WASHINGTON, D.C. 20006
TELEPHONE (202) 293-7390
FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org

March 21, 2002

President:
MARK H. MORIAL
Mayor of New Orleans

Vice President:
THOMAS M. MENINO
Mayor of Boston

Past Presidents:
VICTOR ASHE
Mayor of Knoxville
M. BRENT COLFS
Mayor of Boise
RICHARD M. DALEY
Mayor of Chicago
JOSEPH P. RILEY, JR.
Mayor of Charleston, SC
WILLINGTON E. WEBB
Mayor of Denver

The Honorable Tom Daschle
Senate Majority Leader
SH-509 Hart Senate Office Building
Washington, D.C. 20510-4103

Dear Senator Daschle:

On behalf of the U.S. Conference of Mayors, I am writing to express our strong opposition to the current provisions of H.R. 3005, the pending trade promotion legislation, which would grant broad new rights to foreign investors to sue the U.S. based on the actions of U.S. cities, and of other units of local government, the states and federal government, pursuant to "investor protection" provisions in international trade agreements.

H.R. 3005 would grant U.S. trade negotiators broad authority to negotiate trade agreements with other nations and, once the agreements have been negotiated, would allow Congress to only cast an up or down vote on the agreements pursuant to legislative "fast track" procedures. Thus, while the pending legislation does not actually ratify any pending agreements, it will have enormous significance in terms of the contents of international trade agreements which the U.S. will negotiate in the future.

The language on "investor protection" in H.R. 3005 is so broad and open-ended that it would allow trade officials to include investor protection standards in future trade agreements that go beyond U.S. law and that effectively grant foreign investors greater rights than U.S. citizens enjoy. The billions of dollars in claims which have been filed under Chapter 11 of the North American Free Trade Agreement confirm the serious risk posed by the investor protection language in the trade promotion legislation.

The U.S. Conference of Mayors has strongly opposed domestic "takings" bills designed to alter the established constitutional reading of the Fifth Amendment or change the established administrative and judicial procedures for resolving taking disputes. Fortunately, Congress has rejected these proposals. However, the pending legislation threatens to undermine Congress' decision to reject proposals to revise the established constitutional test for a taking by creating an expansive new right to bring "expropriation" claims against the U.S. under international trade agreements.

Trustees:
MICHAEL A. CUIDO
Mayor of Dearborn
PATRICK HENRY HAYS
Mayor of North Little Rock
SHARTE JAMES
Mayor of Newark, NJ
WILLIAM A. JOHNSON, JR.
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Mayor of San Leandro
Executive Director:
I. THOMAS COCHRAN

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RESOLUTIONS ADOPTED

at the 70 TH ANNUAL CONFERENCE OF MAYORS
Madison, WI - June 14-18, 2002

* * * * *

URGING THAT FOREIGN INVESTORS BE GIVEN NO GREATER RIGHTS THAN U.S. INVESTORS IN THE TRADE PROMOTION AUTHORITY ACT OF 2001

WHEREAS, the U.S. House of Representatives and the U.S. Senate have approved separate legislative proposals, (Trade Promotion Authority Act of 2001) that would grant U.S. trade negotiators broad discretion to include so called "investor protection" provisions in future trade agreements with other countries; and

WHEREAS, the bills list among the principal negotiating objectives of the United States, "seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practices," which is subject to broad interpretation and does not bind U.S. trade negotiators to follow U.S. legal precedents; and

WHEREAS, these provisions would expand the opportunities of foreign investors operating in the United States to challenge the action of federal, state and local governments as "regulatory takings," particularly federal, state and local actions restricting the use of property to protect the environment, public health and safety, and public morals; and

WHEREAS, foreign investors would be given the exclusive right to circumvent the U.S. court system and the process in place at the state and local level for addressing takings claims. They would be permitted to sue the U.S. government for financial compensation based on federal, state or local actions before an international arbitration panel which would not be obligated to follow the U.S. Supreme Court's interpretations of the Fifth Amendment on takings claims or to follow U.S. legal precedents in this area; and

WHEREAS, the investor protection provisions in the proposed legislation are modeled after Chapter 11 of the North American Free Trade Agreement, which allows foreign investors to sue for damages if any court or regulatory agency of the federal, state or local government takes an action that can be viewed as a trade barrier; and

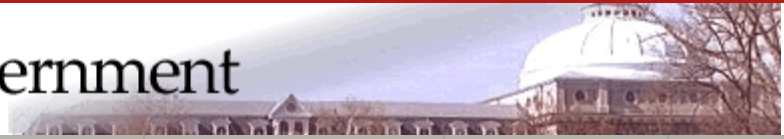
WHEREAS, foreign investors have filed billions of dollars in takings claims under Chapter 11 of NAFTA, including a \$1 billion claim pending against the United States that was filed by Methanex Corporation of Canadian (which is the world's largest producer of one of the key ingredients used to make MTBE) in response to the State of California's decision to ban MTBE, a gasoline additive, in order to protect groundwater supplies; and

WHEREAS, the Senate attempted to address some of these concerns before passing its version of the bill by including language that specifically states that foreign investors will not be accorded greater rights than U.S. investors in the United States but it does not establish clear standards or an effective enforcement mechanism to ensure that this objective is carried out,

NOW, THEREFOR, BE IT RESOLVED, that The United States Conference of Mayors urges House and Senate Conferees on the Trade Promotion Authority Act of 2001 to include language providing that decisions and other orders of the courts of the United States, including the U.S. Supreme Court and the highest courts of states, cannot be



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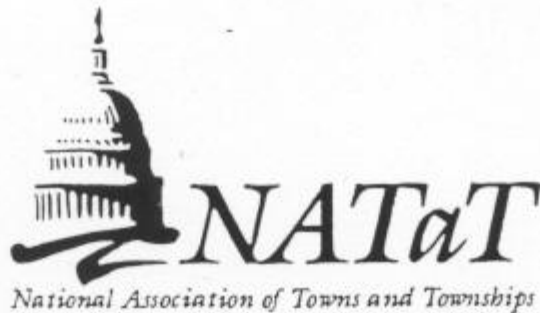
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April 4, 2002

Dear Senator:

I am writing to express the very deep concerns that this organization has with the investor provisions as they currently exist in the Bipartisan Trade Promotion Authority Act of 2001 (TPA), HR 3005. While we understand the need for foreign investors to be assured that their investments in other countries will be protected against expropriation, our concern is that the provisions, as they now stand, will prevent states and localities from being able to enforce public health and safety laws and land use controls.

Our concerns arise from some of the Chapter 11 claims being made under the North America Free Trade Agreement by foreign investors against the United States and other governments covered by the treaty. Under Chapter 11, a private foreign company may sue the federal government directly to seek compensation if the company believes that a state or local regulation has resulted in a taking. There have already been approximately \$2 billion in claims filed under Chapter 11 and we are concerned that the number of takings claims against state and local governments could skyrocket if foreign investor protections as they currently exist are included in HR 3005. These investor claims are decided by tribunals in closed session and are not subject to the legal precedents governing takings claims that have evolved over time in our judicial system.

In particular, we are troubled that a claim by a foreign company that a local government's regulation or zoning law constitutes a taking against the company will make it impossible for the locality to enforce that specific regulation or law against the company. Equally troubling, such an action would appear to favor foreign companies over domestic companies, which would in all likelihood have to comply with the local regulation or law.

We hope that the Senate will take a close look at the ramifications of the foreign investor

provisions of the IPA to ensure that state and local laws designed to protect the public and public property remain enforceable against all parties. Congress has repeatedly rejected efforts in recent years to alter how takings claims are considered at the state and local level. We ask that you now reject this even more serious threat to local governments as you develop our nation's trade policy.

Sincerely,

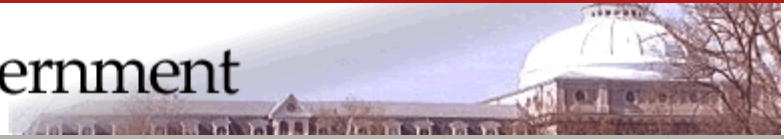


Tom Halicki
Executive Director

444 N. Capitol Street, NW • Suite 397 • Washington, D.C. 20001
(202) 624-3550 • Fax: (202) 624-3554 • e-mail: natat@sso.org
www.natat.org



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Better Cities - A Better Life

League of California Cities
www.calcities.org

May 20, 2002

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

On behalf of California's 477 cities, I am writing to express our concerns about the potential impact on local governments of the investor-state provisions in H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002. The League of California Cities (League) is concerned that this bill would enable future trade negotiations to expand the definition of a "regulatory taking" and would give too much power to international corporations at the expense of the health and safety of California's citizens.

At the core of the League's concerns are the "expropriation" provisions that have become the standard of international trade agreements, such as that included in Chapter 11 of the North American Free Trade Agreement. The principle of expropriation is similar to that of regulatory takings, except it is more extreme. While the takings clause of the U.S. Constitution limits compensation to the physical appropriation (or its regulatory equivalent) of property, expropriation provisions require payment anytime health and safety regulations have a negative effect on a foreign corporation's investment. Even more troubling is that these provisions are often written with vague language that makes it difficult for local agencies to predict if and when their regulations may amount to an expropriation requiring compensation.

This issue is of particular importance to Californians. The largest claim for compensation to date involves California's ban on methyl tertiary-butyl ether (MTBE). The State ordered a phase out of MTBE after studies showed it was contaminating California's drinking water. However, as reasonable as this action seems, the Canadian corporation Methanex is now seeking compensation of \$970 million from the United States on grounds that the plan to remove MTBE from California's gasoline amounts to an expropriation. The alleged expropriation comes in the form of Methanex's lost sales of methanol, a component of MTBE.

Expropriation language in international trade agreements gives international corporations more rights than those given to domestic companies. Additionally, the process for resolving disputes is extremely troubling. Most international agreements rely on tribunals modeled after private commercial arbitrations, which are held behind closed doors, with no avenue for public or local government participation.

Headquarters
1400 K Street
Sacramento, CA 95814
916.878.8200

Southern California Office
602 East Huntington Dr., Suite C
Monrovia, CA 91016
626.305.1313
FAX 626.305.1326



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OKLAHOMA MUNICIPAL LEAGUE, INC.

201 N.E. 23rd STREET • OKLAHOMA CITY, OK 73105
(405) 528-7515 • 1-800-324-8651 • FAX (405) 528-7560 • www.omi.org

Board Resolution No. 02-01 Oklahoma Municipal League

WHEREAS, in the past many of us have joined together to protest efforts in Congress to invade state and local government sovereign prerogatives with regard to takings claims issues; and

WHEREAS, state and local governments are by law uniquely situated to provide the best safeguards for their citizens in many areas involving health, safety, land use, consumer and environmental protection; and

WHEREAS, we strongly support the promotion of international trade, including the elimination of unfair and discriminatory barriers to the importation of foreign products and foreign investment; however,

WHEREAS, H.R. 3005 as currently drafted may allow trade negotiators to grant foreign investors new and greater rights to seek financial compensation based on state, local, or federal governmental regulatory actions; and

WHEREAS, implementation of the standards in Chapter 11 of the North American Free Trade Agreement (NAFTA) raises serious concerns over its potential impact on the power of state or local governments to protect the welfare and environment of their citizens; and

NOW, THEREFORE BE IT RESOLVED THAT THE OKLAHOMA MUNICIPAL LEAGUE:

1. Encourages Congress to ensure that in any new legislation providing for international trade agreements foreign investors shall not circumvent established U.S. administrative and judicial proceedings and shall receive no greater legal rights than those afforded to our U.S. citizens;

2. Trade Agreements negotiated by the U.S. Government shall

2. Trade Agreements negotiated by the U.S. Government shall respect state and local government sovereignty, provide open and transparent proceedings for the resolution of disputes, assure a level playing field for U.S. and foreign firms, and incorporate well-defined U.S. Constitutional 5th Amendment takings principles.

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201 N.E. 23rd STREET • OKLAHOMA CITY, OK 73105
(405) 528-7515 • 1-800-324-8651 • FAX (405) 528-7560 • www.ohl.org

May 1, 2002

The Honorable Don Nickles
United States Senate
133 Hart Senate Office Building
Washington DC 20510

Dear Senator Nickles:

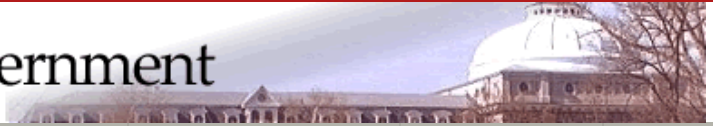
On behalf of the Oklahoma Municipal League and its more than 2,700 elected governing municipal officials in the State of Oklahoma, I am writing to express serious concerns about the potential impact on local governments of the investor-state provisions in H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002. In your recent press release calling for speedy Senate action on a bill to give the President authority to negotiate trade agreements you state that you must pass Trade Promotion Authority to secure the best trade deals on behalf of American producers. While that is a worthy goal, the broader ramifications of international trade agreements on local government sovereignty are also an important consideration and we encourage your office to address these concerns.

The Government of Mexico is currently pursuing reimbursement from the State of San Luis Potosi, and a local Mexican municipality for the \$16,000,000.00 NAFTA Chapter 11 claim awarded to a U.S. company against Mexico in the *Metalclad Corp. v. United Mexican States* case. If a multi-million dollar claim is awarded against the United States our concern is that the U.S. government will pursue recovery against the state or local government whose local laws are not in "harmony" with the NAFTA international arbitration tribunal's version of international law. The investor protection provisions threaten to produce massive new financial claims against the U.S. federal treasury which will no doubt be passed on to the state or local level and will impose a serious new burden on the American taxpayer.

The Oklahoma Municipal League supports the goal of expanded trade and recognizes the benefits of reducing unreasonable barriers to international trade and investment for local economies. However there continues to be uncertainty whether there is an inherent conflict between global trade agreements and local authority. The Oklahoma Municipal League urges the Senate to amend H.R. 3005 in order to protect the legal authority of America's municipalities to enact local laws necessary to safeguard the health and welfare of our citizens. Specifically, we are concerned that future trade negotiations, particularly a hemispheric Free Trade Area of the Americas (FTAA) could include provisions that expand the definition of a regulatory taking. As evidenced by disputes under Chapter 11 of NAFTA, vague expropriation language has allowed new avenues of recourse for foreign investors to challenge current state and local ordinances as "regulatory takings".



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RESOLUTION NO. 01-113

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE
OPPOSING THE EXTENSION OF THE NORTH AMERICAN FREE TRADE
AGREEMENT TO THE FREE TRADE AREA OF THE AMERICAS

WHEREAS, the North American Free Trade Agreement ("NAFTA") Chapter 11 has provisions which allow investors to seek monetary compensation from a signatory government through international arbitration if that government expropriates the investor's investment; and

WHEREAS, there is no clear definition of "expropriation" in NAFTA Chapter 11; and

WHEREAS, the nature of international arbitration is such that municipalities or the public are not directly involved in the process, and arbitration proceedings can be secretive without documents being publicly available through regular channels; and

WHEREAS, there is uncertainty regarding the outcome of any NAFTA arbitration because the arbitration decisions by definition are not binding on other arbitration proceedings; and

WHEREAS, large monetary awards may lead a signatory government to attempt to influence laws on a local level; and

WHEREAS, due to the lack of transparency of the arbitration process under NAFTA and the lack of a clear definition of "expropriation," there is a concern that claims pursuant to NAFTA Chapter 11 may lead to unintended results which affect the legitimate police power of local governments; and

WHEREAS, it is anticipated that the negotiations in progress to finalize the Free Trade Area of the Americas ("FTAA") will include provisions similar to NAFTA Chapter 11; and

WHEREAS, the City of Glendale should not be subjected to the unintended results of an FTAA which includes the Chapter 11 language of NAFTA.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE,
CALIFORNIA:

SECTION 1. The Council does hereby oppose the extension of NAFTA to the FTAA.

SECTION 2. The Council does hereby request the U.S. Trade Representative to release proposals for the agreement and written submissions to the nine negotiating groups of the FTAA so that local governments may assess the impact of the agreement on their sovereignty.

SECTION 3. The Council does hereby request that the State Legislature investigate NAFTA and the proposed FTAA, and adopt implementing legislation for the agreements that prevent the interference with or dilution of the sovereignty of local governments.

SECTION 4. The Council urges Congress to take an active role in ensuring that the proposed FTAA agreement includes safeguards for the sovereignty of local agencies and protection of state and local environmental laws.

SECTION 5. The City Clerk shall send a copy of this resolution to George W. Bush, President of the United States, U.S. Trade Representatives, Honorable Adam Schiff, Congressman, 27th District, Honorable Dianne Feinstein and Honorable Barbara Boxer (members of the U.S. Senate), Honorable Sheila Kuehl, Senator, 23rd Dist., Honorable Jack Scott, Senator, 21st Dist., Honorable Dario Frommer, Assemblyman, 43rd Dist., and Honorable Carol Liu, Assemblywoman, 44th Dist.

Adopted this 26th day of June, 2001.

Gus Gomez, Mayor

I, DORIS TWEDT, City Clerk of the City of Glendale, certify that the foregoing Resolution No. 01-113 was adopted by the Council of the City of Glendale, California, at a regular meeting held on the 26th day of June, 2001, and that same was adopted by the following vote:

Ayes:	Manoukian, Quintero, Yousefian, Gomez
Noes:	Weaver
Absent:	None
Abstain:	None

DORIS TWEDT

by: Rita Buchanan, Assistant City Clerk

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RESOLUTION

Council of the City of Philadelphia, PA
May 2, 2002

Opposing the granting of "Fast Track" trade promotion authority by the United States Congress to the President of the United States, which authority threatens to undermine, if not destroy, the power of municipalities and States to protect their police and regulatory powers against the demands of foreign corporations.

WHEREAS Fast Track "Trade Promotional Authority" (TPA), soon to be voted on in the United States Senate, circumvents democratic procedures by eliminating Congress' right to amend trade agreements submitted to it for approval by the President, thereby also sharply limiting citizen input into Congressional deliberations on trade issues; and

WHEREAS, trade agreements negotiated in recent years have severely constrained the exercise of local government authority to protect the health and welfare of local residents; and

WHEREAS, for example, Chapter 11 of the North American Free Trade Agreement ("NAFTA") has provisions which allow investors to seek monetary compensation from a signatory government through international arbitration if that government, or any of its subdivisions, such as cities or states, "expropriates" the investor's investment; and

WHEREAS, there is no clear definition of "expropriates" in NAFTA; and

WHEREAS, the nature of international arbitration is such that municipalities and the public are not allowed to participate in the process, although they may be deeply affected by the result; and

WHEREAS, due to the lack of transparency of the arbitration process under NAFTA and the lack of a clear definition of "expropriates," claims made pursuant to Chapter 11 of NAFTA may sharply penalize, if not eliminate, the legitimate police power of local governments; and

WHEREAS, negotiations are now in progress to finalize a variety of new trade agreements, including creation of a Free Trade Area of the Americas (FTAA) among 34 nations of the Western Hemisphere, creation of bilateral agreements such as a U.S.-Chile agreement, and expansion of the General Agreement on Trade in Services (GATS); and

...negotiations on trade in services (GATS), and

WHEREAS, these negotiations, if conducted on a “fast track” basis, may well result in the inclusion in these trade agreements of provisions similar to Chapter 11 of NAFTA, as well as a variety of other infringements on national sovereignty, all of which would serve to insulate multinational corporations from state and local government regulatory power; and

WHEREAS, for instance, certain “investment provisions” on the negotiating table are intended to increase foreign investor rights by allowing challenges to core functions of state and local government such as zoning, protection of ground water and other natural resources, law enforcement by courts, and sovereign immunity; and



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March 12, 2002

United States Senate
Washington, DC 20510

Re: IMLA Concerns About Investor-Protection Provisions of H.R. 3005

Dear Senator:

On behalf of the International Municipal Lawyers Association and its more than 1450 members, I am writing to express serious concerns about the "investor-protection" provisions of H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002. IMLA urges the Senate to amend the investor protection provisions in order to protect the legal authority of America's municipalities to enact measures necessary to safeguard the health and welfare of our citizens.

IMLA is a non-profit, professional organization that has been an advocate and resource for local government attorneys since 1935. Governed solely by its members, IMLA is the legal voice for the nation's local governments.

As currently drafted, H.R. 3005 would authorize U.S. trade officials to negotiate international agreements granting foreign investors operating in the U.S. broad new legal rights to challenge the actions of local governments before international arbitration panels.

The bill's open-ended language also would allow trade negotiators to adopt expansive "takings" and other provisions that go beyond U.S. law. The arbitration panels hearing the suits filed under these provisions would not be bound by U.S. law and their decisions would not be subject to meaningful review in U.S. courts. Thus, H.R. 3005 would create a unique, specially favorable forum for use exclusively by foreign investors seeking to challenge the actions of local governments. The full range of municipal government actions could be challenged under the investor-protection provisions, including planning and zoning functions, licensing decisions, and contracting practices.

Experience with Chapter 11 of the North American Free Trade Agreement confirms the threat posed by the investor protection provisions in the trade promotion legislation. Several billion dollars in legal claims have been filed under Chapter 11, and tens of millions of dollars have already been awarded. Most of the claims which have been filed rely on legal theories that significantly depart from U.S. legal standards, and, in the few years since NAFTA went into effect, a few of these claims have already succeeded. It is our understanding that NAFTA Chapter 11 is generally viewed as the model for the future trade agreements which would be negotiated under the trade promotion legislation. Certainly nothing in H.R. 3005 would prevent the proliferation of NAFTA Chapter 11 claims on a worldwide basis.



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American Public Health Association

Working for a Healthier World

800 I Street, NW • Washington, DC 20001-3710
(202) 777-APHA • Fax: (202) 777-2534 • comments@apha.org • www.apha.org

May 3, 2002

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our organizations and our members, we are writing to express our concerns about the so-called "investor protection" provisions in the pending Baucus/Grassley fast-track trade legislation (H.R. 3005) and their potential to undermine public health in the United States and in other countries around the world.

The proposed legislation would authorize U.S. trade officials to negotiate trade agreements that grant foreign investors the right to sue their host countries for actions that reduce the value of their investments. Foreign investors could demand financial compensation from governments based on violations of a series of vaguely worded legal standards which differ from U.S. laws or the laws of other nations, and may well grant foreign investors greater legal rights than domestic entities or individuals possess. We understand that the investor-protection provisions in the North American Free Trade Agreement (NAFTA) are the likely model for future agreements with other countries around the world.

Experience under the NAFTA demonstrates the potential for investor protection provisions to undermine public health protections:

- In the Methanex case, a Canadian firm brought a nearly \$1,000,000,000 claim based on the State of California's decision to ban the sale of MTBE, a suspected carcinogen, in order to protect the State's drinking water supplies;
- In the Metalclad case, a U.S. firm recovered \$16,000,0000 under NAFTA, based on the refusal of a Mexican municipality to grant a permit for the construction of a hazardous waste treatment facility in the community.
- In the SD Meyers case, a U.S. firm brought a successful NAFTA challenge to a Canadian government ban on the export of PCB wastes to the U.S.; and
- Recently, the U.S. Crompton corporation has threatened a NAFTA suit over Canadian restrictions on a dangerous pesticide called lindane, which is a possible human carcinogen banned in Europe for agricultural use, and in California for use in anti-lice shampoo.

Beyond these specific examples, a wide variety of government measures relating to public health could potentially be challenged under NAFTA and other future trade agreements. These include adverse judicial decisions against foreign drug or medical device manufacturers, health product labeling and restrictions on dangerous pesticides, drugs, and alcohol, and occupational safety and health measures. Regulations that monitor and



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Privatization, Free Trade and the Erosion of Government Authority

Market Structuring Role
The Subtext

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Specific to Privatization

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Free Trade Regime
Tasks

Recent Trade Agreements

FTAs Erode State and Local
Government Authority

Investor rights

Investor Property Rights

Partial Takings

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Legislative Authority

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Resulting NAFTA Challenge

UPS v. Canada

Resulting Challenge

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Market Structuring
Role Threatened

Free Trade Agreements Create a
Governance Deficit

Privatization, Free Trade and the Erosion of Government Authority

Jennifer Gerbasi

Presented to
Economic Policy Institute Washington, D.C.
April 2003

Overview

- y Market Structuring Role of Local Government
- y Democratic Deficit Created by Free Trade Agreements
- y Implications for Privatization

Cornell University, 305 West Sibley Hall, Ithaca, NY 14853
607/255-6647 * jcg28@cornell.edu



**Why Should Local and State Governments Pay
Attention to the New International Trade Agreements?**

Jennifer Gerbasi and Mildred Warner

June 2002

International trade arena is gaining a new audience. Traditionally a matter reserved exclusively for the federal government, state, county and municipal governments are taking a closer look at how the new generation of trade agreements may place greater demands on all levels of government. Governments are trying to understand the best way to enjoy the benefits from the markets and protections provided by the agreements while retaining local governmental authority. The Western Governors Association, the National Conference of State Legislators, and the National League of Cities are a few entities that have made public requests to the US negotiating body, the United States Trade Representative (USTR) for clarification of or protection from the treaty obligations. Why are they concerned?

International Trade Agreements Impact Local And State Laws

As currently formulated, the new trade agreements may significantly restrain the authority of state and local governmentsⁱ. Though the agreements do not directly require changes to existing laws, they do lay a foundation for challenging democratically created laws and customary domestic practices. A broad range of state and local powers may be impacted including, but not limited to zoning, water management, land use planning, the finality of the court system, and public service provisionⁱⁱ. Regional cooperation, business subsidies, regional environmental plans and precautionary health regulations are common tools planners and legislators use to encourage growth and protect human health as well as property values. These mechanisms may be impractical or non-compliant with trade agreement obligations. New international standards stemming from free trade agreements (such as the North American Free Trade Agreement (NAFTA), the Free Trade Area of the Americas (FTAA), and the General Agreement on Trade in Services (GATS) waive government immunity, forbid the use of many planning tools like those listed above, and supercede local preference and democratically established legislation. Other areas that may be affected by the agreements include pesticide residue laws, recycled

content laws, pollution control, licensing requirements and labeling. Customary public policy considerations may not be legitimate in the international trade arena.

Deference to State Laws Supplanted by International Standards

States and localities are currently able to customize legislation to meet local needs and concerns. The agreements obligate federal, state and local laws to comply with international standards. If there is a conflict, international arbitration tribunals are authorized to interpret the law and levy heavy financial fines for non-compliance. Historically, when federal and state laws have differed, US courts have given deference to state laws as long as they did not contradict the federal law. The government closest to the citizens is assumed to be most able to represent local preferences and priorities. Public policy and economic conditions are criteria for selecting what is appropriate in the context of each geographical area. These new international trade tribunals are not obligated or encouraged to follow or consider US customs or law. State and federal governments have historically enjoyed some protections from frivolous lawsuits because they cannot be sued without consenting to the case. Under the NAFTA, immunity is waived. Foreign nationals with financial investments in the United States can challenge laws they perceive as limiting expected profits. Investors challenge the national government directly, not the specific state or local government. State and local governments have no seat at the negotiating table or arbitration panel hearings. It is unclear whether the government body that passed the offending measure or the nation will pay if the challenge is successful.

New Rights Bring Investors on Par with Nations

An "investor" is any person, company or lender with a financial venture that sells goods or services in a participating country where the investor is considered foreign (i.e. US investor in Mexico)ⁱⁱⁱ. These investors have a right to sue for "government measures" that affect their investments negatively. The rights are based on the legal principle that commercial entities have a right to be ruled by the least burdensome laws necessary to achieve the stated objective. Laws must pass a three-part test that proves that:

1. the objective is considered legitimate under the WTO;
2. it is the least trade restrictive alternative available; and
3. the measure does not constitute a disguised restriction on trade.

These new investor rights may exceed the rights given to citizens under the Constitution. Foreign investors may be paid for partial regulatory takings that are considered non-compensable, reasonable losses for the privilege of citizenship in the domestic context^{iv}. This change is the basis of much of the concern voiced by state and local governments.

Devolution and Preemption: Concurrent and Competing Trends

In contrast to "devolution" which is increasing the authority of state and local government, international trade agreements appear to encroach on state sovereignty. State and local government associations have made public statements to Congress outlining their concerns that State rights to self-governance under the 10th amendment are being eroded. The National Association of Counties (NACo) has long been on guard against federal preemption in the domestic context. NACo has only recently voiced concerns about international trade agreements prompted by investor provisions in the Andean Trade Promotion and Drug Enforcement Treaty. California has created the Senate Select Committee on International Trade Policy and drafted legislation specifically to identify the potential threats to public health, the environment and the legislative process. Local governments from Oregon to Massachusetts have written resolutions requesting a more meaningful presence in the negotiations, or the ability to opt out of these agreements entirely. Academics, non-governmental organizations (NGOs) and the international community are also studying international agreements and attempting to join the debate at the negotiating table.

The concerns of the government groups are similar, and the resolutions to Congress and requests for information from the USTR have common themes. State and local governments are seeking to participate fully in the negotiations to try to preserve the traditional powers of state and local governments. In case of failure in that pursuit, they are requesting that the USTR protect these rights in the negotiations. Specifically, they are asking the USTR or Congress to:

- Provide open and transparent proceedings including negotiations, submissions and arbitrations and a mechanism for meaningful participation in those proceedings.
- Reserve equal rights to the people, and apply constitutional restrictions equally to foreign investors.
- Preserve police powers that are the basis for protecting human health, environmental resource conservation and fair competition.
- Make states and localities immune from the investor challenges.

- Require the investor's national government to consent to the claim being brought against the defending government to avoid frivolous claims or those that do not serve the greater public interest.
- Preserve the concept of federalism in practice in the United States by ensuring that States continue to be the dominant policy makers in traditional areas such as land use planning, education, and public services.

Financial Claims May Stall Legitimate Regulations

In theory, governments can continue to manage in the usual fashion even under the agreements. However, the taxpayer would have to pay millions of dollars for the federal government to defend the measure and pay the fines if defeated. The current potential liability to the United States from NAFTA claims is \$1.8 billion USD. The number of claims is expected to expand proportionally with the addition of 31 more countries under the Free Trade Area of the Americas (FTAA). There is no indication at this point if the Federal government will pass the cost of fines on to the state and local governments or continue to pay out of general funds.

The challenges span the gamut of local legislative efforts^v.

- Methanex v. United States: A Canadian company is challenging a California resolution to ban a ground water pollutant. Potential cost: \$970 million
- Ethyl v. Canada: \$13 million was paid as a settlement in a case parallel to Methanex. Canada also apologized and lost the right to ban the chemical (banned already in some US states).
- Loewen v. United States: Challenges the Illinois standard court of appeals process, which requires a bond equal to 150% of damages. Potential cost: \$725 million
- Sun Belt Water, Inc. v. Canada: Questions the right to refuse to export a natural resource. Potential cost: \$220 million
- Metalclad v. Mexico: \$17 million paid to stop water pollution from a hazardous waste facility.

Ohio Democrat Congressman Sherrod Brown stated that “in NAFTA and in every public health challenge under the WTO, 33 straight times, public health laws, environmental laws, and food safety laws, every single time they have been struck down”. Given the potential implications of these challenges, it is surprising that there are not more governments actively involved in this debate. In early 2002, Bill Moyers broadcast the issue to the public over PBS_in the program “Trading Democracy”. The media has given a glimpse of the increasingly popular protests against "free trade", the WTO and the FTAA. However, these protests have not focused on state

and local government concerns. NGOs have been effective in getting their agenda heard, but state and local governments have not been very active in the public debate.

More State and Local Governments Should Join the Debate

States and local governments rely on history and future demands to formulate current but predictable legislation that meets the needs of the communities they serve. State representatives have not convinced the treaty negotiators of the dangers of loss of this stability due to trade obligations. Treaty negotiators believe free trade agreements should focus on economic issues and some state and national sovereignty must be lost in the give and take of treaty formation.^{vi} Neither the framers (including government and commercial interests) nor the public are focused on the implications for everyday governance of our states and cities. Planners and elected representatives of this country need to educate themselves about the issues that affect their constituents and regions. A balance must be struck between the benefits of free trade and the preservation of state and local sovereignty.

ⁱ Stumberg, R. and W. Schweke, *International Investor Rights and Local Economic Development*. Corporation of Enterprise Development, Washington, D.C. 1999.

ⁱⁱ Keuhl, Senator S., *Senate Joint Resolution No. 40 – Relative to international investment agreements*. Submitted to the legislature March 20, 2002.

ⁱⁱⁱ The North American Free Trade Agreement, Chapter 11, Article 1101.

^{iv} Dalton, Robert, E., 1999. National Treatment Law and Practice. M. Leigh and L.B. Ederington, Eds. Chapter 6, "United States". American Society of International Law, Washington, DC.

^v International Institute for Sustainable Development, 2001. Public Rights, Public Problems: A guide to NAFTA's controversial chapter on investor rights. World Wildlife Fund, Canada.

^{vi} Record of statement to the Subcommittee on Ways and Means Hearing on Free Trade Deals: *Is the United States Losing Ground as its Trading Partners Move Ahead?* March 29, 2001.

Free Trade, Privatization and the Erosion of State and Local Government Authority

Jennifer Gerbasi
Economic Policy Institute Conference on Public Sector Efficiency
Washington, DC
April 4, 2003

Presentation based on the following research:

Warner, M.E. and Jennifer Gerbasi. 2003. "Free Trade, Privatization and the Erosion of State and Local Government Authority," Submitted to *International Journal of Urban and Regional Research*, March 2003.

Abstract

The new free trade agreements are rescaling governance in ways that have critical implications for cities. The nation state is not simply being hollowed out, rather a new governance nexus is forming – of nation states, multinational corporations and international agreements - which explicitly excludes sub national and local government voice. This paper illustrates how the new generation of free trade agreements (NAFTA, WTO, GATS and FTAA) have eroded subnational and local government authority in legislative, judicial and contracting arenas. Designed to advance privatization of public services, these agreements undermine the very ability of local governments to use markets for public goods. The contradictions between private profit and public interest appear at the local level but their resolution is engaged at the global level between private investors and the nation state. These trade agreements define traditional governance mechanisms as non-tariff barriers to trade and seek to limit the authority of local government.

Please direct comments to:

Jennifer Gerbasi
Research Specialist, Department of City and Regional Planning
305 W. Sibley Hall Cornell University, Ithaca, NY 14853-6701
607-255-6647
jcg28@cornell.edu

Mildred E. Warner
Assistant Professor, Department of City and Regional Planning
215 W. Sibley Hall Cornell University Ithaca, NY 14853-6701
607-255-6816, 607-255-1971 (fax)
mew15@cornell.edu

Local Government Restructuring Web Site <http://www.cce.cornell.edu/restructuring/>

Funding support provided by the US Dept of Agriculture National Research Initiative, Affinito Stewart Grants Program, Cornell University.

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Sun Belt Water, Inc. v. Canada -
Canadian position

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Acknowledgements

Thank you



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What Should Be Done with County Nursing Facilities in New York State?

Center for Governmental Research, Inc.
September, 1997

Executive Summary

Counties across New York State face the above question with each annual budget. Most of the 44 county-owned and operated nursing facilities lose money each year, and pressure from voters to hold the line on property taxes is stronger than ever. Many counties have considered selling their nursing homes, or other options, to reduce the burden on their taxpayers. Elected officials are asking fundamental questions about the county's role as a service provider: Should the county be in the business of operating a nursing home? If so, how should the county home react to a rapidly changing health environment and position itself for an uncertain future?

The County Nursing Facilities of New York, Inc. (CNFNY), a statewide association of county homes and an affiliate of the New York Association of Counties (NYSAC), commissioned the Center for Governmental Research, Inc. (CGR) to probe these questions. In *What Should be Done With County Nursing Facilities in New York State?*, CGR outlines the challenges facing county homes and investigates alternatives various counties have pursued or considered. The report does not recommend or advocate particular solutions for individual homes, but presents the array of options counties must consider for the future of their nursing homes.

- [The Changing Face of Long Term Care](#)
- [What Makes the County Home Different?](#)
- [What Can Counties Do?](#)

The Changing Face of Long-Term Care

A number of changes in the funding and delivery of care have profoundly affected the way all nursing homes do business. These changes will continue to compel nursing home administrators and operators to adapt and seek new opportunities. The principal developments affecting county nursing homes today include:

- State and Federal efforts to control Medicaid long-term care costs;
- The impact of managed care on long-term care delivery;
- A growing array of "lower levels" of care; and
- The possibility of publicly-traded corporations operating nursing homes in New York State.

Medicaid is the health care program designed for the poor and indigent, funded primarily by the Federal and State governments. In New York and other states, middle class elderly often rely on Medicaid to pay for the often prohibitive cost of nursing home stays. For this and other reasons, the cost of Medicaid has outpaced inflation for several years, and policymakers are now attempting to contain the costs.

Moreover, New York is one of few states to pass a portion of Medicaid costs to county taxpayers. The State Department of Health, which regulates all nursing homes, has responded to these pressures by adjusting the

reimbursement mechanism to control costs and encourage homes to care for more physically infirm patients. These adjustments, many feel, have had a particularly adverse impact on county homes, which have unique costs not shared by their competition in the private sector.

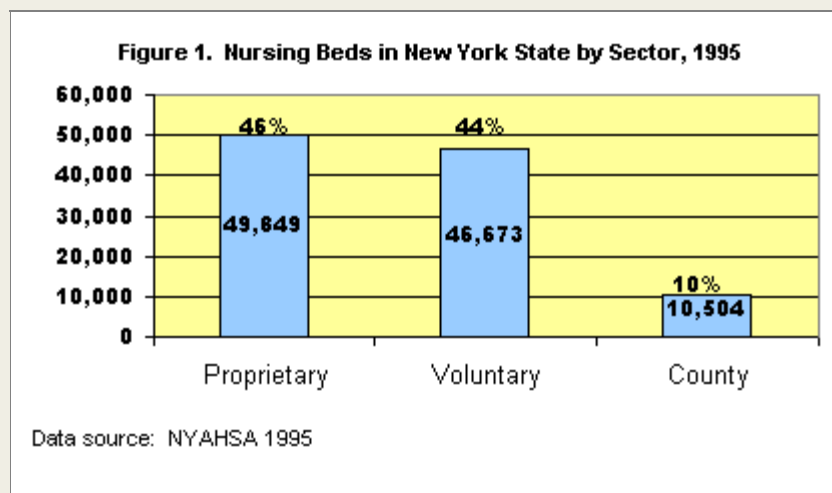
Managed care is one avenue policymakers are using to control health care costs. New York State is continuing to enroll Medicaid recipients in managed care plans, but has yet to enroll long-term care recipients on a widespread basis. In anticipation of this likely occurrence, however, hospitals, nursing homes and other care providers are pursuing alliances and networks in an effort to become the low cost service provider with which the coming managed care organizations will want to contract.

In response to the need for cost containment and to changing demands, a variety of long-term care options are emerging. The elderly today are making more use of options such as home care, adult day care, adult care facilities, assisted living and other models that are less medically intensive than the nursing home. These alternative services represent increased competition and promise to redefine the role of the nursing home in the future.

Currently, New York law prohibits publicly-traded corporations from operating nursing homes in the state. The state's nursing homes have to date been sheltered from competing with large national chains like Beverly and Marriott Host, but this could change. Many expect that NYS lawmakers will eventually pass legislation allowing these companies to operate in New York. Many small operators in the state will be hard pressed to compete with the chains because of their economies of scale. County homes are likely to be in the poorest competitive position.

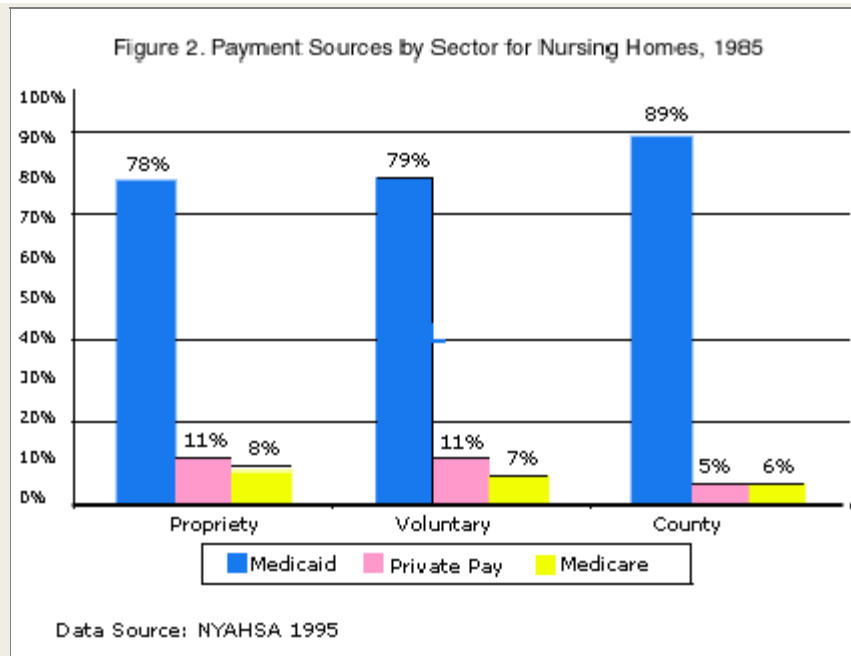
What Makes the County Home Different?

There are three kinds of nursing homes in New York State. Proprietary homes are run as businesses by private individuals or corporations. Voluntary homes are not-for-profit entities, often affiliated with religious organizations, and are run by elected boards. County homes are departments of county government and are ultimately governed by elected representatives. In New York, there are over 600 nursing homes and more than 100,000 beds. About ten percent of these beds are in county home.



Several factors distinguish county homes from proprietary and voluntary homes:

- **County homes have a mission distinct from private sector homes.** Their traditional mission is to care for poor and indigent elderly county residents regardless of ability to pay. Proprietary and voluntary homes, on the other hand, typically pursue persons with the greatest ability to pay. Nursing homes charge "private pay" residents at a rate higher than the State-determined rate for Medicaid residents. County homes typically do not compete for these private pays as aggressively as private homes do. On the whole, county homes have ten percent more resident days paid by Medicaid than do private homes, and have only half the rate of private pay resident days as do proprietary and voluntary homes.

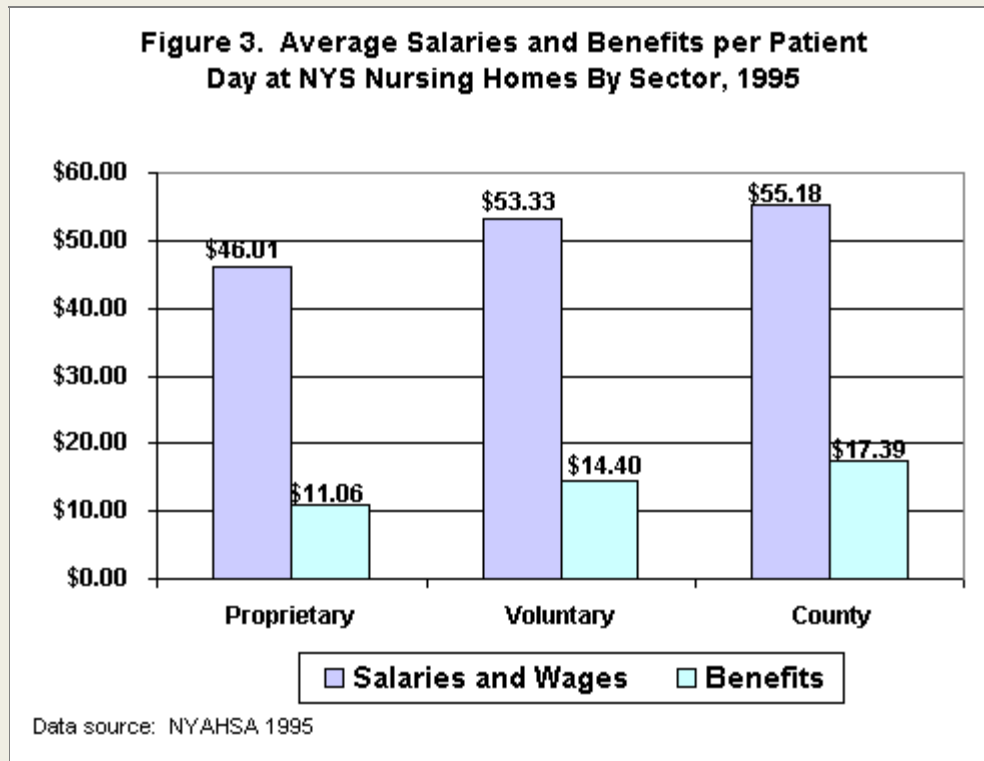


- County homes can have difficulty competing for the Medicaid dollar as well.** Medicaid reimbursement is designed to increase with the intensity of a patient's medical needs, known as the "case mix index." Many county homes see nearby private homes "cherry picking" residents with high case mix indices (CMI's) while their own beds fill with less reimbursable residents. Some relatively healthy patients have low CMI's but complex behavioral problems. These patients demand increased staff attention but carry no additional reimbursement. Some private homes have refused admission to such patients, who often ultimately end up in the county home. *CGR estimates that the typical county home would receive over \$450,000 more in revenues each year if it maintained the same aggregate case mix index as the average private home.*
- County nursing homes receive certain revenue and incur unique expenses because of their status as government entities.** In addition to revenues from Medicaid, Medicare and private pay, which all homes receive, county homes benefit from inter-governmental transfers, or IGT's, from the Federal government. The total local share of IGT's for the 1997-8 State fiscal year will be over \$63 million, and 20 counties will each receive over \$1 million for their nursing homes. The future of IGT's is, however, uncertain.

Many homes also receive operating subsidies from the county when their expenses exceed their revenues. In 1996, counties contributed an average of more than \$600,000 to the operation of their nursing homes.

- Unlike proprietary and voluntary homes, county homes receive most administrative and support services from the county government.** County departments provide services such as snow plowing and legal advice and charge the cost to the nursing home. While some of these cost allocations are for services a private home would obtain by contracting, many county costs allocated against the nursing home budget bear little relationship to the actual use by the home of the services. As such, they often artificially inflate the true cost of operation. These county cost allocations are not, in most cases, calculated consistently from year to year within or across counties. *CGR estimates that county homes had a total of \$27 million in county costs allocated against them in 1996, an average of \$627,000 per home.*
- County nursing home employees are county employees and generally receive more generous wages, salaries and benefits than their counterparts in private homes.** More than 80% of county nursing home employees are represented by unions, compared to about 40% in other homes. Most are represented by the Civil Service Employees Association (CSEA) and are part of countywide bargaining units. The typical county nursing home administrator has almost no input in labor negotiations. By law, county homes must contribute to the State Retirement System on behalf of their employees. Payments

range from 10 to 20% of salary and generally exceed pension benefits, where they are offered, in the private sector. The graph above normalizes wages, salaries and benefits by patient day. With average benefits of 31% of salary, county homes are significantly more generous than proprietary and voluntary homes. Benefits in county homes exceed those in voluntary homes by 21% and proprietary homes by 57%.



- **While each county home has an administrator, policy and management decisions ultimately rest with the county legislature or board of supervisors.** Understandably, these policymakers are sensitive to numerous pressures, and the efficient operation of the nursing home is not always the top priority. For reasons both within and beyond the control of county policy makers, county homes generally spend more than they make each year. In CGR's survey of county nursing home administrators, many indicated that they had less flexibility in management decisions than their peers in private homes, and that they were relatively constrained in what they could do.

Many expressed interest in a variety of alternatives with the potential to make their enterprises more profitable and more able to meet the challenges of a changing health care landscape.

What Can Counties Do?

Counties will have an increasingly difficult time operating their nursing homes as if they were just another department of county government. If the Federal government should one day limit or eliminate IGT's, or if the State or Federal government seeks aggressive reductions in Medicaid reimbursements for long-term care, counties will require huge increases in county taxpayer support to keep their homes open. The time to make informed policy decisions is now, before events force rapid and uninformed decisions with far-reaching consequences. Counties are considering a variety of approaches. Some of these may be appropriate for some counties and not others. Each county and its nursing home must examine its own unique situation and plan for its future with the necessary information and careful consideration.

In *What Should be Done With County Nursing Facilities in New York State?*, CGR details various alternatives a county might choose to take, that follow three broad paths:

- Continue to operate the nursing home essentially as is, but with individual reforms addressing cost and efficiency issues;

- Continue to operate with additional long-term services beyond traditional nursing home care in order to be more competitive and cost-effective; and/or
- Change the present relationship between the county government and the nursing home.

Each of these broad alternatives contains numerous options, which are not mutually exclusive, although some options call for the county to give up partial or complete control of the operation of the nursing home.

There are various ways counties can respond to the individual factors contributing to their higher costs. Many counties have, in fact, attempted one or more of the following reforms:

- Counties can allocate funds for their nursing homes to market more aggressively. If the marketing effort results in even a few added private pay admissions, the investment should more than pay for itself.
- Some counties have effectively forged special agreements with labor unions outside of the countywide contract negotiations. Counties could also increase the involvement of their nursing home administrators in contract negotiations.
- While difficult to do, a county could create a separate bargaining unit for its nursing home employees. This would separate the home's interests from larger county issues.

Other options a county might consider are the use of private contractors and consultants for special services, merging with other county departments, and revisiting the cost allocations against the nursing home in an effort to make them more realistic reflections of actual costs.

In February 1997, *Business Week* ran an article with the provocative title "Farewell to the Nursing Home" and a subtitle that read "a host of alternatives help the aging live independently." Health care providers and elderly customers are fueling the growth of lower levels of care that are generally less expensive than traditional nursing homes. Some counties have added services from a growing list of alternative long-term care models, and others are considering doing the same. These services include assisted living, adult day care, respite care, adult care facilities, early- to mid-stage dementia services, home health care, continuing care networks and continuing care retirement communities. There are both advantages and potential disadvantages to counties offering each of these and other services, which are discussed in greater detail in the report. While CGR does not recommend any specific services for county homes to offer, directly or in partnership, it is clear that their growth will reshape the role of the nursing home along the spectrum of long-term care.

More and more, counties are asking whether they should even be in the nursing home business. Because some, if not most, of the higher costs associated with county homes stem from the fact that they are units of county government, counties are looking into options that limit their role in the operation of the nursing home. Along a continuum ranging from the least limitation of the county's role to complete divestiture of responsibilities, options that counties have considered or tried include:

- **Contract for management services to operate the county home.** Under this option the county would retain ownership of the home, but in contract out responsibilities for varying degrees of the day-to-day management of the home.
- **Sell licensed beds.** The county could transfer the license to operate some of its beds to a new operator. While the county would lose control of those beds, it would gain financially from the sale and could convert the sold nursing home beds into lower levels of care while retaining the remaining unsold beds for nursing home care.
- **Convert the home to a public benefit corporation.** The nursing home would become a quasi-governmental entity essentially divorced from the county, though the county could retain some control by appointing some members of the PBC board. Two counties in New York State are attempting to put public benefit corporations in place. This option frees counties from the responsibility of operating the nursing home, and depending on the enabling legislation, preserves civil service protections for employees.

- ***Transfer the home to a not-for-profit corporation or sell to a proprietary corporation.*** A county could transfer or sell the home to a newly created or already existing not-for-profit corporation or sell the home outright to a proprietary operator. In each of these scenarios, the county is freed from the costs and responsibilities of operating the home, but also loses control. Its ability to help assure a continuation of the home's historic mission will vary by the type of organization to which the home is transferred.

These and other alternatives to the existing relationship between counties and their nursing homes are discussed in greater detail in the report. While giving up ownership of its nursing home may save a county home, the county will also lose the ability to control the home's future and the extent to which the new owner maintains the homes' historic mission. Many administrators expressed concern about what would happen to the county's more difficult-to-place patients; many were also concerned with job protection for their staff (an average of 300 employees per county home).

In the report, CGR details the points that county policymakers will need to consider as they grapple with decisions about the county home in a changing environment. The most appropriate options must be determined on a case by case basis, depending on the circumstances unique to each county.

NOTE: For a full copy of the report, contact the Center for Governmental Research Inc. at 37 South Washington Street, Rochester, N.Y. 14608, tel. (716) 325-6360

Big Questions in the CGR Report

- **What are the critical changes likely to affect the viability of county homes in New York State?**
- **How have county homes across the state responded to these challenges?**
- **What should counties do to meet these challenges?**

11/29/99



Quality of Care: Unanswered Questions

- What are the obstacles to improving quality of care in county homes?
- What steps can labor and management take to improve the quality of care offered at county nursing homes?

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Health Care Finance

Financing long-term care (LTC) for the elderly is difficult for both individuals and governments. Health care costs continue to rise at rates faster than the economy as a whole, and the number of persons requiring long-term care is growing at an accelerating pace. This page discusses how long-term care is financed in the United States, with links to summaries of recent articles on long-term care finance as well as other related web sites.

- [The Costs of Long-Term Care](#)
- [The Role of Medicaid and Medicare](#)
- [Controlling the costs of long-term care](#)
- [Online references](#)

The Cost of Long Term Care

Table 1 presents an overview of long-term care spending in the United States. Spending on LTC services totaled \$91 billion in 1995, with the majority of funding (about 60 percent) coming from public sources. Medicaid is the largest source of public funding, financing nearly one third of all long-term care and 38 percent of nursing home care. Yet while Medicaid accounts for just 38 percent of all nursing home care dollars, the number of persons that rely on Medicaid to pay for their care is much higher: nearly 7 out of 10 nursing home residents are paid for by Medicaid. Medicare is the primary funding source for home- and community-based care, accounting for 25 percent of total spending and over one half of all home care expenditures.

Table 1. Expenditures for Long-Term Care for the Elderly, 1995
(Billions of Dollars)

Funding source	Nursing Home	Home Care	Total
Out-of-pocket	30.0	5.5	35.5
Medicaid	24.2	4.3	28.5
Medicare	8.4	14.3	22.7
Other public sources	1.3	2.2	3.5
Private Insurance	0.4	0.3	0.7
Total	64.3	26.6	90.9

Source: GAO (1998) [Long-Term Care: Baby Boom Generation Presents Financing Challenges](#). p. 3.

Table 1 also shows that individuals pay a substantial portion (nearly 40 percent) of the country's total long-term care bill. While many private payers are wealthy Americans with the resources to pay for their own care indefinitely, the more typical private pay resident "spends down" her savings quickly once she enters a nursing home. On average, a year in a nursing home cost \$46,000 in 1995, which means that most elderly persons eventually rely on Medicaid to pay for most of their care.

The Role of Medicare & Medicaid

Medicaid is the Nation's Largest Provider of Long-Term Care

Medicaid was originally established to provide acute care to low income families. With the high costs of nursing home care, however, Medicaid has become the most important public program providing long-term care as well. Medicaid's importance to long-term care should not be underestimated: Over \$28 billion was spent by Medicaid for long-term care needs in 1995, accounting for 26 percent of the total Medicaid budget but only covering 11 percent of all Medicaid beneficiaries.

Medicare Pays Only a Fraction of Long-Term Care Costs

Many people mistakenly believe that Medicare will pay for long-term care, but that is rarely the case. Medicare does pay for skilled nursing facility benefits and home health care services, but eligibility is limited to those with acute medical problems, such as short-term nursing home stays following an operation. Elderly persons in need of chronic care must rely on private insurance, personal savings, or Medicaid to pay for their care.

Who Pays What: Public Health Care Programs and Federalism

While both Medicaid and Medicare are national programs, each is financed differently. Medicaid is financed jointly by the federal government and the states (and, in some cases, local governments). While each state's contribution to Medicaid is different, on average the costs of Medicaid are split 50/50 between the federal government and the states. In contrast, Medicare is financed entirely at the national level. For this reason, many state programs to restructure Medicaid involve shifting payment from Medicaid to Medicare. The net effect of such a shift is lower costs for state and local governments, but the total cost of health care for the elderly remains the same.

Controlling the Cost of Long Term Care

Efforts to reduce government spending on LTC fall into one of two categories. The first is to cut costs, by (1.) increasing use of managed care, or (2.) expanding home- and community-based services. The second broad strategy is to increase revenues from private sources. Examples include promoting long-term care insurance, and ensuring that those with the ability to pay for their own care do so out of their own pockets. The limited success of each of these options illustrates the complexity of long-term care reform.

Managed Care no Panacea for Long-Term Care

To date, managed care has yet to enter the long-term care market in any significant way. Nevertheless, there are a number of demonstration projects underway that suggest managed care may be able to reduce costs if implemented effectively. The basic principle behind these projects is that acute and long-term care needs can be integrated into a single program, thereby providing better service to clients and lowering total costs. Savings derived from these programs is difficult to calculate given the complexity of LTC finance, yet initial studies in this direction indicate that total costs can be lowered through managed care without any reduction in service quality. Still, serious doubts about the ability of managed care organizations to serve elderly clients with long-term care needs remain. In particular, the common fear that managed care organizations cut costs at the expense of quality care is a longstanding concern of consumer advocates.

Home- and Community-Based Services are Rarely a Substitute for Nursing Home Care

A number of states have attempted to control costs by expanding home- and community-based services (HCBS) for the elderly. By expanding HCBS it is hoped that the rate of nursing home admissions will be reduced, thereby lowering total long-term care costs. In most cases, however, the very small reduction in nursing home admissions has been offset by very large increases in HCBS spending. Why? Given the choice

between nursing home care and no care at all, most elderly people will choose the latter. When the menu of services offered is expanded to include HCBS, however, the number of elderly people demanding HCBS increases significantly, and these people are often not those most at risk of institutionalization. In other words, to save money HCBS must serve as a substitute, not a complement, for institutional care, but very few programs have been able to target their services with this level of precision.

Private Insurance for Long-Term Care Slow to Catch On

In order to protect families from the catastrophic costs of long-term care, as well as lower future Medicaid spending, a number of states (including New York) have initiated long-term care insurance programs. To date, however, few policies have been sold. High premiums and limited public awareness of the costs associated with long-term care are often cited as the major reasons for limited sales.

Efforts to Make the Elderly Pay More Produce Little Additional Revenue

Attempts to recoup long-term care costs from the elderly and their families have produced few savings and may adversely affect service quality. During the 1960s, for example, the family responsibility requirements of the Old Age Assistance Program resulted in many elderly parents forgoing aid rather than comply with requirements that their children contribute to the program. Today, a number of states are attempting to increase private revenue streams by cracking down on "Medicaid estate planning" and attempting to recoup costs through estate recovery programs. Medicaid estate planning--where middle and upper class elderly transfer their assets to their children in order to qualify for Medicaid--is rarer than is commonly assumed. Efforts to expand estate recovery--the practice of recovering Medicaid costs by taking the profits from the sale of the deceased's homes--are not only politically unpopular but produce little revenue.

Online References

In addition to the GAO report above, the following sources were consulted for this web page:

John Holahan and David Liska, "Variations in Medicaid Spending Among States", *Assessing the New Federalism*, Series A, No. A-3, January 1997. Available at http://newfederalism.urban.org/html/anf_a3.htm

Urban Institute, "Long-Term Care for the Elderly: Ten Questions Answered" Available at <http://www.urban.org/news/factsheets/elderlyFS.html>

Joshua M. Wiener and David G. Stevenson, "Long Term Care for the Elderly and State Health Policy". Available at <http://newfederalism.urban.org/html/anf17.html>

Information about long-term care insurance in New York State can be found at <http://www.nyspltc.org/>

Government resources on LTC finance include the [Medicaid Long Term Care Main Page](#) and [HCFA](#), the Health Care Finance Administration.

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Policy Innovations

[Managed Care and Long-Term Care for the Elderly: The Arizona Experience](#)

This study looks at one state's experience with using managed care to deliver long-term care services for the elderly. In the state of Arizona, managed care has been able to reduce demand for both acute care and nursing home care through an aggressive preventative health care program and extensive use of home- and community-based services. Quality of care in Arizona is comparable to that found elsewhere, but the per capita costs of the program are considerably lower than long-term care costs in similar states. Arizona's success rests on the combined efforts of private health care contractors and innovative state and federal health care agencies.

[Program of All-Inclusive Care for the Elderly](#)

Modeled after the On Lok Senior Health Services Program in San Francisco's Chinatown, the Program of All-inclusive Care for the Elderly (PACE) is an innovative approach to providing long-term care services to frail senior citizens. By October 1997 more than 70 organizations in 31 states were in some stage of PACE development (Employee Benefit Plan Review, 1997). This number is expected to grow rapidly over the next several years because the 1997 Balanced Budget Act establishes PACE as a permanent provider under Medicare, and allows states the option to pay for PACE using Medicaid dollars (Irvin et al., 1997).

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Labor Issues and Demographic Change

Labor Issues

The quality of care at any nursing home is only as good as the quality of its employees. As a labor-intensive industry, attracting quality staff is a central concern of long-term care professionals, nursing home residents, and families. Yet attracting quality employees to the field and keeping them has become a major problem in the industry. Staff turnover rates at nursing homes vary widely, ranging from 40 percent to as high as 500 percent annually in some facilities (Cohen-Mansfield 1997).

Turnover varies depending on the type of facility, administration, location, and characteristics of the current workforce (Cohen-Mansfield 1997).

Demographic Change

The graying of the U.S. population is accelerating. The number of "young old" (65 to 69-year olds) is expected to double in the next fifty years, even as the number of "old old" (85 years and older) will triple or quadruple. Three-quarters of these senior citizens will be single, divorced, or widowed. Many will therefore depend on public support (*Atlantic Monthly*, May 1996).

The ratio of taxpayers to the elderly will decline. In 1960, 5.1 taxpayers could support each beneficiary; in the mid-1990's, the ratio was 3.3. Within fifty years, this will shrink to around 2.0 taxpayers per beneficiary (*Atlantic Monthly*, May 1996). The Congressional Budget Office (1997) notes that between 2010 and 2030 the population over 65 will rise by 70 percent, while the number of individuals paying payroll taxes will rise less than four percent.

Congress is under increasing pressure to reduce reimbursement rates for Medicare and Medicaid, the primary public programs that support the delivery of long-term care, assisted living and other services upon which the elderly depend.

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Summary of Labor Summary (Selected Questions)

This survey was conducted via telephone by CSEA staff of all 44 CSEA local representatives in county nursing homes in March and April 1999. Only 14 responded.

LABOR-MANAGEMENT RELATIONSHIP

1. Do management and labor share in the decision-making process?

Yes 4

No 3

2. Does your facility have a labor-management committee?

Yes 8

No 6

3. If yes, how often does the committee meet?

Monthly 1

Quarterly 4

Annually 2

Never 1

4. How would you characterize the relationship between labor and management at your facility?

cooperative 9

adversarial 5

don't know 0

5. How would you characterize the relationship between union and non-union employees?

Very Cooperative 0

Cooperative 12

Adversarial 2

Very Adversarial

QUALITY OF CARE

6. How would you rate the quality of care in your facility?

Excellent 6

Very Good 5

Good 3
 Fair 0
 Poor 0

7. Does your nursing home have a team-based management quality program?

Yes 8
 No 6

8. If so, how effective is it?

Not effective 3
 Moderately effective 2
 Effective 1
 Very Effective 2

9. Please answer the following questions regarding restructuring options:

	Home considering?			County considering?		
	yes	no	don't know	yes	no	don't know
performance-based budgeting	2	3	9	3	3	8
privatization	3	10	1	5	7	2
voluntary organization	1	8	5	1	6	7
PBC	2	7	5	3	6	5
closure	1	12	1	1	12	1
other	0	0	0	0	0	0

10. Does your county legislature see the nursing home as essential to the mission of local government?

Yes 6
 No 8

11. How involved is the county legislature in nursing home management concerns?

Very involved 7
 Somewhat Involved 5
 Not Involved at All 2

12. How would you characterize the relationship?

Very Cooperative 1
 Cooperative 8
 Adversarial 5
 Very Adversarial 0

13. Do you think your county is under fiscal stress?

Yes 9

No 5

14. If yes, does this affect the nursing home's viability?

Yes 6

No 3

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Summary of Nursing Home Administrators Survey 1

This survey was mailed to all 44 county owned nursing facilities in New York State in March 1999. Thirty six nursing homes responded. The number of homes responding to each question is given after each possible answer.

1. What is the rate of annual employee turnover for these positions at your facility?

	0-25%	26-50%	51-75%	76-100%	no answer
RNs:	29	5	0	0	2
LPNs:	28	4	1	0	2
CNAs:	22	9	3	0	2
support:	28	2	1	1	3

2. How many shifts per day does your facility have an RN supervisor?

1 shift	1
2 shifts	2
3 shifts	33

3. What is your normal staffing ratio of licensed nursing staff to beds for the following shifts?

The answers for this question are unreliable, as the question was poorly understood by respondents. For each shift, a staffing ratio of over 1: 13 was the most common answer (e.g., 25/32 respondents).

RELATIONSHIP WITH COUNTY GOVERNMENT

4. How is your facility financed?

Enterprise budget: 24
 Part of County Budget: 10
 Other: 1
 No answer: 1

Please describe the current fiscal health of your facility WITHOUT IGT:

5a. Do you have a deficit?

yes:	27
------	----

no:	5
-----	---

no answer:	4
---------------	---

5b. If YES, how much?

under \$1 million	15
-------------------	----

\$1-3 million	8
---------------	---

more than 3 million	3
---------------------	---

5c. If YES, what percentage is this of your county nursing home budget?

less than 1%	2
--------------	---

1-3%	3
------	---

4-7%	6
------	---

7-10%	8
-------	---

greater than 10%	5
------------------	---

6a. Do you have a surplus?

yes	5
-----	---

no	27
----	----

no answer	4
-----------	---

6b. If YES, how much?

under \$1 million	4
-------------------	---

\$1-3 million	1
---------------	---

more than 3 million	0
---------------------	---

Describe the current fiscal health of your facility WITH IGT:

7a. Do you have a deficit:

yes	11
no	18
no answer	7

7b. If YES, how much?

under \$1 million	9
\$1-3 million	1
more than 3 million	1

7c. If YES, what percentage is this of your county nursing home budget?

less than 1%	2
1-3%	0
4-7%	2
7-10%	1
greater than 10%	2

8a. Do you have a surplus?

yes	18
no	11
no answer	7

8b. If YES, how much?

under \$1 million	13
\$1-3 million	3
more than 3 million	1
no answer	1

8c. If YES, what percentage is this of your county nursing home budget?

less than 1%	0
1-3%	5
4-7%	6
7-10%	2
greater than 10%	4
no answer	1

9. Does your county legislature see the nursing home as essential to the mission of local government?

yes	30
no	1
unsure	1
no answer	4

10a. How involved is the county legislature in nursing home management concerns?

very involved	10
somewhat involved	20
not involved at all	6

10b. How would you characterize the relationship?

very cooperative	12
cooperative	21
adversarial	2
very adversarial	0
no answer	1

11. Please answer the following questions regarding restructuring options:

Home considering?

County considering?

	yes	no	yes	no	don't know
performance-based budgeting	5	28	3	22	9
privatization	3	31	3	22	8
voluntary organization	1	34	1	25	8
PBC	9	23	2	22	9
closure	0	35	0	27	7
other	0	0	0	0	0

12a. Is your county under fiscal stress?

a great deal	3
somewhat	22
not at all	10

12b. IF YES, does this affect the nursing home's viability?

a great deal	2
somewhat	13
not at all	9
no answer	1

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Survey of Labor



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CSEA is conducting the following survey in an attempt to understand principal challenges to public sector nursing home viability in New York State and to contribute toward a larger process of strategic planning for the future. Cornell University students will assist in analyzing the results of this survey and will present these to CNFNY and CSEA at a future date.

SIZE OF INSTITUTION

1. What is the total number of employees at your facility, including management and union employees?

Of those, how many are full-time employees? _____

Of those, how many are part-time employees? _____

LABOR-MANAGEMENT RELATIONSHIP

Do management and labor share in the decision-making process?

Yes

No

2A. Does your facility have a labor-management committee? Yes No

2B. If yes, how often does the committee meet?

Monthly

Quarterly

Annually

Never

3. How would you characterize the relationship between labor and management at your facility?

cooperative

adversarial

don't know

4. Does the nursing home have a separate bargaining unit? Yes No

If no, then skip to 5.

4B. How many bargaining units are there in your facility? _____

What are they?

CSEA	Yes	No
SEIU	Yes	No
NYSNA	Yes	No
Teamsters	Yes	No
Other	Yes	No

Skip to 6.

5. Where is the union leadership employed in your county?

DDS	DPW	nursing home
-----	-----	--------------

6. How would you characterize the relationship between union and non-union employees?

Very Cooperative	Cooperative	Adversarial	Very Adversarial
------------------	-------------	-------------	------------------

QUALITY OF CARE.

7. How would you rate the quality of care in your facility?

Excellent	Very Good	Good	Fair	Poor
-----------	-----------	------	------	------

8A. Does your nursing home have a team-based management quality program?

Yes	No
-----	----

8B. If so, how effective is it?

Not effective	Moderately effective	Effective	Very Effective
---------------	----------------------	-----------	----------------

MARKETING.

9A. Does your facility market the services it provides? Yes No

If no, skip to 10.

9B. **If yes**, how important are the following goals for doing marketing?

	Very important	Somewhat important	Not very important	Not important
--	----------------	--------------------	--------------------	---------------

Build public enthusiasm

Legislative support

Fill beds

Attract paying clients

Educate the public

Other (specify)

9C. If yes, have you used any of the following strategies to market the county home?

Print media:

yes no

Television:

yes no

Radio:

yes no

Community events:

yes no

Other: _____ yes no

10. Are you viewed as a referral point for nursing care?

Yes

No

11. Are you viewed as a referral point for rehabilitative care?

Yes

No

Do not offer rehabilitative care

12. Are hospitals currently competing with you for long term care delivery?

Yes

No

THE FUTURE/RELATIONSHIP TO COUNTY GOVERNMENT

Please be aware your answers to the following questions will not be linked to particular institutions or respondents. The results of this last section of the survey will be summarized in broad terms for public sector nursing facilities across New York State for the final report.

13A. Do you think your county is under fiscal stress?

Yes	No
-----	----

13B. If yes, does this affect the nursing home's viability?

Yes	No
-----	----

14. Please answer the following questions regarding restructuring options by your nursing facility or the local legislature.

	Is your RHCF investigating this option for restructuring?			Is your legislature investigating this option for restructuring your RHCF?		
a) performance-based budgeting	Yes	No	Don't know	Yes	No	Don't know
b) privatization	Yes	No	Don't know	Yes	No	Don't know
c) voluntary sector	Yes	No	Don't know	Yes	No	Don't know
d) public benefit corporation	Yes	No	Don't know	Yes	No	Don't know
e) closure	Yes	No	Don't know	Yes	No	Don't know
f) other	Yes	No	Don't know	Yes	No	Don't know

15. Does your county legislature see the nursing home as essential to the mission of local government?

Yes	No
-----	----

16. How involved is the county legislature in nursing home management concerns?

Very involved	Somewhat Involved	Not Involved at All
---------------	-------------------	---------------------

17. How would you characterize the relationship?

Very Cooperative

Cooperative

Adversarial

Very Adversarial

18. Are there other issues you see as essential for the viability of your county nursing facility that CSEA should know?

19. What are your facility's biggest concerns as you look toward the future?



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Survey of Nursing Home Administrators 1



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LABOR ISSUES

1. What is the rate of annual employee turnover for these positions at your facility?

a) RN's:	0-25%	26-50%	51-75%	76-100%
b) LPN's:	0-25%	26-50%	51-75%	76-100%
c) CNA's:	0-25%	26-50%	51-75%	76-100%
d) support staff:	0-25%	26-50%	51-75%	76-100%

2. For how many shifts per day does your facility have an RN supervisor?

1	2	3
---	---	---

3. What is your normal staffing ratio of licensed nursing staff to beds for the following shifts?

	Less than 1:5	1:5	1:6	1:7	1:8	1:9	1:10	1:11	1:12	More than 1:12
7am-3pm										
3pm-11pm										
11pm-7am										

RELATIONSHIP WITH COUNTY GOVERNMENT.

4. How is your facility financed?

enterprise budget

part of county budget

other: _____

Please describe the current fiscal health of your facility, **WITHOUT intergovernmental transfer monies:**

5a. Do you have a **DEFICIT**? Yes No *(if no, skip to question 6)*

5b. If YES, how much?

Under \$1 million \$1-3 million more than \$3 million

5c. If YES, what percentage is this of your county nursing facility budget?

Less than 1% 1-3% 4-7% 7-10% more than 10%

6a. Do you have a **SURPLUS**? Yes No *(if no, skip to question 7)*

6b. If YES, how much?

Under \$1 million \$1-3 million more than \$3 million

6c. If YES, What percentage is this of your county nursing facility budget?

Less than 1% 1-3% 4-7% 7-10% more than 10%

Please describe the current fiscal health of your facility **WITH intergovernmental transfer monies:**

7a. Do you have a **DEFICIT**? Yes No *(If no, skip to question 8)*

7b. If YES, how much?

Under \$1 million \$1-3 million more than \$3 million

7c. If YES, what percentage is this of your county nursing facility budget?

Less than 1% 1-3% 4-7% 7-10% more than 10%

8a. Do you have a **SURPLUS**? Yes No *(If no, skip to question 9)*

8b. If YES, how much?

Under \$1 million \$1-3 million more than \$3 million

8c. If YES, what percentage is this of your county nursing facility budget?

Less than 1% 1-3% 4-7% 7-10% more than 10%

9. Does your county legislature see the nursing home as essential to the mission of local government?

Yes No

10a. How involved is the county legislature in nursing home management concerns?

Very involved

Somewhat involved

Not involved at all

10b. How would you characterize the relationship?

Very cooperative

Cooperative

Adversarial

Very Adversarial

11. Please answer the following questions regarding restructuring options:

	Is your RHCF investigating this option for restructuring ?			Is your legislature investigating this option for restructuring your RHCF ?		
a) performance-based budgeting	Yes	No	Don't know	Yes	No	Don't know
b) privatization	Yes	No	Don't know	Yes	No	Don't know
c) voluntary sector	Yes	No	Don't know	Yes	No	Don't know
d) public benefit corporation	Yes	No	Don't know	Yes	No	Don't know
e) closure	Yes	No	Don't know	Yes	No	Don't know
f) other	Yes	No	Don't know	Yes	No	Don't know

12a. Is your county under fiscal stress?

A great deal

Somewhat

Not at all

12b. If yes, does this affect the nursing home's viability?

A great deal

Somewhat

Not at all

13. Are there other issues you see as essential for the viability of your county nursing facility that CNFNY should be aware of?

14. How could CNFNY help you in meeting such challenge(s)?

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Survey of Nursing Home Administrators 2

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CNFNY is conducting the following survey in an attempt to understand principal challenges to public sector nursing home viability in New York State and to contribute toward a larger process of strategic planning for the future. Cornell University students will assist in analyzing the results of this survey and will present these to CNFNY and CSEA in May 1999.

GENERAL CHARACTERISTICS

1. When was your facility built?

Pre-1960 1960's 1970's 1980's 1990's

2. When was the most recent significant renovation of your facilities?

1960's 1970's 1980-1985 1986-1990 1991-1995 1996-present

3. What is the TOTAL NUMBER of employees at your facility? _____

4. Of these, how many FULL-TIME employees are there at your facility? _____

MARKET PROFILE

5. Name one service your facility would like to offer, but doesn't offer currently:

6. Does your facility contract with a third party to provide any of the following?

A) maintenance services? Yes No If so, is this for (*circle*):

Management or Service Position

B) dietary services? Yes No If so, is this for (*circle*):

Management or Service Provision

C) laundry services? Yes No If so, is this for (*circle*):

Management or Service Provision

D) housekeeping services? Yes No If so, is this for (*circle*):

Management or Service Provision

E) pharmaceutical services? Yes No If so, is this for (*circle*):

Management or Service Provision

F) nursing staff? Yes No If so, is this for (*circle*):

Management or Service Provision

G) overall management? Yes No If so, is this for (*circle*):

Management or Service Provision

MARKETING

8A. Does your facility market the services it provides? Yes No

If no, skip to 9.

8B. How important are the following goals for doing marketing?

	Very important	Somewhat important	Not important
Build public interest			
Legislative support			
Fill beds			
Attract paying clients			
Educate the public			
Other (specify) _____			

8C. Have you used any of the following strategies to market your facility?

Print media: yes no

Television: yes no

Radio: yes no

Community events: yes no

Other: _____ yes no

8D. Of the strategies you named, which was **MOST** effective in achieving your goal?

8E. Of the strategies you named, which was **LEAST** effective in achieving your goal?

Is outreach and marketing an area where seminars or educational training would be useful to you?

Yes No

10A. Does your facility monitor clients' satisfaction with services? Yes No

If no, skip to 11A.

10B. How is client satisfaction monitored?

Resident surveys	yes	no
Family council meetings	yes	no
Resident council meetings	yes	no
Suggestion box	yes	no

Other (specify) _____

LABOR ISSUES

11A. Does your facility have a separate bargaining unit? Yes No

11B. If no, where is the union leadership employed in your county?

Corrections DDS DPW nursing home Other: _____

12A. Does your facility have a labor-management committee? Yes No

If no, skip to 13.

12B. How often does the committee meet?

Monthly Quarterly Annually Never

13. How would you characterize the relationship between labor and management at your facility?

cooperative

adversarial

don't know

14. Beyond contract negotiations, do labor and management share in broader decision making processes (e.g. total quality management)?

RELATIONSHIP TO OTHER LONG TERM CARE PROVIDERS

15. What is your latest full-house Case Mix Index? _____

16. Based on your latest census figures, what was your breakdown by payment class?

Medicaid _____

Medicare _____

Other insurance _____

Private pay _____

17. Do you currently perceive significant competition from other long term care providers?

Yes No

18. Is your facility viewed as a referral point for nursing care by area hospitals?

Yes No

19. Is your facility viewed as a referral point for rehabilitative care by area hospitals?

Yes No Do not offer rehabilitative care

20. Are hospitals currently competing with your facility for long term care delivery?

Yes No

21. Have hospitals historically competed with your facility for long term care delivery?

Yes No

22. Do you anticipate hospitals expanding into services you currently provide?

Yes No

23. What are your biggest concerns as you look toward the future?

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Transforming Work: Key Elements

The eight key elements of a high-performance organization are:

1. Effective use of all company resources, especially the insights and experiences of front-line workers, in order to achieve continuous improvements in productivity.
2. Acute concern for the quality of products and services in order to satisfy the demands of a consumer-driven marketplace.
3. A participative and nonauthoritarian management style in which workers-both at the point of production and at the point of customer contact-are empowered to make significant decisions by:
 - a. using their individual discretion, experience, and creativity; and
 - b. cooperating with their peers in a mutually supportive atmosphere.
4. Internal and external flexibility in order to:
 - a. rapidly adjust internal production processes to produce a variety of goods or services; and
 - b. accurately comprehend the external environment and adjust to changing economic and social trends.
5. A positive incentive structure that includes: employment security; rewards for effectively working in groups; decent pay and working conditions; and policies that promote an appreciation for how the company functions as an integrated whole.
6. Leading-edge technology deployed in a manner that extends human capabilities and builds upon the skills, knowledge, and insights of personnel at all levels of the company.
7. A well-trained and well-educated workforce capable of: improving a company's work organization and production processes; adapting existing machine technology and selecting new equipment; developing new and improved products or services; and engaging in continuous learning, both on-the-job and in the classroom.
8. An independent source of power for workers-a labor union and collective bargaining agreement-that protects employee interests in the workplace; helps to equalize power relations with management; and provides mechanisms to resolve disagreements that arise because of the inherently adversarial nature of labor-management relations.

Source:

Ray Marshall et al. *Restructuring the American Workplace: Implications for the Public Sector*. LERC Monograph Series, University of Oregon, no. 11. (1992): 26-27.

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Transforming Work: Models of Workplace Change

Model 1: The American Human Resources Model of the 1960s

Goals: promote superior performance by stressing individual motivation and job satisfaction.

Organizational structure: nonunion, hierarchical setting, with a focus on managerial competence and creation of common goals between workers and managers.

Workers'/managers' status: sharp distinctions between workers and managers.

For more about the American human resources model:

Thomas Kochan, Harry Katz, and Thomas McKersie, *The Transformation of American Industrial Relations* (New York: Basic Books, 1986).

Model 2: The Swedish Sociotechnical Model

Goals: to "humanize" workplaces, increase efficiency.

Organizational structure: centralized, somewhat hierarchical.

Workers'/managers' status: egalitarian; workers work in autonomous, functional teams with high skill levels, receive rewards for group performance.

For further information on the Swedish model:

Peter Auer and Claudius Reigler, *Post-Taylorism: The Enterprise as a Place of Learning Organizational Change* (Stockholm: Swedish Work Environment Fund, 1993).

Model 3: Japanese Lean Production

Goals: reduce bottlenecks, quality defects, and other impediments to smooth production; link production and innovation.

Organizational structure: centralized, flattened. Voluntary groups of line workers led by a supervisor meet regularly to solve job-related problems, but traditional corporate structure remains intact.

Workers'/managers' status: egalitarian; workers gain increased participation, leading to greater morale, productivity, and motivation. However, power still resides in upper-level management.

For further information on quality management:

W. Edwards Deming, *Out of the Crisis* (Cambridge: MIT Press, 1984)

J. M. Juran and Frank Gurna, *Juran's Quality Control Handbook* 4th ed. (New York: McGraw-Hill, 1988)

Kaoru Ishikawa, *Total Quality Control: The Japanese Way* (Englewood Cliffs, NJ: Prentice-Hall, 1985).

For more information on lean production:

Robert E. Cole, "Learning from the Japanese: Prospects and Pitfalls," *Management Review* 69 (Sept.1980): 22-42

Strategies for Learning: Small Group Activities in American, Japanese, and Swedish Industry (Berkeley: University of California Press, 1989).

Model 4: Italian Flexible Specialization

Goals: adaptability to changing markets, through small-scale production of a large variety of goods.

Organizational structure: decentralized, flexible; strong collaboration with other firms and institutions (municipal governments provide services that encourage cooperation).

Workers'/managers' status: firms form and dissolve frequently, leading to mobility between worker and owner roles. Workers frequently work in autonomous groups.

For further information on flexible specialization:

Michael J. Piore and Charles Sabel, *The Second Industrial Divide* (New York: Basic Books, 1984).

Model 5: German Diversified Quality Production

Goals: effective adjustment to new technology and changing market conditions.

Organizational structure: centralized and hierarchical, although unions actively advocate decentralization of decision making and the use of self-directed teams.

Workers'/managers' status: differentiated; work councils and other labor-management institutions negotiate the terms of development and flexible deployment of a highly skilled labor force.

For further information on diversified quality production:

Wolfgang Streeck, "On the Institutional Conditions of Diversified Quality Production," pp. 21-61 in *Beyond Keynesianism: The Socio-Economics of Production and Full Employment*, edited by Egon Matzner and Wolfgang Streeck (Brookfield, VT: Edward Elgar, 1991)

Lowell Turner, *Democracy at Work: Changing World Markets and the Future of Labor Unions* (Ithaca, NY: Cornell University Press, 1991).

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Tools for Cooperation - Mutual Gains Bargaining.

Prepared by Darth Vaughn

Mutual Gains Bargaining

Public management has a responsibility to promote taxpayers interests, and labor unions have a duty to represent workers' interests, but often times unions and management find themselves distracted from their intended purposes and engaged in ideological fights with each other. Too many bargaining situations are resulting in bad contracts both from the point of view of management and the unions, with neither side really getting what they needed.

Mutual Gains Bargaining (MBG) is preventative medicine. It helps to circumvent many of the ills associated with traditional labor-management interaction, and allows for healthier more productive cooperation. MGB is a method of bargaining designed to dramatically improved the technical quality of solutions, and increase the likelihood of compliance between labor and management, ultimately benefiting their constituents. The philosophy behind the process is that through in-depth discussion with an emphasis on side by side problem solving (as opposed to face to face confrontation), you can get what you need, *and* I can get what I need. This is a much more effective approach compared to the traditional process.

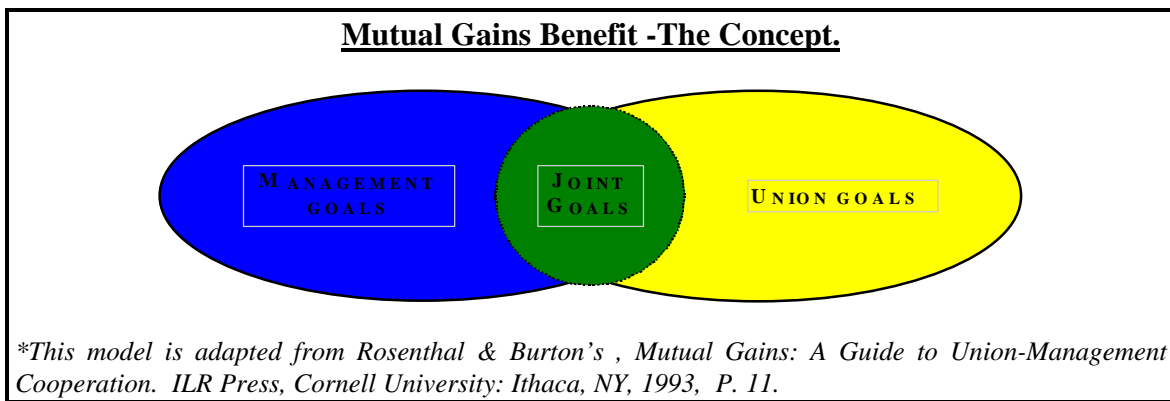
With traditional bargaining, groups enter the negotiations with their own preferred solutions and then haggled over whose proposal is best. Labor and management will develop their positions on issues, submit overblown proposals to each other, and argue emphatically. Arguing on positions leaves both sides with one of four options; "I win, you lose," "You win, I lose," "We both compromised, and lost", or "No deal." Eventually the outcome is determined by a series of power struggles concentrating on personalities and anecdotal data rather than the issues. Traditional bargaining is adversarial, the approach is to beat the other guy. Mutual Gains Bargaining, on the other hand, is a different way of thinking.

With MGB both sides understand the need to focus on interests before their positions. It's not to beat the other guy, but rather to get the best for what you need and the other side as well, because their interests are your interests. Labor-management cooperation is supposed to be an affirmation of the leadership in both the union and management with the goal of seeking better ways of working and new avenues to success. This cooperation in no way compromises or denies the identity of either party. It is also not an answer to all ills. Conflict may still arise, as it should for if handled correctly it sparks creativity and change. This cooperation, is rather a process that can provide a better way to get things done.

The Process

*"The smartest strategy in war is the one that allows you to achieve your objectives without having to fight."
--Sun Tzu, 500 BC*

The mutual gains process focuses negotiating teams on interests rather than positions. "The concept is simple. It is that unions and management can identify at least one goal in common that they can work toward together - and find ways to accomplish that goal jointly."¹



As simple as the concept might be, it's critical that labor, management, and legislation go through a formal training process before they decide to embark on mutual gains. Often times, too much distrust exists between the groups not to. Legislation is often ignored, but it's important that they be pulled on board so they understand and support the process.

There are various approaches and techniques to Mutual Gains Bargaining. Primarily union and management team members sit dispersed around a table (as opposed to traditional negotiations where parties sit across from each other) and openly and honestly discuss their interests and concerns regarding an issue. Team members then analyze all interests, and focus in on those that are mutual. Many times both parties are surprised by how many common interests they have.

Once interests have been identified and examined, the parties participate in a brainstorming process to develop a series of potential solutions and options for each interest. The information is shared openly among both bargaining teams and the potential solutions and options are listed without assessing their feasibility. Team members can take turns serving as facilitators and recorders of information if desired. For first time users of mutual gains, however, it is usually a good idea to have an outside facilitator.

¹. Rosenthal & Burton's , Mutual Gains: A Guide to Union-Management Cooperation. ILR Press, Cornell University: Ithaca, NY, 1993, P. 3.

Once options are developed, the groups agree upon a set of objective standards to use in evaluating the options. The parties then brainstorm again to compile an initial list, which is refined and polished through discussion until a consensus is reached.

Finally, through open discussion the teams to apply the standards and identify those potential solutions and options on which team members can reach consensus. As options are agreed upon, together union and management team members draft contract language and a bargaining history for final review and consensus approval by the full team.

For access to formal training see:

- <http://www.research.cornell.edu/VPR/CenterDir/PEWS.html>.or
<http://www.ctarrce.org/ctaibb.htm>

To register for an upcoming training session see:

- <http://www.ilr.cornell.edu/extension/mgmtprog/LR304.htm>

PERMISS - Keys to Interest Based Bargaining Success
--

There are a number of key factors in making win-win negotiations and labor-management cooperation successful.²

- **Commitment to the Process.** Both parties must be committed to bringing about a cultural change whereby they listen to each other, understand each other's needs and interests, and seek solutions designed to strengthen each party.
- **Information Sharing and Trust.** Candor is essential to building trust. Neither party can be surprised by the other and privileged and private conversations stay that way.
- **Model Behavior.** At all stages of negotiation and during day-to-day contract administration, union leaders and managers need to model cooperative behavior. They must set the example for all to follow.
- **Time to Prepare.** Key leaders on each bargaining team need to have a sense of trust and commitment to the effort so they are willing to take risks, be candid, share information, and model cooperative behavior. It takes time to build this trust and rapport and between key players it must be done prior to sitting down at the bargaining table.
- **Isolate the Problem.** The parties need to accept that some people will not adopt this new approach and can be disruptive to their mutual interests. The parties need to isolate these individuals, if at all possible, and concentrate on the vast majority of managers and employees who prefer the cooperative model.
- **Contract Is Only Paper.** The key to success is understanding that the conclusion of negotiations is only the beginning of a long term partnership between union and management to implement the contract and market this new cooperative approach. Organizational culture cannot be changed just by issuing a new contract to everyone.

² Reproduction of "PERMISS – Keys to Interest Based Bargaining Success":
<http://www.ctarrce.org/ibbkeys.html>

The parties must develop a strategy for change over the life of the contract and beyond.

Union and Management's Benefits.

Labor-management cooperation is the key to having an effective relationship between unions and management while keeping the public sector competitive and viable. For labor-management cooperation to result, two powerful institutions (union and management) must respect each other and work together to achieve mutual interests whenever possible. Mutual Gains bargaining is not a cure all solution, and does not prevent the different parties from disagreeing with each other on issues. Under this process, however, disagreements neither affect the overall relationship, or the ability to resolve other issues. The parties can agree to disagree, but disputed issues will be resolved through dispute mechanisms, including the use of third parties where necessary.

Union's Benefits

For the union and management, the primary question centers on what cooperation will mean for both groups in the short and long run.³ The union can use MGB as a way to empower workers and their institutions to shape their lives at work. Union Benefits Include:⁴

- Increased access to information, and prenotification of changes in work arrangements and technology.
- Increased input, which helps management avoid errors or decisions that would hurt union membership.
- Work satisfaction may increase.
- Union may be able to address a broader range of personal concerns.
- Members concerns are resolved more quickly and fully.
- Membership, education and skill levels increase.

Management's Benefits

In the public sector, management must make the organization as effective as possible to meet the needs and expectations of citizens and their legislative authorities. Management's benefits include:⁵

- Higher Profitability.
- Improved management effectiveness.
- Increased organizational flexibility.
- Improved working environment.
- Enhanced productivity.
- Stronger Market Profile.

³ Rosenthal & Burton's , Mutual Gains: A Guide to Union-Management Cooperation. ILR Press, Cornell University: Ithaca, NY, 1993, P. 23.

⁴ Ibid. p. 23-29.

⁵ Ibid. p. 38-44.

Mutual Gains is more than just a process. It is a cultural change in philosophy that cannot occur without careful preparation. As an organization begins to implement contracts using Mutual Gains to effect changes in working, trained union and management officials will need to jointly train other supervisors, union officials, and employees on the process, contract topic, and key contractual terms. Both parties will need to continue to work together to implement and effectively administer these contracts.

The Mutual Gains bargaining approach establishes that a common ground can be located, mutual interests can be identified, and cooperative relationships between unions and management can be built. While the bargaining experience generates improved labor-management relations, both parties can clearly recognize that beginning and continuing a mutual commitment is a key to long-term cultural change and success.⁶

Resources

American Federation of State, County and Municipal Employees –(AFSCME)

- **Interest-Based Bargaining**
<http://www.igc.org/afscme/bargtabl/cbr3a.htm>
- **Redesigning Government**
<http://www.igc.org/afscme/wrkplace/redgo.htm>

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Cornell University
Department of Regional and City Planning
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Keys to Interest Based Bargaining Success:

<http://www.ctarrce.org/ibbkeys.html>.

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Aspiring to Excellence

Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

**A Report from the Department of City and Regional Planning
Cornell University
June 1998**

**Authors: Nicole Blumner, Lindy Burt, Jon Gans,
Lisa Goldberg, Kristin Guild, Young Sung Kim,
Chang Kil Lee, Darth Vaughn, Mildred Warner**

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Additional copies of this report and the individual county case studies can be downloaded from the Restructuring Local Government Website maintained by the Department of City and Regional Planning (www.cce.cornell.edu/community/govt/restructuring/). Other information relating to local government restructuring can also be found at the site. For further information, contact Professor Mildred Warner (email: mew15@cornell.edu, phone 607-255-6816). Support for this project is provided in part by Cornell Cooperative Extension and by the Cornell Agricultural Experiment Station.

EXECUTIVE SUMMARY

The public sector, particularly local government, is under pressure to simultaneously improve performance and curtail costs. Reductions in state and federal funding, a continuing demand for efficient and flexible government services, and fear of tax revolts are leading to reexaminations of how local governments can best meet the demand for their services. Governments are utilizing a number of tools for restructuring service delivery to increase efficiency and reduce costs.

In our background research, we identified two types of restructuring: external restructuring, where a government turns to outside organizations to provide services (through privatization or intermunicipal cooperation, for example), and internal restructuring, which seeks to improve service delivery by altering organizational structure and decision-making processes. High levels of public sector unionization in New York State make internal restructuring through labor-management cooperation an especially important alternative. Through case studies of three New York State counties, we examined the use of three specific tools for labor-management cooperation: labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM). Genesee, Tompkins, and Ontario Counties were chosen as cases where at least two of these three internal restructuring tools have been implemented successfully.

We found that these cooperative workplace structures improve communication and broaden participation in decision making, leading to greatly improved labor-management relations and employee morale. They may also reduce costs and improve service delivery. However, limited evaluation in the three counties makes savings and service improvements difficult to document.

These tools appear to fall on a continuum of complexity, investment costs, and comprehensiveness. Labor-management committees provide a foundation for the other tools by building an ongoing forum for communication and trust building. They are flexible, deal with a wide array of concerns, and require minimal training. Mutual-gains bargaining requires more training and, in our cases, a preexisting environment of trust. While there are spillover benefits to other areas, MGB is primarily limited to contract negotiations. TQM is the most comprehensive of the three tools and requires the greatest degree of training and organizational culture change to be effective. It also may offer the greatest potential for service improvement.

The case study counties all enjoyed a preexisting environment of trust, committed leadership, and lack of political or fiscal crisis. Given the investments in training and change in perspective required of labor, management, and elected officials, implementation of these tools may be more successful in counties not experiencing crisis or a recent history of labor-management conflict.

These internal restructuring tools are not designed to address external stakeholders. Service improvements may be limited by higher-level policies and mandates these tools cannot address. Similarly, citizen involvement is not enhanced by these tools. However, by creating new forums for communication and participatory decision making, local government enhances its ability to identify and implement programs for service improvement. Adding mechanisms for citizen involvement and strategies to push for needed policy change at higher levels may further increase local government's capacity to restructure to meet the needs of its diverse constituents.

ASPIRING TO EXCELLENCE: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

INTRODUCTION

The public sector is under pressure to simultaneously improve performance and curtail costs, and this is particularly true of local government. Reductions in state and federal funding, tax revolts, and the advent of privatization are leading to reexaminations of how local governments can best meet the demand for their services. Keeping taxes down while delivering the quality services that citizens expect is a difficult challenge. Local government must become more efficient and more accountable to the general public.

EXTERNAL RESTRUCTURING

External restructuring, which involves privatization or contracting out for services, can create a competitive environment and result in increased efficiency and cost savings (Savas 1987). In New York State, however, privatization has been limited (Lauder 1992). A 1997 survey of local government restructuring in the state found intermunicipal cooperation to be the most common form of restructuring (45% of respondents). Privatization was the next most common form of restructuring (31%), but reverse privatization (bringing services back into the public sector) was also significant (Warner and Hebdon 1997). This suggests that local governments in New York State recognize the value of both cooperation and competition in improving service delivery.

Privatization can create an uneasy or even hostile environment between labor and management. It can result in lower wages, benefits, and levels of unionization (Hebdon 1995; Chandler and Feuille 1991, 1994) despite government efforts to ensure no layoffs. Some empirical studies have shown the impacts of contracting on unionized workers' pay and employment to be minimal (Pendleton 1997). However, lowered employee morale and fears about job security have significant negative effects on the potential for a cooperative relationship. In addition, public sector unions must fight privatization if they are to retain their membership base (CSEA 1995).

In New York State, public sector collective bargaining is governed by the Taylor Law, which mandates that employers negotiate with the union before contracting out a service that is essentially the same as one union members currently provide. Thus the Taylor Law is often perceived as a roadblock to privatization. However, under some circumstances, New York State's governments may contract out services without negotiating with the union, and they also may downsize when there is no longer the need for a particular service or when financial circumstances demand it. Nonetheless, collective bargaining restrictions under the Taylor Law may limit opportunities for contracting out. This makes the search for other, more cooperative methods for implementing workplace innovations essential for local government restructuring in New York State (Donovan 1990; Lawyers Co-operative Publishing 1982).

INTERNAL RESTRUCTURING FOR TRANSFORMING GOVERNMENT

In their well-known book *Reinventing Government* (1992), David Osborne and Ted Gaebler argue that a sweeping overhaul of how government does business can be achieved through

internal restructuring. They describe this as a move from a supply-driven system to a demand-driven system. The rigidity of budgeting, service delivery, and the labor-management relationship in traditional supply-driven governments, they argue, must be replaced by flexible, quality-oriented systems that are responsive to customers' needs. Internal competition and more cooperative labor-management relationships can provide an effective alternative to privatization for improving government efficiency.

Decentralization of authority can help government achieve better performance. The private sector has demonstrated that decentralizing authority and flattening hierarchies can be very effective in improving efficiency and product quality (Appelbaum and Batt 1994). Giving decision-making power to front-line workers, who are closest to most of the problems and opportunities, and encouraging employee innovation are important steps (Marshall 1992). Direct citizen participation is also vital to improving government services (Osborne and Gaebler 1992; Osborne and Plastrik 1997).

Total quality management (TQM) is one vehicle for internal restructuring. TQM programs are being used to transform government, especially at the federal level, but also in New York State and in more than 400 municipalities nationwide (Rusaw 1997, U.S. GAO 1995, New York State GOER 1992). TQM emphasizes an organization's commitment to the customer and to continuous improvement of every process through the use of data-driven problem-solving approaches based on empowerment of employee groups and teams. Cooperative processes such as TQM help to create a culture change, perhaps the most important requirement for transforming the public sector.

THE POTENTIAL OF LABOR-MANAGEMENT COOPERATION

Traditional industrial relations practices relied on the acceptance of a shared ideology among labor, management, and government that defined workplace roles and provided stability to the system. The 1990s saw the development of a new model, one that recognizes there is often a lack of consensus between management and labor, and that both are greatly impacted by the instability in economic, technological, political, and social environments. In this context, methods that focus on building communication and cooperation between management and labor offer considerable promise (Kochan, Katz, and McKersie 1994).

Cooperative labor-management structures such as labor-management committees, total quality management (TQM) programs, and mutual-gains bargaining can be used effectively in the public sector. While the public sector is distinct in many ways from the private sector, it can learn from the experiences of private firms in implementing some of these progressive labor-management practices (Lawler 1990).

However, resistance to cooperative practices can be substantial. Any of the major stakeholders in the process—management, elected officials, and labor—may resist the change for different reasons, making transition difficult and time-consuming. Managers may resent their loss of authority and harbor doubts that productivity gains can be attained through these methods. Elected officials may be hesitant to accept the political risks of instituting change. Unions may perceive cooperative structures as a ploy to weaken labor and divert attention from basic issues

such as wages and job security. They also fear that by increasing workplace efficiency, they are putting their jobs in jeopardy (Gold 1986). In addition, participation may not necessarily give workers any real power.

Cooperative tools are inherently limited, since many fundamental decisions about organizational structure and work processes still remain in the domain of upper management. This is a commonly cited drawback to programs such as TQM (Appelbaum and Batt 1994). But more and more it is being recognized that all interested parties (labor, management, elected officials, customers) should have a voice in decision making, and that valuable production knowledge resides in all levels of an organization, especially with front-line workers (Marshall 1992). Having been implemented in the private sector with success, cooperative techniques are clearly beginning to take hold in public sector workplaces, as evidenced by the many examples profiled in the U.S Department of Labor report *Working Together for Public Service*, better known as the Florio Report (1996).

The literature indicates that effects of labor-management cooperation on the ability of local government to undertake internal restructuring and to improve service delivery are worth examining. While obstacles clearly exist, with effort, many of the barriers to labor-management cooperation can be overcome (Gold 1986). By profiling counties where several tools of labor-management cooperation have been employed successfully, we hope to add to the existing knowledge of how these specific tools can be used to improve local government services.

METHODOLOGY

Initial research for this project was conducted in collaboration with the New York State Civil Service Employees Association (CSEA), the New York State Association of Counties (NYSAC), and the New York State Department of State's (DOS) Division of Local Government. Representatives from each of these groups were interviewed for their perspectives on and concerns about local government restructuring. The team found, through these discussions, that public sector management was searching for ways to improve internal and external operations, while labor was interested in exploring ways to prevent privatization of services. We hypothesized that labor-management cooperation can reduce costs and increase service quality, diminishing the impetus for privatization.

Further interviews with key informants helped the team focus on the relevant issues surrounding labor-management cooperation and identify the types of labor-management tools being employed in counties throughout New York State. Key informants included: CSEA, NYSAC, DOS, the Public Employment Relations Board (PERB), the Governor's Office of Employee Relations (GOER), staff and faculty of Cornell University's School of Industrial and Labor Relations, and elected officials from counties which had implemented some form of cooperation (see Appendix A for complete list).

We found that formal labor-management cooperative initiatives were not widely used in the state, but that a handful of both exemplary and semi-successful cases did exist. In the majority of cases, the most commonly implemented tools were labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM) programs. As a result, the team decided to focus on these three initiatives as tools of the labor-management cooperative process.

A 1997 survey of local government restructuring in New York State provided a preliminary indication of the incidence of privatization and restructuring in NYS counties (Warner and Hebdon 1997).¹ Twelve of the counties that responded to this survey indicated they had used cooperative labor-management initiatives. Key informants provided names of counties which had participated in TQM or mutual-gains bargaining training, or had implemented labor-management committees.² The research team then selected three counties—Genesee, Ontario, and Tompkins—which had been successful in implementing formal labor-management cooperation.

To explore our hypothesis that labor-management cooperative efforts could be an attractive alternative to privatization, the following key questions were formulated for the case studies based on the preliminary interviews and relevant literature:

- What are the basic elements of a cooperative labor-management relationship in county government?
- What are the goals that labor, management, and county officials hope to achieve through cooperation?
- What is the impact of a cooperative labor-management program on labor relations, service quality, and cost of service delivery?

These key questions reflect an attempt to describe the *process* of labor-management cooperation. Therefore, the chosen research method for the project is that of a *case study*, a descriptive research tool (Yin 1984).

The case study counties were selected on the following criteria:

- *Utilizing several tools of labor-management cooperation.* Having examined in our preliminary investigation several counties that had implemented one cooperative tool with marginal success, the team hypothesized that several tools may be necessary to substantively change the relationship between management and labor. Thus we chose counties that had implemented more than one of the cooperative tools identified: total quality management, labor-management committees, or mutual-gains bargaining.

¹ Conducted by Cornell University in cooperation with the County Legislators and Supervisors Association of New York State, this survey was distributed to all towns (932) and upstate county governments (57) in New York State. Responses were received from 196 towns (21% response rate) and 26 counties (45.6% response rate).

² The counties initially considered were Chautauqua, Clinton, Columbia, Dutchess, Erie, Genesee, Livingston, Oneida, Ontario, Putnam, Schenectady, Tioga, Tompkins, Ulster, and Westchester.

- *Key informant recommendations.* The case study selection was also based on the beliefs of key informants listed in Appendix A that these counties were among the more successful of New York State in implementing cooperative labor-management efforts.
- *Willingness to participate and proximity.* Cases were selected on the basis of the willingness and ability of the counties to provide us with the necessary access to personnel and resources. Geographic proximity to Ithaca was also a consideration due to time constraints.

In each case, every attempt was made to interview one or more representatives from each of the three perspectives: elected officials, management, and organized labor (see Appendix B). An interview guide (see Appendix C) was developed to provide consistency and direction across all interviews. However, the interview format also provided flexibility for open-ended responses, so that the elements, advantages, challenges, and lessons of labor-management cooperative initiatives could be fully explored. Interviewees were able to respond to questions and expand on their ideas verbally, in a manner that a survey does not allow.

Face-to-face interviews were conducted with the majority of interviewees. When this was not possible, interviews were conducted by telephone. Interviews were summarized and shared with interviewees for review. Where necessary, follow-up interviews were conducted by telephone.

The research team compared the cases, discussing the commonalities and differences across them. Preconditions, goals, and limitations of the three tools of labor-management cooperation studied were emphasized. The analysis was written as a draft report and shared with the key informants in the case study counties. Their comments were incorporated into the final report. Permission to share the information contained in this report with the public was obtained from all county officials and staff who were interviewed.

FINDINGS

The case study counties—Genesee, Ontario, and Tompkins—are located in central and western New York State. Genesee County has a population of about 60,000, while Ontario and Tompkins each have about 95,000 residents. Politically, Genesee and Ontario are governed by Republican-dominated legislatures and Tompkins currently has a Democrat-controlled board. All three counties have an appointed full-time county manager or administrator. This is the most common form of county government in New York State.³ The presence of a professional, full-time manager was a control factor across these three counties. The ability to generalize findings to other counties with county executives or no full-time, professional manager may be limited. However, key informants familiar with cooperative efforts across the state indicate that strong

³ Of the 57 counties outside of New York City, 18 (31.5%) are governed by the county executive structure (elected official), 27 (47.5%) are governed by county managers or administrators (appointed), and 12 (21%) have no full-time manager or county executive.

leadership and support for change appear to be more important to successful implementation than type of governance structure.

Additionally, the environment between labor and management in all three cases was found to be generally cooperative, or at least noncombative, prior to the implementation of cooperative initiatives. Therefore, this study cannot speak to counties where an adversarial relationship between labor and management is present.

The three labor-management tools were found to exist along a continuum of complexity, with labor-management committees providing the foundation for the other two tools. These committees provide a flexible forum for problem solving and building trust, and they require minimal training. Labor-management committees in all cases predated mutual-gains bargaining and TQM. The interest-based bargaining approach of MGB required substantial training for successful implementation. Used primarily for contract negotiations, MGB appears to have had very positive effects on negotiation processes and outcomes, as well as positive spillover effects to other arenas of decision making. TQM was by far the most comprehensive and complex of the three tools studied. Extensive training of labor, management, and elected officials was required to support the culture change toward shared decision making required for a successful TQM effort.

Key elements for successful cooperation include training, committed leadership, communication, and evaluation. In the case study counties, improved morale, costs savings, and service improvements resulted from the use of these three tools, suggesting they do provide an effective alternative to privatization. However, limited evaluation in the counties prevented definitive analysis of the true costs and benefits of labor-management cooperation.

LABOR-MANAGEMENT COMMITTEES

Labor-management committees are cooperative structures that focus on problem solving and building trust. They typically deal with issues including workplace safety, work hours, training, personnel issues, and daily workplace concerns. Although labor-management committees may initially focus on less controversial issues, such as worker safety standards, over time they may build a level of trust between labor and management that allows them to deal with more complex problems (Gold 1986).

Labor-management committees may be permanent or they may form around a particular issue and disband once resolution is reached. However, they are not necessarily formed to solve crises. Many are proactive and attempt to improve current work practices. They are flexible and easy to implement, and require minimal training. Labor-management committees are cornerstones of cooperation in each of the counties studied.

STRUCTURE

The labor-management committees in Genesee, Ontario, and Tompkins Counties are similar in terms of their goals: enhanced labor-management relations, decreased costs, and improved services. Each county has a central guiding or umbrella committee that oversees the activities of issue-based or departmental labor-management subcommittees. They may facilitate training and provide direction to subcommittees or they may address specific program innovations or daily operations. All three counties implemented labor-management committees before mutual-gains bargaining and total quality management.

There are differences in how each county uses the committees, however. In Ontario County, where such committees have existed since the early 1980s, they operate independently of the TQM program. Ontario County has a countywide committee, committees that operate within departments, and others that address specific issues, such as safety and health.

Tompkins County's labor-management committees, which have existed since the mid-1980s, now function as part of its TQM program. Prior to the inception of the TQM program, non-union members who volunteered or were voted in by all employees were allowed to serve on labor-management committees. Under the total quality management agreement negotiated between the CSEA and the county board of representatives, now there are more committees, and only union-selected representatives may serve on them (see the total quality management section, below).

Genesee County does not have a TQM program, and their labor-management committees are the main venue for workplace innovation. There is one main committee for the general bargaining unit, which covers most county departments, and a separate committee for the nursing home unit.

REPRESENTATION

Labor-management committees are composed of representatives of management and the union. Only in Tompkins County were legislators also included. Tompkins County's umbrella committee has 13 members, including representatives from top management, middle management, and labor. In Ontario County, the countywide committee is made up of the county administrator, deputy administrator, director of human resources, and several of the local union presidents. In Genesee County, the general unit committee consists of the county manager, the personnel officer, the CSEA general unit president, and the regional labor relations specialist, as well as two more representatives from both management and labor who rotate onto the committee in three-year intervals. This provides more people an opportunity to be part of the process. Size of the committees varies according to the scope of the issue and the need for stakeholder input. Most have eight or fewer members, but at least one committee in Tompkins County has over twenty members.

FUNCTIONS

In all counties, labor-management committees address a broad spectrum of workplace concerns. In Genesee County, the general unit committee emphasizes relationships and creating an environment where employees feel their input is valued and decisions are made by consensus.

The labor-management committee has introduced policies that create a more family-oriented environment.

Labor-management committees can also be forums for discussing alternatives to privatization proposals. In Ontario County, labor has the opportunity to give their input before a decision to privatize a service is made by the administration. In Genesee County, labor and management formed a special joint action committee to address the threat of possible privatization in the Department of Mental Health Services.

Labor-management committees can impact the delivery of government services by finding ways to reduce costs while maintaining or improving the service itself. While hard data documenting the impact of innovations on cost was difficult to obtain, workers' compensation costs were significantly reduced in Tompkins County as a result of safety measures and training recommended by a labor-management committee (prior to the implementation of TQM). In Genesee County, labor-management committee recommendations and process improvements have led to cost savings through reduced absenteeism, increased productivity, and decreased supervision time. Their nursing home committee has helped the facility improve efficiency and avoid privatization. Client surveys in Ontario and Tompkins Counties have indicated overall improvements in services.

Labor-management committees do not address contract disputes or grievances, although they appear to be effective in defusing potential problems before they reach the grievance stage. All three counties credited labor-management committees for helping to keep the number of formal grievances low.

ROLE AND AUTHORITY OF COMMITTEES

There is great flexibility in how roles are defined for labor-management committees. Tompkins County has a formal agreement defining the roles, expectations, and boundaries of authority for the Leadership Council, which took one year to negotiate and which clearly outlines the scope of the committee process. Genesee County has less formal written guidelines that articulate the goals and procedures of the committee. The authority of the labor-management committee is not written into a contract but is accepted by both parties. Ontario County's labor-management committee is well entrenched and seems to function effectively without a written agreement.

Labor-management committees have varying degrees of authority and power. In some cases, their policy recommendations are binding, while in others they merely offer suggestions that must gain the approval of elected officials. This is often the case when budget or cost decisions are involved. Committees in Ontario County are empowered to draft letters of agreement around issues that would normally be addressed through contract negotiations.

In some cases, the use of labor-management committees may impact traditional lines of authority. Middle managers may lose some of their decision-making authority because employees can voice concerns directly to top levels of management through the committee. In Ontario County this was an issue, but in Genesee and Tompkins Counties, middle managers are included on committees.

TRAINING/SUPPORT

Training committee members in conflict resolution and consensus decision making may help committees work more smoothly. Training sessions allow both groups to establish their commitment to the concept and to forge cooperative relationships. For example, in the Genesee County Nursing Home, a half-day training session for the entire staff helped them use their labor-management committee more effectively. In this case, a CSEA facilitator from Albany was used. The Public Employment Relations Board (PERB) and Cornell's Industrial and Labor Relations Extension are other valuable sources of training and information. It is important to recognize, however, that there may be a significant time lag after training before measurable results are seen.

Tompkins and Ontario Counties, which had longer-standing labor-management committees, have invested more in training for mutual-gains bargaining techniques and total quality management than for labor-management committees.

RELATIONSHIPS

Labor-management committees can be contentious because they bring together individuals with diverse points of view. Strong leadership, good communication, and commitment to the process make the difference between success and failure. Without these elements it is difficult, if not impossible, to build the necessary level of trust to make a labor-management committee work. Both Tompkins and Genesee Counties had attempted labor-management committees in the past, with limited scope and success. By focusing on relationships, building trust, and gaining the commitment of leadership they were able to establish the successful committees that operate today. One strategy used was to begin by addressing issues that are less contentious, to build momentum so committees can tackle larger, more difficult problems in the future. This increases the level of trust among committee members and reduces the potential for early conflict.

Employee morale has been greatly improved in the counties studied. There are still conflicts and differences of opinion, but labor-management committees provide a mechanism for giving voice to these problems before they become intractable.

CHALLENGES AND LIMITATIONS

Several challenges in implementing labor-management committees are evident:

- Time is required to build the trust necessary for effective committees.
- They have limited authority: they are not designed to make decisions about broad structural changes in county operations.
- Defining the appropriate roles and boundaries of committees is important: many problems lie beyond the scope of committees and call for wider participation of elected officials and citizens.

CONCLUSION

Labor-management committees are excellent forums for communication and workplace problem solving. They are flexible and require minimal training, which also makes them inexpensive. In all three counties, good communication, strong relationships, committed leadership, and trust

proved to be the most important factors for committee success. While the most compelling impact seen was on labor-management relations, committee efforts also led to improvements in county government functioning. Labor-management committees are relatively easy to implement and provide a foundation for incorporating more sophisticated tools, such as mutual-gains bargaining and total quality management, into an organization.

The following are recommendations to consider for labor-management committees:

- Establish a central, guiding committee to oversee the endeavor.
- Integrate committees into the organizational structure.
- Define expectations and parameters for decision making.
- Include as many stakeholders as possible and necessary.
- Communicate and foster a shared understanding of goals and objectives for both the committee and the organization.
- Be cognizant of power differentials and the effect these may have on communication.
- Address issues where it is easy to reach consensus at the outset in order to build momentum to tackle more difficult topics.

MUTUAL-GAINS BARGAINING

Mutual-gains bargaining (MGB) is a method of bargaining designed to dramatically improve the quality of contract negotiations and increase the likelihood of compliance between labor and management, ultimately benefiting their constituents. The mutual-gains process focuses on negotiations based on interests rather than positions and on building consensus. Through this process, unions and management identify at least one common goal and find ways to jointly accomplish that goal (Cohen-Rosenthal and Burton 1993). While MGB can be used for many types of negotiations, the case studies focused on its use for contract negotiations. Ontario County has been using mutual-gains bargaining since 1994, Tompkins County since 1995, and Genesee County since 1996.

PRECONDITIONS

All three counties had existing cooperative labor-management relationships in place before the initiation of MGB. Tompkins and Ontario Counties indicated they had been using interest-based bargaining techniques informally for years, and that they moved to MGB as a way of formalizing the process. This leads us to speculate that counties that have good labor-management relationships may be more apt to implement MGB because the idea of cooperating isn't very radical to them and there is less distrust between labor and management to overcome. Genesee County, however, was less satisfied with their standard negotiation process and wanted to use MGB to improve the quality of negotiations.

BENEFITS

Mutual-gains bargaining led to smoother contract negotiations in all three counties. This was especially true in Genesee, where labor and management agreed the new techniques were far more productive than previous negotiations. Perhaps because Ontario and Tompkins Counties already had well-established cooperative structures that resembled MGB in place, the changes

were less dramatic, but in both counties labor and management spoke positively about the effects of MGB techniques on the negotiating process.

MGB can be used to empower workers and strengthen their organizations, as well as to shape their lives at work. The benefits include increased access to information, prenotification of changes in work arrangements and technology, and increased input, which helps management avoid errors or decisions that would hurt union membership. There is also an indication that work satisfaction may increase, and the union may be able to address a broader range of members' concerns more quickly and fully. In addition, the literature on the subject indicates that union membership, education, and skill levels increase.

In the public sector, management must make the organization as effective as possible to meet the needs and expectations of citizens and their legislative authorities. Management's benefits include improved effectiveness, increased organizational flexibility, an improved working environment, and enhanced productivity (Cohen-Rosenthal and Burton, 1993).

Labor and management in the case study counties agree MGB has saved a lot of time. The use of MGB allowed Genesee County to complete their last contract in about a month, whereas it used to take up to six or seven months. The same is true for Tompkins County, where labor and management found the salary issue was on the table faster than ever before, in part because the economy was doing well, but also as a result of MGB.

Neither management nor labor see MGB as a panacea, but both concede that both parties walk away from the negotiating process feeling better. While both labor and management in Ontario County are pleased with MGB, the union appears to favor the process a bit more. CSEA representatives felt that MGB would definitely be used in the future. At least one manager, on the other hand, was of the opinion that MGB was a bit "tedious" and might not be used in the next contract because levels of trust were already high. In Tompkins County, labor felt that the "win-win" solutions that MGB is supposed to create often result in compromises. Management respected the process, but felt it was nothing new in comparison to the way they interacted in the past.

LEADERSHIP

The commitment of top management and union leaders to MGB is very important to its success. Some people will find it difficult to accept a new approach and will be subversive to both groups' mutual interests. In some cases, a change in leadership was necessary before a county could effectively implement MGB. In Ontario and Genesee Counties, for example, changes in union and/or management leadership preceded their formal implementation of MGB.

During negotiations, and during day-to-day interaction, the administration, union leaders, and managers need to set an example of open communication for all to follow. Labor and management must be committed to MGB. They must communicate with each other, understand each other's needs and interests, and pursue answers that benefit both groups. Tompkins, Genesee, and Ontario Counties' MGB efforts had the support of top management.

TRAINING

Mutual-gains bargaining requires a change in philosophy that cannot occur without careful preparation. Unlike traditional collective bargaining, mutual-gains bargaining operates on trust and open information sharing, and as simple as the concept might be, it is critical that labor, management, and legislators receive training before they decide to embark on mutual gains. While legislators do not participate in negotiation, it is important they understand and support the process.

In their efforts to implement MGB, Ontario, Genesee, and Tompkins Counties all turned to the New York State School of Industrial and Labor Relations Extension for training. Tompkins County trained 300 out of 720 employees in MGB before its formal implementation in 1995, and had few problems. Now all bargaining units in Tompkins County (except the sheriff's department) use mutual-gains techniques for all terms except salary. In the case of Genesee County, the assistant county manager was trained to facilitate the negotiations, while Ontario and Tompkins used outside facilitators. Although Genesee's general unit contract was successfully negotiated using MGB in a much shorter period of time than was typical, the negotiating process was still very challenging, and the rank and file expressed skepticism about the initial contract. Because of the distrust that traditionally exists between the two groups, it may help to use an outside facilitator at the outset. Even with training, it can take employees and management time to learn to trust and accept the process.

CHALLENGES

MGB can benefit both labor and management, but it can also be risky to both parties. Both union leaders and management are in danger of being perceived as too close to the "adversary"—legislators may fear management is being too easy on the union, while union members may fear their leadership is being "co-opted." Since the union is negotiating the terms and conditions of employment for its members, it has more at stake. The open negotiation process inherently requires each side to relinquish some of its negotiating power and may limit the union's ability to act as a unified group. In Tompkins County, the union has not yet agreed to negotiate salary using mutual-gains bargaining techniques largely for these reasons.

Mutual-gains bargaining is a process that was developed in the private sector to increase labor-management cooperation, but also to aid downsizing efforts. MGB inherently cuts out middle management as the mediators between labor and top management. In Ontario County, for example, middle managers were resistant to MGB, as it appeared to take some of their authority away.

Finally, because mutual-gains bargaining is a tool which is used only during contract negotiation time, it is limited in its ability to have a direct impact on the daily interaction between labor and management. However, there were important "spillover" effects of mutual-gains bargaining training to other venues such as labor-management committees and total quality management teams.

CONCLUSION

Interest-based bargaining appears to save money and time, and have positive effects on labor-management relationships. MGB resulted in quicker contract negotiation where both parties walked away feeling better about the process and the outcome. However, as with other similar labor-management cooperative methods, it is difficult to quantify the results of MGB. For example, Ontario County tries to quantify cost savings whenever possible but finds it difficult to assign a dollar value to the intangible benefits of their cooperative efforts. The counties studied did not establish evaluation measures to determine what impact (positive or negative) MGB has made.

TOTAL QUALITY MANAGEMENT (TQM)

While Genesee, Ontario, and Tompkins Counties have all implemented labor-management committees and mutual-gains bargaining, only Ontario and Tompkins Counties have instituted total quality management (TQM) initiatives. Ontario County began to implement total quality management in 1993, Tompkins County in 1994.

Total quality management represents a shift in management philosophy from autocratic, hierarchical decision-making structures to flatter organizational structures and shared decision-making responsibility (Kursat and Calicchia 1994). In the past few decades, following the model of the private sector, local governments have come to realize that top-down management is not always the best way to achieve results and that line workers have valuable contributions to make in identifying strategies for improvement (Osborne and Gaebler 1992).

In Tompkins and Ontario Counties, total quality management has changed the way decisions are made, processes are designed, and labor and management interact. Informants describe total quality management programs as a “visceral change,” a “paradigm shift,” and a “culture change.” Both counties’ total quality management programs are new, and therefore conclusions about the programs’ impacts and differences between them are tentative.

THREE COMPONENTS: SHARED DECISION MAKING, CUSTOMER FOCUS, MANAGEMENT BY FACT

Total quality management initiatives have three primary components according to Kursat and Calicchia (1994):

1. Shared leadership and employee involvement

Total quality management programs are based in part on the idea that employees performing the work can create more efficient and effective processes to produce a higher-quality product. Total quality management programs typically establish formal structures such as labor-management committees for sharing decision making between managers and front-line employees.

2. Customer focus and an emphasis on service and product quality

TQM focuses on the needs and wants of two types of customers: “internal” customers—the next people down the line in the work process—and “external” customers—those who purchase or utilize a good or service. TQM seeks to improve the quality of both the product and the process by identifying the type and quality of good desired by both internal and external customers and providing what each customer wants. This can be difficult, since in the public sector, external customers include the people using a good or service but also the people paying for the good (taxpayers) and their representatives (elected officials).

3. Management by fact and continual improvement

Total quality management encourages steady data collection and rational decision making based on data rather than on impressions or uninformed opinions. Labor-management committees are one way to collect data about many facets of a complex issue. Others include customer surveys and careful tracking and documentation of any cost or time savings. The second component, a philosophy of continual improvement, encourages employees and managers to exceed current standards. Continuous improvement is achieved through constant experimentation, learning from mistakes, and diffusing learning throughout the organization.

GOALS

In both Tompkins and Ontario Counties, the goals of total quality management most often articulated by managers and employees were to improve labor-management relations and work conditions, leading to a more smoothly functioning organization. All parties also expressed a desire to improve service quality. This desire is exemplified by Ontario County’s slogan for total quality management: “We aspire to excellence.” In Tompkins County, elected officials’ goals focused primarily on service improvement and cost savings.

TRAINING

Participatory methods of decision making, identifying customer needs, and determining what kind of data to collect and how to collect it require skills of employees and managers that are not inborn or traditionally taught in schools or in the workplace. Thus, to effectively implement a total quality management program and achieve the paradigm shift required for success, training is essential.

Of the two counties, Tompkins has conducted more extensive training and spent more money. Tompkins County’s Leadership Council (the labor-management committee charged with planning and managing the total quality management program) has the goal of training all employees, managers, and elected officials in quality methods. Initial training sessions were conducted by consultants, who are still involved in the process. In the fall of 1996, however, the county hired a full-time training coordinator, and now more sessions are conducted by in-house staff.

Between 1994 and 1997, Tompkins County spent just over \$300,000 for outside consultants to conduct training. In 1998, the county will spend an estimated \$170,000 on consultants to complete the bulk of the training. Since 1997, in-house costs have been around \$100,000. These costs will drop dramatically after 1998, when all employees, managers, and elected officials will

have been trained in total quality management techniques and only training for new employees and refresher courses will be necessary.

Ontario County appears to have spent significantly less on their training program, particularly on outside consultants. Initially both labor and management leaders as well as county legislators were trained at the Rochester Institute of Technology. Initial training cost \$35,000 for employees and \$50,000 for supervisors, managers, and elected officials. The county gradually built their capacity to do training in-house, and today all county employees have been trained in TQM concepts.

It is important to remember when comparing these figures, however, that we obtained dollar amounts from Tompkins County for both outside and in-house costs, whereas the figures reported for Ontario County's training costs are only initial start-up costs for consultants. Still, there appears to be an appreciable difference in expenditures on consultants.

This difference may be due to the values held by county leaders. Tompkins County leaders are professionally and personally interested in organizational theory and process, and are willing to wait for long-term results. These may be the reasons for the strong emphasis on process and formal training. Ontario County leaders seem less interested in process and more interested in both short- and long-term results.

SUPPORT STRUCTURES

Individuals, however well trained in new ways of thinking and doing, will not be able to maintain the culture shift without a system of structural supports that devolve authority for decision making to labor-management teams. Supportive structures are probably one of the largest differences between total quality management programs which employees perceive to be "fake" and those which seem more real and effective.

Ontario County's Service Excellence program is structured around a countywide steering committee that acts as a core planning group, setting the direction for the program and coordinating the activities of the subgroups. The four departmental work group committees each have the same organizational structure as the steering committee and coordinate their corresponding functions.

Tompkins County's Leadership Council includes representatives from labor, top management, middle management, and elected officials. The Leadership Council guides the training process and the activities of departmental committees, and facilitates the work of smaller, project-oriented or cross-functional committees.

Another support mechanism is in-house training facilitators. Currently, Tompkins County employs a full-time training coordinator. An additional twenty employees act as facilitators, assuming leadership roles on various departmental and issue-related committees. They lend practical support based on their understanding of TQM and committee concepts. In addition, they are role models for other employees and managers.

ADVANTAGES

Total quality management is the most comprehensive cooperative tool for restructuring that the research team investigated. More than labor-management committees, total quality management programs can address inefficiencies in work processes and strive to identify customer needs. Unlike mutual-gains bargaining techniques, which are used primarily for contract negotiations once every few years, total quality management is ongoing and suffuses all work processes. It empowers labor to improve the workplace. In Tompkins County, for instance, labor-management relations had been good for some time, but TQM forced managers to rethink their traditional style to allow greater employee involvement in decision making. Employees and management now work together to solve problems, and by all accounts, both find the new process more productive and rewarding.

The cases studied indicate that total quality management does improve the functioning of the organization, employee morale, and labor-management relations. Based on the suggestions of a total quality management committee in the Department of Social Services, Tompkins County streamlined the intake process for several social service programs. A Tompkins County survey indicates that employee morale in the Department of Public Works improved 22% between 1990 and 1997. Further, since the TQM programs have been implemented, both Ontario and Tompkins Counties have had fewer frivolous grievances as a result of increased communication and trust.

The programs have also reduced costs in both counties, although the cost savings have not always been well documented. Tompkins County representatives believe they have saved a great deal due to improved morale and greater efficiency. Ontario County has documented savings through the efforts of its workplace safety team. The team project began with county safety coordinators identifying high-risk job duties, such as driving and heavy lifting, based on local and national accident and injury data. Employees performing these tasks were then trained in safer driving and lifting techniques, resulting in a 37% reduction of OSHA-recordable injuries in the county from 1994 to 1997. Lost days were reduced by 60% in the same time period. As a result of these safety improvements, a special tax assessment to pay for workers' compensation, to be spread out over five years, was paid off in only three, saving taxpayers \$1.5 million.

LIMITATIONS

Both middle managers and elected officials may resist the total quality management culture change because it devolves supervisory and decision-making power to TQM teams and committees. While middle managers and elected officials are formally involved in several levels of the TQM program in Tompkins County, they are absent from the committees in Ontario County, and have understandably been more resistant to the process. Middle managers may also fear for their jobs. Tompkins County is dealing with this issue by retaining middle managers as top-level technical employees and ensuring their representation on the TQM committees.

Another limitation of total quality management as a tool for restructuring is its internal focus. The difficulty in identifying the "customer" for public sector goods and services and the focus on internal work processes make it hard to truly involve citizens in these TQM efforts. Both counties seek to identify external customer needs with surveys, and Tompkins County includes elected representatives on committees, but neither county includes citizens on committees. In

Ontario County, citizen involvement in the TQM program is slightly greater than in Tompkins, since it includes an advisory council made up of a select group of local business owners.

Tompkins and Ontario Counties both seem to focus more attention on internal customers, (through surveys and participation in labor-management committees), in the belief that process improvements will result in product and service improvements. This is not an unreasonable assumption, though it can be difficult to document. Customer satisfaction surveys in Ontario and Tompkins Counties indicate external customers are generally satisfied with service improvements generated by total quality management programs.

The substantial cost of total quality management training and implementation as well as the time required to reap benefits are also limitations of total quality management as a tool for local government restructuring. Finally, because total quality management focuses primarily on internal work processes, policy about external factors is outside its purview. The inability to address broader policy issues may limit the ultimate impact of investments in total quality management.

CONCLUSIONS

GOALS OF COOPERATIVE TOOLS AND PROCESSES

Most of our informants articulated their goal as a more smoothly functioning organization, with more creative problem solving and positive interactions between management and labor. Managers and elected officials focused on increased efficiency, cost savings, and improved service quality. Labor representatives expressed goals of increasing employee participation in decision making and improving service delivery by widening employees' stake in the process and product. Thus, improving service delivery was a goal of all parties, but with slightly different emphases. Elected officials valued improved service delivery for its impact on citizen constituents, whereas labor representatives valued increased service quality for its effects on job quality.

PRECONDITIONS FOR SUCCESS

Several conditions existed in our counties prior to the successful introduction of formalized cooperative processes. First, the labor-management relationship in all three counties was already cooperative, or at least noncombative, providing fertile ground in which cooperative structures could thrive. Second, all the counties we studied were in relatively stable economic and political positions prior to establishing cooperative structures. We were not informed of any fiscal or political crises in recent memory that might put pressure on leaders to avoid the risk-taking inherent in cooperative initiatives. These three counties made a significant culture change not as a last-resort strategy, but as a means to improve already functional but imperfect processes. However, the cooperative structures have proven useful in dealing with crisis, such as the threatened sale of the nursing home in Genesee County.

We observed several other essential preconditions in our study counties. Committed, supportive leaders are required. This sometimes necessitates a change in the legislature, county administration, or union leadership. The attitudes of those in leadership positions proved crucial to the counties' ability to embrace the new ideas and paradigms of cooperative tools. Furthermore, in order to buy into the new cooperative relations, middle managers and line employees had to trust the intentions of both labor and management leaders. Even in counties where cooperative tools have been used successfully, the departments with a lower degree of labor-management trust have been slower to make the transition to new tools.

IMPACTS OF COOPERATION

Internal Process Improvements

The changes seen in government service delivery seem to be primarily internal in nature. Tompkins County, for instance, streamlined its intake processes for various social services. Genesee County instituted several policies that affect employee benefits, encouraging workplace efficiency and increased job satisfaction. The efficiency gains from internal restructuring are thought to "trickle down" to external improvements. The Genesee County Nursing Home, for instance, through its labor-management committee, has addressed staffing issues that are crucial to efficient functioning and effective service delivery.

Employee Morale

The second area where impacts have been significant is employee morale, which was uniformly reported by our informants to have improved under cooperative processes. Again, data for improvements are difficult to obtain, and most employee surveys were completed after new structures were implemented, and therefore lack a comparative benchmark. All counties stated the number of grievances has decreased, and the grievances that are filed are uniformly serious in nature, the less serious problems being resolved in other forums, due to improved communication and trust.

Cost Savings

Though gains and savings have sometimes proven difficult to measure due to a fear of budget cuts to agencies that report cost savings, the overriding sentiment is that cooperative efforts are resulting in real cost savings. Ontario County has documented at least one instance of large financial savings in its reduction of worker compensation costs due to a safety program implemented by a TQM committee. Genesee County's nursing home has become profitable again in part due to the efforts of its labor-management committee.

KEY ELEMENTS FOR COOPERATION

From the case studies, we have identified a number of elements that are necessary for cooperation to be successful:

Training

First, a substantial amount of time and resources were devoted to training labor and management leaders, and more often than not, legislators and line employees as well, in cooperative structures and processes. In Ontario and Tompkins Counties for instance, all employees are being trained in

total quality management concepts. Line employees were less likely to be trained in mutual-gains bargaining, which is used primarily by representatives of labor and management for the contract agreement. In Genesee County, for instance, while the assistant county manager was trained to facilitate the negotiation process, the employees were not trained prior to the switch to mutual-gains bargaining, and perhaps for this reason, the first contract negotiated by this method was voted down by union members. On the other hand, the Genesee County Nursing Home sponsored a half-day training session for the entire nursing home staff with a CSEA facilitator, which helped their labor-management committee become much more effective. Whether or not all employees were trained, training brought about a critical shift in how members of the organization viewed labor-management relations.

Local colleges and universities were valuable resources for training in these methods. Both Tompkins and Ontario Counties made extensive use of nearby educational facilities.

Leadership Commitment and Support

The counties we studied all shared the presence of an appointed, professional administrator to manage the transition to cooperative tools. However, one expert on local government told us that the form of government is less important than the administrator or leader's commitment to the cooperative process. A high level of emotional maturity is essential, as is the ability to work well with people and to get them to buy into the process. The case study counties possessed leaders who were willing to work with, but ultimately hold responsible, resistant managers. The commitment of union leadership was also an important factor. Without the willingness of the union officials in these counties to try new ways of working with management, cooperative processes would not have been possible.

The role of elected officials was significant only to the extent they were generally supportive and did not interfere with the process. We did not observe a high degree of involvement in cooperative tools on the part of county elected officials, with the notable exception of Tompkins County, where a legislator was actively engaged in developing the TQM initiative.

Additionally, in the three counties we observed a clear commitment to the *process* of implementing cooperative tools. Since gains from TQM, for instance, were not immediate, and could take several years after training to realize, the commitment of leaders to see the process through was essential to its success. Administrators' and union officials' commitment to labor-management committees as an effective vehicle for problem solving also seemed to be a significant factor in their success. Tools that yield faster results, such as mutual-gains bargaining, perhaps require less depth of commitment from county leaders. In all cases, however, all parties must buy in to the process. Given the levels of trust required, cooperative efforts are likely to be sensitive to attempts to undermine them.

Communication

Communication of the goals, structure, and roles of key players in cooperative processes is also important, both within the organization and in the larger community. Umbrella or countywide committees play important roles here as the central forums for sharing of information and ideas.

Creating public awareness of county efforts also may be desirable but was not emphasized in our case study counties.

Evaluation

Evaluation is essential to assure appropriate and effective implementation of cooperative tools and to create support among elected officials and the public. Better evaluation of the cooperative processes in all three counties is needed. For instance, in Ontario County cooperative relations are so strong that some perceive mutual-gains bargaining as an administrative burden that in and of itself may not add significant benefits. However, county leaders currently have no means to gauge MGB's effectiveness. Management in Genesee County indicated that evaluation was an area they hoped to address in the future. The private sector may be a source for evaluation tools that counties can use to measure the success of their efforts.

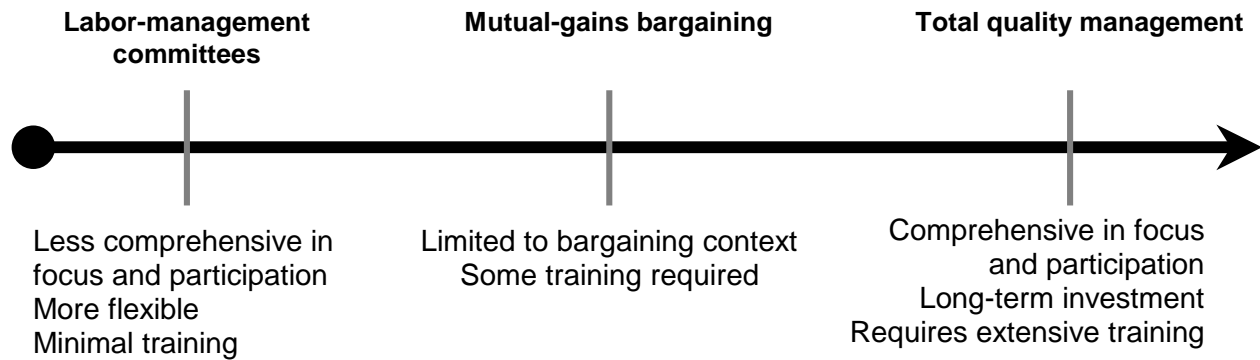
KEY DIFFERENCES BETWEEN THE COUNTIES

We recognized several key differences among the counties in the implementation of cooperative tools. First, the amount of money spent on training varied widely. Tompkins County had by far the greatest expenditures, almost entirely attributable to its TQM program. Tompkins' use of outside consultants on a regular basis also distinguished it from the other two counties. Genesee County, in contrast, only approached outside consultants on an infrequent basis. However, Genesee's labor-management committees required lower levels of training and hence less cost, compared to the formal TQM programs of Ontario and Tompkins. Interest in the process of workplace change rather than a focus on outcomes or products seemed to guide efforts in Tompkins County, perhaps partly because of its close ties to the academic community through Cornell University.

The level of involvement of elected officials and middle managers also varied. In Genesee County, middle managers may participate in the negotiating process and sit on labor-management committees. In Tompkins County, middle managers are well represented on total quality management committees. In Ontario, where the committees create a direct channel from workers to top management, it is less clear that middle managers are adequately incorporated into the structure. Tompkins is the only county in which an elected official sits on the countywide labor-management committee. In Genesee County, county management felt that by not participating in committees, elected officials maintained a beneficial distance from the process. Whether elected officials should be involved may depend on the extent of the changes being implemented; in a more formal and expensive process such as TQM, their participation seems more appropriate and essential, while it may not be necessary for internally focused committees.

CONTINUUM OF COOPERATIVE TOOLS

The three cooperative tools exist along a continuum based on the complexity of the tool, the level of investment required, and its degree of departure from traditional labor-management relations. The following diagram illustrates this continuum:



A government with labor-management committees may not choose to implement a TQM program, but a government without labor-management committees may not be wise to implement TQM as its first cooperative effort. Thus, the diagram may also be viewed as a time line of cooperative structures, indicating a progression from relatively simple tools such as labor-management committees to more complex, formal, costly, and comprehensive processes such as TQM. Other tools we did not observe in our counties could be added to this model, such as gainsharing.

LIMITATIONS AND FURTHER QUESTIONS

As tools for restructuring, the cooperative methods discussed here have several limitations. Their ability to affect the external policy environment is limited, so they are constrained by the political contexts in which they must operate. They also do not afford an opportunity for citizens to become more involved in government. Since public support for its activities is important to local governments, they should come up with ways for creating greater citizen involvement in their restructuring efforts.

Many questions emerged during the course of our study. First, what is the true impact of cooperative tools and processes on middle management? Much has been written about the downsizing of middle management in the private sector. Is this also the case in government? Second, what are the appropriate roles for citizens and elected officials in efforts to restructure government—through both internal and external methods? Finally, our cases only addressed examples of successful cooperative tools and processes in counties that had developed a significant degree of trust between labor and management. What are the outcomes of cooperative initiatives in counties that lacked this precondition of trust?

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APPENDIX A: KEY INFORMANTS

Steve Alviene, Deputy Director of Labor Relations, New York Civil Service Employees Association

John Bartow, Director, Division of Local Government, New York State Department of State

Franklin Bassett, Administrator, Livingston County Office of Aging

Kate Bronfenbrenner, Sr. Extension Associate, New York State School of Industrial Labor Relations Division of Extension and Public Service

Marcia Calicchia, Sr. Extension Associate, New York State School of Industrial Labor Relations Division of Extension and Public Service

Ken Crannell, Director of Research, New York State Association of Counties

John Crotty, Deputy Chair and Counsel, Public Employment Relations Board

Ron Dougherty, former County Chair, Tioga County

Kevin Flanigan, Supervising Public Employment Mediator, Public Employment Relations Board

Andrew Goodell, former County Executive, Chautauqua County

Todd Greci, Governor's Office of Employee Relations

Robert Hebdon, Assistant Professor, New York State School of Industrial Labor Relations

Scott Heyman, County Administrator, Tompkins County

Sally Klingel, Director, Programs for Employment and Workplace Systems, New York State School of Industrial Labor Relations Division of Extension and Public Service

Karen Macintosh-Frering, Labor Management Coordinator, Ulster County

Alan McAdams, Associate Professor, Johnson School of Management, Cornell University

Barbara Mink, Chair, Tompkins County Board of Representatives and four-year member, Tompkins County Leadership Council

Jeff Osinski, Project Director, New York State Association of Counties

David Pilliod, Assistant Director, Department of State, Division of Local Government

Jim Platner, Director, Chemical Hazard Information Program, New York State School of Industrial and Labor Relations Division of Extension and Public Service

Keith Stack, Special Assistant, Department of State, Division of Local Government

Jeff Swain, Assistant Deputy Comptroller, New York State Office of the Comptroller

APPENDIX B: CASE STUDY INFORMANTS

GENESEE COUNTY

Darlene Acker, CSEA Nursing Home Unit President
Jay Gsell, County Manager
Jack Pease, Administrator, County Nursing Home
Nancy Smith, CSEA General Unit President
Martha Standish, County Personnel Officer

ONTARIO COUNTY

Geoffrey Astles, Deputy County Administrator
John Garvey, Human Resources Director
Edward Grace, County Administrator
Robert Russo, President, CSEA Local 7850

TOMPKINS COUNTY

David Chase, President, CSEA Local 855
Scott Heyman, (former) County Administrator
Barbara Mink, Chair, Tompkins County Board of Representatives

APPENDIX C: INTERVIEW GUIDE

Project Description

This project is part of a graduate course on local government restructuring in Cornell's Department of City and Regional Planning. Acknowledging the fiscal and legal pressures on local governments in New York State and the importance of front-line workers in service delivery, we have chosen to focus on the role of labor-management cooperation in efforts to improve county government functioning. As an example of success, we would like to examine how cooperation developed in your county and the role that it played in bringing about changes in service delivery or in workplace systems. We have selected counties that have implemented a combination of mutual-gains bargaining, labor-management committees, and/or Total Quality Management initiatives. We plan to interview local officials, union representatives, and managers in order to create a case study investigating the cooperative labor-management programs you have implemented.

Confidentiality

We would ideally like to discuss the details of this interview, and subsequent analysis of your case, as openly as possible. For that reason, we are asking for your permission to quote and paraphrase this interview in our project. We will provide you with a draft of our interview notes—including any quotes we would like to use—and, if you wish, a copy of the case study itself, for your approval. In addition, in order for our research to be more useful to others, we would like to include your name in our report as a contact. We may be reached easily to discuss any confidentiality concerns, at (607) 255-6647 or by email at the following addresses:

Nicole Blumner nb42@cornell.edu
Lindy Burt mkb14@cornell.edu
Jon Gans jag33@cornell.edu
Lisa Goldberg leg8@cornell.edu
Kristin Guild kag24@cornell.edu
Young Sung Kim yk67@cornell.edu
Chang Kil Lee ck12@cornell.edu
Darth Vaughn dkv1@cornell.edu
Prof. Mildred Warner mew15@cornell.edu

County _____
Organization/Agency/Dept _____
Perspective L M O

Interviewer name: _____

Date: _____

Interviewee name: _____

Address: _____

Phone: _____ Fax: _____

Position: _____

Time started: _____

I. What tools are you using to develop labor-management cooperation?

1. Have you used a mutual-gains bargaining process?
 - a) If so, what was the impetus behind it?
 - b) Is the contract that resulted still in force?
 - c) Do you expect mutual-gains bargaining to be used in the future?
2. Do you have active labor-management committees in your county?
 - a) How do they (does it) function (for what functions or around what issues)?
 - b) Are they effective in solving workplace problems?
 - c) If so, what types of problems?
3. Do you have a TQM program?
 - a) How does it work? What departments are involved?
 - b) Are there mechanisms for implementing TQM committee recommendations?
 - c) Have any TQM committee recommendations been implemented?
 - d) Do you think the program is successful?
4. Are there other efforts to engage labor in decision making?

II. What are the necessary elements to build a cooperative labor-management relationship in local government in New York State?

1. What previous conditions, if any, existed in your county that made cooperation possible?
2. What challenges did labor and management face going into the process?
3. What type of training preceded the effort?
4. Who were the key players?
5. How do perceptions of labor and management affect the process?
6. Was privatization a factor in the decision to change the labor-management relationship?

III. What goals do local officials, labor, and management hope to achieve through cooperation?

1. How were these goals articulated?
2. What do you think were the goals of the other key players?

3. Were there any conflicts between goals of the different parties?
4. So far, have goals been met by cooperative labor-management initiatives?
5. Which programs have met expectations? Which have not met expectations?

IV. What impact does a successful cooperative program have on:

(A) future labor relations?

Are there new relational systems in place?

Permanent committees, new communication networks?

Are grievances handled any differently? Are fewer or more grievances filed?

Are there impacts on employee morale?

Are employees encouraged to innovate?

(B) service quality?

Are any objective measures of quality used?

If not, how *would* you measure the effects on quality, if you were to do so?

Are customers asked about their opinions of service quality?

If so, have they remarked of any change in service quality?

(C) cost?

Are there ways to determine whether the cooperative program results in cost savings?

Were there substantial costs involved in the implementation of the program?

**V. What do you wish you had known about this process before embarking on it?
What advice would you offer to others?**

-Key lessons?

-Unforeseen problems?

-Were there any particular resources that you found valuable?

**VI. Are there any available background documents (memos, contracts, newsletters)
which you could provide us?**

We will fax the interview summary to you on April _ and call you for approval shortly after. We do really want your comments, but we're on a very tight schedule so we'll be asking you for a quick turnaround.

The information you provide is very valuable to us, and we appreciate your time. Thank you!

Appendix C

Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

Authors: Nicole Blumner, Lindy Burt, Jon Gans, Lisa Goldberg, Kristin Guild, Young Sung Kim, Chang Kil Lee, Darth Vaughn, Mildred Warner
June 1998

Project Description

This project is part of a graduate course on local government restructuring in Cornell's Department of City and Regional Planning. Acknowledging the fiscal and legal pressures on local governments in New York State and the importance of front-line workers in service delivery, we have chosen to focus on the role of labor-management cooperation in efforts to improve county government functioning. As an example of success, we would like to examine how cooperation developed in your county and the role that it played in bringing about changes in service delivery or in workplace systems. We have selected counties that have implemented a combination of mutual-gains bargaining, labor-management committees, and/or Total Quality Management initiatives. We plan to interview local officials, union representatives, and managers in order to create a case study investigating the cooperative labor-management programs you have implemented.

Confidentiality

We would ideally like to discuss the details of this interview, and subsequent analysis of your case, as openly as possible. For that reason, we are asking for your permission to quote and paraphrase this interview in our project. We will provide you with a draft of our interview notes—including any quotes we would like to use—and, if you wish, a copy of the case study itself, for your approval. In addition, in order for our research to be more useful to others, we would like to include your name in our report as a contact. We may be reached easily to discuss any confidentiality concerns, at (607) 255-6647 or by email at the following addresses:

Nicole Blumner nb42@cornell.edu
Lindy Burt mkb14@cornell.edu
Jon Gans jag33@cornell.edu
Lisa Goldberg leg8@cornell.edu
Kristin Guild kag24@cornell.edu
Young Sung Kim yk67@cornell.edu
Chang Kil Lee ckl2@cornell.edu
Darth Vaughn dkv1@cornell.edu
Prof. Mildred Warner mew15@cornell.edu

County:

Organization/Agency/Dept:

Perspective: Labor Management Official

Interviewer name:

Date:

Interviewee name:

Address:

Phone:

Fax:

Position:

Time started:

- I. **What tools are you using to develop labor-management cooperation?**
 1. Have you used a mutual-gains bargaining process?

- a. If so, what was the impetus behind it?
- b. Is the contract that resulted still in force?
- c. Do you expect mutual-gains bargaining to be used in the future?
2. Do you have active labor-management committees in your county?
 - a. How do they (does it) function (for what functions or around what issues)?
 - b. Are they effective in solving workplace problems?
 - c. If so, what types of problems?
3. Do you have a TQM program?
 - a. How does it work? What departments are involved?
 - b. Are there mechanisms for implementing TQM committee recommendations?
 - c. Have any TQM committee recommendations been implemented?
 - d. Do you think the program is successful?
4. Are there other efforts to engage labor in decision making?

II. What are the necessary elements to build a cooperative labor-management relationship in local government in New York State?

1. What previous conditions, if any, existed in your county that made cooperation possible?
2. What challenges did labor and management face going into the process?
3. What type of training preceded the effort?
4. Who were the key players?
5. How do perceptions of labor and management affect the process?
6. Was privatization a factor in the decision to change the labor-management relationship?

III. What goals do local officials, labor, and management hope to achieve through cooperation?

1. How were these goals articulated?
2. What do you think were the goals of the other key players?
3. Were there any conflicts between goals of the different parties?
4. So far, have goals been met by cooperative labor-management initiatives?
5. Which programs have met expectations? Which have not met expectations?

IV. What impact does a successful cooperative program have on:

1. future labor relations?
 - a. Are there new relational systems in place?
 - b. Permanent committees, new communication networks?
 - c. Are grievances handled any differently? Are fewer or more grievances filed?
 - d. Are there impacts on employee morale?
 - e. Are employees encouraged to innovate?
2. service quality?
 - a. Are any objective measures of quality used?
 - b. If not, how *would* you measure the effects on quality, if you were to do so?
 - c. Are customers asked about their opinions of service quality?
 - d. If so, have they remarked of any change in service quality?
3. cost?
 - a. Are there ways to determine whether the cooperative program results in cost savings?
 - b. Were there substantial costs involved in the implementation of the program?

V. What do you wish you had known about this process before embarking on it? What advice would you offer to others?

1. Key lessons?
2. Unforeseen problems?
3. Were there any particular resources that you found valuable?

VI. Are there any available background documents (memos, contracts, newsletters) which you could provide us?

The information you provide is very valuable to us, and we appreciate your time. Thank you!

Cooperative Labor-Management Structures in Genesee County

Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

Authors: Lindy Burt and Lisa Goldberg

June 1998



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Genesee County is located in western New York State, between Rochester and Buffalo. It has a population of approximately 60,000. The county functions under a county manager who is appointed by a nine-member legislature. The main tools of labor-management cooperation being used in Genesee County are labor-management committees and mutual-gains bargaining. Through face-to-face and telephone interviews, we examined how these cooperative structures developed in Genesee and their role in helping county government function better.

The following people were interviewed for this study:

- Jay Gsell, County Manager
- Martha Standish, Personnel Officer
- Nancy Smith, CSEA General Unit President
- Jack Pease, Administrator, County Nursing Home
- Darlene Acker, CSEA Nursing Home Unit President

Labor-Management Committees

Mutual-Gains Bargaining

Necessary Elements for a Cooperative Labor-Management Relationship

Goals of Labor-Management Cooperation

Impacts of Labor-Management Cooperation

Lessons and Insights

Labor-Management Committees

The Origins of Labor-Management Committees in Genesee County

There are two main labor-management committees in Genesee County. The general unit labor-management committee includes most county departments, with about 320 CSEA members represented, and the Genesee County Nursing Home labor-management committee, which has about 150 CSEA member employees.

The general unit committee was started in 1991, and the nursing home committee was started during the late 1980s. The nursing home has its own committee because of the special nature of the services it provides. It also operates as an "enterprise fund," which means that its finances are separate from the rest of the county's departments. As an enterprise fund, the nursing home is able to keep the money it earns, but when it is losing money, it cannot draw on other county revenue. Currently, the home is earning money, which has enabled the county to invest in improvements in the facility.

The two committees operate within somewhat different contexts. In the late 1980s and early 1990s, the nursing home was losing money due to a change in the state's reimbursement policy for Medicare and Medicaid patients. It faced the prospect of being sold by the county legislature if it did not become self-sustaining on its own revenues. It was realized that the home had to change its mode of operating in order to survive, and that the cooperation and involvement of both management and labor would be necessary. The labor-management committee provided a good vehicle for the two groups to work together to try to improve the operations of the home.

With the general unit committee, management saw great potential in improving workplace practices through the more

cooperative structure provided by a labor-management committee. The county personnel officer approached the CSEA labor relations specialist, who agreed that establishing a committee was a good idea.

How Labor-Management Committees Work

The labor-management committees in the general unit and the nursing home work in a very similar fashion. They both meet once per month at a set time and day. In the nursing home, the union officers and stewards meet a week and a half prior to the monthly meeting to develop their list of items for the agenda. The union president and nursing home administrator then meet one week prior to the monthly meeting to discuss each other's proposed items for the agenda, and put it in its final form. Issues are not placed on the agenda unless agreed to by mutual consent. During this preliminary meeting, the nursing home administrator and union president are sometimes able to resolve certain issues, which don't require the input of other committee members.

While the authority of the nursing home committee is actually written into the nursing home unit contract, the authority of the general unit committee is not incorporated into the general unit contract, but is mutually accepted by labor and management.

The purpose of both committees is to serve as a forum for discussion and a vehicle for active improvement on management issues, labor issues, program ideas, and operations. The resolution of any issue requires consensus among all committee members. The committees do not address contract disputes or grievances. These matters are dealt with using standard procedure.

The permanent members of the general unit committee are the personnel officer, the county manager, the CSEA general unit president, and the labor relations specialist from the CSEA regional office. Two department heads and two additional union members also sit on the committee; these positions rotate in about three-year intervals to give different people exposure to the process and to the issues being discussed. The nursing home committee is comprised of the nursing home administrator (Jack Pease), the director and assistant director of nursing, the activities director, the officers of the union, including the president, vice-president, treasurer, secretary, and the head nurse.

Members of the county legislature do not sit on the committees or participate in the meetings. By not participating in the committees, the legislators can remain more neutral and objective with respect to the management and labor positions. The legislators are kept aware of the activities of the labor-management committees through meeting minutes.

Through the committees, many more union members are involved in labor-management initiatives than ever before. According to the president of the general unit, currently about 25 percent of the 300+ employees in the general unit participate in some way through subcommittees and various programs. Within the nursing home unit, union members also serve on various subcommittees organized around different program initiatives. Additionally, according to the nursing home unit president, employees are always encouraged to bring their ideas and concerns to the committee representatives.

Creating Solutions to Workplace Problems

One of the greatest concerns of the nursing home is to ensure sufficient staffing 24 hours a day, seven days per week. Its committee has developed such initiatives as an incentive program for attendance and a voluntary work program. Because it is crucial to the operation of the nursing home that there be sufficient staffing at all times, management has the right to mandate employees to work overtime or to come in on their days off when there exists a shortage of staff. The voluntary work program allows the employees to "volunteer" (with pay) to work extra hours at their own convenience. After working a certain number of "voluntary" hours, employees are then eligible to be taken off of the mandate list during the upcoming quarter. The nursing home committee has also served as a forum to discuss worker safety issues during building renovations.

One of the most significant programs developed by the general unit committee is the sick-leave bank. Through the sick-leave bank, employees may choose to donate some of their allotted sick days to the bank, which can be used in the future by any employee who needs to take an extended medical leave. This program serves as a close substitute for

long-term disability, which is not provided to employees of the general unit. Other programs initiated by the general unit committee include a volunteer tuition reimbursement program, which grants employees who perform community service tuition credits for their family members at the local community college; a job-share program; and participation in Make-a-Difference Day, a national community service day. The labor-management committee also started a newsletter for county employees, which is partially funded by CSEA.

Through labor-management committees, the management of the nursing home and other county departments represented by the general bargaining unit have worked cooperatively with labor to develop innovative ways to improve productivity, efficiency, and flexibility in the workplace. Such initiatives have a positive effect on the county's ability to deliver services to the community.

Mutual-Gains Bargaining

The Origins of Mutual-Gains Bargaining in Genesee County

Mutual-gains bargaining was first tried in the general unit in 1996. The assistant county manager was trained by Cornell University's School of Industrial and Labor Relations Extension, and he facilitated the negotiating process. Jay Gsell, County Manager, and Nancy Smith, President of the Local CSEA General Unit, had just taken their positions at the county a few years prior, and were very interested in trying a new approach to contract negotiations.

The first tentative agreement negotiated under mutual-gains bargaining was not accepted by the union membership. Many members were very skeptical, and it took time for them to trust and accept the process, which was completely different from the way previous negotiations were conducted. However, employees eventually came to accept the process, and in 1997 the general unit contract was successfully negotiated using mutual-gains bargaining.

The nursing home does not use mutual-gains bargaining. Labor is not yet interested in implementing the process.

How Mutual-Gains Bargaining Works

The mutual-gains bargaining process requires that both parties reveal their true interests rather than defending their positions. After this is done, the specifics are discussed. For labor, the priority is in determining what they need in order to achieve a contract that will provide general satisfaction to the greatest number of people. Management needs to consider the expectations of the elected officials they represent.

Both labor and management agree that the mutual-gains bargaining process was more productive than any previous negotiations. There was more input, openness, brainstorming, and problem solving among the participants. The negotiations were a continuous, open dialogue between the two sides, with no side discussions taking place. Even the lunch break was taken together. Another benefit of mutual gains is that it greatly accelerated the negotiations process. While typical contract negotiations can take up to six or seven months, the most recent contract was negotiated in about a month. By revealing their true interests, each group comes to a better understanding of the other's position. Participants look for ways to mutually resolve the issues, instead of wondering what they will have to concede. County Manager Jay Gsell also noted that mutual gains helps facilitate identification of the sticking points in the issues.

In coming to agreement on a contract, although not every interest was satisfied, participants came away from the process feeling as though a great deal had been accomplished. Because of the cooperation that is inherent to the process, resentment and hurt feelings are avoided. Agreement is easier to achieve and people feel better, even about the things that did not make it into the contract.

Necessary Elements for a Cooperative Labor-Management Relationship

Trust and Openness

In order for the county to use mutual-gains bargaining and labor-management committees, trust must exist between labor and management. Everyone involved in labor-management cooperation concurs that keeping to agreements once they have been made is one of the most important elements in building trust. For union officials, in a situation where

there are preconceived notions about "the union," delivering on promises you've made is key to allaying the suspicions of management and building trust. Nancy Smith used this approach when she became the CSEA general unit president. It took some time, but eventually management started to understand that they could work with her on the basis of trust.

In 1996, new union officers were elected at the nursing home, and they proved to be more willing to hold to agreements than the previous union leadership. Management concurs it is very important that both sides "stick to the course" of whatever has been agreed upon.

Both management and labor must be open about their interests and positions. Maintaining an open-door policy and encouraging employees to approach management when they have concerns is important to fostering labor-management cooperation. County Personnel Officer Martha Standish says she believes that openness and honesty are the best ways to build the trust necessary for cooperation. However, she acknowledges that sometimes this openness backfires. All it takes is one person to make a comment, and it can affect people's trust in you. When you are trying to bring together two groups that have traditionally been very adversarial toward one another, trust is very fragile and takes time to build. Yet she still holds to a policy of being "very available and honest, telling things like they are-even if sometimes people don't like to hear it."

The Role of Commitment and Leadership

People who are involved in these joint efforts must be committed to the county. Both management and labor must think beyond what is beneficial to their own interests and instead think about what is good for the county as a whole and for their total membership. Both labor and management feel that it is difficult to get people to shift to this new way of thinking.

Before efforts at labor-management cooperation can even begin, the key people involved must see the value of these efforts. There must be a commitment on the part of both labor and management to invest time and effort in the meetings and in the initiatives that emerge. Personalities of the leadership can influence whether labor-management committees are adopted. In the nursing home, the turnover of the union leadership from a president who had operated for a long tenure in an adversarial manner to a president with a very different style was very important. Similarly, Nancy Smith has had a very large influence as president of the CSEA general unit.

There must be a willingness to work things out on the part of the key individuals. In Genesee County, the individuals active in labor-management efforts come to the table with a real desire to work together to resolve workplace issues. One indicator of commitment on labor's part is that all the current officers in the general unit plan to run for reelection this year. They all feel very positive about the way things are going and want to stay involved.

In departments where management and staff do not see the value in trying to address issues that fall outside of their contract or outside of day-to-day operations in a nontraditional manner, labor-management committees are difficult to establish. The county went as far as bringing in a PERB mediator to try to help facilitate the development of a labor-management committee in one of their non-CSEA units, but it was unsuccessful. However, this department's management has recently turned over, as has the union leadership, and Martha Standish is hopeful that it may now be possible to start a labor-management committee there.

Changing Perceptions and Attitudes

Labor and management perceptions clearly play a role in how effective cooperation can be. At the nursing home, the belief among unionized workers was that when management spoke to other people, such as the legislature, they were critical of the union. Management's perception was that the labor-management committee was something that they had to do, but not really a useful forum for solving problems. Both of these perceptions needed change before cooperation could occur.

As Nancy Smith says, in today's workplace, "we need to realize that change is inevitable." One of the challenges of cooperation is that people often find it difficult to accept that sometimes things have to change, even if they might prefer the status quo.

The elected officials agree with the concept of labor-management cooperation, but sometimes have concerns about management too often taking the side of labor. Additionally, there is also some degree of dissatisfaction on the part of some union members who are less knowledgeable and enthusiastic about the process.

Goals of Labor-Management Cooperation

The goals of labor-management cooperation in Genesee County are not written down anywhere, and the individuals we spoke with each focused on different goals.

Management describes the goal of labor-management committees as fostering an environment of equality among and between labor and management, encouraging everyone to bring their ideas forward. One important purpose of committees is to empower employees, by letting them know their opinion is valued and encouraging them to share their ideas for improvement. Management strives to have good, functioning labor-management committees, a good understanding with the union officials, and an established basis of trust, so they will avoid grievances, which are time-consuming and costly. However, the county manager notes that the bottom line is the client-the person they're serving. Anything they do must be done with the final product (the service) and the customer (the taxpayer) in mind.

The union has a goal of educating people on the benefits of cooperative efforts. Believing that most employees sincerely do not want an adversarial relationship, the CSEA general unit president is getting more people involved in some way in the union, and in labor-management committees. She also hopes to establish smaller labor-management committees within county departments.

According to Administrator Jack Pease, one of the main goals at the nursing home is to address the issue of interpersonal relationships. Everybody needs to be treated respectfully in order for things to work, so they are going to be looking more closely at relationships in the workplace. The nursing home staff works in a very demanding environment, which puts a great deal of pressure on the employees, and he believes improving work relationships can help improve overall performance.

Impacts of Labor-Management Cooperation

The county doesn't have objective measures of the effects of labor-management cooperation. Measurement of success should be implemented through the cooperative process.

The union leadership believes that cooperative efforts have made workers more productive and have improved relationships between people in the workplace. Because of the programs they have implemented, the workplace is more family-oriented. For example, you can take a sick day to care for a sick child or spouse.

Not many grievances are filed in Genesee County. When a problem arises, the general unit president will call the personnel officer to discuss it, and they will go from there.

Fortunately, they have not had much downsizing-most of their workforce reductions have occurred through attrition. Privatization has not played a significant role in the county. While some employees have perceived it as a threat, very few, if any, services in the county have been privatized to date.

Currently, however, the county legislature is considering privatization of the county Mental Health Services. Cuts in state aid have put the agency under fiscal pressure. Together, labor and management in the agency responded to the problem by forming a joint action committee to work on alternatives to privatization. The general unit president works at Mental Health Services and has been heavily involved in this effort. The process has not been negative or adversarial; employees have been involved and have agreed to make changes, some of which have been implemented already. While a decision has not yet been made, it is very possible that privatization will be avoided because of this cooperative effort.

The nursing home unit president believes labor-management cooperation enables management and employees to see the "big picture." It broadens everyone's perspective on the functioning of the facility, and is a good forum for bringing people together and getting to the root of challenges in operations.

Service Quality

The county has not implemented formal measurements of customer satisfaction with their services. Service quality monitoring and evaluation is probably one of the next areas that the county will be getting into. County Manager Jay Gsell believes that "it's a priority to understand the needs of the customers. Quality of service, reasonable cost and being treated fairly and equitably are the priorities in service delivery."

Personnel Officer Martha Standish notes that programs like TQM are great, but they take a great deal of time and effort. They have tried instituting quality workgroups in the Department of Social Services, but they have had a difficult time. Right now they have one self-directed workgroup there, with about five to seven people.

Especially in the nursing home, the quality of service delivery is critical. Nursing homes have changed a great deal—they must operate with much more flexibility in service provision than in the past. So workplace change is happening within the context of a very different environment. They need to keep employees involved, and use the labor-management committee. It doesn't work to make changes in a top-down manner.

Every year the state health department surveys the nursing home. They are trying to use the state survey to do their own evaluation, and they are trying to come up with other ways to measure quality internally, using survey of residents or their family and other information.

Cost

The effects of labor-management efforts on cost aren't formally quantified. Martha Standish and Nancy Smith both suggested that the sick-leave bank probably contributes to cost savings, since it encourages people to take fewer paid sick days. There is also a general impression that labor-management cooperation leads to increased productivity and less supervision time, which ultimately lead to cost savings.

In the county nursing home, it is easier to determine costs, as the home's finances are independent from the rest of the county. They are currently making money and are able to pay their bills, so this indicates that the labor-management cooperation has had some positive financial effects.

Lessons and Insights

Training has played an important role in the county's efforts with the labor-management committees and mutual-gains bargaining. People are often skeptical of a new way of operating, and outside assistance can be crucial in resolving such skepticism. Cornell's Industrial and Labor Relations (ILR) Extension and the New York State Public Employee Relations Board (PERB) are very good resources.

Martha Standish also believes that it's important that people maintain a "cooperative spirit." Disagreements will still occur, yet people must realize that there is a forum for resolving these disagreements. Labor-management committees and mutual-gains bargaining provide excellent vehicles for arriving at these resolutions.

For the nursing home, the support of and flexibility allowed by the county manager and personnel officer were important to the success of the labor-management committee. Training also helped labor and management at the home to use the committee more effectively. For some time, the members seemed to get stuck on the same old issues, meeting after meeting. A trainer was brought in from CSEA who showed them how to run the process in a more productive manner. The union president recommends distributing the monthly meeting agenda to all committee members prior to the meeting. This ensures no one is surprised or caught off guard by the issues that come up at the meeting. It also allows participants time to gather any information they feel might be relevant to the meeting discussion.

Finally, Genesee County is essentially a small community where connections are close. While the county's community service programs developed out of the labor-management committee, they also have served to strengthen the cooperative character of relations between everyone involved in county government.

Creating "Win-Win" Situations: The Case of Ontario County

Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

Authors: Nicole Blumner and Darth Vaughn

June 1998



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Twenty years ago in Ontario County, labor-management relationships were confrontational, and walkouts during contract negotiations were not uncommon. Ontario County was then one of several New York counties to have legislative determinations (the Board of Supervisors could impose contracts on the bargaining units), a practice that was very unpopular with employees and was later discontinued. Beginning in the 1980s, changes in management and union leadership led to a new interest in building "win-win" situations that characterize today's more cooperative labor-management relations in Ontario County. The County has built cooperation through a variety of structures and tools, including labor-management committees, a "Service Excellence" total quality management program, and mutual-gains bargaining.

The following people were interviewed for this study:

- Edward Grace, County Administrator
- Geoffrey Astles, Deputy County Administrator
- John Garvey, Human Resources Director
- Robert Russo, President, CSEA Unit #7850

Labor-Management Committees

The Service Excellence Program

Mutual-Gains Bargaining

The Right Climate

Privatization, Engaging Labor, and Performance Measurement

Key Lessons

Conclusion

Labor-Management Committees

Since the early 1980s, labor-management committees have been key for developing successful day-to-day labor-management relations. These committees function at countywide and departmental levels and around specific issues, such as safety and health. The committees provide an opportunity for workers to bring their issues to the highest level of management in the county. Currently, the county administrator as well as the deputy administrator, the director of human resources, and several local union presidents, sit on the countywide committee. However, county administrators say they are gradually decentralizing the work of these committees so that individual departmental committees handle most of the work.

The committees meet monthly and have dealt with many day-to-day workplace issues, such as work scheduling, flexible hours and overtime, procedures for dealing with employee absences, and treatment of employees by supervisors. They also deal with long-range planning issues related to the workplace. For instance, prior to the recent construction of the new human services building, the countywide committee met with the architects to develop a building program that suited their needs. Committees do not deal with issues formally dealt with in the labor contract, such as compensation and benefits. Agency-wide committees have formed in the Social Service and Public Works Departments, and a committee is currently forming in the County Nursing Home.

County managers laud the committees as being very effective. Although it sometimes takes a couple of months for people to get used to the idea and build trust, both labor and management agree the committees are useful in solving

daily issues. Now issues don't build up until contract renegotiation. Instead, a letter of agreement can be issued, ultimately allowing for a smoother bargaining process. In fact, one union leader reported that the existence of the labor-management committee was a form of "preventive medicine" that allowed him to resolve more workplace issues as they occurred. Labor-management relations were so improved by the committees that he did not have to bring many minor issues to the committee meeting. Officials also point to a reduced number of employee grievances filed, which is likely a result of the committees' efforts. For both labor and management, this means increased time to deal with matters other than labor disputes. Furthermore, labor was able to achieve its goal of gaining greater employee involvement in the decision-making process.

One drawback of the committees is that they effect a loss of authority for middle managers that some resent, since employees are now empowered to bring their concerns directly to the highest level of management. Furthermore, the County only trains the top labor and management leaders in the concepts and techniques of labor-management committees, effectively shutting out middle managers from the process. However, despite middle managers' resistance, both labor and management leaders view the committees as successful endeavors. County leaders say they are taking steps to train middle managers in cooperative processes with the goal of getting them to buy into the new structures. However, training is expensive, and so it may not be possible to train every manager unless proven necessary for success.

The Service Excellence Program

Another cooperative initiative that has been successful in Ontario County is the Service Excellence Program (also known as total quality management or TQM). This program was initiated in 1993 with union participation in order to promote "customer satisfaction by continuous improvement through employee involvement." Initially both labor and management leaders as well as county legislators were trained by Rochester Institute of Technology staff. Initial training cost \$35,000 for employees and \$50,000 for supervisors, managers and elected officials. The county gradually built its capacity to do training in-house, and today all county employees have been trained in Service Excellence concepts.

The Service Excellence program is structured around a countywide steering committee that acts as a core planning group, setting the direction for the program and coordinating the activities of the subgroups. Four of the 37 departments have operational workgroups, which have the same organizational structure as the steering committee and coordinate their corresponding functions.

There are currently six subgroups that perform the following functions:

- **Trainers and Facilitators:** trains new employees in service excellence concepts.
- **Training and Development:** provides technical tools and training to TQM teams.
- **Measurement and Assessment:** surveys and measures customer and employee satisfaction; develops measures for performance standards.
- **Team Chartering:** selects projects for service excellence efforts; provides mentoring and assistance to teams in improving job performance.
- **Communications:** shares information and ideas through a quarterly newsletter; publicizes the program, and increases awareness of program success.
- **Recognition and Reward:** provides rewards for good work, incentives to improve operations, with the goal of better service as a result. Rewards include free dinners at area restaurants, pins for long-serving employees, and engraving employee names on a plaque in the county courthouse.

The Service Excellence initiative has resulted in "win-win" situations for labor and management. It has also saved county taxpayers money. The workplace safety team project, for instance, began with county safety coordinators identifying high-risk job duties, such as driving and heavy lifting, based on local and national accident and injury data. Employees performing these tasks were then trained by professionals in safer driving and lifting techniques. This initiative resulted in a 37% reduction of OSHA-recordable injuries in the county from 1994 to 1997. Lost days were reduced by 60% in the same time period. As a result of these safety improvements, a special tax assessment to pay for workers' compensation, to be spread out over five years, was paid off in only three due to reduced injuries, saving

taxpayers \$1.5 million. Furthermore, employees received an important morale-building message-that management truly cares about their safety on the job.

Another example of the benefits of service excellence is the county sheriff's department, one of only two sheriff's departments in the state accredited by CALEA (Commission for the Accreditation of Law Enforcement Agencies), which requires that 800 standards be met before granting accreditation. Managers emphasize that through service excellence, the county aspires to have the highest professional law enforcement standards in New York State, a goal borne out by the fact that the county jail is also nationally accredited. It's a win-win situation for law enforcement and citizens alike, since there is a lessened liability to the community for lawsuits from dissatisfied citizens. A string of deficiency-free state auditor's ratings in the nursing home and in the home health program further illustrate the quality improvements engendered by the service excellence program.

This is not to say that service excellence is without its drawbacks. Training is expensive and the results are not always immediate. The work groups have experienced varying levels of success, according to the human resources director. In particular, there is a need for greater employee-based innovation in both health and social services departments, both of which have experienced greater resistance from middle managers.

Finally, it should be noted that the work of the Service Excellence committees does not overlap with that of the labor-management committees. However, in a small organization such as Ontario County, there is overlap among the key players in the various groups that allows for communication between them.

Mutual-Gains Bargaining

A third tool, mutual-gains bargaining, has been used in the county to negotiate labor contracts since 1994, when the county used this process to re-negotiate four contracts with CSEA. Training, provided by staff from the New York State School of Industrial and Labor Relations at Cornell University, helped to educate both management and labor about the techniques of mutual-gains bargaining. Results were positive, and both labor and management say they would use mutual-gains bargaining again in future contracts. Through the mutual gains process, they both have become more adept at cooperative skills, such as listening to each other and providing information up front.

Union leaders extolled the benefits of mutual gains, although they acknowledged the difficulty of adjusting to providing information up front. Sounding a less satisfied note, one manager noted that mutual gains is a "tedious process" and might not be used in the next contract, now that trust levels are high, making formal processes for information-sharing less necessary. Mutual gains has proven valuable to smooth negotiation contracts, but as another manager put it, "it is the respect and mutual trust developed the other 11 months of the year that really matters."

The Right Climate

There were several pre-existing conditions needed to build cooperative labor-management relationships in Ontario County. Above all, it was willingness of both labor and management to risk upsetting a stable but fundamentally adversarial relationship to move towards a more cooperative, "win-win" model of relations. To do so, county leaders focused on the county's changing needs and saw the value of changing the status quo in order to "be the best", as one manager said.

There was some initial resistance to the Service Excellence program, for example, on the part of the Board of Supervisors. They were skeptical of, in the words of one manager, "another one of those touchy-feely programs". Today the legislators are much more supportive of the program, but as elected officials, ultimately they are most interested in the bottom line. Since improvements are sometimes hard to quantify, this can be a barrier to gaining their endorsement for new initiatives.

Some employees and middle managers have also remained uncomfortable with the new cooperative outlook. Middle managers may rightfully believe they are being cut out of the decision-making loop, and that their jobs are threatened as a result. However, county leaders say this resentment has diminished over time, as people have gotten involved and helped to solve problems. However, some leaders wished they had made more effort to train middle managers before cooperative processes were instituted. Some county officials believe it may take up to ten years for a full transition to a

new philosophy of cooperation.

Support from union leadership has been more uniform, especially in regard to safety, which is also a top priority for national AFL-CIO leaders. Service Excellence parameters have even been incorporated into the most recent labor contract. Still, leaders on both sides remark that some people are resistant to change of any kind, and that it takes time to build the trust and teamwork necessary for change.

Privatization, Engaging Labor, and Performance Measurement

Privatization is a contentious issue that can stymie even the smoothest labor-management relations. Ontario County has successfully dealt with privatization issues by bringing labor into the process. When the county receives an unsolicited offer to privatize a particular service, as it has for the county landfill, nursing home, and home health care, both management and labor are involved in making the decision. In the case of home health, employees are giving input to an outside consultant hired to study the costs and benefits of privatization. County administrators consider the input of employees and the consultant alike before making a final decision.

As a result of the decision-making process, the landfill and nursing home have remained county-run, and the study of home health care is ongoing. County officials, however, do make it clear that just because a service is not privatized today does not mean it can't be in the future. If the private sector can provide the service cheaper and better, according to county management, then the service will go private. This belief, in the words of union leaders, is a "constant challenge," but they are glad to have the opportunity to conduct their own research and bring the results to the table to discuss with management in a cooperative setting.

In another effort to engage labor in decision making, Ontario County union (CSEA) representatives serve on the search committees for new county administrators. The present County Administrator was chosen this way, as was the Director of Planning. County management and the union also cooperated in developing a new cafeteria health plan, which, after a year-long education period, now allows workers to choose their own benefits package.

The effects on employee morale and citizen satisfaction of Ontario's cooperative programs have been positive, but have only been quantified to a limited extent. Officials cite the difficulty of finding objective measures of performance quality. The county has obtained some information through a "Citizen Survey" and an "Employee Survey" conducted under the auspices of the Service Excellence program. The results of the surveys indicate that both citizens and employees are generally satisfied with county services and workplaces. However, there was no survey taken prior to implementing the changes. Nor was the data compared to national norms. While attitude change may be difficult to quantify, the County is able to show clear instances of cost savings in particular departments, such as the workman's compensation tax windfall. However, the County still does not have a way to measure cost savings on an inter-agency level.

Key Lessons

Cooperative labor-management structures have had a short but productive existence in Ontario County. Several key lessons have emerged, according to both labor and management leaders:

- It may be tempting to jump into the latest trendy program, but few people realize the amount of work needed to sustain the effort. Begin by understanding the level of commitment needed to implement these programs.
- It takes time to build a cooperative labor-management relationship. There is no such thing as a quick fix. However, significant success was achieved in Ontario County in just three years of service excellence and mutual gains.
- In any negotiation, it is important to make sure the other side looks good. This mindset can lead to a more productive negotiation process.
- The right people need to be at the table for a successful result. If labor leaders don't represent employee's true interests but defer to management, for instance, the negotiation will be futile. The people at the table also need to have the authority to make a final decision.
- One group can adhere to its principles and still maintain a regard for the other group's interests. There can be mutual gains in the negotiation process.

- Middle management must buy into the process and be trained in the cooperative philosophy. Even if top management buys into the idea, middle managers need to support it. Leaders should not be afraid to make ultimatums if middle managers continue to resist changes.
- Attain small victories like safety improvements, and build on those successes to make broader changes.

Certain resources were especially helpful to both labor and management in getting the cooperative process started. First and foremost, they did extensive background research on each initiative. For instance, county leaders recruited an advisory council of eight business people who use Service Excellence in their firms. This council continues to provide information to the county about private sector innovations that improve performance and service. Managers cited the importance of looking to the private sector to learn about successful methods for building labor-management cooperation.

Area educational institutions were also a valuable resource. The Finger Lakes Community College Business Institute (FLCC), the Rochester Institute of Technology College of Continuing Education, the Cornell School of Industrial and Labor Relations, and the Center for Government Research, a nonprofit public-policy consulting firm in Rochester, all aided the process through information and/or training. The FLCC, for example, houses an Excellence in Government Institute, which offers all county employees free certificate programs in supervision, customer skills, and workplace skills. Course topics include conflict management, problem solving, meeting skills, and tools for process improvement. On a national level, a summer program of the Institute for Local Government at the University of Virginia gave officials a larger perspective on government restructuring efforts around the country.

Conclusion

Instituting cooperative processes involves a culture change, an evolution in the way work systems are designed. It does not occur overnight, nor without careful preparation. In order to effect changes in working relationships and labor-management relations, managers, union officials, legislators, and employees need to be trained on the philosophy behind cooperation. Both parties need to work together continuously to implement and effectively administer change.

Labor-management cooperation in Ontario County is a testimony to the leadership of both the union and management in seeking better ways of working and new paths to success. Ontario County's example shows that cooperation does not have to compromise or deny the identity of either party. However, cooperative structures are not panaceas. Conflict may still arise, and if handled correctly, can spark creativity and change. Ontario County's example demonstrates that labor-management cooperation can provide a better way for government to function effectively.

Cooperative Labor-Management Restructuring Tools in Tompkins County

Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

Authors: Jon Gans and Kristin Guild

June 1998



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Tompkins County is located in the Finger Lakes region of New York State at the base of Cayuga Lake. It has a population of approximately 95,000, and operates under a county administrator who is appointed by the fifteen-member elected Board of Representatives.

In Tompkins County, the primary focus of cooperative labor-management relations is a total quality management initiative called Partners for Quality. All labor-management committees are implemented under the structural umbrella of the Partners for Quality initiative. Mutual-gains bargaining is another tool used in Tompkins County. However, the scope of mutual-gains bargaining is not as broad as the Partners for Quality program nor as central to day-to-day decision making and service delivery.

The following people were interviewed for this study:

- David Chase, President, CSEA Local 855
- Scott Heyman, County Administrator
- Barbara Mink, Chair, Board of Representatives

Labor-Management Committees

Mutual-Gains Bargaining

Benefits of Labor-Management Cooperation in Tompkins County

Key Lessons and Insights

Conclusion

Labor-Management Committees

The Origins of Labor-Management Committees in Tompkins County

Labor-management committees have long been implemented in an ad hoc manner in Tompkins County. There was a clause in the standard labor contract which allowed for creating labor-management committees to resolve workplace conflicts or address specific projects, and labor-management committees were occasionally used in that context. There was also an Employee Council (comprised primarily of employees) which served as a venue for communication.

These committees set the stage for implementing a formal total quality management program in the county in several ways. First, they demonstrated to employees, managers, and elected officials that cooperative structures could be effective. Second, the ad hoc committees on which any employee, union or non-union, could serve and which were beginning to address contract matters such as terms and conditions of employment, represented a threat to the authority of the CSEA Local 855, which bargains for all county employees. Thus, when county managers wanted to formalize labor-management committees and subsume them under a total quality management initiative, it was in the union's interest to work to negotiate an exclusive agreement between the county Board of Representatives and the union. At that time, the other existing cooperative structures such as the Employee Council were disbanded.

How Labor-Management Committees Function Now

Under the total quality management program, there is a nested system of labor-management committees; a hierarchy stepping down from the Leadership Council, to departmental committees, to cross-functional project teams.

The umbrella committee is the Leadership Council which directs the implementation of the program and provides structural organizational support for departmental labor-management committees operating under the program. The large departments in the County, such as the Department of Social Services, the Health Department, and the Probation Department, each have a departmental labor-management committee which addresses general workplace matters and formulates policy recommendations designed to improve the efficiency of the department. Cross-functional project teams are created to work on a particular project such as coordinating intake systems for welfare and other social service recipients.

Partners for Quality

In 1993, county administrators and elected officials decided to formalize the cooperative structures in the county and implement a more comprehensive mechanism for cooperative decision-making: the Partners for Quality program (also known as total quality management or TQM).

Tompkins County Administrator, Scott Heyman, had been interested in the concept of TQM for a number of years, but information about implementing total quality management in the public sector was difficult to find. After some research of successful examples of total quality management in the public sector in Minneapolis, Minnesota, and Madison, Wisconsin, the Board agreed to hire Marcia Calicchia from the School of Industrial and Labor Relations (ILR) at Cornell University and the Program for Employment and Workplace Systems (PEWS) to assist in planning the implementation and conduct employee training. These consultants were chosen due to their jargon-free and labor-oriented approach to TQM. This perspective on total quality management was, and still is, very important to the goals of the county.

Shifting from Autocratic to Cooperative Work Systems

Barbara Mink, Chair of the Board of Representatives, described total quality management as "an absolute visceral change in the way [we] react to problems and the way [we] take initiative for change." As a result of the Partners for Quality initiative, many managers have shifted from an autocratic way of directing operations to one that is more cooperative. This change in management style is beginning to impact all departments. Almost everything that is done in Tompkins County now is done through a labor-management framework. Total quality management has impacted Tompkins County employees and managers in a profound way; a higher degree of communication and cooperation is now part of the culture in Tompkins County.

Structure of the Partners for Quality Program

There are three primary components to Partners for Quality:

1. The Civil Service Employees Association (CSEA) Local 855 and the Tompkins County Board of Representatives spent a year negotiating an agreement establishing the labor-management partnership. The agreement outlines the guiding principles and overall expectations for the initiative. The agreement is still in force.
2. The Leadership Council - a labor-management committee which guides the implementation of the Partners for Quality program and provides structural, organizational support for departmental labor-management committees operating under the program.
3. Every employee, manager, and legislator in Tompkins County is trained in total quality management techniques and work processes. The goal is to provide training that crosses formal organizational boundaries. Marcia Calicchia and her colleagues have trained twenty in-house facilitators in TQM techniques and several people within the county now have leadership roles with the program.

Tompkins County has invested heavily in training for this program. Between 1994 and 1997, the county spent just over \$300,000 for outside consultants to conduct training. In 1998, the county will spend an estimated \$170,000 for consultants to complete the bulk of the training (for all departments except the sheriff's department which is

independent of other county government). Since 1997, in-house costs have been around \$100,000. These costs will drop dramatically after 1998, when all employees, managers, and elected officials have been trained in total quality management techniques and only training for new employees and refresher courses will be necessary.

Successes

Certain projects are ideally suited for joint decision-making. It can be a time-consuming process, but the tangible results are often worthwhile.

Example - Human Services Building

In December of 1997, Tompkins County completed construction on a new building to house the Department of Social Services. The building was planned using TQM methods with a great deal of employee involvement in decision making. The old building had inadequate ventilation and a lawsuit had been filed by employees which prompted the search for a new facility.

When decisions such as these were made in the past, a committee of five legislators was chosen to oversee the project without representation from labor. When the Board announced the formation of this committee, union representatives requested labor's involvement in the design and construction of the facility. The size of the preliminary planning committee grew to twenty-one members and, although it was large, the contribution of labor to the overall project resulted in an extremely functional building.

The process took four years from conceptualization to completion. Most importantly, a lot of the controversy that usually accompanies this kind of dramatic change was eliminated. When the committee was first established, labor expressed some fear and anxiety toward the project. These concerns were largely dealt with in the context of the various labor-management committees that were formed.

There were at least three committees established to construct the building: a stakeholders committee comprised of building occupants (both labor and management) to do the preliminary planning of what was needed in a new building, a building design committee which determined room sizes, color scheme, carpet types, etc., and a building construction committee which organized and supervised construction. Barbara Mink reported: "[I]t was extremely labor intensive, but not agonizingly so, and it resulted in the best building project we have ever had."

Limitations

Labor-management committees and total quality management methods can only function well when committee authority is clearly-defined and consistent.

Example - Downtown Ithaca Parking

A county labor-management committee was formed to address the lack of employee parking in downtown Ithaca, and was charged with the task of making recommendations to the Board of Representatives. The parking committee did not have jurisdiction over expenditures; so the members could not recommend putting up a gate that costs \$20,000, for example, without going through the Board. However, the committee was given the authority to determine the policies for county parking lots. The committee has recommended that several parking spaces currently reserved for Board members be reassigned to other county employees. The Board is poised to reject the committee's recommendations.

The labor-management committee in this case does not have the authority to determine a policy that the Board of Representatives does not like. Situations like this which give authority only to take it away can undermine cooperative efforts and slowly-developing trust. To prevent failures, the role and authority of committees should be clearly defined from the outset, and elected officials must be as committed to the process as others involved.

Mutual-Gains Bargaining

In Tompkins County mutual-gains bargaining techniques have been instinctively used for many years. In 1995, County

administrators decided to formalize a mutual gains approach by training employees in the technique. Bernie Flaherty of the School of Industrial Labor Relations at Cornell University trained approximately 300 of 720 county employees in mutual-gains. Now all bargaining units other than the sheriff's department utilize mutual-gains techniques for all terms and conditions except salary.

Mutual-gains bargaining is not a panacea for Tompkins County. The impact of using this tool depends on the commitment of the participant as the President of the CSEA Local 855, David Chase pointed out:

Mutual-gains bargaining can be whatever you want it to be. Some people don't see [win-win] as win-win. Some people see it as compromise-compromise...There's a contract between labor and management which automatically creates sides. But, that doesn't mean that the two shouldn't look at each other and say: we should do what's best for the both of us (and) for the entity that we serve which is Tompkins County...We realize the reality of the situation; there is X amount of money to be allocated and we need to figure out the best way to move it around.

Mutual-gains bargaining serves to improve the process of negotiations. Through the use of this tool, consensus and agreement can be reached more quickly and with less aggravation in Tompkins County.

Advantages of Mutual-Gains Bargaining

All three interviewees recognized the benefits of mutual gains techniques in negotiations. The fact that interest-based approaches to problem solving have extended beyond the collective bargaining process to committee, and other discussions, is an indication of their usefulness. Chair of the Board of Representatives, Barbara Mink indicated that the Sheriff's Department used the language of mutual gains in the latest discussion of health care benefits.

In collective bargaining, salary remains the only issue that is not negotiated with mutual gains techniques. The county has offered to negotiate salary using mutual gains but the union has resisted. However, the issue of salary was 'on the table' faster than ever before in the latest round of contract negotiations according to David Chase.

Benefits of Labor-Management Cooperation in Tompkins County

There are three broad expectations associated with labor-management cooperation in Tompkins County: to improve labor/management relations, to decrease costs for delivering services, and to keep taxes down. The decision to establish formal structures to share decision-making with labor was not due to particular fiscal or service pressures. TQM is a formalization of the labor-management relationship that has been developing since the 1980s.

Improved Relations Between Labor and Management

The focus of the Tompkins County Partners for Quality (PfQ) initiative is on improved labor-management relations. This reflects the perception that cooperation will directly, and indirectly, result in cost savings and improved service quality. Barbara Mink describes its effects as:

"...a shift in our paradigm; an absolute visceral change in the way we react to problems and the way we take initiative for change...Tompkins County is a good example of how TQM can work...The best evidence for this, in addition to the cost savings and improvements in efficiency, is the change in people's attitudes."

These goals have been articulated through various mission and vision statements. In addition, TQM orientation sessions, which have occurred since December 1994, are another forum for developing a shared understanding of these goals.

Grievances

One indication of improved relations between labor and management is in the type and number of grievances that have been filed since the implementation of TQM. The grievances that are filed today represent issues that are not resolvable through labor-management committees. In Tompkins County, grievances have been minimized through these new avenues for communication.

Improved Service Quality

In Tompkins County, the focus of labor-management cooperation is on process issues. For instance, the Department of Social Services labor-management committee developed a framework for eliminating excessive layers of administration. Now, there is a single intake system for food stamps and Medicaid. Indirectly, this change is impacting more than service quality. The cost of providing services is being reduced.

Cost Savings from Improved Labor-Management Relations

Management believes the benefits of TQM more than outweigh the costs and has been willing to invest heavily in the process. However, figures documenting these cost savings are hard to come by due to a fear that cost savings will result in budget cuts, punishing successful departments. Coupling total quality management with performance-based budgeting techniques could help to encourage documentation of cost savings. Another strategy would be to simply make it clear at the outset to departmental staff that if funds for training and to sustain the overall initiative were going to continue to flow, documentation of cost savings must be forthcoming.

Key Lessons and Insights

Trust, Leadership, and Defining Roles

The most important factor in developing cooperation between labor and management is people. One of the main reasons for the success of TQM in Tompkins County is that both management and labor were committed to the idea. The degree of trust that existed prior to the implementation of TQM enabled Tompkins County to proceed with the initiative.

Both Barbara Mink (Chair, Board of Representatives) and David Chase (CSEA Local 855 President) acknowledged the role Scott Heyman (County Administrator) played in developing support for the Partners for Quality program in Tompkins County. One concern David Chase has is the impact Scott Heyman's retirement will have on the initiative. Subsequently, one priority of the interview process is to determine whether or not the values of candidates for County Administrator are consistent with the TQM program.

The expectations and roles for labor-management committees must be defined as clearly as possible to limit misunderstandings. Clear roles enable committees to remain focused. Union representatives have played an important role in keeping this focus and pointing out when the committee is getting off track.

Communication and Planning

Communication is paramount to success. Through communication goals are defined, expectations are delineated, and relationships are built. Limiting the use of jargon and terms also facilitates the process, especially during training sessions.

Careful planning will result in a smooth transition during implementation. It is important to make sure the strategy for implementation is clearly defined before presenting it to employees. Tompkins phased in its program and this led to a lot of confusion among union members and employees because of the time lag between the start of training in the Department of Social Services and the full implementation of TQM. Two years have elapsed since the initiative was announced and some people have just begun their training.

Information

The major obstacle was not the will to begin using TQM, but the means by which to implement the program. Tompkins devoted a lot of time and effort to finding the right people to conduct the TQM training. County Administrator Scott Heyman asserts, "You have to make sure that you get the right people to do the training; that the consultant's conception of TQM is what you want; that it is consistent with what you have been doing." In addition to finding the right facilitators, reviewing the experience of local governments through hands-on practice is important.

Conclusion

This case study has shown that labor-management cooperation is not only possible, but viable in Tompkins County. With the right people to coordinate the effort and the support of labor, management, and elected officials, the TQM initiative in Tompkins County has been, to a large degree, successful. The insights drawn from this case may provide other county governments with information necessary to pursue labor-management cooperation as a tool for service delivery.

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Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

A Report from the Department of City and Regional Planning

Cornell University

June 1998

Authors: Nicole Blumner, Lindy Burt, Jon Gans, Lisa Goldberg, Kristin Guild, Young Sung Kim, Chang Kil Lee, Darth Vaughn, Mildred Warner



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Additional copies of this report and the individual county case studies can be downloaded from the Restructuring Local Government Website maintained by the Department of City and Regional Planning. Other information relating to local government restructuring can also be found at the site. For further information, contact Professor Mildred Warner (email: mew15@cornell.edu, phone 607-255-6816). Support for this project is provided in part by Cornell Cooperative Extension and by the Cornell Agricultural Experiment Station.

Executive Summary

The public sector, particularly local government, is under pressure to simultaneously improve performance and curtail costs. Reductions in state and federal funding, a continuing demand for efficient and flexible government services, and fear of tax revolts are leading to reexaminations of how local governments can best meet the demand for their services. Governments are utilizing a number of tools for restructuring service delivery to increase efficiency and reduce costs.

In our background research, we identified two types of restructuring: external restructuring, where a government turns to outside organizations to provide services (through privatization or intermunicipal cooperation, for example), and internal restructuring, which seeks to improve service delivery by altering organizational structure and decision-making processes. High levels of public sector unionization in New York State make internal restructuring through labor-management cooperation an especially important alternative. Through case studies of three New York State counties, we examined the use of three specific tools for labor-management cooperation: labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM). Genesee, Tompkins, and Ontario Counties were chosen as cases where at least two of these three internal restructuring tools have been implemented successfully.

We found that these cooperative workplace structures improve communication and broaden participation in decision making, leading to greatly improved labor-management relations and employee morale. They may also reduce costs and improve service delivery. However, limited evaluation in the three counties makes savings and service improvements difficult to document.

These tools appear to fall on a continuum of complexity, investment costs, and comprehensiveness. Labor-management committees provide a foundation for the other tools by building an ongoing forum for communication and trust building. They are flexible, deal with a wide array of concerns, and require minimal training. Mutual-gains bargaining requires more training and, in our cases, a preexisting environment of trust. While there are spillover benefits to other areas, MGB is primarily limited to contract negotiations. TQM is the most comprehensive of the three tools and requires the greatest degree of training and organizational culture change to be effective. It also may offer the greatest potential for service improvement.

The case study counties all enjoyed a preexisting environment of trust, committed leadership, and lack of political or fiscal crisis. Given the investments in training and change in perspective required of labor, management, and elected officials, implementation of these tools may be more successful in counties not experiencing crisis or a recent history of labor-management conflict.

These internal restructuring tools are not designed to address external stakeholders. Service improvements may be limited by higher-level policies and mandates these tools cannot address. Similarly, citizen involvement is not enhanced by these tools. However, by creating new forums for communication and participatory decision making, local government enhances its ability to identify and implement programs for service improvement. Adding mechanisms for citizen involvement and strategies to push for needed policy change at higher levels may further increase local government's capacity to restructure to meet the needs of its diverse constituents.

Introduction

The public sector is under pressure to simultaneously improve performance and curtail costs, and this is particularly true of local government. Reductions in state and federal funding, tax revolts, and the advent of privatization are leading to reexaminations of how local governments can best meet the demand for their services. Keeping taxes down while delivering the quality services that citizens expect is a difficult challenge. Local government must become more efficient and more accountable to the general public.

External Restructuring

External restructuring, which involves privatization or contracting out for services, can create a competitive environment and result in increased efficiency and cost savings (Savas 1987). In New York State, however, privatization has been limited (Lauder 1992). A 1997 survey of local government restructuring in the state found intermunicipal cooperation to be the most common form of restructuring (45% of respondents). Privatization was the next most common form of restructuring (31%), but reverse privatization (bringing services back into the public sector) was also significant (Warner and Hebdon 1997). This suggests that local governments in New York State recognize the value of both cooperation and competition in improving service delivery.

Privatization can create an uneasy or even hostile environment between labor and management. It can result in lower wages, benefits, and levels of unionization (Hebdon 1995; Chandler and Feuille 1991, 1994) despite government efforts to ensure no layoffs. Some empirical studies have shown the impacts of contracting on unionized workers' pay and employment to be minimal (Pendleton 1997). However, lowered employee morale and fears about job security have significant negative effects on the potential for a cooperative relationship. In addition, public sector unions must fight privatization if they are to retain their membership base (CSEA 1995).

In New York State, public sector collective bargaining is governed by the Taylor Law, which mandates that employers negotiate with the union before contracting out a service that is essentially the same as one union members currently provide. Thus the Taylor Law is often perceived as a roadblock to privatization. However, under some circumstances, New York State's governments may contract out services without negotiating with the union, and they also may downsize when there is no longer the need for a particular service or when financial circumstances demand it. Nonetheless, collective bargaining restrictions under the Taylor Law may limit opportunities for contracting out. This makes the search for other, more cooperative methods for implementing workplace innovations essential for local government restructuring in New York State (Donovan 1990; Lawyers Co-operative Publishing 1982).

Internal Restructuring for Transforming Government

In their well-known book *Reinventing Government* (1992), David Osborne and Ted Gaebler argue that a sweeping overhaul of how government does business can be achieved through internal restructuring. They describe this as a move from a supply-driven system to a demand-driven system. The rigidity of budgeting, service delivery, and the labor-management relationship in traditional supply-driven governments, they argue, must be replaced by flexible, quality-oriented systems that are responsive to customers' needs. Internal competition and more cooperative labor-management relationships can provide an effective alternative to privatization for improving government efficiency.

Decentralization of authority can help government achieve better performance. The private sector has demonstrated that decentralizing authority and flattening hierarchies can be very effective in improving efficiency and product quality (Appelbaum and Batt 1994). Giving decision-making power to front-line workers, who are closest to most of the problems and opportunities, and encouraging employee innovation are important steps (Marshall 1992). Direct citizen participation is also vital to improving government services (Osborne and Gaebler 1992; Osborne and Plastrik 1997).

Total quality management (TQM) is one vehicle for internal restructuring. TQM programs are being used to transform government, especially at the federal level, but also in New York State and in more than 400 municipalities nationwide (Rusaw 1997, U.S. GAO 1995, New York State GOER 1992). TQM emphasizes an

organization's commitment to the customer and to continuous improvement of every process through the use of data-driven problem-solving approaches based on empowerment of employee groups and teams. Cooperative processes such as TQM help to create a culture change, perhaps the most important requirement for transforming the public sector.

The Potential of Labor-Management Cooperation

Traditional industrial relations practices relied on the acceptance of a shared ideology among labor, management, and government that defined workplace roles and provided stability to the system. The 1990s saw the development of a new model, one that recognizes there is often a lack of consensus between management and labor, and that both are greatly impacted by the instability in economic, technological, political, and social environments. In this context, methods that focus on building communication and cooperation between management and labor offer considerable promise (Kochan, Katz, and McKersie 1994).

Cooperative labor-management structures such as labor-management committees, total quality management (TQM) programs, and mutual-gains bargaining can be used effectively in the public sector. While the public sector is distinct in many ways from the private sector, it can learn from the experiences of private firms in implementing some of these progressive labor-management practices (Lawler 1990).

However, resistance to cooperative practices can be substantial. Any of the major stakeholders in the process—management, elected officials, and labor—may resist the change for different reasons, making transition difficult and time-consuming. Managers may resent their loss of authority and harbor doubts that productivity gains can be attained through these methods. Elected officials may be hesitant to accept the political risks of instituting change. Unions may perceive cooperative structures as a ploy to weaken labor and divert attention from basic issues such as wages and job security. They also fear that by increasing workplace efficiency, they are putting their jobs in jeopardy (Gold 1986). In addition, participation may not necessarily give workers any real power.

Cooperative tools are inherently limited, since many fundamental decisions about organizational structure and work processes still remain in the domain of upper management. This is a commonly cited drawback to programs such as TQM (Appelbaum and Batt 1994). But more and more it is being recognized that all interested parties (labor, management, elected officials, customers) should have a voice in decision making, and that valuable production knowledge resides in all levels of an organization, especially with front-line workers (Marshall 1992). Having been implemented in the private sector with success, cooperative techniques are clearly beginning to take hold in public sector workplaces, as evidenced by the many examples profiled in the U.S. Department of Labor report *Working Together for Public Service*, better known as the Florio Report (1996).

The literature indicates that effects of labor-management cooperation on the ability of local government to undertake internal restructuring and to improve service delivery are worth examining. While obstacles clearly exist, with effort, many of the barriers to labor-management cooperation can be overcome (Gold 1986). By profiling counties where several tools of labor-management cooperation have been employed successfully, we hope to add to the existing knowledge of how these specific tools can be used to improve local government services.

Methodology

Initial research for this project was conducted in collaboration with the New York State Civil Service Employees Association (CSEA), the New York State Association of Counties (NYSAC), and the New York State Department of State's (DOS) Division of Local Government. Representatives from each of these groups were interviewed for their perspectives on and concerns about local government restructuring. The team found, through these discussions, that public sector management was searching for ways to improve internal and external operations, while labor was interested in exploring ways to prevent privatization of services. We hypothesized that labor-management cooperation can reduce costs and increase service quality, diminishing the impetus for privatization.

Further interviews with key informants helped the team focus on the relevant issues surrounding labor-management cooperation and identify the types of labor-management tools being employed in counties throughout New York State. Key informants included: CSEA, NYSAC, DOS, the Public Employment Relations Board (PERB), the Governor's Office of Employee Relations (GOER), staff and faculty of Cornell University's School of Industrial and Labor Relations, and elected officials from counties which had implemented some form of cooperation (see [Appendix A](#) for complete list).

We found that formal labor-management cooperative initiatives were not widely used in the state, but that a handful of both exemplary and semi-successful cases did exist. In the majority of cases, the most commonly implemented tools were labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM) programs. As a result, the team decided to focus on these three initiatives as tools of the labor-management cooperative process.

A 1997 survey of local government restructuring in New York State provided a preliminary indication of the incidence of privatization and restructuring in NYS counties (Warner and Hebdon 1997)¹. Twelve of the counties that responded to this survey indicated they had used cooperative labor-management initiatives. Key informants provided names of counties which had participated in TQM or mutual-gains bargaining training, or had implemented labor-management committees². The research team then selected three counties—Genesee, Ontario, and Tompkins—which had been successful in implementing formal labor-management cooperation.

To explore our hypothesis that labor-management cooperative efforts could be an attractive alternative to privatization, the following key questions were formulated for the case studies based on the preliminary interviews and relevant literature:

- What are the basic elements of a cooperative labor-management relationship in county government?
- What are the goals that labor, management, and county officials hope to achieve through cooperation?
- What is the impact of a cooperative labor-management program on labor relations, service quality, and cost of service delivery?

These key questions reflect an attempt to describe the *process* of labor-management cooperation. Therefore, the chosen research method for the project is that of a *case study*, a descriptive research tool (Yin 1984).

The case study counties were selected on the following criteria:

- *Utilizing several tools of labor-management cooperation.* Having examined in our preliminary investigation several counties that had implemented one cooperative tool with marginal success, the team hypothesized that several tools may be necessary to substantively change the relationship between management and labor. Thus we chose counties that had implemented more than one of the cooperative tools identified: total quality management, labor-management committees, or mutual-gains bargaining.
- *Key informant recommendations.* The case study selection was also based on the beliefs of key informants listed in [Appendix A](#) that these counties were among the more successful of New York State in implementing cooperative labor-management efforts.
- *Willingness to participate and proximity.* Cases were selected on the basis of the willingness and ability of the counties to provide us with the necessary access to personnel and resources. Geographic proximity to Ithaca was also a consideration due to time constraints.

In each case, every attempt was made to interview one or more representatives from each of the three perspectives: elected officials, management, and organized labor (see [Appendix B](#)). An interview guide (see [Appendix C](#)) was developed to provide consistency and direction across all interviews. However, the interview format also provided flexibility for open-ended responses, so that the elements, advantages, challenges, and lessons of labor-management cooperative initiatives could be fully explored. Interviewees were able to respond to questions and expand on their ideas verbally, in a manner that a survey does not allow.

Face-to-face interviews were conducted with the majority of interviewees. When this was not possible,

interviews were conducted by telephone. Interviews were summarized and shared with interviewees for review. Where necessary, follow-up interviews were conducted by telephone.

The research team compared the cases, discussing the commonalities and differences across them. Preconditions, goals, and limitations of the three tools of labor-management cooperation studied were emphasized. The analysis was written as a draft report and shared with the key informants in the case study counties. Their comments were incorporated into the final report. Permission to share the information contained in this report with the public was obtained from all county officials and staff who were interviewed.

Findings

The case study counties—[Genesee](#), [Ontario](#), and [Tompkins](#)—are located in central and western New York State. Genesee County has a population of about 60,000, while Ontario and Tompkins each have about 95,000 residents. Politically, Genesee and Ontario are governed by Republican-dominated legislatures and Tompkins currently has a Democrat-controlled board. All three counties have an appointed full-time county manager or administrator. This is the most common form of county government in New York State³. The presence of a professional, full-time manager was a control factor across these three counties. The ability to generalize findings to other counties with county executives or no full-time, professional manager may be limited. However, key informants familiar with cooperative efforts across the state indicate that strong leadership and support for change appear to be more important to successful implementation than type of governance structure.

Additionally, the environment between labor and management in all three cases was found to be generally cooperative, or at least noncombative, prior to the implementation of cooperative initiatives. Therefore, this study cannot speak to counties where an adversarial relationship between labor and management is present.

The three labor-management tools were found to exist along a continuum of complexity, with labor-management committees providing the foundation for the other two tools. These committees provide a flexible forum for problem solving and building trust, and they require minimal training. Labor-management committees in all cases predated mutual-gains bargaining and TQM. The interest-based bargaining approach of MGB required substantial training for successful implementation. Used primarily for contract negotiations, MGB appears to have had very positive effects on negotiation processes and outcomes, as well as positive spillover effects to other arenas of decision making. TQM was by far the most comprehensive and complex of the three tools studied. Extensive training of labor, management, and elected officials was required to support the culture change toward shared decision making required for a successful TQM effort.

Key elements for successful cooperation include training, committed leadership, communication, and evaluation. In the case study counties, improved morale, costs savings, and service improvements resulted from the use of these three tools, suggesting they do provide an effective alternative to privatization. However, limited evaluation in the counties prevented definitive analysis of the true costs and benefits of labor-management cooperation.

Labor-Management Committees

Labor-management committees are cooperative structures that focus on problem solving and building trust. They typically deal with issues including workplace safety, work hours, training, personnel issues, and daily workplace concerns. Although labor-management committees may initially focus on less controversial issues, such as worker safety standards, over time they may build a level of trust between labor and management that allows them to deal with more complex problems (Gold 1986).

Labor-management committees may be permanent or they may form around a particular issue and disband once resolution is reached. However, they are not necessarily formed to solve crises. Many are proactive and attempt to improve current work practices. They are flexible and easy to implement, and require minimal training. Labor-management committees are cornerstones of cooperation in each of the counties studied.

Structure

The labor-management committees in Genesee, Ontario, and Tompkins Counties are similar in terms of their goals: enhanced labor-management relations, decreased costs, and improved services. Each county has a central guiding or umbrella committee that oversees the activities of issue-based or departmental labor-management subcommittees. They may facilitate training and provide direction to subcommittees or they may address specific program innovations or daily operations. All three counties implemented labor-management committees before mutual-gains bargaining and total quality management.

There are differences in how each county uses the committees, however. In Ontario County, where such committees have existed since the early 1980s, they operate independently of the TQM program. Ontario County has a countywide committee, committees that operate within departments, and others that address specific issues, such as safety and health.

Tompkins County's labor-management committees, which have existed since the mid-1980s, now function as part of its TQM program. Prior to the inception of the TQM program, non-union members who volunteered or were voted in by all employees were allowed to serve on labor-management committees. Under the total quality management agreement negotiated between the CSEA and the county board of representatives, now there are more committees, and only union-selected representatives may serve on them (see the total quality management section, below).

Genesee County does not have a TQM program, and their labor-management committees are the main venue for workplace innovation. There is one main committee for the general bargaining unit, which covers most county departments, and a separate committee for the nursing home unit.

Representation

Labor-management committees are composed of representatives of management and the union. Only in Tompkins County were legislators also included. Tompkins County's umbrella committee has 13 members, including representatives from top management, middle management, and labor. In Ontario County, the countywide committee is made up of the county administrator, deputy administrator, director of human resources, and several of the local union presidents. In Genesee County, the general unit committee consists of the county manager, the personnel officer, the CSEA general unit president, and the regional labor relations specialist, as well as two more representatives from both management and labor who rotate onto the committee in three-year intervals. This provides more people an opportunity to be part of the process. Size of the committees varies according to the scope of the issue and the need for stakeholder input. Most have eight or fewer members, but at least one committee in Tompkins County has over twenty members.

Functions

In all counties, labor-management committees address a broad spectrum of workplace concerns. In Genesee County, the general unit committee emphasizes relationships and creating an environment where employees feel their input is valued and decisions are made by consensus. The labor-management committee has introduced policies that create a more family-oriented environment.

Labor-management committees can also be forums for discussing alternatives to privatization proposals. In Ontario County, labor has the opportunity to give their input before a decision to privatize a service is made by the administration. In Genesee County, labor and management formed a special joint action committee to address the threat of possible privatization in the Department of Mental Health Services.

Labor-management committees can impact the delivery of government services by finding ways to reduce costs while maintaining or improving the service itself. While hard data documenting the impact of innovations on cost was difficult to obtain, workers' compensation costs were significantly reduced in Tompkins County as a result of safety measures and training recommended by a labor-management committee (prior to the implementation of TQM). In Genesee County, labor-management committee recommendations and process improvements have led to cost savings through reduced absenteeism, increased productivity, and decreased supervision time. Their nursing home committee has helped the facility improve efficiency and avoid

privatization. Client surveys in Ontario and Tompkins Counties have indicated overall improvements in services.

Labor-management committees do not address contract disputes or grievances, although they appear to be effective in defusing potential problems before they reach the grievance stage. All three counties credited labor-management committees for helping to keep the number of formal grievances low.

Role and Authority of Committees

There is great flexibility in how roles are defined for labor-management committees. Tompkins County has a formal agreement defining the roles, expectations, and boundaries of authority for the Leadership Council, which took one year to negotiate and which clearly outlines the scope of the committee process. Genesee County has less formal written guidelines that articulate the goals and procedures of the committee. The authority of the labor-management committee is not written into a contract but is accepted by both parties. Ontario County's labor-management committee is well entrenched and seems to function effectively without a written agreement.

Labor-management committees have varying degrees of authority and power. In some cases, their policy recommendations are binding, while in others they merely offer suggestions that must gain the approval of elected officials. This is often the case when budget or cost decisions are involved. Committees in Ontario County are empowered to draft letters of agreement around issues that would normally be addressed through contract negotiations.

In some cases, the use of labor-management committees may impact traditional lines of authority. Middle managers may lose some of their decision-making authority because employees can voice concerns directly to top levels of management through the committee. In Ontario County this was an issue, but in Genesee and Tompkins Counties, middle managers are included on committees.

Training/Support

Training committee members in conflict resolution and consensus decision making may help committees work more smoothly. Training sessions allow both groups to establish their commitment to the concept and to forge cooperative relationships. For example, in the Genesee County Nursing Home, a half-day training session for the entire staff helped them use their labor-management committee more effectively. In this case, a CSEA facilitator from Albany was used. The Public Employment Relations Board (PERB) and Cornell's Industrial and Labor Relations Extension are other valuable sources of training and information. It is important to recognize, however, that there may be a significant time lag after training before measurable results are seen.

Tompkins and Ontario Counties, which had longer-standing labor-management committees, have invested more in training for mutual-gains bargaining techniques and total quality management than for labor-management committees.

Relationships

Labor-management committees can be contentious because they bring together individuals with diverse points of view. Strong leadership, good communication, and commitment to the process make the difference between success and failure. Without these elements it is difficult, if not impossible, to build the necessary level of trust to make a labor-management committee work. Both Tompkins and Genesee Counties had attempted labor-management committees in the past, with limited scope and success. By focusing on relationships, building trust, and gaining the commitment of leadership they were able to establish the successful committees that operate today. One strategy used was to begin by addressing issues that are less contentious, to build momentum so committees can tackle larger, more difficult problems in the future. This increases the level of trust among committee members and reduces the potential for early conflict.

Employee morale has been greatly improved in the counties studied. There are still conflicts and differences of opinion, but labor-management committees provide a mechanism for giving voice to these problems before they become intractable.

Challenges and Limitations

Several challenges in implementing labor-management committees are evident:

- Time is required to build the trust necessary for effective committees.
- They have limited authority: they are not designed to make decisions about broad structural changes in county operations.
- Defining the appropriate roles and boundaries of committees is important: many problems lie beyond the scope of committees and call for wider participation of elected officials and citizens.

Conclusion

Labor-management committees are excellent forums for communication and workplace problem solving. They are flexible and require minimal training, which also makes them inexpensive. In all three counties, good communication, strong relationships, committed leadership, and trust proved to be the most important factors for committee success. While the most compelling impact seen was on labor-management relations, committee efforts also led to improvements in county government functioning. Labor-management committees are relatively easy to implement and provide a foundation for incorporating more sophisticated tools, such as mutual-gains bargaining and total quality management, into an organization.

The following are recommendations to consider for labor-management committees:

- Establish a central, guiding committee to oversee the endeavor.
- Integrate committees into the organizational structure.
- Define expectations and parameters for decision making.
- Include as many stakeholders as possible and necessary.
- Communicate and foster a shared understanding of goals and objectives for both the committee and the organization.
- Be cognizant of power differentials and the effect these may have on communication.
- Address issues where it is easy to reach consensus at the outset in order to build momentum to tackle more difficult topics.

Mutual-Gains Bargaining

Mutual-gains bargaining (MGB) is a method of bargaining designed to dramatically improve the quality of contract negotiations and increase the likelihood of compliance between labor and management, ultimately benefiting their constituents. The mutual-gains process focuses on negotiations based on interests rather than positions and on building consensus. Through this process, unions and management identify at least one common goal and find ways to jointly accomplish that goal (Cohen-Rosenthal and Burton 1993). While MGB can be used for many types of negotiations, the case studies focused on its use for contract negotiations. Ontario County has been using mutual-gains bargaining since 1994, Tompkins County since 1995, and Genesee County since 1996.

Preconditions

All three counties had existing cooperative labor-management relationships in place before the initiation of MGB. Tompkins and Ontario Counties indicated they had been using interest-based bargaining techniques informally for years, and that they moved to MGB as a way of formalizing the process. This leads us to speculate that counties that have good labor-management relationships may be more apt to implement MGB because the idea of cooperating isn't very radical to them and there is less distrust between labor and

management to overcome. Genesee County, however, was less satisfied with their standard negotiation process and wanted to use MGB to improve the quality of negotiations.

Benefits

Mutual-gains bargaining led to smoother contract negotiations in all three counties. This was especially true in Genesee, where labor and management agreed the new techniques were far more productive than previous negotiations. Perhaps because Ontario and Tompkins Counties already had well-established cooperative structures that resembled MGB in place, the changes were less dramatic, but in both counties labor and management spoke positively about the effects of MGB techniques on the negotiating process.

MGB can be used to empower workers and strengthen their organizations, as well as to shape their lives at work. The benefits include increased access to information, prenotification of changes in work arrangements and technology, and increased input, which helps management avoid errors or decisions that would hurt union membership. There is also an indication that work satisfaction may increase, and the union may be able to address a broader range of members' concerns more quickly and fully. In addition, the literature on the subject indicates that union membership, education, and skill levels increase.

In the public sector, management must make the organization as effective as possible to meet the needs and expectations of citizens and their legislative authorities. Management's benefits include improved effectiveness, increased organizational flexibility, an improved working environment, and enhanced productivity (Cohen-Rosenthal and Burton, 1993).

Labor and management in the case study counties agree MGB has saved a lot of time. The use of MGB allowed Genesee County to complete their last contract in about a month, whereas it used to take up to six or seven months. The same is true for Tompkins County, where labor and management found the salary issue was on the table faster than ever before, in part because the economy was doing well, but also as a result of MGB.

Neither management nor labor see MGB as a panacea, but both concede that both parties walk away from the negotiating process feeling better. While both labor and management in Ontario County are pleased with MGB, the union appears to favor the process a bit more. CSEA representatives felt that MGB would definitely be used in the future. At least one manager, on the other hand, was of the opinion that MGB was a bit "tedious" and might not be used in the next contract because levels of trust were already high. In Tompkins County, labor felt that the "win-win" solutions that MGB is supposed to create often result in compromises. Management respected the process, but felt it was nothing new in comparison to the way they interacted in the past.

Leadership

The commitment of top management and union leaders to MGB is very important to its success. Some people will find it difficult to accept a new approach and will be subversive to both groups' mutual interests. In some cases, a change in leadership was necessary before a county could effectively implement MGB. In Ontario and Genesee Counties, for example, changes in union and/or management leadership preceded their formal implementation of MGB.

During negotiations, and during day-to-day interaction, the administration, union leaders, and managers need to set an example of open communication for all to follow. Labor and management must be committed to MGB. They must communicate with each other, understand each other's needs and interests, and pursue answers that benefit both groups. Tompkins, Genesee, and Ontario Counties' MGB efforts had the support of top management.

Training

Mutual-gains bargaining requires a change in philosophy that cannot occur without careful preparation. Unlike traditional collective bargaining, mutual-gains bargaining operates on trust and open information sharing, and

as simple as the concept might be, it is critical that labor, management, and legislators receive training before they decide to embark on mutual gains. While legislators do not participate in negotiation, it is important they understand and support the process.

In their efforts to implement MGB, Ontario, Genesee, and Tompkins Counties all turned to the New York State School of Industrial and Labor Relations Extension for training. Tompkins County trained 300 out of 720 employees in MGB before its formal implementation in 1995, and had few problems. Now all bargaining units in Tompkins County (except the sheriff's department) use mutual-gains techniques for all terms except salary. In the case of Genesee County, the assistant county manager was trained to facilitate the negotiations, while Ontario and Tompkins used outside facilitators. Although Genesee's general unit contract was successfully negotiated using MGB in a much shorter period of time than was typical, the negotiating process was still very challenging, and the rank and file expressed skepticism about the initial contract. Because of the distrust that traditionally exists between the two groups, it may help to use an outside facilitator at the outset. Even with training, it can take employees and management time to learn to trust and accept the process.

Challenges

MGB can benefit both labor and management, but it can also be risky to both parties. Both union leaders and management are in danger of being perceived as too close to the "adversary"- legislators may fear management is being too easy on the union, while union members may fear their leadership is being "co-opted." Since the union is negotiating the terms and conditions of employment for its members, it has more at stake. The open negotiation process inherently requires each side to relinquish some of its negotiating power and may limit the union's ability to act as a unified group. In Tompkins County, the union has not yet agreed to negotiate salary using mutual-gains bargaining techniques largely for these reasons.

Mutual-gains bargaining is a process that was developed in the private sector to increase labor-management cooperation, but also to aid downsizing efforts. MGB inherently cuts out middle management as the mediators between labor and top management. In Ontario County, for example, middle managers were resistant to MGB, as it appeared to take some of their authority away.

Finally, because mutual-gains bargaining is a tool which is used only during contract negotiation time, it is limited in its ability to have a direct impact on the daily interaction between labor and management. However, there were important "spillover" effects of mutual-gains bargaining training to other venues such as labor-management committees and total quality management teams.

Conclusion

Interest-based bargaining appears to save money and time, and have positive effects on labor-management relationships. MGB resulted in quicker contract negotiation where both parties walked away feeling better about the process and the outcome. However, as with other similar labor-management cooperative methods, it is difficult to quantify the results of MGB. For example, Ontario County tries to quantify cost savings whenever possible but finds it difficult to assign a dollar value to the intangible benefits of their cooperative efforts. The counties studied did not establish evaluation measures to determine what impact (positive or negative) MGB has made.

Total Quality Management (TQM)

While Genesee, Ontario, and Tompkins Counties have all implemented labor-management committees and mutual-gains bargaining, only Ontario and Tompkins Counties have instituted total quality management (TQM) initiatives. Ontario County began to implement total quality management in 1993, Tompkins County in 1994.

Total quality management represents a shift in management philosophy from autocratic, hierarchical decision-making structures to flatter organizational structures and shared decision-making responsibility (Kursat and Calicchia 1994). In the past few decades, following the model of the private sector, local governments have come to realize that top-down management is not always the best way to achieve results and that line

workers have valuable contributions to make in identifying strategies for improvement (Osborne and Gaebler 1992).

In Tompkins and Ontario Counties, total quality management has changed the way decisions are made, processes are designed, and labor and management interact. Informants describe total quality management programs as a "visceral change," a "paradigm shift," and a "culture change." Both counties' total quality management programs are new, and therefore conclusions about the programs' impacts and differences between them are tentative.

Three Components: Shared Decision Making, Customer Focus, Management by Fact

Total quality management initiatives have three primary components according to Kursat and Calicchia (1994):

1. Shared leadership and employee involvement

Total quality management programs are based in part on the idea that employees performing the work can create more efficient and effective processes to produce a higher-quality product. Total quality management programs typically establish formal structures such as labor-management committees for sharing decision making between managers and front-line employees.

2. Customer focus and an emphasis on service and product quality

TQM focuses on the needs and wants of two types of customers: "internal" customers-the next people down the line in the work process-and "external" customers-those who purchase or utilize a good or service. TQM seeks to improve the quality of both the product and the process by identifying the type and quality of good desired by both internal and external customers and providing what each customer wants. This can be difficult, since in the public sector, external customers include the people using a good or service but also the people paying for the good (taxpayers) and their representatives (elected officials).

3. Management by fact and continual improvement

Total quality management encourages steady data collection and rational decision making based on data rather than on impressions or uninformed opinions. Labor-management committees are one way to collect data about many facets of a complex issue. Others include customer surveys and careful tracking and documentation of any cost or time savings. The second component, a philosophy of continual improvement, encourages employees and managers to exceed current standards. Continuous improvement is achieved through constant experimentation, learning from mistakes, and diffusing learning throughout the organization.

Goals

In both Tompkins and Ontario Counties, the goals of total quality management most often articulated by managers and employees were to improve labor-management relations and work conditions, leading to a more smoothly functioning organization. All parties also expressed a desire to improve service quality. This desire is exemplified by Ontario County's slogan for total quality management: "We aspire to excellence." In Tompkins County, elected officials' goals focused primarily on service improvement and cost savings.

Training

Participatory methods of decision making, identifying customer needs, and determining what kind of data to collect and how to collect it require skills of employees and managers that are not inborn or traditionally taught in schools or in the workplace. Thus, to effectively implement a total quality management program and achieve the paradigm shift required for success, training is essential.

Of the two counties, Tompkins has conducted more extensive training and spent more money. Tompkins

County's Leadership Council (the labor-management committee charged with planning and managing the total quality management program) has the goal of training all employees, managers, and elected officials in quality methods. Initial training sessions were conducted by consultants, who are still involved in the process. In the fall of 1996, however, the county hired a full-time training coordinator, and now more sessions are conducted by in-house staff.

Between 1994 and 1997, Tompkins County spent just over \$300,000 for outside consultants to conduct training. In 1998, the county will spend an estimated \$170,000 on consultants to complete the bulk of the training. Since 1997, in-house costs have been around \$100,000. These costs will drop dramatically after 1998, when all employees, managers, and elected officials will have been trained in total quality management techniques and only training for new employees and refresher courses will be necessary.

Ontario County appears to have spent significantly less on their training program, particularly on outside consultants. Initially both labor and management leaders as well as county legislators were trained at the Rochester Institute of Technology. Initial training cost \$35,000 for employees and \$50,000 for supervisors, managers, and elected officials. The county gradually built their capacity to do training in-house, and today all county employees have been trained in TQM concepts.

It is important to remember when comparing these figures, however, that we obtained dollar amounts from Tompkins County for both outside and in-house costs, whereas the figures reported for Ontario County's training costs are only initial start-up costs for consultants. Still, there appears to be an appreciable difference in expenditures on consultants.

This difference may be due to the values held by county leaders. Tompkins County leaders are professionally and personally interested in organizational theory and process, and are willing to wait for long-term results. These may be the reasons for the strong emphasis on process and formal training. Ontario County leaders seem less interested in process and more interested in both short- and long-term results.

Support Structures

Individuals, however well trained in new ways of thinking and doing, will not be able to maintain the culture shift without a system of structural supports that devolve authority for decision making to labor-management teams. Supportive structures are probably one of the largest differences between total quality management programs which employees perceive to be "fake" and those which seem more real and effective.

Ontario County's Service Excellence program is structured around a countywide steering committee that acts as a core planning group, setting the direction for the program and coordinating the activities of the subgroups. The four departmental work group committees each have the same organizational structure as the steering committee and coordinate their corresponding functions.

Tompkins County's Leadership Council includes representatives from labor, top management, middle management, and elected officials. The Leadership Council guides the training process and the activities of departmental committees, and facilitates the work of smaller, project-oriented or cross-functional committees.

Another support mechanism is in-house training facilitators. Currently, Tompkins County employs a full-time training coordinator. An additional twenty employees act as facilitators, assuming leadership roles on various departmental and issue-related committees. They lend practical support based on their understanding of TQM and committee concepts. In addition, they are role models for other employees and managers.

Advantages

Total quality management is the most comprehensive cooperative tool for restructuring that the research team investigated. More than labor-management committees, total quality management programs can address inefficiencies in work processes and strive to identify customer needs. Unlike mutual-gains bargaining techniques, which are used primarily for contract negotiations once every few years, total quality management is ongoing and suffuses all work processes. It empowers labor to improve the workplace. In

Tompkins County, for instance, labor-management relations had been good for some time, but TQM forced managers to rethink their traditional style to allow greater employee involvement in decision making. Employees and management now work together to solve problems, and by all accounts, both find the new process more productive and rewarding.

The cases studied indicate that total quality management does improve the functioning of the organization, employee morale, and labor-management relations. Based on the suggestions of a total quality management committee in the Department of Social Services, Tompkins County streamlined the intake process for several social service programs. A Tompkins County survey indicates that employee morale in the Department of Public Works improved 22% between 1990 and 1997. Further, since the TQM programs have been implemented, both Ontario and Tompkins Counties have had fewer frivolous grievances as a result of increased communication and trust.

The programs have also reduced costs in both counties, although the cost savings have not always been well documented. Tompkins County representatives believe they have saved a great deal due to improved morale and greater efficiency. Ontario County has documented savings through the efforts of its workplace safety team. The team project began with county safety coordinators identifying high-risk job duties, such as driving and heavy lifting, based on local and national accident and injury data. Employees performing these tasks were then trained in safer driving and lifting techniques, resulting in a 37% reduction of OSHA-recordable injuries in the county from 1994 to 1997. Lost days were reduced by 60% in the same time period. As a result of these safety improvements, a special tax assessment to pay for workers' compensation, to be spread out over five years, was paid off in only three, saving taxpayers \$1.5 million.

Limitations

Both middle managers and elected officials may resist the total quality management culture change because it devolves supervisory and decision-making power to TQM teams and committees. While middle managers and elected officials are formally involved in several levels of the TQM program in Tompkins County, they are absent from the committees in Ontario County, and have understandably been more resistant to the process. Middle managers may also fear for their jobs. Tompkins County is dealing with this issue by retaining middle managers as top-level technical employees and ensuring their representation on the TQM committees.

Another limitation of total quality management as a tool for restructuring is its internal focus. The difficulty in identifying the "customer" for public sector goods and services and the focus on internal work processes make it hard to truly involve citizens in these TQM efforts. Both counties seek to identify external customer needs with surveys, and Tompkins County includes elected representatives on committees, but neither county includes citizens on committees. In Ontario County, citizen involvement in the TQM program is slightly greater than in Tompkins, since it includes an advisory council made up of a select group of local business owners.

Tompkins and Ontario Counties both seem to focus more attention on internal customers, (through surveys and participation in labor-management committees), in the belief that process improvements will result in product and service improvements. This is not an unreasonable assumption, though it can be difficult to document. Customer satisfaction surveys in Ontario and Tompkins Counties indicate external customers are generally satisfied with service improvements generated by total quality management programs.

The substantial cost of total quality management training and implementation as well as the time required to reap benefits are also limitations of total quality management as a tool for local government restructuring. Finally, because total quality management focuses primarily on internal work processes, policy about external factors is outside its purview. The inability to address broader policy issues may limit the ultimate impact of investments in total quality management.

Conclusions

Goals of Cooperative Tools and Processes

Most of our informants articulated their goal as a more smoothly functioning organization, with more creative

problem solving and positive interactions between management and labor. Managers and elected officials focused on increased efficiency, cost savings, and improved service quality. Labor representatives expressed goals of increasing employee participation in decision making and improving service delivery by widening employees' stake in the process and product. Thus, improving service delivery was a goal of all parties, but with slightly different emphases. Elected officials valued improved service delivery for its impact on citizen constituents, whereas labor representatives valued increased service quality for its effects on job quality.

Preconditions for Success

Several conditions existed in our counties prior to the successful introduction of formalized cooperative processes. First, the labor-management relationship in all three counties was already cooperative, or at least noncombative, providing fertile ground in which cooperative structures could thrive. Second, all the counties we studied were in relatively stable economic and political positions prior to establishing cooperative structures. We were not informed of any fiscal or political crises in recent memory that might put pressure on leaders to avoid the risk-taking inherent in cooperative initiatives. These three counties made a significant culture change not as a last-resort strategy, but as a means to improve already functional but imperfect processes. However, the cooperative structures have proven useful in dealing with crisis, such as the threatened sale of the nursing home in Genesee County.

We observed several other essential preconditions in our study counties. Committed, supportive leaders are required. This sometimes necessitates a change in the legislature, county administration, or union leadership. The attitudes of those in leadership positions proved crucial to the counties' ability to embrace the new ideas and paradigms of cooperative tools. Furthermore, in order to buy into the new cooperative relations, middle managers and line employees had to trust the intentions of both labor and management leaders. Even in counties where cooperative tools have been used successfully, the departments with a lower degree of labor-management trust have been slower to make the transition to new tools.

Impacts of Cooperation

Internal Process Improvements

The changes seen in government service delivery seem to be primarily internal in nature. Tompkins County, for instance, streamlined its intake processes for various social services. Genesee County instituted several policies that affect employee benefits, encouraging workplace efficiency and increased job satisfaction. The efficiency gains from internal restructuring are thought to "trickle down" to external improvements. The Genesee County Nursing Home, for instance, through its labor-management committee, has addressed staffing issues that are crucial to efficient functioning and effective service delivery.

Employee Morale

The second area where impacts have been significant is employee morale, which was uniformly reported by our informants to have improved under cooperative processes. Again, data for improvements are difficult to obtain, and most employee surveys were completed after new structures were implemented, and therefore lack a comparative benchmark. All counties stated the number of grievances has decreased, and the grievances that are filed are uniformly serious in nature, the less serious problems being resolved in other forums, due to improved communication and trust.

Cost Savings

Though gains and savings have sometimes proven difficult to measure due to a fear of budget cuts to agencies that report cost savings, the overriding sentiment is that cooperative efforts are resulting in real cost savings. Ontario County has documented at least one instance of large financial savings in its reduction of worker compensation costs due to a safety program implemented by a TQM committee. Genesee County's nursing home has become profitable again in part due to the efforts of its labor-management committee.

Key Elements for Cooperation

From the case studies, we have identified a number of elements that are necessary for cooperation to be

successful:

Training

First, a substantial amount of time and resources were devoted to training labor and management leaders, and more often than not, legislators and line employees as well, in cooperative structures and processes. In Ontario and Tompkins Counties for instance, all employees are being trained in total quality management concepts. Line employees were less likely to be trained in mutual-gains bargaining, which is used primarily by representatives of labor and management for the contract agreement. In Genesee County, for instance, while the assistant county manager was trained to facilitate the negotiation process, the employees were not trained prior to the switch to mutual-gains bargaining, and perhaps for this reason, the first contract negotiated by this method was voted down by union members. On the other hand, the Genesee County Nursing Home sponsored a half-day training session for the entire nursing home staff with a CSEA facilitator, which helped their labor-management committee become much more effective. Whether or not all employees were trained, training brought about a critical shift in how members of the organization viewed labor-management relations.

Local colleges and universities were valuable resources for training in these methods. Both Tompkins and Ontario Counties made extensive use of nearby educational facilities.

Leadership Commitment and Support

The counties we studied all shared the presence of an appointed, professional administrator to manage the transition to cooperative tools. However, one expert on local government told us that the form of government is less important than the administrator or leader's commitment to the cooperative process. A high level of emotional maturity is essential, as is the ability to work well with people and to get them to buy into the process. The case study counties possessed leaders who were willing to work with, but ultimately hold responsible, resistant managers. The commitment of union leadership was also an important factor. Without the willingness of the union officials in these counties to try new ways of working with management, cooperative processes would not have been possible.

The role of elected officials was significant only to the extent they were generally supportive and did not interfere with the process. We did not observe a high degree of involvement in cooperative tools on the part of county elected officials, with the notable exception of Tompkins County, where a legislator was actively engaged in developing the TQM initiative.

Additionally, in the three counties we observed a clear commitment to the *process* of implementing cooperative tools. Since gains from TQM, for instance, were not immediate, and could take several years after training to realize, the commitment of leaders to see the process through was essential to its success. Administrators and union officials' commitment to labor-management committees as an effective vehicle for problem solving also seemed to be a significant factor in their success. Tools that yield faster results, such as mutual-gains bargaining, perhaps require less depth of commitment from county leaders. In all cases, however, all parties must buy in to the process. Given the levels of trust required, cooperative efforts are likely to be sensitive to attempts to undermine them.

Communication

Communication of the goals, structure, and roles of key players in cooperative processes is also important, both within the organization and in the larger community. Umbrella or countywide committees play important roles here as the central forums for sharing of information and ideas. Creating public awareness of county efforts also may be desirable but was not emphasized in our case study counties.

Evaluation

Evaluation is essential to assure appropriate and effective implementation of cooperative tools and to create support among elected officials and the public. Better evaluation of the cooperative processes in all three

counties is needed. For instance, in Ontario County cooperative relations are so strong that some perceive mutual-gains bargaining as an administrative burden that in and of itself may not add significant benefits. However, county leaders currently have no means to gauge MGB's effectiveness. Management in Genesee County indicated that evaluation was an area they hoped to address in the future. The private sector may be a source for evaluation tools that counties can use to measure the success of their efforts.

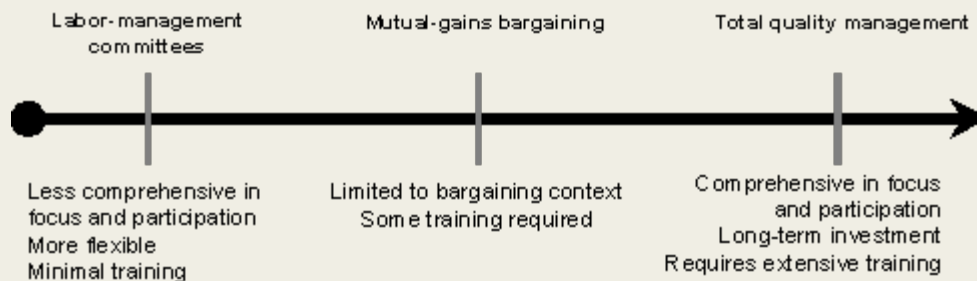
Key Differences Between the Counties

We recognized several key differences among the counties in the implementation of cooperative tools. First, the amount of money spent on training varied widely. Tompkins County had by far the greatest expenditures, almost entirely attributable to its TQM program. Tompkins' use of outside consultants on a regular basis also distinguished it from the other two counties. Genesee County, in contrast, only approached outside consultants on an infrequent basis. However, Genesee's labor-management committees required lower levels of training and hence less cost, compared to the formal TQM programs of Ontario and Tompkins. Interest in the process of workplace change rather than a focus on outcomes or products seemed to guide efforts in Tompkins County, perhaps partly because of its close ties to the academic community through Cornell University.

The level of involvement of elected officials and middle managers also varied. In Genesee County, middle managers may participate in the negotiating process and sit on labor-management committees. In Tompkins County, middle managers are well represented on total quality management committees. In Ontario, where the committees create a direct channel from workers to top management, it is less clear that middle managers are adequately incorporated into the structure. Tompkins is the only county in which an elected official sits on the countywide labor-management committee. In Genesee County, county management felt that by not participating in committees, elected officials maintained a beneficial distance from the process. Whether elected officials should be involved may depend on the extent of the changes being implemented; in a more formal and expensive process such as TQM, their participation seems more appropriate and essential, while it may not be necessary for internally focused committees.

Continuum of Cooperative Tools

The three cooperative tools exist along a continuum based on the complexity of the tool, the level of investment required, and its degree of departure from traditional labor-management relations. The following diagram illustrates this continuum:



A government with labor-management committees may not choose to implement a TQM program, but a government without labor-management committees may not be wise to implement TQM as its first cooperative effort. Thus, the diagram may also be viewed as a time line of cooperative structures, indicating a progression from relatively simple tools such as labor-management committees to more complex, formal, costly, and comprehensive processes such as TQM. Other tools we did not observe in our counties could be added to this model, such as gainsharing.

Limitations and Further Questions

As tools for restructuring, the cooperative methods discussed here have several limitations. Their ability to affect the external policy environment is limited, so they are constrained by the political contexts in which they must operate. They also do not afford an opportunity for citizens to become more involved in government. Since public support for its activities is important to local governments, they should come up

with ways for creating greater citizen involvement in their restructuring efforts.

Many questions emerged during the course of our study. First, what is the true impact of cooperative tools and processes on middle management? Much has been written about the downsizing of middle management in the private sector. Is this also the case in government? Second, what are the appropriate roles for citizens and elected officials in efforts to restructure government-through both internal and external methods? Finally, our cases only addressed examples of successful cooperative tools and processes in counties that had developed a significant degree of trust between labor and management. What are the outcomes of cooperative initiatives in counties that lacked this precondition of trust?

Notes

1. Conducted by Cornell University in cooperation with the County Legislators and Supervisors Association of New York State, this survey was distributed to all towns (932) and upstate county governments (57) in New York State. Responses were received from 196 towns (21% response rate) and 26 counties (45.6% response rate).
2. The counties initially considered were Chautauqua, Clinton, Columbia, Dutchess, Erie, Genesee, Livingston, Oneida, Ontario, Putnam, Schenectady, Tioga, Tompkins, Ulster, and Westchester.
3. Of the 57 counties outside of New York City, 18 (31.5%) are governed by the county executive structure (elected official), 27 (47.5%) are governed by county managers or administrators (appointed), and 12 (21%) have no full-time manager or county executive.

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Appendix A: Key Informants

Steve Alviene, Deputy Director of Labor Relations, New York Civil Service Employees Association

John Bartow, Director, Division of Local Government, New York State Department of State

Franklin Bassett, Administrator, Livingston County Office of Aging

Kate Bronfenbrenner, Sr. Extension Associate, New York State School of Industrial Labor Relations Division of Extension and Public Service

Marcia Calicchia, Sr. Extension Associate, New York State School of Industrial Labor Relations Division of Extension and Public Service

Ken Crannell, Director of Research, New York State Association of Counties

John Crotty, Deputy Chair and Counsel, Public Employment Relations Board

Ron Dougherty, former County Chair, Tioga County

Kevin Flanigan, Supervising Public Employment Mediator, Public Employment Relations Board

Andrew Goodell, former County Executive, Chautauqua County
Todd Greci, Governor's Office of Employee Relations
Robert Hebdon, Assistant Professor, New York State School of Industrial Labor Relations
Scott Heyman, County Administrator, Tompkins County
Sally Klingel, Director, Programs for Employment and Workplace Systems, New York State School of Industrial Labor Relations Division of Extension and Public Service
Karen Macintosh-Frering, Labor Management Coordinator, Ulster County
Alan McAdams, Associate Professor, Johnson School of Management, Cornell University
Barbara Mink, Chair, Tompkins County Board of Representatives and four-year member, Tompkins County Leadership Council
Jeff Osinski, Project Director, New York State Association of Counties
David Pilliod, Assistant Director, Department of State, Division of Local Government
Jim Platner, Director, Chemical Hazard Information Program, New York State School of Industrial and Labor Relations Division of Extension and Public Service
Keith Stack, Special Assistant, Department of State, Division of Local Government
Jeff Swain, Assistant Deputy Comptroller, New York State Office of the Comptroller

Appendix B: Case Study Informants

Genesee County

Darlene Acker, CSEA Nursing Home Unit President
Jay Gsell, County Manager
Jack Pease, Administrator, County Nursing Home
Nancy Smith, CSEA General Unit President
Martha Standish, County Personnel Officer

Ontario County

Geoffrey Astles, Deputy County Administrator
John Garvey, Human Resources Director
Edward Grace, County Administrator
Robert Russo, President, CSEA Local 7850

Tompkins County

David Chase, President, CSEA Local 855
Scott Heyman, County Administrator
Barbara Mink, Chair, Tompkins County Board of Representatives

County Case Studies

- [Genesee County](#)
- [Ontario County](#)
- [Tompkins County](#)

COOPERATIVE LABOR-MANAGEMENT STRUCTURES IN GENESEE COUNTY

Authors: Lindy Burt and Lisa Goldberg

From the report, *Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State*

Department of City and Regional Planning, Cornell University, June 1998

Genesee County is located in western New York State, between Rochester and Buffalo. It has a population of approximately 60,000. The county functions under a county manager who is appointed by a nine-member legislature. The main tools of labor-management cooperation being used in Genesee County are labor-management committees and mutual-gains bargaining. Through face-to-face and telephone interviews, we examined how these cooperative structures developed in Genesee and their role in helping county government function better. The following people were interviewed for this study:

- Jay Gsell, County Manager
- Martha Standish, County Personnel Officer
- Nancy Smith, CSEA General Unit President
- Jack Pease, Administrator, County Nursing Home
- Darlene Acker, CSEA Nursing Home Unit President

LABOR-MANAGEMENT COMMITTEES

THE ORIGINS OF LABOR-MANAGEMENT COMMITTEES IN GENESEE COUNTY

There are two main labor-management committees in Genesee County. The general unit labor-management committee includes most county departments, with about 320 CSEA members represented. The Genesee County Nursing Home, with about 150 CSEA member employees, has a separate labor-management committee.

The general unit committee was started in 1991, and the nursing home committee was started during the late 1980s. The nursing home has its own committee because of the special nature of the services it provides. It also operates as an “enterprise fund,” which means that its finances are separate from the rest of the county’s departments. As an enterprise fund, the nursing home is able to keep the money it earns, but when it is losing money, it cannot draw on other county revenue. Currently, the home is earning money, which has enabled the county to invest in improvements in the facility.

The two committees operate within somewhat different contexts. In the late 1980s and early 1990s, the nursing home was losing money due to a change in the state’s reimbursement policy for Medicare and Medicaid patients. It faced the prospect of being sold by the county legislature if it did not become self-sustaining on its own revenues. It was realized that the home had to change its mode of operating in order to survive, and that the cooperation and involvement of both management and labor would be necessary. The labor-management committee provided a good vehicle for the two groups to work together to try to improve the operations of the home.

With the general unit committee, management saw great potential in improving workplace practices through the more cooperative structure provided by a labor-management committee. The county personnel officer approached the CSEA labor relations specialist, who agreed that establishing a committee was a good idea.

HOW LABOR-MANAGEMENT COMMITTEES WORK

The labor-management committees in the general unit and the nursing home work in a very similar fashion. They both meet once per month at a set time and day. In the nursing home, the union officers and stewards meet a week and a half prior to the monthly meeting to develop their list of items for the agenda. The union president and nursing home administrator then meet one week prior to the monthly meeting to discuss each other's proposed items for the agenda, and put it in its final form. Issues are not placed on the agenda unless agreed to by mutual consent. During this preliminary meeting, the nursing home administrator and union president are sometimes able to resolve certain issues, in cases that don't require the input of other committee members.

While the authority of the nursing home committee is actually written into the nursing home unit contract, the authority of the general unit committee is not incorporated into the general unit contract, but is mutually accepted by labor and management.

The purpose of both committees is to serve as a forum for discussion and a vehicle for active improvement on management issues, labor issues, program ideas, and operations. The resolution of any issue requires consensus among all committee members. The committees do not address contract disputes or grievances. These matters are dealt with using standard procedure.

The permanent members of the general unit committee are the personnel officer, the county manager, the CSEA general unit president, and the labor relations specialist from the CSEA regional office. Two department heads and two additional union members also sit on the committee; these positions rotate in about three-year intervals to give different people exposure to the process and to the issues being discussed. The nursing home committee is comprised of the nursing home administrator, the director and assistant director of nursing, the activities director, the officers of the union, including the president, vice-president, treasurer, secretary, and the head nurse.

Members of the county legislature do not sit on the committees or participate in the meetings. By not participating in the committees, the legislators can remain more neutral and objective with respect to the management and labor positions. The legislators are kept aware of the activities of the labor-management committees through meeting minutes.

Through the committees, many more union members are involved in labor-management initiatives than ever before. According to the president of the general unit, currently about 25 percent of the 320 employees in the general unit participate in some way through subcommittees and various programs. Within the nursing home unit, union members also serve on various subcommittees organized around different program

initiatives. Additionally, according to the nursing home unit president, employees are always encouraged to bring their ideas and concerns to the committee representatives.

CREATING SOLUTIONS TO WORKPLACE PROBLEMS

One of the greatest concerns of the nursing home is to ensure sufficient staffing 24 hours a day, seven days per week. Its committee has developed such initiatives as an incentive program for attendance and a voluntary work program. Because it is crucial to the operation of the nursing home that there be sufficient staffing at all times, management has the right to mandate employees to work overtime or to come in on their days off when there exists a shortage of staff. The voluntary work program allows the employees to “volunteer” (with pay) to work extra hours at their own convenience. After working a certain number of “voluntary” hours, employees are then eligible to be taken off of the mandate list during the upcoming quarter. The nursing home committee has also served as a forum to discuss worker safety issues during building renovations.

One of the most significant programs developed by the general unit committee is the sick-leave bank. Through the sick-leave bank, employees may choose to donate some of their allotted sick days to the bank, which can be used in the future by any employee who needs to take an extended medical leave. This program serves as a close substitute for long-term disability, which is not provided to employees of the general unit. Other programs initiated by the general unit committee include a volunteer tuition reimbursement program, which grants employees who perform community service tuition credits for their family members at the local community college; a job-share program; and participation in Make-a-Difference Day, a national community service day. The labor-management committee also started a newsletter for county employees, which is partially funded by CSEA.

Through labor-management committees, the management of the nursing home and other county departments represented by the general bargaining unit have worked cooperatively with labor to develop innovative ways to improve productivity, efficiency, and flexibility in the workplace. Such initiatives have a positive effect on the county’s ability to deliver services to the community.

MUTUAL-GAINS BARGAINING

THE ORIGINS OF MUTUAL-GAINS BARGAINING IN GENESEE COUNTY

Mutual-gains bargaining was first tried in the general unit in 1996. The assistant county manager was trained by Cornell University’s School of Industrial and Labor Relations Extension, and he facilitated the negotiating process. Jay Gsell, County Manager, and Nancy Smith, President of the Local CSEA General Unit, had just taken their positions at the county a few years prior, and were very interested in trying a new approach to contract negotiations.

The first tentative agreement negotiated under mutual-gains bargaining was not accepted by the union membership. Many members were very skeptical, and it took time for them to trust and accept the process, which was completely different from the way

previous negotiations were conducted. However, employees eventually came to accept the process, and in 1997 the general unit contract was successfully negotiated using mutual-gains bargaining.

The nursing home does not use mutual-gains bargaining. Labor is not yet interested in implementing the process.

HOW MUTUAL-GAINS BARGAINING WORKS

The mutual-gains bargaining process requires that both parties reveal their true interests rather than defending their positions. After this is done, the specifics are discussed. For labor, the priority is in determining what they need in order to achieve a contract that will provide general satisfaction to the greatest number of people. Management needs to consider the expectations of the elected officials they represent.

Both labor and management agree that the mutual-gains bargaining process was more productive than any previous negotiations. There was more input, openness, brainstorming, and problem solving among the participants. The negotiations were a continuous, open dialogue between the two sides, with no side discussions taking place. Even the lunch break was taken together. Another benefit of mutual gains is that it greatly accelerated the negotiations process. While typical contract negotiations can take up to six or seven months, the most recent contract was negotiated in about a month. By revealing their true interests, each group comes to a better understanding of the other's goals. Participants look for ways to mutually resolve the issues, instead of wondering what they will have to concede. County Manager Jay Gsell also noted that mutual gains helps identify more quickly the issues under negotiation that are most problematic.

In coming to agreement on a contract, although not every interest was satisfied, participants came away from the process feeling that a great deal had been accomplished. Because of the cooperation that is inherent to the process, resentment and hurt feelings are avoided. Agreement is easier to achieve and people feel better, even about the things that did not make it into the contract.

NECESSARY ELEMENTS FOR A COOPERATIVE LABOR-MANAGEMENT RELATIONSHIP

TRUST AND OPENNESS

In order for the county to use mutual-gains bargaining and labor-management committees, trust must exist between labor and management. Everyone involved in labor-management cooperation concurs that keeping to agreements once they have been made is one of the most important elements in building trust. For union officials, in a situation where there are preconceived notions about "the union," delivering on promises you've made is key to allaying the suspicions of management and building trust. Nancy Smith used this approach when she became the CSEA general unit president. It took some time, but eventually management started to understand that they could work with her on the basis of trust.

In 1996, new union officers were elected at the nursing home, and they proved to be more willing to hold to agreements than the previous union leadership. Management concurs it is very important that both sides “stick to the course” of whatever has been agreed upon.

Both management and labor must be open about their interests and positions. Maintaining an open-door policy and encouraging employees to approach management when they have concerns is important to fostering labor-management cooperation. County Personnel Officer Martha Standish says she believes that openness and honesty are the best ways to build the trust necessary for cooperation. However, she acknowledges that sometimes this openness backfires. All it takes is one person to make a comment, and it can affect people’s trust in you. When you are trying to bring together two groups that have traditionally been very adversarial toward one another, trust is very fragile and takes time to build. Yet she still holds to a policy of being “very available and honest, telling things like they are—even if sometimes people don’t like to hear it.”

THE ROLE OF COMMITMENT AND LEADERSHIP

People who are involved in these joint efforts must be committed to the county. Both management and labor must think beyond what is beneficial to their own interests and instead think about what is good for the county as a whole and for their total membership. Both labor and management feel that it is difficult to get people to shift to this new way of thinking.

Before efforts at labor-management cooperation can even begin, the key people involved must see the value of these efforts. There must be a commitment on the part of both labor and management to invest time and effort in the meetings and in the initiatives that emerge. Personalities of the leadership can influence whether labor-management committees are adopted. In the nursing home, the turnover of the union leadership from a president who had operated for a long tenure in an adversarial manner to a president with a very different style was very important. Similarly, Nancy Smith has had a very large influence as president of the CSEA general unit.

There must be a willingness to work things out on the part of the key individuals. In Genesee County, the individuals active in labor-management efforts come to the table with a real desire to work together to resolve workplace issues. One indicator of commitment on labor’s part is that all the current officers in the general unit plan to run for reelection this year. They all feel very positive about the way things are going and want to stay involved.

In departments where management and staff do not see the value in trying to address issues that fall outside of their contract or outside of day-to-day operations in a nontraditional manner, labor-management committees are difficult to establish. The county went as far as bringing in a PERB mediator to try to help facilitate the development of a labor-management committee in one of their non-CSEA units, but it was unsuccessful. However, this department’s management has recently turned over, as

has the union leadership, and Martha Standish is hopeful that it may now be possible to start a labor-management committee there.

CHANGING PERCEPTIONS AND ATTITUDES

Labor and management perceptions clearly play a role in how effective cooperation can be. At the nursing home, the belief among unionized workers was that when management spoke to other people, such as the legislature, they were critical of the union. Management's perception was that the labor-management committee was something that they had to do, but not really a useful forum for solving problems. Both of these perceptions needed change before cooperation could occur.

As Nancy Smith says, in today's workplace, "we need to realize that change is inevitable." One of the challenges of cooperation is that people often find it difficult to accept that sometimes things have to change, even if they might prefer the status quo.

The elected officials agree with the concept of labor-management cooperation, but sometimes have concerns about management too often taking the side of labor. Additionally, there is also some degree of dissatisfaction on the part of some union members who are less knowledgeable and enthusiastic about the process.

GOALS OF LABOR-MANAGEMENT COOPERATION

The goals of labor-management cooperation in Genesee County are not written down anywhere, and the individuals we spoke with each focused on different goals.

Management describes the goal of labor-management committees as fostering an environment of equality among and between labor and management, encouraging *everyone* to bring their ideas forward. One important purpose of committees is to empower employees, by letting them know their opinion is valued and encouraging them to share their ideas for improvement. Management strives to have good, functioning labor-management committees, a good understanding with the union officials, and an established basis of trust, so they will avoid grievances, which are time-consuming and costly. However, the county manager notes that the bottom line is the client—the person they're serving. Anything they do must be done with the final product (the service) and the customer (the taxpayer) in mind.

The union has a goal of educating people on the benefits of cooperative efforts. Believing that most employees sincerely do not want an adversarial relationship, the CSEA general unit president is getting more people involved in some way in the union, and in labor-management committees. She also hopes to establish smaller labor-management committees within county departments.

According to Administrator Jack Pease, one of the main goals at the nursing home is to address the issue of interpersonal relationships. Everybody needs to be treated respectfully in order for things to work, so they are going to be looking more closely at relationships in the workplace. The nursing home staff works in a very demanding

environment, which puts a great deal of pressure on the employees, and he believes improving work relationships can help improve overall performance.

IMPACTS OF LABOR-MANAGEMENT COOPERATION

The county doesn't have objective measures of the effects of labor-management cooperation. The county manager acknowledged that any measurements of success should be implemented through the cooperative process.

The union leadership and county administrators believe that cooperative efforts have made workers more productive and have improved relationships between people in the workplace. Because of the programs that have implemented in the county, the workplace is more family-oriented. For example, you can take a sick day to care for a sick child or spouse.

Not many grievances are filed in Genesee County. When a problem arises, the general unit president will call the personnel officer to discuss it, and they will go from there.

Fortunately, the county has not had much downsizing—most of their workforce reductions have occurred through attrition. Privatization has not played a significant role in the county. While some employees have perceived it as a threat, very few, if any, services in the county have been privatized to date.

Currently, however, the county legislature is considering privatization of the county Mental Health Services. Cuts in state aid have put the agency under fiscal pressure. Together, labor and management in the agency responded to the problem by forming a joint action committee to work on alternatives to privatization. The general unit president works at Mental Health Services and has been heavily involved in this effort. The process has not been negative or adversarial; employees have been involved and have agreed to make changes, some of which have been implemented already. While a decision has not yet been made, it is very possible that privatization will be avoided because of this cooperative effort.

The nursing home unit president believes labor-management cooperation enables management and employees to see the “big picture.” It broadens everyone’s perspective on the functioning of the facility, and is a good forum for bringing people together and getting to the root of challenges in operations.

SERVICE QUALITY

The county has not implemented formal measurements of customer satisfaction with their services. Service quality monitoring and evaluation is probably one of the next areas that the county will be getting into. County Manager Jay Gsell believes that “it’s a priority to understand the needs of the customers. Quality of service, reasonable cost and being treated fairly and equitably are the priorities in service delivery.”

Personnel Officer Martha Standish notes that programs like TQM are great, but they take a great deal of time and effort. They have tried instituting quality workgroups in the Department of Social Services, but they have had a difficult time. Right now they have one self-directed workgroup there, with about five to seven people.

Especially in the nursing home, the quality of service delivery is critical. Nursing homes have changed a great deal—they must operate with much more flexibility in service provision than in the past. So workplace change is happening within the context of a very different environment. They need to keep employees involved, and use the labor-management committee. It doesn't work to make changes in a top-down manner.

Every year the state health department surveys the nursing home. They are trying to use the state survey to do their own evaluation, and they are trying to come up with other ways to measure quality internally, using survey of residents or their family and other information.

COST

The effects of labor-management efforts on cost aren't formally quantified. Martha Standish and Nancy Smith both suggested that the sick-leave bank probably contributes to cost savings, since it encourages people to take fewer paid sick days. There is also a general impression that labor-management cooperation leads to increased productivity and less supervision time, which ultimately lead to cost savings.

In the county nursing home, it is easier to determine costs, as the home's finances are independent from the rest of the county. They are currently making money and are able to pay their bills, so this indicates that the labor-management cooperation has had some positive financial effects.

LESSONS AND INSIGHTS

Training has played an important role in the county's efforts with the labor-management committees and mutual-gains bargaining. People are often skeptical of a new way of operating, and outside assistance can be crucial in resolving such skepticism. Cornell's Industrial and Labor Relations (ILR) Extension and the New York State Public Employment Relations Board (PERB) are very good resources.

Martha Standish also believes that it's important that people maintain a "cooperative spirit." Disagreements will still occur, yet people must realize that there is a forum for resolving these disagreements. Labor-management committees and mutual-gains bargaining provide excellent vehicles for arriving at these resolutions.

For the nursing home, the support of and flexibility allowed by the county manager and personnel officer were important to the success of the labor-management committee. Training also helped labor and management at the home to use the committee more effectively. For some time, the members seemed to get stuck on the same old issues, meeting after meeting. A trainer was brought in from CSEA who showed them how to run the process in a more productive manner. The union president recommends

distributing the monthly meeting agenda to all committee members prior to the meeting. This ensures no one is surprised or caught off guard by the issues that come up at the meeting. It also allows participants time to gather any information they feel might be relevant to the meeting discussion.

Finally, Genesee County is essentially a small community where connections are close. While the county's community service programs developed out of the labor-management committee, they also have served to strengthen the cooperative character of relations between everyone involved in county government.

CREATING “WIN-WIN” SITUATIONS: THE CASE OF ONTARIO COUNTY

Authors: Nicole Blumner and Darth Vaughn

From the report, *Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State*

Department of City and Regional Planning, Cornell University, June 1998

Twenty years ago in Ontario County, labor-management relationships were confrontational, and walkouts during contract negotiations were not uncommon. Ontario County was then one of several New York counties to have legislative determinations (the Board of Supervisors could impose contracts on the bargaining units), a practice that was very unpopular with employees and was later discontinued. Beginning in the 1980s, changes in management and union leadership led to a new interest in building “win-win” situations that characterize today’s more cooperative labor-management relations in Ontario County. The county has built cooperation through a variety of structures and tools, including labor-management committees, a “Service Excellence” total quality management program, and mutual-gains bargaining.

The following people were interviewed for this study:

- Edward Grace, County Administrator
- Geoffrey Astles, Deputy County Administrator
- John Garvey, Human Resources Director
- Robert Russo, President, CSEA Unit #7850

LABOR-MANAGEMENT COMMITTEES

Since the early 1980s, *labor-management committees* have been key for developing successful day-to-day labor-management relations. These committees function at countywide and departmental levels and around specific issues, such as safety and health. The committees provide an opportunity for workers to bring their issues to the highest level of management in the county. Currently, the county administrator, the deputy administrator, the director of human resources, and several local union presidents sit on the countywide committee. County administrators say they are gradually decentralizing the work of these committees so that individual departmental committees handle most of the work.

The committees meet monthly and have dealt with many day-to-day workplace issues, such as work scheduling, flexible hours and overtime, procedures for dealing with employee absences, and treatment of employees by supervisors. They also deal with long-range planning issues related to the workplace. For instance, prior to the recent construction of the new human services building, the countywide committee met with the architects to develop a building program that suited their needs. Committees do not deal with the largest contractual issues, such as compensation and benefits. Agencywide

committees have formed in the Social Service and Public Works Departments, and a committee is currently forming in the County Nursing Home.

County managers laud the committees as being very effective. Although it sometimes takes a couple of months for people to get used to the idea and build trust, both labor and management agree the committees are useful in solving daily issues. Now issues don't build up until contract renegotiation. Instead, a letter of agreement can be issued, ultimately allowing for a smoother bargaining process. In fact, one union leader reported that the existence of the labor-management committee was a form of "preventive medicine" that allowed him to resolve more workplace problems as they occurred. Labor-management relations were so improved by the committees that he did not have to bring many minor issues to the committee meeting. Officials also point to a reduced number of employee grievances filed, which is likely a result of the committees' efforts. For both labor and management, this means increased time to deal with matters other than labor disputes. Furthermore, labor was able to achieve its goal of gaining greater employee involvement in the decision-making process.

One drawback of the committees is that they effect a loss of authority for middle managers that some resent, since employees are now empowered to bring their concerns directly to the highest level of management. Furthermore, the county only trains the top labor and management leaders in the concepts and techniques of labor-management committees, effectively shutting out middle managers from the process. However, despite middle managers' resistance, both labor and management leaders view the committees as successful endeavors. County leaders say they are taking steps to train middle managers in cooperative processes with the goal of getting them to buy into the new structures. However, training is expensive, and so it may not be possible to train every manager unless proven necessary for success.

THE SERVICE EXCELLENCE PROGRAM

Another cooperative initiative that has been successful in Ontario County is the *Service Excellence Program* (also known as total quality management or TQM). This program was initiated in 1993 with union participation in order to promote "customer satisfaction by continuous improvement through employee involvement." Initially both labor and management leaders as well as county legislators were trained by Rochester Institute of Technology staff. Initial training cost \$35,000 for employees and \$50,000 for supervisors, managers, and elected officials. The county gradually built its capacity to do training in-house, and today all county employees have been trained in Service Excellence concepts.

The Service Excellence program is structured around a countywide steering committee that acts as a core planning group, setting the direction for the program and coordinating the activities of the subgroups. Four of the 37 departments have operational workgroups, which have the same organizational structure as the steering committee and coordinate their corresponding functions.

There are currently six subgroups that perform the following functions:

- **Trainers and Facilitators:** trains new employees in Service Excellence concepts
- **Training and Development:** provides technical tools and training to TQM teams
- **Measurement and Assessment:** surveys and measures customer and employee satisfaction; develops measures for performance standards
- **Team Chartering:** selects projects for Service Excellence efforts; provides mentoring and assistance to teams in improving job performance
- **Communications:** shares information and ideas through a quarterly newsletter; publicizes the program and increases awareness of program success
- **Recognition and Reward:** provides rewards for good work and incentives to improve operations, with the goal of better service as a result. Rewards include free dinners at area restaurants, pins for long-serving employees, and engraving employee names on a plaque in the county courthouse.

The Service Excellence initiative has resulted in “win-win” situations for labor and management. It has also saved county taxpayers money. The workplace safety team project, for instance, began with county safety coordinators identifying high-risk job duties, such as driving and heavy lifting, based on local and national accident and injury data. Employees performing these tasks were then trained by professionals in safer driving and lifting techniques. This initiative resulted in a 37% reduction of OSHA-recordable injuries in the county from 1994 to 1997. Lost days were reduced by 60% in the same time period. As a result of these safety improvements, a special tax assessment to pay for workers’ compensation, to be spread out over five years, was paid off in only three due to reduced injuries, saving taxpayers \$1.5 million. Furthermore, employees received an important morale-building message—that management truly cares about their safety on the job.

Another example of the benefits of Service Excellence is the county sheriff’s department, one of only two sheriff’s departments in the state accredited by CALEA (Commission for the Accreditation of Law Enforcement Agencies), which requires that 800 standards be met before granting accreditation. Managers emphasize that through Service Excellence, the county aspires to have the highest professional law enforcement standards in New York State, a goal borne out by the fact that the county jail is also nationally accredited. It’s a win-win situation for law enforcement and citizens alike, since there is a lessened liability to the community for lawsuits from dissatisfied citizens. A string of deficiency-free state auditor’s ratings in the nursing home and in the home health program further illustrate the quality improvements engendered by the Service Excellence program.

This is not to say that Service Excellence is without its drawbacks. Training is expensive and the results are not always immediate. The work groups have experienced varying levels of success, according to the human resources director. In particular, there is a need for greater employee-based innovation in both health and social services departments, both of which have experienced greater resistance from middle managers.

Finally, it should be noted that the work of the Service Excellence committees does not overlap with that of the labor-management committees. However, in a small organization such as Ontario County, there is overlap among the key players in the various groups that allows for communication between them.

MUTUAL-GAINS BARGAINING

A third tool, *mutual-gains bargaining*, has been used in the county to negotiate labor contracts since 1994, when the county used this process to renegotiate four contracts with CSEA. Training, provided by staff from the New York State School of Industrial and Labor Relations at Cornell University, helped to educate both management and labor about the techniques of mutual-gains bargaining. Results were positive, and both labor and management say they would use mutual-gains bargaining again in future contracts. Through the mutual gains process, they both have become more adept at cooperative skills, such as listening to each other and providing information up front.

Union leaders extolled the benefits of mutual gains, although they acknowledged the difficulty of adjusting to providing information up front. Sounding a less satisfied note, one manager noted that mutual gains is a “tedious process” and might not be used in the next contract, now that trust levels are high, making formal processes for information-sharing less necessary. Mutual gains has proven valuable to smooth negotiation contracts, but as another manager put it, “it is the respect and mutual trust developed the other 11 months of the year that really matters.”

THE RIGHT CLIMATE

There were several preexisting conditions needed to build cooperative labor-management relationships in Ontario County. Above all, it was willingness of both labor and management to risk upsetting a stable but fundamentally adversarial relationship to move towards a more cooperative, “win-win” model of relations. To do so, county leaders focused on the county’s changing needs and saw the value of changing the status quo in order to “be the best,” as one manager said.

There was some initial resistance to the Service Excellence program, for example, on the part of the Board of Supervisors. They were skeptical of, in the words of one manager, “another one of those touchy-feely programs.” Today the legislators are much more supportive of the program, but as elected officials, ultimately they are most interested in the bottom line. Since improvements are sometimes hard to quantify, this can be a barrier to gaining their endorsement for new initiatives.

Some employees and middle managers have also remained uncomfortable with the new cooperative outlook. Middle managers may rightfully believe they are being cut out of the decision-making loop, and that their jobs are threatened as a result. However, county leaders say this resentment has diminished over time, as people have gotten

involved and helped to solve problems. However, some leaders wished they had made more effort to train middle managers before cooperative processes were instituted. Some county officials believe it may take up to ten years for a full transition to a new philosophy of cooperation.

Support from union leadership has been more uniform, especially in regard to safety, which is also a top priority for national AFL-CIO leaders. Service Excellence parameters have even been incorporated into the most recent labor contract. Still, leaders on both sides remark that some people are resistant to change of any kind, and that it takes time to build the trust and teamwork necessary for change.

PRIVATIZATION, ENGAGING LABOR, AND PERFORMANCE MEASUREMENT

Privatization is a contentious issue that can stymie even the smoothest labor-management relations. Ontario County has successfully dealt with privatization issues by bringing labor into the process. When the county receives an unsolicited offer to privatize a particular service, as it has for the county landfill, nursing home, and home health care, both management and labor are involved in making the decision. In the case of home health, employees are giving input to an outside consultant hired to study the costs and benefits of privatization. County administrators consider the input of employees and the consultant alike before making a final decision.

As a result of the decision-making process, the landfill and nursing home have remained county-run, and the study of home health care is ongoing. County officials, however, do make it clear that just because a service is not privatized today does not mean it can't be in the future. If the private sector can provide the service cheaper and better, according to county management, then the service will go private. This belief, in the words of union leaders, is a "constant challenge," but they are glad to have the opportunity to conduct their own research and bring the results to the table to discuss with management in a cooperative setting.

In another effort to engage labor in decision making, Ontario County CSEA representatives serve on the search committees for new county administrators. The present county administrator was chosen this way, as was the director of planning. County management and the union also cooperated in developing a new cafeteria health plan, which, after a year-long education period, now allows workers to choose their own benefits packages.

The effects on employee morale and citizen satisfaction of Ontario's cooperative programs have been positive, but have only been quantified to a limited extent. Officials cite the difficulty of finding objective measures of performance quality. The county has obtained some information through a "Citizen Survey" and an "Employee Survey" conducted under the auspices of the Service Excellence program. The results of the surveys indicate that both citizens and employees are generally satisfied with county

services and workplaces. However, there was no survey taken prior to implementing the changes. Nor was the data compared to national norms. While attitude change may be difficult to quantify, the county is able to show clear instances of cost savings in particular departments, such as the workers' compensation tax windfall. However, the County still does not have a way to measure cost savings on an interagency level.

KEY LESSONS

Cooperative labor-management structures have had a short but productive existence in Ontario County. Several key lessons have emerged, according to both labor and management leaders:

- It may be tempting to jump into the latest trendy program, but **few people realize the amount of work needed to sustain the effort**. Begin by understanding the level of commitment needed to implement these programs.
- **It takes time to build a cooperative labor-management relationship**. There is no such thing as a quick fix. However, significant success was achieved in Ontario County in just three years of Service Excellence and mutual-gains bargaining.
- In any negotiation, **it is important to make sure the other side looks good**. This mindset can lead to a more productive negotiation process.
- **The right people need to be at the table** for a successful result. If labor leaders don't represent employees' true interests but defer to management, for instance, the negotiation will be futile. The people at the table also need to have the authority to make a final decision.
- One group can adhere to its principles and still maintain a regard for the other group's interests. **There can be mutual gains** in the negotiation process.
- **Middle management must buy into the process** and be trained in the cooperative philosophy. Even if top management buys into the idea, middle managers need to support it. Leaders should not be afraid to make ultimatums if middle managers continue to resist changes.
- **Attain small victories** like safety improvements, and **build on those successes** to make broader changes.

Certain resources were especially helpful to both labor and management in getting the cooperative process started. First and foremost, they did extensive background research on each initiative. For instance, county leaders recruited an advisory council of eight business people who use Service Excellence in their firms. This council continues to provide information to the county about private sector innovations that improve performance and service. Managers cited the importance of looking to the private sector to learn about successful methods for building labor-management cooperation.

Area educational institutions were also a valuable resource. The Finger Lakes Community College Business Institute (FLCC), the Rochester Institute of Technology College of Continuing Education, the Cornell School of Industrial and Labor Relations, and the Center for Government Research, a nonprofit public-policy consulting firm in

Rochester, all aided the process through information and/or training. The FLCC, for example, houses an Excellence in Government Institute, which offers all county employees free certificate programs in supervision, customer skills, and workplace skills. Course topics include conflict management, problem solving, meeting skills, and tools for process improvement. On a national level, a summer program of the Institute for Local Government at the University of Virginia gave officials a larger perspective on government restructuring efforts around the country.

CONCLUSION

Instituting cooperative processes involves a culture change, and an evolution in the way work systems are designed. It does not occur overnight, nor without careful preparation. In order to effect changes in working relationships and labor-management relations, managers, union officials, legislators, and employees need to be trained in the philosophy behind cooperation. Both parties need to work together continuously to implement change effectively.

Labor-management cooperation in Ontario County is a testimony to the leadership of both the union and management in seeking better ways of working and new paths to success. Ontario County's example shows that cooperation does not have to compromise or deny the identity of either party. However, cooperative structures are not panaceas. Conflict may still arise, and if handled correctly, can spark creativity and change. Ontario County's example demonstrates that labor-management cooperation can provide a better way for government to function effectively.

COOPERATIVE LABOR-MANAGEMENT RESTRUCTURING TOOLS IN TOMPKINS COUNTY

Authors: Jon Gans and Kristin Guild

From the report, *Aspiring to Excellence: Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State*

Department of City and Regional Planning, Cornell University, June 1998

Tompkins County is located in the Finger Lakes region of New York State at the base of Cayuga Lake. It has a population of approximately 95,000, and operates under a county administrator who is appointed by the fifteen-member elected Board of Representatives.

In Tompkins County, the primary focus of cooperative labor-management relations is a total quality management initiative called Partners for Quality. All labor-management committees are implemented under the structural umbrella of the Partners for Quality initiative. Mutual-gains bargaining is another tool used in Tompkins County. However, the scope of mutual-gains bargaining is not as broad as the Partners for Quality program nor as central to day-to-day decision making and service delivery.

The following people were interviewed for this study:

- David Chase, President, CSEA Local 855
- Scott Heyman, County Administrator
- Barbara Mink, Chair, Board of Representatives

LABOR-MANAGEMENT COMMITTEES

THE ORIGINS OF LABOR-MANAGEMENT COMMITTEES IN TOMPKINS COUNTY

Labor-management committees have long been implemented in an ad hoc manner in Tompkins County. There was a clause in the standard labor contract which allowed for creating labor-management committees to resolve workplace conflicts or address specific projects, and labor-management committees were occasionally used in that context. There was also an Employee Council (comprised primarily of employees) which served as a venue for communication.

These committees set the stage for implementing a formal total quality management program in the county in several ways. First, they demonstrated to employees, managers, and elected officials that cooperative structures could be effective. Second, the ad hoc committees on which any employee, union or non-union, could serve and which were beginning to address contract matters such as terms and conditions of employment, represented a threat to the authority of the CSEA Local 855, which bargains for all county employees. Thus, when county managers wanted to formalize labor-management committees and subsume them under a total quality management initiative, it was in the union's interest to work to negotiate an exclusive agreement between the county Board of Representatives and the union. At that time, the other existing cooperative structures such as the Employee Council were disbanded.

HOW LABOR-MANAGEMENT COMMITTEES FUNCTION NOW

Under the total quality management program, there is a nested system of labor-management committees, with a hierarchy stepping down from the Leadership Council to departmental committees to cross-functional project teams.

The umbrella committee is the Leadership Council, which directs the implementation of the program and provides structural organizational support for departmental labor-management committees operating under the program. The large departments in the county, such as the Department of Social Services, the Health Department, and the Probation Department, each have a departmental labor-management committee that addresses general workplace matters and formulates policy recommendations designed to improve the efficiency of the department. Cross-functional project teams are created to work on a particular project such as coordinating intake systems for welfare and other social service recipients.

PARTNERS FOR QUALITY

In 1993 county administrators and elected officials decided to formalize the cooperative structures in the county and implement a more comprehensive mechanism for cooperative decision-making: the Partners for Quality program (also known as total quality management or TQM).

Tompkins County Administrator, Scott Heyman, had been interested in the concept of TQM for a number of years, but information about implementing total quality management in the public sector was difficult to find. After some research of successful examples of total quality management in the public sector in Minneapolis, Minnesota, and Madison, Wisconsin, the Board agreed to hire Marcia Calicchia from the School of Industrial and Labor Relations Extension of Cornell University and the Program for Employment and Workplace Systems (PEWS) to assist in planning the implementation and conduct employee training. These consultants were chosen due to their jargon-free and labor-oriented approach to TQM. This perspective on total quality management was, and still is, very important to the goals of the county.

SHIFTING FROM AUTOCRATIC TO COOPERATIVE WORK SYSTEMS

Barbara Mink, Chair of the Board of Representatives, described total quality management as “an absolute visceral change in the way [we] react to problems and the way [we] take initiative for change.” As a result of the Partners for Quality initiative, many managers have shifted from an autocratic way of directing operations to one that is more cooperative. This change in management style is beginning to impact all departments. Almost everything that is done in Tompkins County now is done through a labor-management framework. Total quality management has impacted Tompkins County employees and managers in a profound way; a higher degree of communication and cooperation is now part of the culture in Tompkins County.

STRUCTURE OF THE PARTNERS FOR QUALITY PROGRAM

There are three primary components to Partners for Quality:

- 1) The Civil Service Employees Association (CSEA) Local 855 and the Tompkins County Board of Representatives spent a year negotiating an agreement establishing the labor-management partnership. The agreement outlines the guiding principles and overall expectations for the initiative. The agreement is still in force.
- 2) The Leadership Council—a labor-management committee that guides the implementation of the Partners for Quality program and provides structural, organizational support for departmental labor-management committees operating under the program.
- 3) Every employee, manager, and legislator in Tompkins County is trained in total quality management techniques and work processes. The goal is to provide training that crosses formal organizational boundaries. Marcia Calicchia and her colleagues have trained twenty in-house facilitators in TQM techniques and several people within the county now have leadership roles with the program.

Tompkins County has invested heavily in training for this program. Between 1994 and 1997, the county spent just over \$300,000 for outside consultants to conduct training. In 1998 the county will spend an estimated \$170,000 for consultants to complete the bulk of the training (for all departments except the sheriff's department, which is an independent agency). Since 1997, in-house costs have been around \$100,000. These costs will drop dramatically after 1998, when all employees, managers, and elected officials will have been trained in total quality management techniques and only training for new employees and refresher courses will be necessary.

SUCCESES

Certain projects are ideally suited for joint decision making. It can be a time-consuming process, but the tangible results are often worthwhile.

Example - Human Services Building

In December of 1997, Tompkins County completed construction on a new building to house the Department of Social Services. The building was planned using TQM methods with a great deal of employee involvement in decision making. The old building had inadequate ventilation and a lawsuit had been filed by employees which prompted the search for a new facility.

When decisions such as these were made in the past, a committee of five legislators was chosen to oversee the project without representation from labor. When the board announced the formation of this committee, union representatives requested labor's involvement in the design and construction of the facility. The size of the preliminary planning committee grew to twenty-one members and, although it was large, the contribution of labor to the overall project resulted in an extremely functional building.

The process took four years from conceptualization to completion. Most importantly, a lot of the controversy that usually accompanies this kind of dramatic change was eliminated. When the

committee was first established, labor expressed some fear and anxiety toward the project. These concerns were largely dealt with in the context of the various labor-management committees that were formed.

There were at least three committees established to construct the building: a stakeholders committee comprised of building occupants (both labor and management) to make the preliminary determination of the requirements for the new building, a building design committee to determine room sizes, color scheme, carpet types, etc., and a building construction committee which organized and supervised construction. Barbara Mink reported: “[I]t was extremely labor intensive, but not agonizingly so, and it resulted in the best building project we have ever had.”

LIMITATIONS

Labor-management committees and total quality management methods can only function well when committee authority is clearly defined and consistent.

Example - Downtown Ithaca Parking

A county labor-management committee was formed to address the lack of employee parking in downtown Ithaca, and was charged with the task of making recommendations to the Board of Representatives. The parking committee did not have jurisdiction over expenditures, so the members could not recommend putting up a gate that costs \$20,000, for example, without going through the board. However, the committee was given the authority to determine the policies for county parking lots. The committee has recommended that several parking spaces currently reserved for board members be reassigned to other county employees. The Board is poised to reject the committee’s recommendations.

The labor-management committee in this case does not have the authority to determine a policy that the Board of Representatives does not like. Situations like this which give authority only to take it away can undermine cooperative efforts and slowly developing trust. To prevent failures, the role and authority of committees should be clearly defined from the outset, and elected officials must be as committed to the process as others involved.

MUTUAL-GAINS BARGAINING

In Tompkins County mutual-gains bargaining techniques have been instinctively used for many years. In 1995 county administrators decided to formalize a mutual gains approach by training employees in the technique. Bernie Flaherty of the School of Industrial Labor Relations Extension of Cornell University trained approximately 300 of 720 county employees in mutual-gains. Now all bargaining units other than the sheriff’s department utilize mutual-gains techniques for all terms and conditions except salary.

Mutual-gains bargaining is not a panacea for Tompkins County. The impact of using this tool depends on the commitment of the participant, as the President of the CSEA Local 855, David Chase pointed out:

Mutual-gains bargaining can be whatever you want it to be. Some people don't see [win-win] as win-win. Some people see it as compromise-compromise...There's a contract between labor and management which automatically creates sides. But, that doesn't mean that the two shouldn't look at each other and say: we should do what's best for the both of us (and) for the entity that we serve which is Tompkins County...We realize the reality of the situation; there is X amount of money to be allocated and we need to figure out the best way to move it around.

Mutual-gains bargaining serves to improve the process of negotiations. Through the use of this tool, consensus and agreement is reached more quickly and with less aggravation in Tompkins County.

ADVANTAGES OF MUTUAL-GAINS BARGAINING

All three interviewees recognized the benefits of mutual-gains techniques in negotiations. The fact that interest-based approaches to problem solving have extended beyond the collective bargaining process to committees and other arenas is an indication of their usefulness. County Board Chair Barbara Mink indicated that the sheriff's department used the language of mutual gains in the latest discussion of health care benefits.

In collective bargaining, salary remains the only issue that is not negotiated with mutual gains techniques. The county has offered to negotiate salary using mutual gains but the union has resisted. However, the issue of salary was "on the table" faster than ever before in the latest round of contract negotiations, according to David Chase.

BENEFITS OF LABOR-MANAGEMENT COOPERATION IN TOMPKINS COUNTY

There are three broad expectations associated with labor-management cooperation in Tompkins County: to improve labor-management relations, to decrease costs for delivering services, and to keep taxes down. The decision to establish formal structures to share decision making with labor was not due to particular fiscal or service pressures. TQM is a formalization of the labor-management relationship that has been developing since the 1980s.

IMPROVED RELATIONS BETWEEN LABOR AND MANAGEMENT

The focus of the Tompkins County Partners for Quality (PfQ) initiative is on improved labor-management relations. This reflects the perception that cooperation will directly, and indirectly, result in cost savings and improved service quality. Barbara Mink describes its effects as:

a shift in our paradigm; an absolute visceral change in the way we react to problems and the way we take initiative for change...Tompkins County is a good example of how TQM can work...The best evidence for this, in addition to the cost savings and improvements in efficiency, is the change in people's attitudes.

These goals have been articulated through various mission and vision statements. In addition, TQM orientation sessions, which have occurred since December 1994, are another forum for developing a shared understanding of these goals.

GRIEVANCES

One indication of improved relations between labor and management is in the type and number of grievances that have been filed since the implementation of TQM. The grievances that are filed today represent issues that are not resolvable through labor-management committees. In Tompkins County, grievances have been minimized through these new avenues for communication.

IMPROVED SERVICE QUALITY

In Tompkins County, the focus of labor-management cooperation is on process issues. For instance, the Department of Social Services labor-management committee developed a framework for eliminating excessive layers of administration. Now, there is a single intake system for food stamps and Medicaid. This change both improves service quality and reduces the cost of providing services.

COST SAVINGS FROM IMPROVED LABOR-MANAGEMENT RELATIONS

Management believes the benefits of TQM more than outweigh the costs and has been willing to invest heavily in the process. However, figures documenting these cost savings are hard to come by due to a fear that cost savings will result in budget cuts, punishing successful departments. Coupling total quality management with performance-based budgeting techniques could help to encourage documentation of cost savings. Another strategy would be to simply make it clear at the outset to departmental staff that if funds for training and to sustain the overall initiative were going to continue to flow, documentation of cost savings must be forthcoming.

KEY LESSONS AND INSIGHTS

TRUST, LEADERSHIP, AND DEFINING ROLES

The most important factor in developing cooperation between labor and management is people. One of the main reasons for the success of TQM in Tompkins County is that both management and labor were committed to the idea. The degree of trust that existed prior to the implementation of TQM enabled Tompkins County to proceed with the initiative.

Both Barbara Mink (Chair, Board of Representatives) and David Chase (CSEA Local 855 President) acknowledged the role Scott Heyman (County Administrator) played in developing support for the Partners for Quality program in Tompkins County. One concern David Chase has is the impact Scott Heyman's retirement will have on the initiative. Subsequently, one priority of the interview process is to determine whether or not the values of candidates for county administrator are consistent with the TQM program.

The expectations and roles for labor-management committees must be defined as clearly as possible to limit misunderstandings. Clear roles enable committees to remain focused. Union

representatives have played an important role in keeping this focus and pointing out when the committee is getting off track.

COMMUNICATION AND PLANNING

Communication is paramount to success. Through communication goals are defined, expectations are delineated, and relationships are built. Limiting the use of jargon also facilitates the process, especially during training sessions.

Careful planning will result in a smooth transition during implementation. It is important to make sure the strategy for implementation is clearly defined before presenting it to employees. Tompkins phased in its program and this led to a lot of confusion among union members and employees because of the time lag between the start of training in the Department of Social Services and the full implementation of TQM. Two years have elapsed since the initiative was announced and some people have just begun their training.

INFORMATION

The major obstacle was not the will to begin using TQM, but the means by which to implement the program. Tompkins devoted a lot of time and effort to finding the right people to conduct the TQM training. County Administrator Scott Heyman asserts, "You have to make sure that you get the right people to do the training; that the consultant's conception of TQM is what you want; that it is consistent with what you have been doing." In addition to finding the right facilitators, reviewing the experience of local governments through hands-on practice is important.

CONCLUSION

This case study has shown that labor-management cooperation is not only possible, but viable in Tompkins County. With the right people to coordinate the effort and the support of labor, management, and elected officials, the TQM initiative in Tompkins County has been, to a large degree, successful. The insights drawn from this case may provide other county governments with information necessary to pursue labor-management cooperation as a tool for service delivery.

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New York State Taylor Law: History

The History of the New York State Public Employees' Fair Employment Act

In the late 1800s and early 1900s, despite some union organizing and periodic labor unrest in the nation, there were no Federal or New York State laws addressing labor organizing in either the private or the public sector. In 1935, Congress passed the National Labor Relations Act (also known as the Wagner Act). The National Labor Relations Act gave private sector unions recognition for the purpose of collective bargaining, but did not address public sector unions.

Post WWII Labor Unrest Sets the Stage for a Public Employees Strike Prohibition

Following World War II, as the nation made the difficult transition from wartime to peacetime production, there was a great deal of labor unrest across the country. In the 12 months following V-J Day, more than five million workers (nearly one tenth of the nation's workforce) struck in 4,630 reported work stoppages. New York State was no exception to this national trend, and public sector strikes in the state were particularly problematic. In 1946, Rochester's mayor summarily dismissed 486 civil servants and threatened to contract out all government services in response to a request for union recognition. To demonstrate their support of the union and disagreement with the mayor's reaction, 30,000 public and private workers in Rochester participated in a one-day general strike. The following year, 2,400 Buffalo teachers struck for a week, effectively shutting down the schools.

Public Sector Strike Prohibited by US and NYS Law - 1947

Due to the essential nature of many government services, a public sector strike can be extremely costly and even dangerous to a community. Recognizing this, the U.S. Congress prohibited public sector strikes and established strict penalties (immediate dismissal and a 3-year bar to reemployment) for striking public sector employees in the Taft-Hartley Act of 1947. That same year, New York State passed the Condon-Wadlin Act, which also prohibited public sector strikes. Under the Condon-Wadlin Act, a striking public sector employee was to be immediately fired. If reinstated to his/her position, a striker was barred from any pay increase for three years, and was placed on probation without tenure for five years.

Public Sector Strikes Still Occurred

These penalties were seldom enforced. Through 1964, though there were 21 strikes, the law was only invoked seven times, and only 18 striking employees were dismissed across the state. Others were rehired or transferred and it is uncertain if the pay and tenure penalties were applied (Donovan, 6). In 1963, to improve enforcement of the Condon-Wadlin Act, the New York State legislature revised the penalties for striking to: (1) a six-month pay freeze to reinstated employees (rather than three years); (2) a one year probation without tenure (rather than five); (3) two days of pay deducted for each day on strike. In addition to these revised penalties, private citizens were given the right to file suit against a local government which did not implement the law or enforce the penalties.

These changes to the law still did not prevent public sector strikes. In 1965, 6,000 Department of Welfare workers struck for 28 days. Part of the negotiated settlement was the suspension of strike penalties (Donovan 1990: 12) . Less than one year later, on New Year's Day of 1966, a transit worker's strike shut

down New York City for twelve days, costing an estimated \$100 million each day. The negotiated settlement included a pay increase, which was contested in a suit by a private citizen. With the threat of a continued strike looming, the state legislature passed an amnesty bill exempting all strikers from Condon-Wadlin penalties (ibid.: 19-20). Clearly, the Condon-Wadlin prohibition of striking and its penalties, even in their revised form, did not prevent costly public sector strikes.

Three days after the end of the New York City transit strike, Governor Nelson Rockefeller announced the appointment of a Public Employee Relations Committee, to "make legislative proposals for protecting the public against the disruption of vital public services by illegal strikes, while at the same time protecting the rights of public employees" (Rockefeller, as quoted in Donovan 1990: 23). Because it was chaired by George W. Taylor, Harnwell Professor of Industry at the University of Pennsylvania, the committee was known as the Taylor Committee. The Public Employees' Fair Employment Act (Section 14 of the New York State Civil Service Law) was passed in 1967 based upon the committee's recommendations. It is called the Taylor Law after the Professor George Taylor, the chair of the Committee.

Taylor Law Mandates Public Sector Collective Bargaining to Prevent Strikes - 1967

The Taylor Law maintains the prohibition of and penalties for public employee strikes, but addresses the root causes of strikes to prevent them by creating a process for negotiation between management and labor, and an agency with the mandate to implement and interpret the statute. Some say that the Taylor Law gives labor the right to bargain collectively in return for taking away the right to strike. In fact, public servants never had the legal right to strike in New York State, but prohibitions and penalties had not worked to prevent them. The Taylor Committee believed that collective bargaining would be more effective.



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March 1, 2002

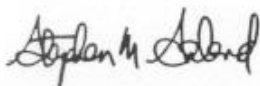
The prospect of an investor-state dispute settlement mechanism (a private right of action) in foreign investment-related disputes is very troubling in light of recent experience under the North American Free Trade Agreement (NAFTA). In particular, NCSL is concerned about this mechanism being used to bring unreasonable challenges to state sovereignty. Provisions must be made to deny any new private right of action in U.S. courts or before international dispute resolution panels, especially if it could result in foreign firms gaining an advantage for foreign firms over U.S. firms in terms of their tax and regulatory treatment.

NCSL supports international investment protections to ensure predictable and equitable treatment for U.S. investors in foreign countries just as the broad standard of protection provided by the U.S. Constitution is enjoyed by foreign entities in this country. In light of recent experience with the Chapter 11 investment provisions of NAFTA, NCSL is concerned that the President or USTR could negotiate an agreement that may precipitate unreasonable challenges to state measures. NCSL believes that any text should be crafted to provide the greatest degree of protection possible for state measures enacted in accordance with the principles of state sovereignty and the broad protections afforded by the Commerce Clause and the Foreign Commerce Clause of the U.S. Constitution.

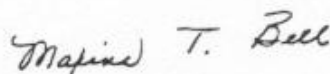
Enclosed, please find NCSL's policies on Presidential Trade Promotion Authority and Free Trade and Federalism. As highlighted in these policies, NCSL supports free trade agreements that open overseas markets to U.S. exports while improving Americans' access to goods and services. Such agreements must respect U.S. constitutional principles, state sovereignty, and federalism. We believe that it is incumbent upon the Congress to ensure that these principles and protections are negotiated into trade agreements from the outset so as to prevent the untenable choice when the agreement is presented to Congress between free trade and constitutional principles.

The National Conference of State Legislatures appreciates the strong efforts of the Congress, the President, and USTR to expand international trade. We look forward to working with you to assure that sufficient and proper guarantees are put in place to protect U.S. constitutional principles, American federalism, and state sovereignty. If you have any questions or for more information about NCSL's policies, please contact Jeremy Meadows, Committee Director for NCSL's Agriculture & International Trade Committee, at 202-624-8664.

Sincerely,



Stephen M. Saland
Senator, New York
President, NCSL



Maxine T. Bell
Representative, Idaho
Chair, NCSL AFI Agriculture & International
Trade Committee

CC: All Members, U.S. Senate

Enclosures: NCSL's President Trade Promotion Authority Policy
NCSL's Free Trade and Federalism Policy

SMS,MTB/jdm



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collectively through state organizations such as NCSL. It is imperative that when state laws are under challenge in international proceedings that the federal government defend state laws as vigorously as it defends federal law.

Because the federal government retains the power to sue a state to enforce international agreements, federal legislation implementing any new trade or investment accord must include appropriate protections for the states related to rules of procedure, evidence and remedies in such litigation. The federal government must bear the burden of proof in court showing that state law is inconsistent with an international agreement, regardless of the finding of an international dispute resolution panel. The President must be required, at least 30 days before the Justice Department files suit against a state, to file a report with Congress justifying its proposed action. In the event of an unfavorable judgment, states must be protected from financial liability. If the federal government agrees, in an international trade or investment agreement, to allow foreign firms to collect money damages for "harm" caused by a state law, then the federal government must fulfill its promise to pay those damages itself, rather than shift the cost to states.

Expires as of Annual Meeting 2003



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with the National Conference of State Legislatures that Fast Track authority should not include such "investor-to-state" remedies. We also believe that trade negotiators should not be able to grant foreign investors rights that are greater than those already enjoyed by investors under the U.S. Constitution.

We urge you to oppose all Fast Track bills that do not explicitly limit international rules or negotiating authority with respect to these concerns. Additionally, we ask that you take the lead in creating the select committees we requested in SJM 2 to examine how trade agreements affect our legal authority to respond to the needs of our constituents.

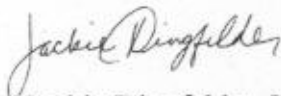
Sincerely,



Rep. Dan Gardner, House District 41



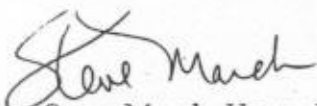
Rep. Alan Bates, House District 5




Rep. Jackie Dingfelder, House District 45



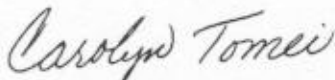
Rep. Randy Leonard, House District 48



Rep. Steve March, House District 46

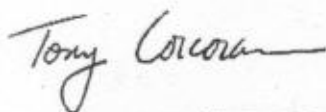


Rep. Charlie Ringo, House District 34



Rep. Carolyn Tomei, House District 38

Rep. Kelly Wirth, House District



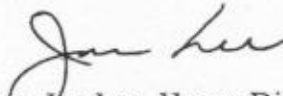
Sen. Tony Corcoran, Senate District 4



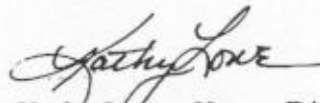
Rep. Phil Barnhart, House District 55



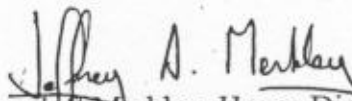
Rep. Richard Devlin, House District 37




Rep. Jan Lee, House District 51



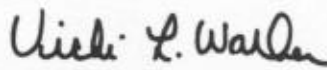
Rep. Kathy Lowe, House District 40



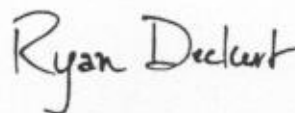
Rep. Jeff Merkley, House District 47



Rep. Diane Rosenbaum, House District 42



Rep. Vicki Walker, House District 13



Sen. Ryan Deckert, Senate District 14



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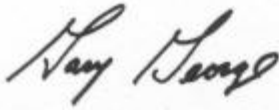
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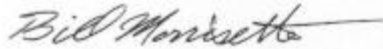
Sen. Gary George, Senate District 12



Sen. Avel Gordly, Senate District 23



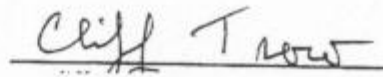
Sen. David Nelson, Senate District 29



Bill Morrisette, Senate District 6



Frank Shields, Senate District 24



Sen. Cliff Trow, Senate District 8

cc: US Representative Earl Blumenauer
US Representative Peter DeFazio
US Representative Darlene Hooley
US Representative Greg Walden
US Representative David Wu





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2.21 relatively high because over 75 percent of the economy is now in
 2.22 the service sector, and many services are regulated or provided
 2.23 by state and local governments, including programs designed to
 2.24 assist disadvantaged areas; and

2.25 WHEREAS, under GATS, WTO members will be making requests of
 2.26 other WTO members to weaken state and local regulation of
 2.27 services, including regulations relating to quality of services
 2.28 and environmental protection, in order to open up domestic
 2.29 markets to foreign corporations; and

2.30 WHEREAS, the risk of conflict between proposed FTAA
 2.31 procurement rules and state or local law is relatively high
 2.32 because over two-thirds of public procurement in the United
 2.33 States occurs at the state and local level, including programs
 2.34 designed to assist disadvantaged areas; and

2.35 INVESTMENT AGREEMENTS

2.36 WHEREAS, foreign investors have already used the provisions
 3.1 of NAFTA's investment chapter to challenge core powers of state
 3.2 and local governments including, but not limited to, regulatory
 3.3 power to protect groundwater, the power of civil juries to use
 3.4 punitive damages to deter corporate fraud, the ability of states
 3.5 to invoke sovereign immunity, and decisions by a local
 3.6 government to deny a zoning permit for construction of a
 3.7 hazardous waste dump; and

3.8 WHEREAS, the FTAA investment chapter creates foreign
 3.9 investor rights that potentially conflict with traditional local
 3.10 land use decision-making ability; and

3.11 WHEREAS, the FTAA investment chapter affects state and
 3.12 local powers including, but not limited to, zoning, protection
 3.13 of groundwater and other natural resources, corporate and tribal
 3.14 ownership of land and casinos, law enforcement by courts, public
 3.15 services, and sovereign immunity; and

3.16 WHEREAS, the FTAA investment rules deviate from United
 3.17 States legal precedents on taking state law and deference to
 3.18 legislative determinations on protecting the public interest;
 3.19 and

3.20 WHEREAS, the FTAA investment rules do not safeguard any
 3.21 category of law from foreign investor complaints including, but
 3.22 not limited to, laws passed in the interest of protecting human
 3.23 or animal health, environmental resources, human rights, and
 3.24 labor rights; NOW, THEREFORE,

3.25 BE IT RESOLVED by the Legislature of the State of Minnesota
 3.26 that it respectfully memorialize the Administration, Congress,
 3.27 and the Governor of Minnesota as follows:

3.28 (1) that the Administration and Congress should consult
 3.29 with state and local officials prior to negotiating any
 3.30 provisions of the FTAA or GATS, to ensure that trade negotiators
 3.31 do not undermine the scope of state and local governmental
 3.32 authority under the Constitution, while assessing the impact of
 3.33 a proposed agreement on state and local laws and future
 3.34 lawmaking authority, and, when necessary, providing general
 3.35 exceptions to safeguard state and local sovereignty and protect
 3.36 effective state and local programs and initiatives;

4.1 (2) that the Administration and Congress preserve and
 4.2 respect the traditional powers of state and local governments by
 4.3 requiring that United States negotiators of international
 4.4 investment agreements do all of the following:

4.5 (i) either exempt state and local governments from the
 4.6 scope of future investment agreements or exclude
 4.7 investor-to-state disputes from investment agreements ;

4.8 (ii) ensure that international investment rules do not give
 4.9 greater rights to foreign investors than United States investors
 4.10 enjoy under the United States Constitution;

4.11 (iii) ensure that international investment rules do not



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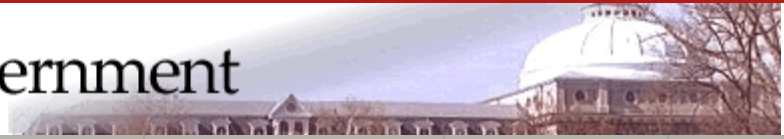
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4.12 undermine traditional police powers of state and local
4.13 governments to protect public health, conserve environmental
4.14 resources, and regulate fair competition;
4.15 (iv) ensure that all proceedings are open to the public and
4.16 that all submissions, findings, and decisions are promptly made
4.17 public, consistent with the need to protect classified
4.18 information, and that amicus briefs will be accepted and
4.19 considered by investment tribunals; and
4.20 (v) provide that an investors' home government must consent
4.21 to the investors' claim against their host government, if
4.22 investor-to-state disputes are retained; and
4.23 (3) that the Governor of Minnesota not consent, opt-in, or
4.24 otherwise voluntarily relinquish any powers of the state or of
4.25 local governments of this state, without first consulting with
4.26 the Minnesota Legislature and with local governments.
4.27 BE IT FURTHER RESOLVED, that the Secretary of State of the
4.28 State of Minnesota is directed to prepare and transmit copies of
4.29 this memorial to the President and Vice President of the United
4.30 States, the United States Trade Representative, the Speaker and
4.31 Clerk of the United States House of Representatives, the
4.32 President and Secretary of the United States Senate, each
4.33 Senator and Representative from Minnesota in the Congress of the
4.34 United States, and to the Governor of Minnesota.



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including the National Conference of State Legislatures (NCSL), which urged federal trade negotiators not to commit the United States to further investor-to-state dispute provisions such as those pending under NAFTA, and the National League of Cities, which has expressed concern that expansion of investment rules could undermine the successful effort by state and local governments to defeat legislation to expand compensation for takings in the 104th Congress.

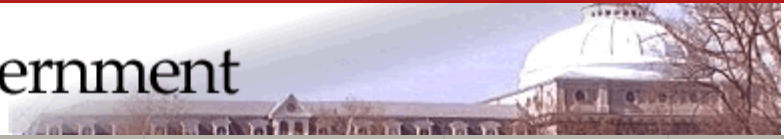
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE 2ND SESSION OF THE 48TH OKLAHOMA LEGISLATURE, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

THAT the Oklahoma State Legislature respectfully memorializes the President and Congress of the United States that the United States Trade Representative: preserve the traditional powers of state and local governments by requiring that negotiators of international investment agreements carve out state and local governments from the scope of future investment agreements or exclude investor-to-state disputes from investment agreements; ensure that international investment rules do not give greater rights to foreign investors than United States investors enjoy under the United States Constitution; ensure that international investment rules do not undermine traditional police powers of state and local governments to protect public health, conserve environmental resources, and regulate fair compensation; ensure that all proceedings are open to the public and that all submissions, findings, and decisions are promptly made public, consistent with the need to protect classified information, and that amicus briefs will be accepted and considered by investment tribunals; and provide that an investor's claim against its host government must consent to the investor's claim against its host government, if investor-to-state disputes are retained.

THAT a copy of this resolution be distributed to the President and Vice President of the United States, to the United States Trade Representative, to members of Oklahoma's Congressional Delegation, and to the National Conference of State Legislatures (NCSL).



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Adopted by the Senate the 6th day of May, 2002.

Presiding Officer of the Senate

Adopted by the House of Representatives the 9th day of May,
2002.

Presiding Officer of the House
of Representatives



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The Honorable Barbara Boxer
The Honorable Dianne Feinstein
April 3, 2002
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My concerns arise from direct experience with a similar investor protection provision in Chapter 11 of the North American Free Trade Agreement (NAFTA). That provision has raised serious concerns over its impact on the power of government to act to protect welfare and the environment.

- It mandates compensation for disappointed investors from other countries under a vague standard potentially much more expansive than that available for domestic investors who claim a regulatory taking. In effect, it may require government to pay foreign investors for the right to enforce its environmental regulations.
- The "measure" for which compensation is required may include any "law, regulation, procedure, requirement or practice." In fact, claimants under Chapter 11 have claimed compensation for the statements of government officials in debates over legislation, e.g., *Ethyl Corp. v. Canada*.
- Compensation is provided by arbitration panels that meet in secret and are not bound by precedent. Even pleadings filed before these panels may not be disclosed without the consent of the parties. These decisions are virtually nonappealable on the merits.

As currently proposed, H.R. 3005 broadly authorizes U.S. trade negotiators to include similar expropriation language in future trade agreements. Our recent experience under NAFTA demonstrates how drastically such provisions in international trade agreement can depart from American constitutional standards. Although NAFTA applies only to Canada, the United States and Mexico, the pending trade legislation could potentially subject the United States to liability to foreign investors from any nation.

The investor provisions found in H.R. 3005 provide substantially greater rights to foreign investors than American ones. They potentially go far beyond the carefully fashioned rules for compensation under the Fifth and Fourteenth Amendments articulated by the U.S. Supreme Court and implemented by trial judges who reach their decisions publicly, are bound by applicable precedent, and whose decisions are subject to appellate review.

I would urge you to consider this one provision of H.R. 3005 and to support amendments to insure in any future trade agreements or in any new legislation providing for international trade agreements that foreign investors receive no greater rights than American ones when they seek compensation for regulatory takings. Our constitutional takings jurisprudence recognizes



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The Honorable Barbara Boxer
The Honorable Dianne Feinstein
April 3, 2002

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the vital importance of private property rights, but the court's decisions also recognize the responsibility of elected representatives to protect the public health and welfare without the need to pay compensation to those subject to reasonable laws and regulations.

Sincerely,

BILL LOCKYER
Attorney General



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well as other regulations and practices. Those claims are heard by arbitration panels that meet behind closed doors, are not bound by precedent, and lack any democratic accountability. Moreover, those claims are not governed by the law of regulatory takings, which would apply to any similar claim for compensation brought by an American citizen.

In my view, Congress should be reluctant to authorize investor protection provisions similar to NAFTA's Chapter 11 in future international trade agreements. I strongly support the promotion of international trade, but I do not believe it is appropriate or necessary to depart from our established legal standards or to give foreign investors substantially greater rights than those enjoyed by Americans. I am also concerned about the impact such provisions may have on Vermont's efforts to protect the environment, public health, and welfare.

I would urge you to look closely at this issue and to support amendments to H.R. 3005 to ensure that in any new legislation providing for international trade agreements, foreign investors shall receive no greater rights to financial compensation than those afforded to our citizens.

Sincerely,

William H. Spirell
Attorney General



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play no part in this process since the foreign investor does not need the approval of its own country as a pre-condition to filing a compensation claim. Rather, the decision to file the claim and the ultimate resolution thereof are predicated solely on private economic impacts.

In response to H.R. 3005, on March 22, 2002, the National Association of Attorneys General ("NAAG"), representing 54 states and territories, passed the attached resolution expressing concern over the inclusion of provisions in international trade agreements that grant individual foreign investors new rights to challenge and seek compensation for state, local or federal government regulatory actions as "expropriations."

NAAG's concerns arise from direct experience with Chapter 11 of NAFTA. That provision has raised serious concerns over its impact on the power of government to act to protect health, welfare and the environment.

- Chapter 11 mandates compensation for disappointed investors from other countries under a vague standard potentially much more expansive than that available to domestic investors who claim a regulatory taking. In particular, the provision effectively would require the federal government to assume liability for enforcement of federal, state and local environmental regulations. See *Methanex v. United States* (\$1 billion expropriation claim filed by Canadian manufacturer of MTBE based on California's decision to ban the gasoline additive in order to protect groundwater); *Metalclad v. Mexico* (\$17 million award against Mexico based on local government's refusal to approve siting of a hazardous waste facility - arbitration panel ruled, in part, that local government lacked permit authority over the facility despite the government of Mexico's contrary assertion).
- The "measure" for which compensation is required may include any "law, regulation, procedure, requirement or practice." In fact, claimants under Chapter 11 have claimed compensation for the statements of government officials in debates over legislation, see *Ethyl Corp. v. Canada*, and for punitive damages imposed by a Mississippi state court on a company partially owned by foreign investors. See *Loewen Group v. United States*.

Actual and potential compensation awards predicated on a violation of international trade agreements will no doubt have a chilling effect on promulgation and enforcement of health and environmental regulations. Although the NAFTA arbitration panels do not have authority to set aside public health and environmental regulations they deem violative of international trade

agreements, and only the U.S. Treasury is liable for the payment of a compensation award, nevertheless, "regulatory expropriation" awards under NAFTA present a profound challenge to our ability to protect the public health and environment and to our Nation's sovereign interests. Moreover, substantial awards payable by the U.S. Treasury may ultimately prompt Congress to pass those costs, directly or indirectly, onto the "offending" state or to have the offending regulation declared invalid. *See* NAFTA Implementation Act, 19 U.S.C.A. § 3312(b)(2) (allowing United States to bring lawsuit to declare state or local regulation invalid).



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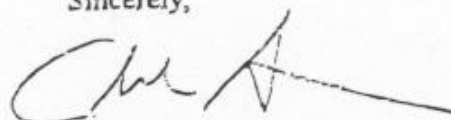
While NAFTA applies only to Canada, the United States and Mexico, the pending trade legislation would potentially subject the United States to liability for claims brought by investors from *any* nation. Its impact, therefore, would be much greater. The United States can support the promotion of international trade without creating an expansive new international law of takings.

The rights granted foreign investors under H.R. 3005 could go far beyond the carefully fashioned taking and due process jurisprudence articulated by the U.S. Supreme Court under the Fifth and Fourteenth Amendments. The purported protections in the proposed bill for environmental and health laws are completely inadequate. I therefore urge that bill be amended to include the following provisions which, I understand, are being proposed by Senator Kerry and are intended to avoid the problems caused by Chapter 11 of NAFTA :

- Foreign investors would enjoy no greater substantive or procedural rights or protection than those afforded to U.S. investors under the U.S. Constitution.
- Foreign investors would have to gain approval from their home country government before bringing a case under the investment protection provisions.
- Expropriation claims would be limited to cases in which there is a direct expropriation of all economically beneficial uses of the property.
- A clear exception for the government exercise of police powers would be provided, including legitimate health, safety, environmental, consumer, and employment opportunity laws and regulations.

Again, I urge you to support inclusion of these amendments in this or any future international trade bill.

Sincerely,



Eliot Spitzer



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- These provisions compensate disappointed investors from other countries under a vague standard that is potentially much more expansive than that available for domestic investors who claim a regulatory taking in our courts. In effect, these provisions may require government to pay foreign investors for the right to enforce its environmental regulations.
- Under these provisions, compensation is provided not by courts versed in constitutional law but by arbitration panels that meet in secret and are not bound by precedent. These decisions are virtually nonappealable on the merits.
- By way of example, under parallel provisions of NAFTA, a foreign corporation has laid claim to a billion dollars in damages arising out of the State of California's ban on MBTE in gasoline that was enacted to protect groundwater. Such claims clearly undermine the ability of state and local government to protect the environment.
- Joining NAAG in expressing concerns with these provisions are the National League of Cities, U.S. Conference of Mayors, National Conference of State Legislators and National Association of Counties.

As currently written, H.R. 3005 broadly authorizes U.S. trade negotiations to extend these provisions to all future trade agreements with other nations. Experience with NAFTA demonstrates how significantly such provisions in international trade agreements can depart from American constitutional standards.

In sum, the investor-protection provisions in H.R. 3005 provide substantially greater rights to foreign investors than American ones. They potentially go far beyond the carefully fashioned rules for compensation under the Fifth and Fourteenth Amendments, as articulated by our courts and implemented by judges who reach their decisions publicly, are bound by applicable precedent, and whose decisions are subject to appellate review.

Please consider supporting amendments to H.R. 3005 that insure that foreign investors receive no greater rights than provided under the U.S. Constitution when they seek

compensation for regulatory takings. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Steven Rowe". The signature is fluid and cursive, with a large initial "G" and a long, sweeping underline.

G. Steven Rowe
Attorney General

GSR/tt

Enclosure



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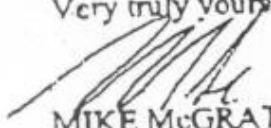
Max Baucus
May 14, 2002
Page Two

Furthermore, the decisions of the arbitration panels would not be subject to meaningful review by U.S. courts while, on the other hand, these panels would have the authority to declare U.S. court rulings in violation of international law and grant foreign investors monetary damages against the United States based on U.S. court rulings. In short, under this regime, foreign arbitration panels, composed largely on non-U.S. citizens and non-U.S. lawyers, would become the courts of last resort to resolve domestic legal issues of vital importance to all Americans.

I recommend that you support further efforts to improve the pending trade bill. In particular, I urge you to support efforts to ensure that foreign investors cannot invoke the investor-state mechanism to challenge rulings by our federal and state courts. I frankly believe an overwhelming majority of the American people and Montanans would react with outrage to the idea that an otherwise final and definitive ruling of our domestic courts could be reviewed by foreign arbitration panels and could provide the basis for money claims against United States taxpayers. Secondly, I urge you to support efforts to establish an effective mechanism to empower our courts to overturn foreign arbitration awards against the United States if and when the panels issue decisions that are inconsistent with our laws as interpreted by the United States Supreme Court and the highest state courts.

Thank you for consideration of these concerns.

Very truly yours,


MIKE McGRATH
Attorney General

MM/bmm/hrf

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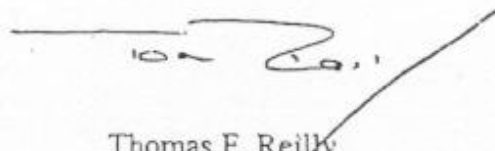
The Honorable Edward M. Kennedy
The Honorable John F. Kerry
May 17, 2002
Page 2

arbitrators in Washington, D.C., on May 20, 2002. We have assisted the United States Department of State and the United States Trade Representative (USTR) in their preparation of the defense. The States of California and Mississippi are similarly involved in the defense of state actions challenged by Canadian firms under NAFTA. In California, a Canadian company has claimed a billion dollars in damages from California's ban on a gasoline additive – a ban that was enacted to protect the groundwater and is presumptively valid under federal statutory and constitutional law.

The California case highlights another troubling provision of NAFTA – the right of foreign investors to seek compensation for state laws, regulations and other legal measures as "expropriations." The "expropriation" language in NAFTA has opened the door to claims by foreign investors that they are entitled to compensation when state laws affect their investment expectations. These claims are judged by the arbitration panels in accordance with standards potentially much broader than those for compensation under U.S. regulatory takings law. As currently proposed, H.R. 3005 would allow similar rights to foreign investors under new trade agreements.

These cases threaten the ability of the Commonwealth and other States to protect their citizens through measures that are indisputably valid under the United States Constitution. I urge you to consider amendments to H.R. 3005 that – as the NAAG resolution provides – "ensure that in any new legislation providing for international trade agreements foreign investors shall receive no greater rights to financial compensation than those afforded to our citizens[.]"

Sincerely,



Thomas F. Reilly



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The Honorable Bill Nelson
The Honorable Bob Graham
May 13, 2002
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For this reason, I think Congress should ensure that new legislation providing for international trade agreements be free of any investor protection provisions similar to that found in NAFTA's Chapter 11. I respectfully urge your consideration of this important issue, and your support of amendments to H. R. 3005 that will preclude foreign investors from receiving greater rights to financial compensation than those afforded for our citizens.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Butterworth", with a large, sweeping flourish above it.

Robert A. Butterworth
Attorney General

RAB/ma

cc: National Association of Attorneys General



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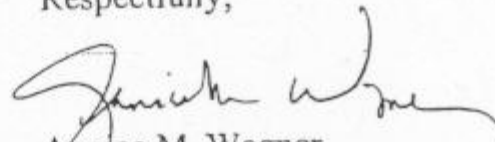
Senators Daschle and Lott
May 15, 2002
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Mayors, National League of Cities, and National Association of Counties have identified similar problems with H.R. 3005. We share many of the same concerns. Therefore, we urge you to consider appropriate measures to preserve the integrity of the courts of this country and their ability to adjudicate fairly and finally the rights of all parties who seek justice in them.

If you have any questions, please contact me, or have members of your staffs contact Mr. Ed O'Connell who provides administrative and technical support to the work of CCJ. Mr. O'Connell can be reached at (703) 841-5602.

Thank you for your consideration of this matter.

Respectfully,



Annice M. Wagner

cc: U.S. Senate



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Moreover the bill would grant this expansive new right to bring takings suits exclusively to foreign investors, not to U.S. firms. In addition, the pending legislation would undermine Congress' decision to preserve local administrative and judicial procedures for resolving takings suits by allowing foreign investors to short circuit local administrative proceedings and bypass the entire American judicial system by bringing their claims before international arbitration panels.

The U.S. Conference of Mayors urges you to support efforts to improve on the current version of H.R. 3005 by ensuring that foreign investors are not granted greater legal rights than U.S. citizens possess and by ensuring that foreign investors are not permitted to circumvent established U.S. administrative and judicial procedures.

If you have any questions concerning the position of the U.S. Conference of Mayors on this issue, please contact Larry Jones at 202/293-7330.

Sincerely,



Marc H. Morial
Mayor of New Orleans
President, U.S. Conference of Mayors



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challenged before international arbitration panels as violations of investment provisions in trade agreements; and

BE IT FURTHER RESOLVED, that The United States Conference of Mayors urges that language also be included in the conference report that ensures that trade agreements that include investment provisions may be presented to Congress for ratification pursuant to this legislation only if the agreements provide that international arbitration panels shall not be empowered to accord foreign investors operating in the United States greater rights than U.S. citizens possess under the U.S. or State Constitutions; and

BE IT FURTHER RESOLVED, that the President and Congress are urged to provide state and local sovereignty safeguards in the Free Trade Agreement of the Americas by establishing general exceptions to preserve core governmental functions that protect the environment, public health and safety, and the welfare of citizens; and by requiring international dispute resolutions panels to honor principles of deference to domestic legislative judgement.



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The investor protection provisions in H.R. 3005 threaten to produce massive new financial claims against the U.S. federal treasury, which may then be passed on to the state or local level. If a multi-million dollar claim is awarded against the U.S. Government, it could pursue recovery against the state or local government whose laws were not in "harmony" with the NAFTA international arbitration tribunal's version of the law. If this occurs, H.R. 3005 will impose a serious new burden on the American taxpayer.

We urge that H.R. 3005 be amended to protect the legal authority of municipalities to enact local laws necessary to safeguard the health and welfare of our citizens. We support efforts to provide a strict and effective limit to the authority to negotiate expropriation provisions in international trade agreements and to provide open and transparent proceedings for the resolution of disputes, supporting a level playing field for U.S. and foreign firms, and incorporating well-defined U.S. Constitutional Fifth Amendment takings principles in all trade agreements.

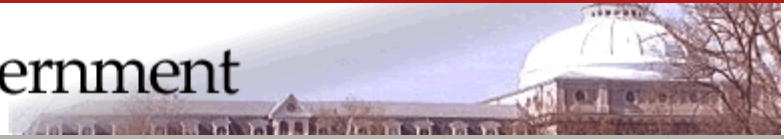
Thank you for your consideration of our concerns. Please feel free to call me at (916) 658-8200 or Eve O'Toole, our Washington advocate, at (202) 833-0007 to discuss our concerns.

Sincerely,

Chris McKenzie
Executive Director



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3. Authorizes the Executive Director of the Oklahoma Municipal League to transmit these views to members of Congress, and to work with appropriate Federal government officials on initiatives consistent with resolution and with the needs of its member municipalities.

Approved and Adopted this 1st day of May, 2002.

Jess Nelson
President, Oklahoma Municipal League
and Mayor, Guymon, Oklahoma

Attest.

Danny George
Executive Director

TOTAL P.04



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The Oklahoma Municipal League Board of Directors considers this an important legislative issue and adopted a position by resolution that is enclosed herein. The Resolution directs me to take necessary steps to encourage Congress to respect state and local government sovereignty in the context of international trade agreements. The Oklahoma Municipal League supports efforts to improve on the current version of H.R. 3005 by ensuring open and transparent proceedings for the resolution of disputes, supporting a level playing field for U.S. and foreign firms and incorporating well-defined U.S. Constitutional Fifth Amendment takings principles in all trade agreements.

Thank you for your consideration of the Oklahoma Municipal League's concerns.

Sincerely,

A handwritten signature in cursive script that reads "Danny George". The signature is written in dark ink and is positioned above the printed name and title.

Danny George
Executive Director



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Corvallis City Council Resolution:

Whereas the Constitution of the United States of America under Article 1, Section 8 (3) delineates the responsibility to regulate foreign trade agreements to Congress; and whereas foreign trade agreements can and do affect the citizens of

Corvallis; the citizens of the State of Oregon; the citizens of the United States of America and the units of government that represent them; and

Whereas, Fast-Track "Trade Promotional Authority" (TPA) circumvents the usual Congressional democratic procedures by eliminating the possibility for amendments to trade agreements submitted by the President and limiting debate and citizen input thus reducing the likelihood of full Congressional scrutiny of trade legislation; and

Whereas the Constitution of the United States of America under Article IV Section 4 states that the federal government shall guarantee to every state in the union a republican form of government; and

Whereas a foundation principle of republican government is the citizens' right to lobby their elected representatives for the inclusion of amendments, changes to agreements, enactment of domestic laws borne from trade agreements, and for those elected representatives, if they so choose, to include amendments to reflect the needs of their constituents; and

Whereas the collective wisdom and individual citizen's participation in representative democracy is to be desired;

Now Therefore be it resolved by the City of Corvallis that it hereby Opposes Fast-Track "Trade Promotional Authority" legislation.

Be it further resolved that the Mayor is authorized and directed to communicate the City's Resolution to the Oregon Congressional Delegation.

and then it went to Salem

Salem joins the City of Corvallis in opposing Fast Track (HR 3005) and the Free Trade Area of the Americas (FTAA). The Salem Council's action followed lobbying efforts by Mid-Willamette Jobs with Justice in conjunction with our allies in the Agenda for a Livable Salem coalition.

RESOLUTION

Salem City Council Resolution
Oppose Fast-Track and FTAA

Whereas The Free Trade Area of the Americas (FTAA) is expected to be an expansion of the North America free Trade Agreement (NAFTA); and

Whereas the Constitution of the United States of America delineates the responsibility to regulate foreign trade agreements to Congress under Article 1, Section 8 (3); and

Whereas "Fast Track" (Trade Promotions Authority) restricts full congressional scrutiny of trade legislation by limiting Congressional debate of international trade treaties to twenty (20) hours and denies Congress the right to amend trade agreements submitted by the President; and

Whereas, Fast-Track"Trade Promotional Authority" (TPA) circumvents the usual Congressional democratic procedures by eliminating the possibility for amendments to trade agreements submitted by the President and limiting debate and citizen input thus reducing the likelihood of full Congressional scrutiny of trade legislation; and

Whereas the FTAA is expected to enjoin the 34 countries of the North and South America (excluding Cuba) and transform the entire Western Hemisphere into an obligated trade area affecting 650 million people; and

Whereas foreign trade agreements can and do affect the citizens of Salem; the citizens of the State of Oregon; the citizens of the United States of America and the units of government that represent them; and



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Whereas NAFTA's Chapter 11 expands the right of foreign investors to sue local governments and threaten the authority of local and state governments to provide services to citizens and this right would likely be included in the FTAA; and

Whereas the expected FTAA/NAFTA assault on the sovereignty of our legal system threatens to diminish the efficacy of local laws and regulations and would threaten the social services that are essential for a thriving local economy; and

Whereas the strict intellectual property laws drafted within the FTAA would have devastating impacts on the people living in the global South; and

Whereas local resolution like this one have been essential to defeat other destructive trade agreements such as the Multilateral Agreement on Investment (MAI); and

Whereas Article IV Section 4 of the Constitution of the United States provides that the federal government shall guarantee to every state in the union a republican form of government; and

Whereas a foundation principle of republican government is the citizens' right to lobby their elected representatives for the inclusion of amendments, changes to agreements, enactment of domestic laws borne from trade agreements, and for those elected representatives, if they so choose, to include amendments to reflect the needs of their constituents; and

Whereas the collective wisdom and individual citizen's participation in representative democracy is to be desired;

NOW THEREFORE, BE IT RESOLVED by the city Council of Saliem, Oregon, that it hereby:

1. urges the full disclosure of the draft FTAA agreement;
2. opposes any re-authorization of "Fast Track" (Trade Promotion Authority);
3. petitions Congress to recognize and consider the Oregon Legislature's Senate Joint Memorial 2 adopted May 10, 2001;
4. requests that the U.S. Government refuse to agree to any new trade and investment agreements, such as the proposed FTAA, that include foreign investor rights similar to those in NAFTA Chapter 11;
5. urges the U.S. Trade Representative to withdraw any further negotiations on the FTAA unless and until all parties affected by the agreements are allowed to attend and observe the negotiations;

6. requests that the U.S. Trade Representative release to the public current proposals for the FTAA agreement and the submissions of the nine negotiating groups for the proposal,

7. requests the public release of a comprehensive list of the representative to the FTAA negotiating groups from all 34 countries,

8. urges the State Legislature to demand and adopt nonnegotiable U.S. sovereignty safeguards in implementing legislation for the FTAA and other trade agreements, now and in the future; and,

BE IT FURTHER RESOLVED that the Mayor is authorized and directed to communicate the City's position regarding this resolution to the U.S. Trade Representative, State Legislature, Oregon's Congressional delegation and all Congressional Committees with trade jurisdiction.

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WHEREAS, certain “procurement provisions” are likely to be negotiated which would require that government purchasing decisions be based only on price and performance, without considering state and local purchasing preferences focusing on recycled content, small business, minority and women-owned business, and avoidance of goods made with forced child labor; and

WHEREAS, provisions on “trade in services” are likely to be added which would require that regulation of business services be limited to the “least burdensome” approach, as opposed to the traditional standard that regulation must merely have a rational basis for protecting the public interest; and

WHEREAS, potential new “market access” rules, already present in the General Agreement on Trade in Services, may forbid many traditional strategies for protecting the public interest, such as exclusive supplier contracts, certificates of need for hospitals and schools, or limits on the corporate form of service providers, such as hospitals, which deliver vital public services; and

WHEREAS, serious concerns about these possible new rules and provisions and Fast Track have been set forth by the National League of Cities, the National Conference of State Legislatures, the National Association of Counties, and the Pennsylvania and national AFL-CIO and other unions including UNITE, United Steelworkers of America, United Food and Commercial Workers, and the Teamsters; and

WHEREAS the Constitution of the United States of America under Article IV Section 4 states that the federal government shall guarantee to every state in the union a republican form of government; and

WHEREAS a foundation principle of republican government is the citizens' right to lobby their elected representatives for the inclusion of amendments, changes to agreements, enactment of domestic laws borne from trade agreements, and for those elected representatives, if they so choose, to include amendments to reflect the needs of their constituents; *therefore,*

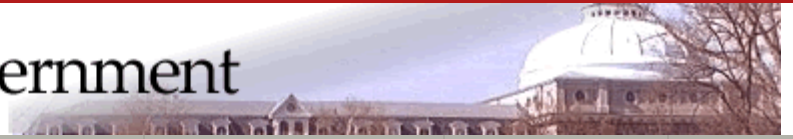
Resolved by the Council of the City of Philadelphia that the Council expresses its strong opposition to proposed legislation granting Fast Track “Trade Promotion Authority” to the President for the negotiation of international trade agreements, and urges Philadelphia’s Congressional delegation to work in every way possible to defeat it; and

Resolved further, that a true and correct copy of this resolution shall be delivered to George W. Bush, President of the United States, U.S. Trade Representatives, Honorable Robert A. Brady, Congressman, 1st District, Honorable Chaka Fattah, Congressman, 2nd District, Honorable Robert Borsky, Congressman, 3rd District, Honorable Arlen Specter and Honorable Rick Santorum as the sincere sentiments of this legislative body.

Councilman Angel Ortiz
May 2, 2002



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The investor protection provisions in H.R. 3005 pose a grave threat to American sovereignty and to the established legal authority of U.S. municipalities by authorizing foreign investors to challenge local government actions in foreign forums based on legal standards that go beyond U.S. law. The investor protection provisions also threaten to produce massive new financial claims against the Federal Treasury, imposing a serious new burden on the American taxpayer. This obviously is a serious concern during this period of national emergency and serious national budget problems. Finally, H.R. 3005, would have the patently unfair effect of granting foreign investors greater rights against U.S. governments than U.S. firms and citizens themselves possess.

IMLA supports free trade and the effort in Congress to reduce unreasonable barriers to international trade and investment. However, IMLA believes that this worthy goal should not be pursued at the expense of undermining the legal authorities of America's local governments.

Sincerely,

HENRY W . UNDERHILL, JR.
Executive Director/General Counsel

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protect access to health services, including facilities that operate in underserved rural and inner city areas, are also at risk.

Apart from the substantive legal standards in international trade agreements, we are concerned about the process for resolving disputes under international trade agreements. International arbitration proceedings are not open to the public and the records of the proceedings are not generally available for public inspection. Interested groups and individuals have no right to intervene as parties in these proceedings, and even the right of *amicus* participation is highly limited. There is no general right of appeal to the courts of the nation whose actions are being challenged.

There is no more important sovereign responsibility than protecting the health of a nation's people. Laws and other government measures to protect public health should be based on transparent, democratic decision-making. The pending trade legislation has the potential to create new international legal standards which will interfere with nations' ability to protect the health of their citizens. It also threatens to undermine the use of the democratic process in formulating public health standards.

Our organizations urge the Senate to develop appropriate amendments to the pending trade legislation, HR 3005, to ensure that foreign investors are not granted broad new legal rights to undermine vital public health measures.

Sincerely,

American Public Health Association
Breast Cancer Action
Learning Disabilities Association
Results

Big Questions

- **What strengths do county homes already have that can be built upon?**
- **How have county homes across the state responded to changes in the long-term care landscape?**
- **Where can county homes go from here?**

11/29/99



Big Questions in theCGR Report

- **What are the critical changes likely to affect the viability of county homes in New York State?**
-
- **How have county homes across the state responded to these challenges?**
- **What should counties do to meet these challenges?**

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Quality of Care: Summary

- Staff turnover lower in county homes
- Low turnover strongly related to high quality care
- HCFA data unclear on quality of care in county homes

11/29/99



Quality of Care: Unanswered Questions

- **What are the obstacles to improving quality of care in county homes?**
- **What steps can labor and management take to improve the quality of care offered at county nursing homes?**

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Methods

- Collaborative research design
- Surveys of administrators
 - initial survey (N= 35)
 - subsequent survey (N=20)
- Survey of labor officials (N=14)
- Supplemented with other data sources:
 - CGR Report 1997
 - HCFA Quality of Care Data 1999
 - CSEA Survey 1998

11/29/99



Two Unexpected Findings

1) Nationally, low staff turnover is strongly related to high quality care, but...

Quality of care data on New York county homes are inconclusive despite low turnover rates.

2) Fiscal stress is typically a cause for local government restructuring, but...

County homes in NYS considering restructuring are not under fiscal stress.

11/29/99



New York county homes have low annual staff turnover

National rates of nursing home staff turnover

- non-profits: 48 to 86%
- for-profits: 72 to 118%

11/29/99

Slide 6 of 29



New York county homes have low annual staff turnover

Among responding New York county homes:

- Eighty percent have RN, LPN and support staff turnover of 25% or less
- Sixty percent have CNA turnover of 25% or less

11/29/99



Why is low staff turnover important?

- Quality and continuity of care
 - Fewer certification violations
 - Lower death rates
 - Fewer problems with bedsores
- Better cost containment

11/29/99



Our use of New York State DOH data as quality index

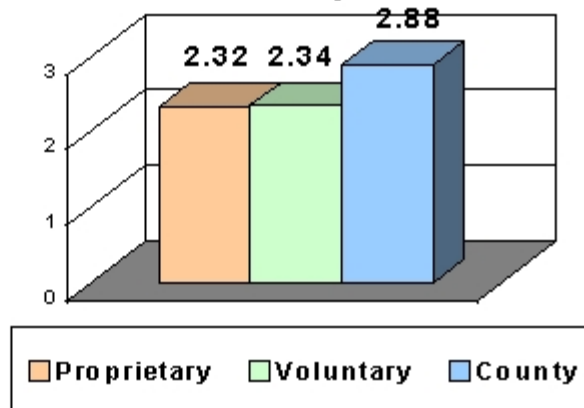
- Scope and severity of deficiencies vary widely
- We examined only incidence
- Apparently wide variance between counties
- We took incidence reports at face value
- We took out metro New York

11/29/99



Quality of care data show mixed results

Average Deficiencies Per Facility



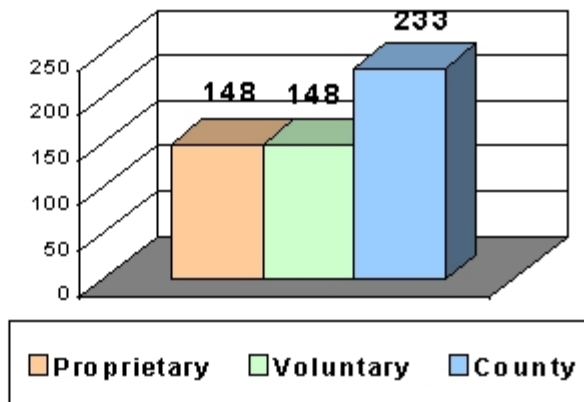
11/29/99

Slide 10 of 29



Quality of care data show mixed results

Average Number of Beds by Sector

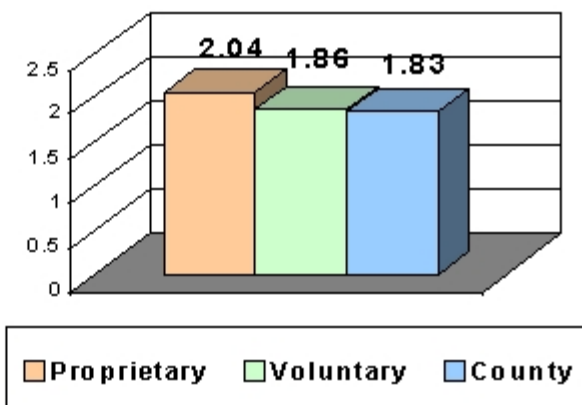


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Quality of care data show mixed results

Deficiencies Per 100 Beds



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Statistical Analysis Results

- Facility size does not explain variation in deficiency rates across New York State nursing facilities



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Forms of restructuring

- Performance-based budgeting
- Voluntary or non-profit status
- Public Benefit Corporation
- Privatization
- Closure



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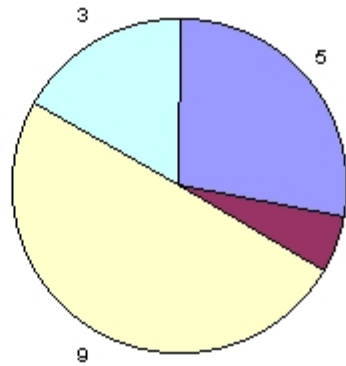
Methods

- This section draws from the survey of nursing home administrators
- Higher response rate for management surveys increases confidence in our findings
- Managers more knowledgeable about restructuring possibilities

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Which forms of restructuring are county homes considering?



■ Performance-based budgeting
■ Voluntary or non-profit status
■ Public benefit corporation
■ Privatization

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Why do county homes choose to restructure?

- Fiscal stress
 - at the nursing home
 - in county government

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Restructuring as a response to fiscal stress in the nursing home*

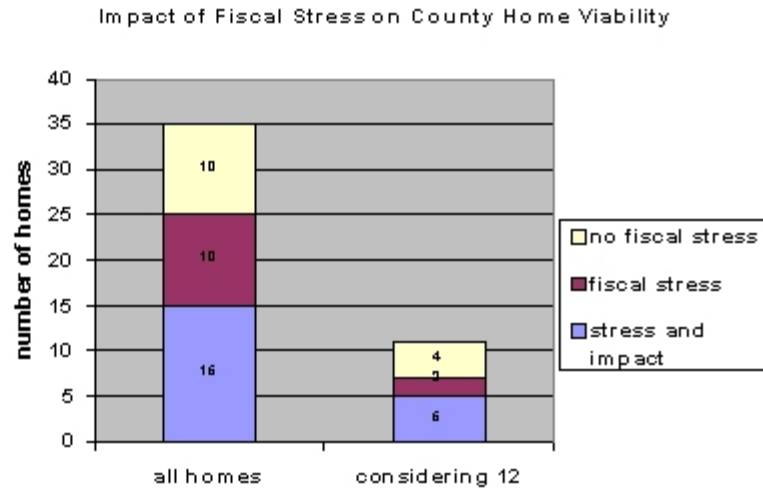
*Question: Describe the current fiscal health of your facility with IGT included



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Is your county under fiscal stress? If yes, does it affect the nursing home?



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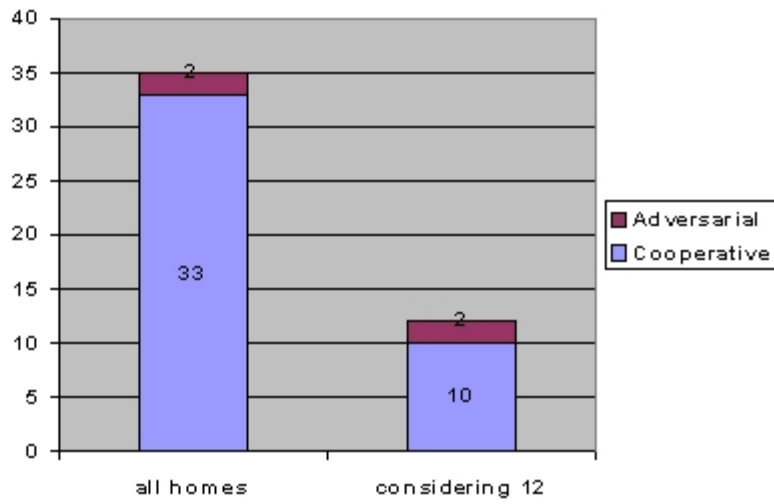
Why do county homes choose to restructure?

- Political pressure
 - poor relations with the county
 - shrinking of government

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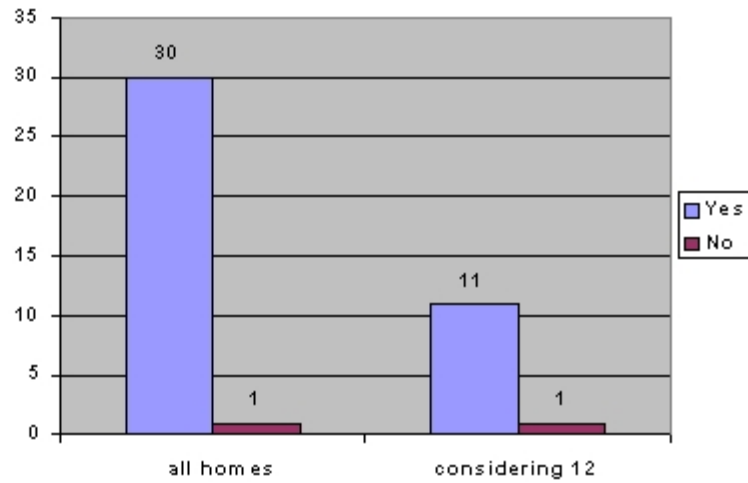
How would you characterize the relationship between the nursing home and county government?



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Does your county legislature see the nursing home as essential to the mission of local government?



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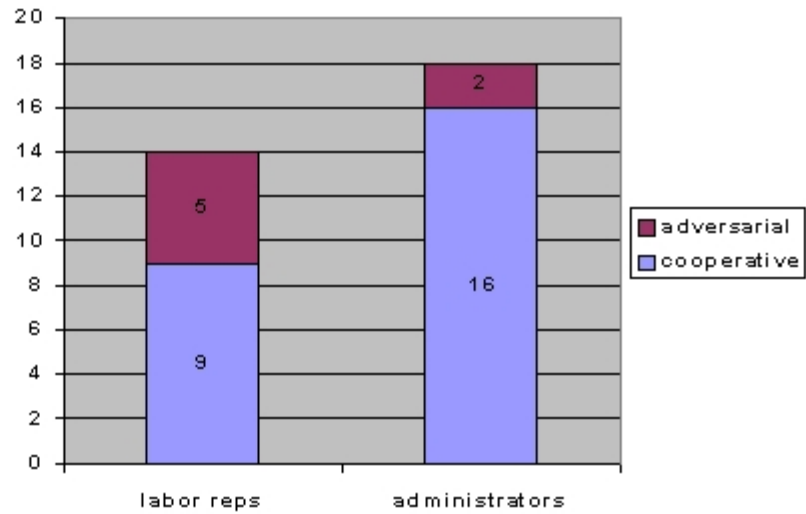
Why do county homes choose to restructure?

- poor labor-management relations

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How would you characterize the relationship between management and labor at your facility?



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Principal findings from administrator surveys

- County homes are financially stable
- County homes have excellent relationships with local government officials
- Relations between management and labor are strong
- Restructuring is under consideration at one third of county homes in New York State

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Questions for Discussion

- We have presented two puzzles on county nursing homes that our surveys cannot answer.
- After-lunch discussion: Can you help us understand these issues better?

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Restructuring: Unanswered Questions

- Why are some county homes interested in restructuring?
- Can the benefits of restructuring be captured by county homes while keeping the nursing home public?

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The Arizona Experience

Michael Ballard

December 1, 1998

This study looks at one state's experience with using managed care to deliver long-term care services for the elderly. In the state of Arizona, managed care has been able to reduce demand for both acute care and nursing home care through an aggressive preventative health care program and extensive use of home- and community-based services. Quality of care in Arizona is comparable to that found elsewhere, but the per capita costs of the program are considerably lower than long-term care costs in similar states. Arizona's success rests on the combined efforts of private health care contractors and innovative state and federal health care agencies.

Introduction

Meeting the long-term care (LTC) needs of the elderly will be one of the greatest challenges of the twenty-first century. Paying for long-term care is already difficult for both individuals and governments, and the number of Americans who require some form of long-term care is expected to double over the next decade. At the same time, governments are under increasing pressure to reduce their role in all areas of social welfare, including long-term care. In response to these trends, a number of states have turned to prepaid managed care as a way to control costs and improve service quality.

This paper looks at the promises and pitfalls of managed care for the elderly by focusing on one state's experience with managed care over the past decade. The Arizona Long-Term Care System (ALTCS) is the longest running managed care program for the elderly in the country, and offers important lessons for other states contemplating long-term care reforms.

Dramatic Increases in Long-Term Care Expenditures

Health care costs overall have risen dramatically since the mid-1980s, and long-term care has not been immune from this larger trend. Medicaid expenditures for the elderly alone, for example, more than doubled between 1988 and 1995 (Wiener 1998, 189). Spending on long-term care services totaled \$91 billion in 1995, representing 12 percent of personal health expenditures and 14 percent of all state and local health care spending (Wiener and Stevenson 1998, 81). Roughly 60 percent of LTC spending comes from public sources, principally Medicaid and Medicare, with the remainder paid by the elderly and their families (GAO 1998, 4). Spending is expected to rise even faster in the future as the "baby boomers," some 76 million people born between 1946 and 1964, enter their senior years and demand more health care services. Collectively, these changes have worked to create a "crisis" environment in long-term care, with the government bearing the brunt of the blame for rising costs. As a result, all levels of government are under increasing pressure to reform the LTC delivery system and to do so with much greater participation from the private sector.

One outcome has been the rapid increase in managed care programs for both Medicaid and Medicare. Roughly 6 million or 16 percent of all Medicare beneficiaries are enrolled in managed care, representing a 100

percent increase from just five years ago (Riley 1998, 69). As of 1996 eighteen states were enrolling elderly Medicaid patients into managed care, and it is likely that this number too has increased significantly since then (Riley 1998, 69)

The Promise of Managed Care

The expanded use of managed care has both potential benefits and risks for LTC patients. Most users of long-term care are enrolled in both Medicaid and Medicare. For the most part, Medicare pays for acute care needs, whereas Medicaid pays for nursing home care. These "dual eligibles" stand to gain the most from managed care because managed care models integrate acute and long-term care into a single service delivery and financing system. Integration promises to improve service for the frail elderly because dually-eligible seniors are often caught in the middle of confusing and often conflicting Medicare and Medicaid rules. Clients are often "ping-ponged" from one bureaucracy to another, at times receive contradictory medical advice, and are uncertain which program to turn to when issuing a complaint.

In contrast, integration of Medicare and Medicaid benefits under a single plan creates a seamless web of care for older persons. Case managers are able to custom tailor programs to meet individual needs and coordinate services to achieve the maximum health benefit for the lowest cost. Accountability is enhanced because there is only one organization responsible for all care, and therefore responsibility for poor quality care cannot be shifted to another organization.

In addition, some managed care programs have been highly successful at reducing the use of expensive institutional care by relying more heavily on preventative health care and home- and community-based alternatives. These measures not only lower costs, but also keep more older persons out of nursing homes, which is strongly preferred by elderly in need of chronic care. Finally, some observers have noted that bringing Medicaid patients into managed care has the effect of "mainstreaming" their care. By being part of a managed care plan that serves a wide range of people and not just the poor, low-income elderly are able to gain access to better quality health care professionals (Wiener and Stevenson 1998, 81). In sum, managed care offers, in theory, a substantial promise for better health care for the elderly.

Risks Associated With Managed Care

There is considerable debate as to whether managed care has been able to live up to its promise of lower costs and greater efficiency. Incentives that reduce "unnecessary" services may also limit badly needed services as well. The degree to which cost containment takes precedence over quality of care varies from program to program, but fears of withholding service for economic rather than medical reasons have been a longstanding public concern.

There is also some concern over the ability of states to monitor managed care organizations. To do so requires states to set up complex administrative structures and information systems to oversee the day-to-day operations of multiple managed care organizations as well as determine appropriate capitation rates. The financial benefits from managed care could disappear quickly if rates are set too high or if administration costs exceed program savings.

Overall, however, the record for managed care remains mixed. In an extensive survey of current research on managed care, Friedland and Feder (1998) find that access to care and service quality is equal to or better than that offered by fee-for-service. However, the intensity of care was found to be lower, in that hospital stays following illness tended to be shorter and follow-up care less frequent than under fee-for-service. In other words, costs savings come not from lowering the probability of service, but from lower intensity of service once care is initiated.

Managed Care in Practice: The Arizona Long-Term Care System

Arizona was unique among the states in that it had no Medicaid program at all until 1982. Refusing to let the federal government dictate how health care should be provided in the state, Arizona relied on county

governments to pay for all indigent care. On average, a quarter of the counties' budgets was being spent on care for the indigent, which was financed entirely by local property taxes. Counties' ability to pay for care was severely curtailed in 1980, however, when the state set limits on property taxes. Suddenly Medicaid began to look better and better to county supervisors, and state legislators entered negotiations with the federal government to introduce Medicaid in Arizona.

Following a two-year review of health care plans, Arizona chose to develop its own managed care plan for low-income people. Key features of the plan included capitation, nominal copayments, restrictions on freedom of choice, and competitive bidding for county contracts. None of these features was part of the Medicaid plan that was then being offered by Washington. However, state reformers in Arizona had a strong ally in President Reagan who, so the story goes, "picked up the phone, called the head of the Health Care Financing Administration, and said 'make it happen'" (Weissert et al. 1997, 1331).

Within six months the Arizona plan became operational as the Arizona Health Care Cost Containment System (AHCCCS), partially funded with Medicaid matching funds. It was not until 1989, however, that long-term care was included as part of the program. The LTC program is similar to the acute care program in that managed care organizations are paid a capitated rate for each enrollee and assume total responsibility and risk for each patient. Medicaid acute care, long-term care, and behavioral care are integrated, but Medicare is not part of the program. However, "informal" integration occurs because ALTCS contracts are usually held with managed care organizations that participate in both Medicare and Medicaid and are therefore able to bill Medicare fee-for-service (Riley 1998, 70).

Most evaluations of the Arizona program have been positive. Its biggest successes have been in reducing nursing home and hospital use by increased use of home- and community-based services (HCBS), improving coordination of Medicare and Medicaid, and containing costs. Its record at improving care quality has been under-studied to date, but fragmentary evidence suggests that LTC users fare no worse under ALTCS than under traditional programs.

Reducing Use of Acute Care

In a major comparative study of ALTCS and New Mexico's fee-for-service program, the elderly in Arizona were found to see health care professionals more frequently (13 visits versus 9) but the number of hospital days used per elderly person were 22 percent lower in Arizona (McCall and Korb 1997). While the authors of that study do not provide any explanation for the difference, it is plausible that the higher frequency of doctors visits in Arizona resulted in earlier detection of health problems, which in turn reduced the need for hospital stays.

Reducing Use of Nursing Home Care

The Arizona program has been able to lower total health costs by (1.) providing a wide array of home- and community-based services to disabled elderly clients *in place of* nursing home care, and (2.) limiting eligibility for these services to those most in need. Arizona was able to substitute HCBS for nursing home care by providing clients with a menu of HCBS options comprehensive enough to allow an individual with high levels of disability to remain in the community. Private care management organizations are required to offer the full range of services to both rural and urban areas before being granted a contract by the state (Weissert et al. 1997).

One explanation for Arizona's success in limiting enrollments has to do with the way eligibility decisions are made. Rather than allow managed care organizations to determine who is eligible for care (which would raise enrollments), the state employs preadmission screening teams of registered nurses and social workers to make all eligibility decisions. In contrast, in most other states eligibility and provision decisions are made by the same organization, which may lead to admissions based on non-medical criteria, such as excess capacity in a nursing home.

Improved Coordination of Care

As stated earlier, continuity of care is often compromised in traditional systems of LTC because of the lack of coordination between Medicaid and Medicare programs. The Arizona program is still not a fully integrated

system in that it has not been able to obtain the Federal waiver required to integrate the Medicare program into ALTCS. However, informal integration occurs because managed care organizations with ALTCS contracts are required to participate in Medicare. As a result, ALTCS is able to force all of its dually eligible clients into participating in its program. The downside of such an approach is that it restricts freedom of choice for Medicare beneficiaries, which many see as a fundamental right of the patient (although elders can still choose another provider within the ALTCS network).

Coordination of care is also enhanced by the use of "care coordinators" or case managers within the system. While the state is responsible for eligibility decisions, once admitted decisions on what services to provide are made by care coordinators in consultation with patients and their families.

Containing Cost

Savings over the first five years of the program have been substantial, averaging 16 percent per year lower than total costs in similar states that used a traditional Medicaid program. Savings totaled nearly \$290 million between 1989 and 1993, with savings increasing substantially over time (e.g., 0.2 percent in 1989, 15 percent in 1991 and 21 percent in 1993) (McCall 1997).

Quality of Care

The scant evidence available on care quality suggests that quality of care is similar to that provided in other states. McCall (1997) finds that quality of care has been better for some measures but worse for others. Nevertheless, if ALTCS has been successful in "mainstreaming" services to low income clients, improving coordination of care, widening the range of care options available, and lowering costs for purchasers of care, then it is likely that overall service quality is better than that found elsewhere.

Can the Arizona Program be Implemented In Other States?

A number of states including Colorado, Florida, Minnesota, Wisconsin and Texas are in the process of developing integrated programs of health care for the elderly similar to ALTCS. Innovation at the state level has been greatly facilitated in recent years as the Health Care Financing Administration becomes much more flexible in allowing states to design their own programs and still remain eligible for federal funds.

Nevertheless, numerous barriers to reform remain. While Arizona did have county-level care prior to 1989, it was able to start ALTCS at the state level largely "from scratch," a luxury that no other state enjoys. In many states, political considerations may outweigh the economic and social benefits of large-scale reform.

That reforms should be undertaken, however, assumes that other states would be as enlightened as the architects of the Arizona plan. At one extreme, more generous states could turn to managed care and expand HCBS but fail to reduce costs—after all, this has been the outcome of most states' efforts to expand HCBS over the last three decades. At the other extreme, some states' efforts at "reform" may be just thinly-veiled attempts to reduce costs *and* benefits to low-income elderly.

The Arizona case represents one of the more mature experiments in health care reform for the elderly. In most respects, the ALTCS presents a strong case for greater devolution of responsibility to the states and a heightened role for the private sector in the delivery of public goods. Nevertheless, it must not be forgotten that Arizona's success was largely the result of a strong federal presence in program design and even stronger state-level oversight of health care contractors. For states interested in LTC reform, these may be Arizona's most important lessons.

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Wiener, Joshua M., and David G. Stevenson, "State Policy on Long-Term Care for the Elderly," *Health Affairs* May/June 1998. pp. 81-100.

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United States General Accounting Office (GAO) *Long-Term Care: Baby Boom Generation Presents Financing Challenges*. (GAO/T-HEHS-98-107) March 9, 1998.

Links

The [Urban Institute](#) website has some of the best research on long-term care policy in the U.S. Check often for regular updates; recent additions include the [Wiener and Stevenson article](#) (above), among others.

The homepages for various state programs can be found by clicking on the state of your choice. For analysis of LTC programs at the state level, see Wiener and Stevenson, [Long-Term Care for the Elderly: Profiles of Thirteen States](#) at the Urban Institute.

State Level Programs: [Arizona](#) | [Wisconsin](#) | [Colorado](#) | [Florida](#) | [Texas](#) | [Minnesota](#) | [New York](#)

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Program of All-Inclusive Care for the Elderly

Modeled after the On Lok Senior Health Services Program in San Francisco's Chinatown, the Program of All-inclusive Care for the Elderly (PACE) is an innovative approach to providing long-term care services to frail senior citizens. By October 1997 more than 70 organizations in 31 states were in some stage of PACE development (Employee Benefit Plan Review, 1997). This number is expected to grow rapidly over the next several years because the 1997 Balanced Budget Act establishes PACE as a permanent provider under Medicare, and allows states the option to pay for PACE using Medicaid dollars (Irvin et al., 1997).

- [Interdisciplinary Teams Ensure High Quality Care](#)
- [PACE Costs Less Than Traditional Nursing Home Care](#)
- [Conclusion](#)
- [References](#)

Interdisciplinary Teams Ensure High Quality Care

What makes PACE unique is that it is a model of care that provides both acute and chronic care services for the frail elderly in a day care setting. Although PACE clients are nursing home eligible, they continue to live in their own homes. Services are provided at day health centers, and attendance requirements vary on a case-by-case basis, with the national average being 11 days per month (Employee Benefit Plan Review, 1997). Patients may choose to attend the PACE center for strictly medical reasons, but the center serves an important social function as well. For many participants, the PACE center is a place to socialize and have meals with others.

Interdisciplinary teams of physicians, nurses, social workers, dieticians, home care aides, and physical therapists manage the total care of the patient. The entire team meets weekly to discuss the care needs of patients under their supervision, making sure that each member of the team is aware of the special needs of each patient. One result of this system is that patients are able to retain the personal autonomy associated with living in their own home, but still have their medical condition monitored on an ongoing basis.

PACE Costs Less Than Traditional Nursing Home Care

PACE relies on capitated payments from Medicaid and Medicare to cover expenses. According to the National PACE Association, PACE costs about 12 percent less than a comparable fee-for-service program (Lee et al., 1998). These results must be approached cautiously, however, as PACE programs serve only a tiny fraction of the frail elderly. In 1997, for example, PACE centers served less than five thousand enrollees (Employee Budget Plan Review, 1997). In addition, some claims of "skimming" (the practice of avoiding potentially difficult clients) have been made by critics of the model, a claim that is often made of capitated health care plans in general (Branch et al., 1995).

Conclusion

The PACE model has sparked significant interest in many state capitals, and existing programs appear to be

successful at both providing high quality care and lowering costs. Nevertheless, the newness of the program and the small number of participating sites make it difficult to draw any firm conclusions about the program. The number of PACE programs should expand rapidly in the years ahead, however, which will allow for more systematic analyses of the strengths and weaknesses of the model.

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Laurence G. Branch, Robert F. Coulam, and Yvonne A. Zimmerman, "The PACE Evaluation: Initial Findings" *The Gerontologist*. 35(3) June 1995. pp. 349-370.

Carol Irvin, Susan Massey, and Turahn Dorsey, "Determinants of Enrollment Among Applicants to PACE" *Health Care Financing Review* 19(2) Winter 1997. pp. 135-53.

Wayne Lee, Catherine Eng, Norris Fox, and Mia Etienne, "PACE: A Model for Integrated Care of Frail Older Patients" *Geriatrics* 53(6) June 1998. pp. 62-74.

For more information about the PACE check out their web site at [The Program of All-inclusive Care for the Elderly \(PACE\)](#).

SURVEY OF LABOR

CSEA is conducting the following survey in an attempt to understand principal challenges to public sector nursing home viability in New York State and to contribute toward a larger process of strategic planning for the future. Cornell University students will assist in analyzing the results of this survey and will present these to CNFNY and CSEA at a future date.

SIZE OF INSTITUTION

- A. What is the total number of employees at your facility, including management and union employees?
- B. Of those, how many are full-time employees? _____
- Of those, how many are part-time employees? _____

LABOR-MANAGEMENT RELATIONSHIP

1. Do management and labor share in the decision-making process?
- Yes No
- 2A. Does your facility have a labor-management committee? Yes No
- 2B. If yes, how often does the committee meet?
- Monthly Quarterly Annually Never
3. How would you characterize the relationship between labor and management at your facility?
- cooperative adversarial don't know
4. Does the nursing home have a separate bargaining unit? Yes No
- If no, then skip to 5.*
- 4B. How many bargaining units are there in your facility? _____
- | | | | |
|----------------|-----------|-----|----|
| What are they? | CSEA | Yes | No |
| | SEIU | Yes | No |
| | NYSNA | Yes | No |
| | Teamsters | Yes | No |
| | Other | Yes | No |
- Skip to 6.*

5. Where is the union leadership employed in your county?

DDS DPW nursing home

6. How would you characterize the relationship between union and non-union employees?

Very Cooperative Cooperative Adversarial Very Adversarial

QUALITY OF CARE.

7. How would you rate the quality of care in your facility?

Excellent Very Good Good Fair Poor

8A. Does your nursing home have a team-based management quality program?

Yes No

8B. If so, how effective is it?

Not effective Moderately effective Effective Very Effective

MARKETING.

9A. Does your facility market the services it provides? Yes No

If no, skip to 10.

9B. **If yes**, how important are the following goals for doing marketing?

	Very important	Somewhat important	Not very important	Not important
Build public enthusiasm				
Legislative support				
Fill beds				
Attract paying clients				
Educate the public				
Other (specify) _____				

9C. If yes, have you used any of the following strategies to market the county home?

- Print media: yes no
- Television: yes no
- Radio: yes no
- Community events: yes no
- Other: _____ yes no

10. Are you viewed as a referral point for nursing care?

- Yes No

11. Are you viewed as a referral point for rehabilitative care?

- Yes No Do not offer rehabilitative care

12. Are hospitals currently competing with you for long term care delivery?

- Yes No

THE FUTURE/RELATIONSHIP TO COUNTY GOVERNMENT

Please be aware your answers to the following questions will not be linked to particular institutions or respondents. The results of this last section of the survey will be summarized in broad terms for public sector nursing facilities across New York State for the final report.

13A. Do you think your county is under fiscal stress? Yes No

13B. If yes, does this affect the nursing home's viability? Yes No

14. Please answer the following questions regarding restructuring options by your nursing facility or the local legislature.

	Is your RHCF investigating this option for restructuring?			Is the legislature investigating this option for restructuring your RHCF?		
	Yes	No	Don't know	Yes	No	Don't know
a) performance-based budgeting	Yes	No	Don't know	Yes	No	Don't know
b) privatization	Yes	No	Don't know	Yes	No	Don't know
c) voluntary sector	Yes	No	Don't know	Yes	No	Don't know
d) public benefit corporation	Yes	No	Don't know	Yes	No	Don't know
e) closure	Yes	No	Don't know	Yes	No	Don't know
f) other	Yes	No	Don't know	Yes	No	Don't know

15. Does your county legislature see the nursing home as essential to the mission of local government?

Yes No

16. How involved is the county legislature in nursing home management concerns?

Very involved Somewhat Involved Not Involved at All

17. How would you characterize the relationship?

Very Cooperative Cooperative Adversarial Very Adversarial

18. Are there other issues you see as essential for the viability of your county nursing facility that CSEA should know?

19. What are your facility's biggest concerns as you look toward the future?

SURVEY OF NURSING HOME ADMINISTRATORS

CNFNY is conducting the following survey in an attempt to understand principal challenges to public sector nursing home viability in New York State and to contribute toward a larger process of strategic planning for the future. Cornell University students will assist in analyzing the results of this survey and will present these to CNFNY and CSEA in May 1999.

LABOR ISSUES

1. What is the rate of annual employee turnover for these positions at your facility?

- | | | | | |
|-------------------|-------|--------|--------|---------|
| a) RN's: | 0-25% | 26-50% | 51-75% | 76-100% |
| b) LPN's: | 0-25% | 26-50% | 51-75% | 76-100% |
| c) CNA's: | 0-25% | 26-50% | 51-75% | 76-100% |
| d) support staff: | 0-25% | 26-50% | 51-75% | 76-100% |

2. For how many shifts per day does your facility have an RN supervisor?

- 1 2 3

3. What is your normal staffing ratio of licensed nursing staff to beds for the following shifts?

	Less than 1:5	1:5	1:6	1:7	1:8	1:9	1:10	1:11	1:12	More than 1:12
7am-3pm										
3pm-11pm										
11pm-7am										

RELATIONSHIP WITH COUNTY GOVERNMENT.

4. How is your facility financed?

- a) enterprise budget
- b) part of county budget
- c) other: _____

Please describe the current fiscal health of your facility, **WITHOUT intergovernmental transfer monies**:

5a. Do you have a **DEFICIT**? Yes No (*if no, skip to question 6*)

5b. If YES, how much?

Under \$1 million \$1-3 million more than \$3 million

5c. If YES, what percentage is this of your county nursing facility budget?

Less than 1% 1-3% 4-7% 7-10% more than 10%

6a. Do you have a **SURPLUS**? Yes No (*if no, skip to question 7*)

6b. If YES, how much?

Under \$1 million \$1-3 million more than \$3 million

6c. If YES, What percentage is this of your county nursing facility budget?

Less than 1% 1-3% 4-7% 7-10% more than 10%

Please describe the current fiscal health of your facility **WITH intergovernmental transfer monies**:

7a. Do you have a **DEFICIT**? Yes No (*If no, skip to question 8*)

7b. If YES, how much?

Under \$1 million \$1-3 million more than \$3 million

7c. If YES, what percentage is this of your county nursing facility budget?

Less than 1% 1-3% 4-7% 7-10% more than 10%

8a. Do you have a **SURPLUS**? Yes No (*If no, skip to question 9*)

8b. If YES, how much?

Under \$1 million \$1-3 million more than \$3 million

8c. If YES, what percentage is this of your county nursing facility budget?

Less than 1% 1-3% 4-7% 7-10% more than 10%

9. Does your county legislature see the nursing home as essential to the mission of local government?

Yes No

10a. How involved is the county legislature in nursing home management concerns?

Very involved Somewhat involved Not involved at all

10b. How would you characterize the relationship?

Very cooperative Cooperative Adversarial Very Adversarial

11. Please answer the following questions regarding restructuring options:

	Is your RHCF investigating this option for restructuring?		Is the legislature investigating this option for restructuring your RHCF?		
	Yes	No	Yes	No	don't know
a) performance-based budgeting	Yes	No	Yes	No	don't know
b) privatization	Yes	No	Yes	No	don't know
c) voluntary organization	Yes	No	Yes	No	don't know
d) public benefit corporation	Yes	No	Yes	No	don't know
e) closure	Yes	No	Yes	No	don't know
f) other: _____	Yes	No	Yes	No	don't know

12a. Is your county under fiscal stress? A great deal Somewhat Not at all

12b. If yes, does this affect the nursing home's viability?

A great deal Somewhat Not at all

13. Are there other issues you see as essential for the viability of your county nursing facility that CNFNY should be aware of?

14. How could CNFNY help you in meeting such challenge(s)?

SURVEY OF NURSING HOME ADMINISTRATORS

CNFNY is conducting the following survey in an attempt to understand principal challenges to public sector nursing home viability in New York State and to contribute toward a larger process of strategic planning for the future. Cornell University students will assist in analyzing the results of this survey and will present these to CNFNY and CSEA in May 1999.

GENERAL CHARACTERISTICS

1. When was your facility built?

Pre-1960 1960's 1970's 1980's 1990's

2. When was the most recent significant renovation of your facilities?

1960's 1970's 1980-1985 1986-1990 1991-1995 1996-present

3. What is the TOTAL NUMBER of employees at your facility? _____

4. Of these, how many FULL-TIME employees are there at your facility? _____

5. See table. Please answer the following questions regarding range of services, occupancy rates, competition, future demand and anticipated expansion of services.

Name of Service	Do you offer this service?	Number of Beds	Average Occupancy (in beds)	Does the competition offer this service?	Do you anticipate future demand to be...	Do you plan to expand this service?
RHCF/Skilled Nursing	Y N			Y N don't know	Less about the same more	Y N don't know
<i>Alzheimer's Unit</i>	Y N			Y N don't know	Less about the same more	Y N don't know
<i>AIDS Unit</i>	Y N			Y N don't know	Less about the same more	Y N don't know
<i>Behavioral Unit</i>	Y N			Y N don't know	Less about the same more	Y N don't know
<i>Head Injury</i>	Y N			Y N don't know	Less about the same more	Y N don't know
<i>Rehabilitative Care (PhysT/OccT/Speech)</i>	Y N			Y N don't know	Less about the same more	Y N don't know
Licensed adult home care	Y N			Y N don't know	Less about the same more	Y N don't know
Respite care	Y N			Y N don't know	Less about the same more	Y N don't know
Hospice care	Y N			Y N don't know	Less about the same more	Y N don't know
Assisted Living	Y N			Y N don't know	Less about the same more	Y N don't know
Other (specify) _____	Y			Y N don't know	Less about the same more	Y N don't know
Long term home health care	Y N			Y N don't know	Less about the same more	Y N don't know
Adult day care	Y N			Y N don't know	Less about the same more	Y N don't know

MARKET PROFILE

6. Name one service your facility would like to offer, but doesn't offer currently:

7. Does your facility contract with a third party to provide any of the following?

A) maintenance services? Yes No If so, is this for (*circle*):
MANAGEMENT or SERVICE PROVISION

B) dietary services? Yes No If so, is this for (*circle*):
MANAGEMENT or SERVICE PROVISION

C) laundry services? Yes No If so, is this for (*circle*):
MANAGEMENT or SERVICE PROVISION

D) housekeeping services? Yes No If so, is this for (*circle*):
MANAGEMENT or SERVICE PROVISION

E) pharmaceutical services? Yes No If so, is this for (*circle*):
MANAGEMENT or SERVICE PROVISION

F) nursing staff? Yes No If so, is this for (*circle*):
MANAGEMENT or SERVICE PROVISION

G) overall management? Yes No If so, is this for (*circle*):
MANAGEMENT or SERVICE PROVISION

10B. How is client satisfaction monitored?

Resident surveys yes no

Family council meetings yes no

Resident council meetings yes no

Suggestion box yes no

Other (specify)_____

LABOR ISSUES

11A. Does your facility have a separate bargaining unit? Yes No

11B. If no, where is the union leadership employed in your county?

Corrections DDS DPW nursing home Other: _____

12A. Does your facility have a labor-management committee? Yes No

If no, skip to 13.

12B. How often does the committee meet?

Monthly Quarterly Annually Never

13. How would you characterize the relationship between labor and management at your facility?

cooperative adversarial don't know

14. Beyond contract negotiations, do labor and management share in broader decision making processes (e.g. total quality management)?

RELATIONSHIP TO OTHER LONG TERM CARE PROVIDERS

15. What is your latest full-house Case Mix Index? _____

16. Based on your latest census figures, what was your breakdown by payment class?

Medicaid _____

Medicare _____

Other insurance _____

Private pay _____

17. Do you currently perceive significant competition from other long term care providers?

Yes

No

18. Is your facility viewed as a referral point for nursing care by area hospitals?

Yes

No

19. Is your facility viewed as a referral point for rehabilitative care by area hospitals?

Yes

No

Do not offer rehabilitative care

20. Are hospitals currently competing with your facility for long term care delivery?

Yes

No

21. Have hospitals historically competed with your facility for long term care delivery?

Yes

No

22. Do you anticipate hospitals expanding into services you currently provide?

Yes

No

23. What are your biggest concerns as you look toward the future?

Aspiring to Excellence

Comparative Case Studies of Public Sector Labor-Management Cooperation in New York State

**A Report from the Department of City and Regional Planning
Cornell University
June 1998**

Authors: Nicole Blumner, Lindy Burt, Jon Gans, Lisa Goldberg, Kristin Guild, Young Sung Kim, Chang Kil Lee, Darth Vaughn, Mildred Warner



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Additional copies of this report and the individual county case studies can be downloaded from the Restructuring Local Government Website maintained by the Department of City and Regional Planning. Other information relating to local government restructuring can also be found at the site. For further information, contact Professor Mildred Warner (email: mew15@cornell.edu, phone 607-255-6816). Support for this project is provided in part by Cornell

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Executive Summary

The public sector, particularly local government, is under pressure to simultaneously improve performance and curtail costs. Reductions in state and federal funding, a continuing demand for efficient and flexible government services, and fear of tax revolts are leading to reexaminations of how local governments can best meet the demand for their services. Governments are utilizing a number of tools for restructuring service delivery to increase efficiency and reduce costs.

In our background research, we identified two types of restructuring: external restructuring, where a government turns to outside organizations to provide services (through privatization or intermunicipal cooperation, for example), and internal restructuring, which seeks to improve service delivery by altering organizational structure and decision-making processes. High levels of public sector unionization in New York State make internal restructuring through labor-management cooperation an especially important alternative. Through case studies of three New York State counties, we examined the use of three specific tools for labor-management cooperation: labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM). Genesee, Tompkins, and Ontario Counties were chosen as cases where at least two of these three internal restructuring tools have been implemented successfully.

We found that these cooperative workplace structures improve communication and broaden participation in decision making, leading to greatly improved labor-management relations and employee morale. They may also reduce costs and improve service delivery. However, limited evaluation in the three counties makes savings and service improvements difficult to document.

These tools appear to fall on a continuum of complexity, investment costs, and comprehensiveness. Labor-management committees provide a foundation for the other tools by building an ongoing forum for communication and trust building. They are flexible, deal with a wide array of concerns, and require minimal training. Mutual-gains bargaining requires more training and, in our cases, a preexisting environment of trust. While there are spillover benefits to other areas, MGB is primarily limited to contract negotiations. TQM is the most comprehensive of the three tools and requires the greatest degree of training and organizational culture change to be effective. It also may offer the greatest potential for service improvement.

The case study counties all enjoyed a preexisting environment of trust, committed leadership, and lack of political or fiscal crisis. Given the investments in training and change in perspective required of labor, management, and elected officials, implementation of these tools may be more successful in counties not experiencing crisis or a recent history of labor-management conflict.

These internal restructuring tools are not designed to address external stakeholders. Service improvements may be limited by higher-level policies and mandates these tools cannot address. Similarly, citizen involvement is not enhanced by these tools. However, by creating new forums for communication and participatory decision making, local government enhances its ability to identify and implement programs for service improvement. Adding mechanisms for citizen involvement and strategies to push for needed policy change at higher levels may further increase local government's capacity to restructure to meet the needs of its diverse constituents.

Introduction

The public sector is under pressure to simultaneously improve performance and curtail costs, and this is particularly true of local government. Reductions in state and federal funding, tax revolts, and the advent of privatization are leading to reexaminations of how local governments can best meet the demand for their services. Keeping taxes down while delivering the quality services that citizens expect is a difficult challenge. Local government must become more efficient and more accountable to the general public.

External Restructuring

External restructuring, which involves privatization or contracting out for services, can create a competitive environment and result in increased efficiency and cost savings (Savas 1987). In New York State, however,

privatization has been limited (Lauder 1992). A 1997 survey of local government restructuring in the state found intermunicipal cooperation to be the most common form of restructuring (45% of respondents). Privatization was the next most common form of restructuring (31%), but reverse privatization (bringing services back into the public sector) was also significant (Warner and Hebdon 1997). This suggests that local governments in New York State recognize the value of both cooperation and competition in improving service delivery.

Privatization can create an uneasy or even hostile environment between labor and management. It can result in lower wages, benefits, and levels of unionization (Hebdon 1995; Chandler and Feuille 1991, 1994) despite government efforts to ensure no layoffs. Some empirical studies have shown the impacts of contracting on unionized workers' pay and employment to be minimal (Pendleton 1997). However, lowered employee morale and fears about job security have significant negative effects on the potential for a cooperative relationship. In addition, public sector unions must fight privatization if they are to retain their membership base (CSEA 1995).

In New York State, public sector collective bargaining is governed by the Taylor Law, which mandates that employers negotiate with the union before contracting out a service that is essentially the same as one union members currently provide. Thus the Taylor Law is often perceived as a roadblock to privatization. However, under some circumstances, New York State's governments may contract out services without negotiating with the union, and they also may downsize when there is no longer the need for a particular service or when financial circumstances demand it. Nonetheless, collective bargaining restrictions under the Taylor Law may limit opportunities for contracting out. This makes the search for other, more cooperative methods for implementing workplace innovations essential for local government restructuring in New York State (Donovan 1990; Lawyers Co-operative Publishing 1982).

Internal Restructuring for Transforming Government

In their well-known book *Reinventing Government* (1992), David Osborne and Ted Gaebler argue that a sweeping overhaul of how government does business can be achieved through internal restructuring. They describe this as a move from a supply-driven system to a demand-driven system. The rigidity of budgeting, service delivery, and the labor-management relationship in traditional supply-driven governments, they argue, must be replaced by flexible, quality-oriented systems that are responsive to customers' needs. Internal competition and more cooperative labor-management relationships can provide an effective alternative to privatization for improving government efficiency.

Decentralization of authority can help government achieve better performance. The private sector has demonstrated that decentralizing authority and flattening hierarchies can be very effective in improving efficiency and product quality (Appelbaum and Batt 1994). Giving decision-making power to front-line workers, who are closest to most of the problems and opportunities, and encouraging employee innovation are important steps (Marshall 1992). Direct citizen participation is also vital to improving government services (Osborne and Gaebler 1992; Osborne and Plastrik 1997).

Total quality management (TQM) is one vehicle for internal restructuring. TQM programs are being used to transform government, especially at the federal level, but also in New York State and in more than 400 municipalities nationwide (Rusaw 1997, U.S. GAO 1995, New York State GOER 1992). TQM emphasizes an organization's commitment to the customer and to continuous improvement of every process through the use of data-driven problem-solving approaches based on empowerment of employee groups and teams. Cooperative processes such as TQM help to create a culture change, perhaps the most important requirement for transforming the public sector.

The Potential of Labor-Management Cooperation

Traditional industrial relations practices relied on the acceptance of a shared ideology among labor, management, and government that defined workplace roles and provided stability to the system. The 1990s saw the development of a new model, one that recognizes there is often a lack of consensus between management and labor, and that both are greatly impacted by the instability in economic, technological, political, and social environments. In this context, methods that focus on building communication and cooperation between management and labor offer considerable promise (Kochan, Katz, and McKersie 1994).

Cooperative labor-management structures such as labor-management committees, total quality management (TQM)

programs, and mutual-gains bargaining can be used effectively in the public sector. While the public sector is distinct in many ways from the private sector, it can learn from the experiences of private firms in implementing some of these progressive labor-management practices (Lawler 1990).

However, resistance to cooperative practices can be substantial. Any of the major stakeholders in the process—management, elected officials, and labor—may resist the change for different reasons, making transition difficult and time-consuming. Managers may resent their loss of authority and harbor doubts that productivity gains can be attained through these methods. Elected officials may be hesitant to accept the political risks of instituting change. Unions may perceive cooperative structures as a ploy to weaken labor and divert attention from basic issues such as wages and job security. They also fear that by increasing workplace efficiency, they are putting their jobs in jeopardy (Gold 1986). In addition, participation may not necessarily give workers any real power.

Cooperative tools are inherently limited, since many fundamental decisions about organizational structure and work processes still remain in the domain of upper management. This is a commonly cited drawback to programs such as TQM (Appelbaum and Batt 1994). But more and more it is being recognized that all interested parties (labor, management, elected officials, customers) should have a voice in decision making, and that valuable production knowledge resides in all levels of an organization, especially with front-line workers (Marshall 1992). Having been implemented in the private sector with success, cooperative techniques are clearly beginning to take hold in public sector workplaces, as evidenced by the many examples profiled in the U.S Department of Labor report *Working Together for Public Service*, better known as the Florio Report (1996).

The literature indicates that effects of labor-management cooperation on the ability of local government to undertake internal restructuring and to improve service delivery are worth examining. While obstacles clearly exist, with effort, many of the barriers to labor-management cooperation can be overcome (Gold 1986). By profiling counties where several tools of labor-management cooperation have been employed successfully, we hope to add to the existing knowledge of how these specific tools can be used to improve local government services.

Methodology

Initial research for this project was conducted in collaboration with the New York State Civil Service Employees Association (CSEA), the New York State Association of Counties (NYSAC), and the New York State Department of State's (DOS) Division of Local Government. Representatives from each of these groups were interviewed for their perspectives on and concerns about local government restructuring. The team found, through these discussions, that public sector management was searching for ways to improve internal and external operations, while labor was interested in exploring ways to prevent privatization of services. We hypothesized that labor-management cooperation can reduce costs and increase service quality, diminishing the impetus for privatization.

Further interviews with key informants helped the team focus on the relevant issues surrounding labor-management cooperation and identify the types of labor-management tools being employed in counties throughout New York State. Key informants included: CSEA, NYSAC, DOS, the Public Employment Relations Board (PERB), the Governor's Office of Employee Relations (GOER), staff and faculty of Cornell University's School of Industrial and Labor Relations, and elected officials from counties which had implemented some form of cooperation (see [Appendix A](#) for complete list).

We found that formal labor-management cooperative initiatives were not widely used in the state, but that a handful of both exemplary and semi-successful cases did exist. In the majority of cases, the most commonly implemented tools were labor-management committees, mutual-gains bargaining (MGB), and total quality management (TQM) programs. As a result, the team decided to focus on these three initiatives as tools of the labor-management cooperative process.

A 1997 survey of local government restructuring in New York State provided a preliminary indication of the incidence of privatization and restructuring in NYS counties (Warner and Hebdon 1997)¹. Twelve of the counties that responded to this survey indicated they had used cooperative labor-management initiatives. Key informants provided names of counties which had participated in TQM or mutual-gains bargaining training, or had implemented labor-management committees². The research team then selected three counties—Genesee, Ontario, and Tompkins—which had been

successful in implementing formal labor-management cooperation.

To explore our hypothesis that labor-management cooperative efforts could be an attractive alternative to privatization, the following key questions were formulated for the case studies based on the preliminary interviews and relevant literature:

- What are the basic elements of a cooperative labor-management relationship in county government?
-
- What are the goals that labor, management, and county officials hope to achieve through cooperation?
- What is the impact of a cooperative labor-management program on labor relations, service quality, and cost of service delivery?

These key questions reflect an attempt to describe the *process* of labor-management cooperation. Therefore, the chosen research method for the project is that of a *case study*, a descriptive research tool (Yin 1984).

The case study counties were selected on the following criteria:

- *Utilizing several tools of labor-management cooperation.* Having examined in our preliminary investigation several counties that had implemented one cooperative tool with marginal success, the team hypothesized that several tools may be necessary to substantively change the relationship between management and labor. Thus we chose counties that had implemented more than one of the cooperative tools identified: total quality management, labor-management committees, or mutual-gains bargaining.
- *Key informant recommendations.* The case study selection was also based on the beliefs of key informants listed in [Appendix A](#) that these counties were among the more successful of New York State in implementing cooperative labor-management efforts.
- *Willingness to participate and proximity.* Cases were selected on the basis of the willingness and ability of the counties to provide us with the necessary access to personnel and resources. Geographic proximity to Ithaca was also a consideration due to time constraints.

In each case, every attempt was made to interview one or more representatives from each of the three perspectives: elected officials, management, and organized labor (see [Appendix B](#)). An interview guide (see [Appendix C](#)) was developed to provide consistency and direction across all interviews. However, the interview format also provided flexibility for open-ended responses, so that the elements, advantages, challenges, and lessons of labor-management cooperative initiatives could be fully explored. Interviewees were able to respond to questions and expand on their ideas verbally, in a manner that a survey does not allow.

Face-to-face interviews were conducted with the majority of interviewees. When this was not possible, interviews were conducted by telephone. Interviews were summarized and shared with interviewees for review. Where necessary, follow-up interviews were conducted by telephone.

The research team compared the cases, discussing the commonalities and differences across them. Preconditions, goals, and limitations of the three tools of labor-management cooperation studied were emphasized. The analysis was written as a draft report and shared with the key informants in the case study counties. Their comments were incorporated into the final report. Permission to share the information contained in this report with the public was obtained from all county officials and staff who were interviewed.

Findings

The case study counties—[Genesee](#), [Ontario](#), and [Tompkins](#)—are located in central and western New York State. Genesee County has a population of about 60,000, while Ontario and Tompkins each have about 95,000 residents.

Politically, Genesee and Ontario are governed by Republican-dominated legislatures and Tompkins currently has a Democrat-controlled board. All three counties have an appointed full-time county manager or administrator. This is the most common form of county government in New York State³. The presence of a professional, full-time manager was a control factor across these three counties. The ability to generalize findings to other counties with county executives or no full-time, professional manager may be limited. However, key informants familiar with cooperative efforts across the state indicate that strong leadership and support for change appear to be more important to successful implementation than type of governance structure.

Additionally, the environment between labor and management in all three cases was found to be generally cooperative, or at least noncombative, prior to the implementation of cooperative initiatives. Therefore, this study cannot speak to counties where an adversarial relationship between labor and management is present.

The three labor-management tools were found to exist along a continuum of complexity, with labor-management committees providing the foundation for the other two tools. These committees provide a flexible forum for problem solving and building trust, and they require minimal training. Labor-management committees in all cases predated mutual-gains bargaining and TQM. The interest-based bargaining approach of MGB required substantial training for successful implementation. Used primarily for contract negotiations, MGB appears to have had very positive effects on negotiation processes and outcomes, as well as positive spillover effects to other arenas of decision making. TQM was by far the most comprehensive and complex of the three tools studied. Extensive training of labor, management, and elected officials was required to support the culture change toward shared decision making required for a successful TQM effort.

Key elements for successful cooperation include training, committed leadership, communication, and evaluation. In the case study counties, improved morale, costs savings, and service improvements resulted from the use of these three tools, suggesting they do provide an effective alternative to privatization. However, limited evaluation in the counties prevented definitive analysis of the true costs and benefits of labor-management cooperation.

Labor-Management Committees

Labor-management committees are cooperative structures that focus on problem solving and building trust. They typically deal with issues including workplace safety, work hours, training, personnel issues, and daily workplace concerns. Although labor-management committees may initially focus on less controversial issues, such as worker safety standards, over time they may build a level of trust between labor and management that allows them to deal with more complex problems (Gold 1986).

Labor-management committees may be permanent or they may form around a particular issue and disband once resolution is reached. However, they are not necessarily formed to solve crises. Many are proactive and attempt to improve current work practices. They are flexible and easy to implement, and require minimal training. Labor-management committees are cornerstones of cooperation in each of the counties studied.

Structure

The labor-management committees in Genesee, Ontario, and Tompkins Counties are similar in terms of their goals: enhanced labor-management relations, decreased costs, and improved services. Each county has a central guiding or umbrella committee that oversees the activities of issue-based or departmental labor-management subcommittees. They may facilitate training and provide direction to subcommittees or they may address specific program innovations or daily operations. All three counties implemented labor-management committees before mutual-gains bargaining and total quality management.

There are differences in how each county uses the committees, however. In Ontario County, where such committees have existed since the early 1980s, they operate independently of the TQM program. Ontario County has a countywide committee, committees that operate within departments, and others that address specific issues, such as safety and health.

Tompkins County's labor-management committees, which have existed since the mid-1980s, now function as part of

its TQM program. Prior to the inception of the TQM program, non-union members who volunteered or were voted in by all employees were allowed to serve on labor-management committees. Under the total quality management agreement negotiated between the CSEA and the county board of representatives, now there are more committees, and only union-selected representatives may serve on them (see the total quality management section, below).

Genesee County does not have a TQM program, and their labor-management committees are the main venue for workplace innovation. There is one main committee for the general bargaining unit, which covers most county departments, and a separate committee for the nursing home unit.

Representation

Labor-management committees are composed of representatives of management and the union. Only in Tompkins County were legislators also included. Tompkins County's umbrella committee has 13 members, including representatives from top management, middle management, and labor. In Ontario County, the countywide committee is made up of the county administrator, deputy administrator, director of human resources, and several of the local union presidents. In Genesee County, the general unit committee consists of the county manager, the personnel officer, the CSEA general unit president, and the regional labor relations specialist, as well as two more representatives from both management and labor who rotate onto the committee in three-year intervals. This provides more people an opportunity to be part of the process. Size of the committees varies according to the scope of the issue and the need for stakeholder input. Most have eight or fewer members, but at least one committee in Tompkins County has over twenty members.

Functions

In all counties, labor-management committees address a broad spectrum of workplace concerns. In Genesee County, the general unit committee emphasizes relationships and creating an environment where employees feel their input is valued and decisions are made by consensus. The labor-management committee has introduced policies that create a more family-oriented environment.

Labor-management committees can also be forums for discussing alternatives to privatization proposals. In Ontario County, labor has the opportunity to give their input before a decision to privatize a service is made by the administration. In Genesee County, labor and management formed a special joint action committee to address the threat of possible privatization in the Department of Mental Health Services.

Labor-management committees can impact the delivery of government services by finding ways to reduce costs while maintaining or improving the service itself. While hard data documenting the impact of innovations on cost was difficult to obtain, workers' compensation costs were significantly reduced in Tompkins County as a result of safety measures and training recommended by a labor-management committee (prior to the implementation of TQM). In Genesee County, labor-management committee recommendations and process improvements have led to cost savings through reduced absenteeism, increased productivity, and decreased supervision time. Their nursing home committee has helped the facility improve efficiency and avoid privatization. Client surveys in Ontario and Tompkins Counties have indicated overall improvements in services.

Labor-management committees do not address contract disputes or grievances, although they appear to be effective in defusing potential problems before they reach the grievance stage. All three counties credited labor-management committees for helping to keep the number of formal grievances low.

Role and Authority of Committees

There is great flexibility in how roles are defined for labor-management committees. Tompkins County has a formal agreement defining the roles, expectations, and boundaries of authority for the Leadership Council, which took one year to negotiate and which clearly outlines the scope of the committee process. Genesee County has less formal written guidelines that articulate the goals and procedures of the committee. The authority of the labor-management committee is not written into a contract but is accepted by both parties. Ontario County's labor-management committee is well entrenched and seems to function effectively without a written agreement.

Labor-management committees have varying degrees of authority and power. In some cases, their policy recommendations are binding, while in others they merely offer suggestions that must gain the approval of elected officials. This is often the case when budget or cost decisions are involved. Committees in Ontario County are empowered to draft letters of agreement around issues that would normally be addressed through contract negotiations.

In some cases, the use of labor-management committees may impact traditional lines of authority. Middle managers may lose some of their decision-making authority because employees can voice concerns directly to top levels of management through the committee. In Ontario County this was an issue, but in Genesee and Tompkins Counties, middle managers are included on committees.

Training/Support

Training committee members in conflict resolution and consensus decision making may help committees work more smoothly. Training sessions allow both groups to establish their commitment to the concept and to forge cooperative relationships. For example, in the Genesee County Nursing Home, a half-day training session for the entire staff helped them use their labor-management committee more effectively. In this case, a CSEA facilitator from Albany was used. The Public Employment Relations Board (PERB) and Cornell's Industrial and Labor Relations Extension are other valuable sources of training and information. It is important to recognize, however, that there may be a significant time lag after training before measurable results are seen.

Tompkins and Ontario Counties, which had longer-standing labor-management committees, have invested more in training for mutual-gains bargaining techniques and total quality management than for labor-management committees.

Relationships

Labor-management committees can be contentious because they bring together individuals with diverse points of view. Strong leadership, good communication, and commitment to the process make the difference between success and failure. Without these elements it is difficult, if not impossible, to build the necessary level of trust to make a labor-management committee work. Both Tompkins and Genesee Counties had attempted labor-management committees in the past, with limited scope and success. By focusing on relationships, building trust, and gaining the commitment of leadership they were able to establish the successful committees that operate today. One strategy used was to begin by addressing issues that are less contentious, to build momentum so committees can tackle larger, more difficult problems in the future. This increases the level of trust among committee members and reduces the potential for early conflict.

Employee morale has been greatly improved in the counties studied. There are still conflicts and differences of opinion, but labor-management committees provide a mechanism for giving voice to these problems before they become intractable.

Challenges and Limitations

Several challenges in implementing labor-management committees are evident:

- Time is required to build the trust necessary for effective committees.
- They have limited authority: they are not designed to make decisions about broad structural changes in county operations.
- Defining the appropriate roles and boundaries of committees is important: many problems lie beyond the scope of committees and call for wider participation of elected officials and citizens.

Conclusion

Labor-management committees are excellent forums for communication and workplace problem solving. They are flexible and require minimal training, which also makes them inexpensive. In all three counties, good communication, strong relationships, committed leadership, and trust proved to be the most important factors for committee success.

While the most compelling impact seen was on labor-management relations, committee efforts also led to improvements in county government functioning. Labor-management committees are relatively easy to implement and provide a foundation for incorporating more sophisticated tools, such as mutual-gains bargaining and total quality management, into an organization.

The following are recommendations to consider for labor-management committees:

- Establish a central, guiding committee to oversee the endeavor.
- Integrate committees into the organizational structure.
- Define expectations and parameters for decision making.
- Include as many stakeholders as possible and necessary.
- Communicate and foster a shared understanding of goals and objectives for both the committee and the organization.
- Be cognizant of power differentials and the effect these may have on communication.
- Address issues where it is easy to reach consensus at the outset in order to build momentum to tackle more difficult topics.

Mutual-Gains Bargaining

Mutual-gains bargaining (MGB) is a method of bargaining designed to dramatically improve the quality of contract negotiations and increase the likelihood of compliance between labor and management, ultimately benefiting their constituents. The mutual-gains process focuses on negotiations based on interests rather than positions and on building consensus. Through this process, unions and management identify at least one common goal and find ways to jointly accomplish that goal (Cohen-Rosenthal and Burton 1993). While MGB can be used for many types of negotiations, the case studies focused on its use for contract negotiations. Ontario County has been using mutual-gains bargaining since 1994, Tompkins County since 1995, and Genesee County since 1996.

Preconditions

All three counties had existing cooperative labor-management relationships in place before the initiation of MGB. Tompkins and Ontario Counties indicated they had been using interest-based bargaining techniques informally for years, and that they moved to MGB as a way of formalizing the process. This leads us to speculate that counties that have good labor-management relationships may be more apt to implement MGB because the idea of cooperating isn't very radical to them and there is less distrust between labor and management to overcome. Genesee County, however, was less satisfied with their standard negotiation process and wanted to use MGB to improve the quality of negotiations.

Benefits

Mutual-gains bargaining led to smoother contract negotiations in all three counties. This was especially true in Genesee, where labor and management agreed the new techniques were far more productive than previous negotiations. Perhaps because Ontario and Tompkins Counties already had well-established cooperative structures that resembled MGB in place, the changes were less dramatic, but in both counties labor and management spoke positively about the effects of MGB techniques on the negotiating process.

MGB can be used to empower workers and strengthen their organizations, as well as to shape their lives at work. The benefits include increased access to information, prenotification of changes in work arrangements and technology, and increased input, which helps management avoid errors or decisions that would hurt union membership. There is also an indication that work satisfaction may increase, and the union may be able to address a broader range of members' concerns more quickly and fully. In addition, the literature on the subject indicates that union membership, education, and skill levels increase.

In the public sector, management must make the organization as effective as possible to meet the needs and expectations of citizens and their legislative authorities. Management's benefits include improved effectiveness, increased organizational flexibility, an improved working environment, and enhanced productivity (Cohen-Rosenthal

and Burton, 1993).

Labor and management in the case study counties agree MGB has saved a lot of time. The use of MGB allowed Genesee County to complete their last contract in about a month, whereas it used to take up to six or seven months. The same is true for Tompkins County, where labor and management found the salary issue was on the table faster than ever before, in part because the economy was doing well, but also as a result of MGB.

Neither management nor labor see MGB as a panacea, but both concede that both parties walk away from the negotiating process feeling better. While both labor and management in Ontario County are pleased with MGB, the union appears to favor the process a bit more. CSEA representatives felt that MGB would definitely be used in the future. At least one manager, on the other hand, was of the opinion that MGB was a bit "tedious" and might not be used in the next contract because levels of trust were already high. In Tompkins County, labor felt that the "win-win" solutions that MGB is supposed to create often result in compromises. Management respected the process, but felt it was nothing new in comparison to the way they interacted in the past.

Leadership

The commitment of top management and union leaders to MGB is very important to its success. Some people will find it difficult to accept a new approach and will be subversive to both groups' mutual interests. In some cases, a change in leadership was necessary before a county could effectively implement MGB. In Ontario and Genesee Counties, for example, changes in union and/or management leadership preceded their formal implementation of MGB.

During negotiations, and during day-to-day interaction, the administration, union leaders, and managers need to set an example of open communication for all to follow. Labor and management must be committed to MGB. They must communicate with each other, understand each other's needs and interests, and pursue answers that benefit both groups. Tompkins, Genesee, and Ontario Counties' MGB efforts had the support of top management.

Training

Mutual-gains bargaining requires a change in philosophy that cannot occur without careful preparation. Unlike traditional collective bargaining, mutual-gains bargaining operates on trust and open information sharing, and as simple as the concept might be, it is critical that labor, management, and legislators receive training before they decide to embark on mutual gains. While legislators do not participate in negotiation, it is important they understand and support the process.

In their efforts to implement MGB, Ontario, Genesee, and Tompkins Counties all turned to the New York State School of Industrial and Labor Relations Extension for training. Tompkins County trained 300 out of 720 employees in MGB before its formal implementation in 1995, and had few problems. Now all bargaining units in Tompkins County (except the sheriff's department) use mutual-gains techniques for all terms except salary. In the case of Genesee County, the assistant county manager was trained to facilitate the negotiations, while Ontario and Tompkins used outside facilitators. Although Genesee's general unit contract was successfully negotiated using MGB in a much shorter period of time than was typical, the negotiating process was still very challenging, and the rank and file expressed skepticism about the initial contract. Because of the distrust that traditionally exists between the two groups, it may help to use an outside facilitator at the outset. Even with training, it can take employees and management time to learn to trust and accept the process.

Challenges

MGB can benefit both labor and management, but it can also be risky to both parties. Both union leaders and management are in danger of being perceived as too close to the "adversary"—legislators may fear management is being too easy on the union, while union members may fear their leadership is being "co-opted." Since the union is negotiating the terms and conditions of employment for its members, it has more at stake. The open negotiation process inherently requires each side to relinquish some of its negotiating power and may limit the union's ability to act as a unified group. In Tompkins County, the union has not yet agreed to negotiate salary using mutual-gains bargaining techniques largely for these reasons.

Mutual-gains bargaining is a process that was developed in the private sector to increase labor-management cooperation, but also to aid downsizing efforts. MGB inherently cuts out middle management as the mediators between labor and top management. In Ontario County, for example, middle managers were resistant to MGB, as it appeared to take some of their authority away.

Finally, because mutual-gains bargaining is a tool which is used only during contract negotiation time, it is limited in its ability to have a direct impact on the daily interaction between labor and management. However, there were important "spillover" effects of mutual-gains bargaining training to other venues such as labor-management committees and total quality management teams.

Conclusion

Interest-based bargaining appears to save money and time, and have positive effects on labor-management relationships. MGB resulted in quicker contract negotiation where both parties walked away feeling better about the process and the outcome. However, as with other similar labor-management cooperative methods, it is difficult to quantify the results of MGB. For example, Ontario County tries to quantify cost savings whenever possible but finds it difficult to assign a dollar value to the intangible benefits of their cooperative efforts. The counties studied did not establish evaluation measures to determine what impact (positive or negative) MGB has made.

Total Quality Management (TQM)

While Genesee, Ontario, and Tompkins Counties have all implemented labor-management committees and mutual-gains bargaining, only Ontario and Tompkins Counties have instituted total quality management (TQM) initiatives. Ontario County began to implement total quality management in 1993, Tompkins County in 1994.

Total quality management represents a shift in management philosophy from autocratic, hierarchical decision-making structures to flatter organizational structures and shared decision-making responsibility (Kursat and Calicchia 1994). In the past few decades, following the model of the private sector, local governments have come to realize that top-down management is not always the best way to achieve results and that line workers have valuable contributions to make in identifying strategies for improvement (Osborne and Gaebler 1992).

In Tompkins and Ontario Counties, total quality management has changed the way decisions are made, processes are designed, and labor and management interact. Informants describe total quality management programs as a "visceral change," a "paradigm shift," and a "culture change." Both counties' total quality management programs are new, and therefore conclusions about the programs' impacts and differences between them are tentative.

Three Components: Shared Decision Making, Customer Focus, Management by Fact

Total quality management initiatives have three primary components according to Kursat and Calicchia (1994):

1. Shared leadership and employee involvement

Total quality management programs are based in part on the idea that employees performing the work can create more efficient and effective processes to produce a higher-quality product. Total quality management programs typically establish formal structures such as labor-management committees for sharing decision making between managers and front-line employees.

2. Customer focus and an emphasis on service and product quality

TQM focuses on the needs and wants of two types of customers: "internal" customers—the next people down the line in the work process—and "external" customers—those who purchase or utilize a good or service. TQM seeks to improve the quality of both the product and the process by identifying the type and quality of good desired by both internal and external customers and providing what each customer wants. This can be difficult, since in the public sector, external customers include the people using a good or service but also the people

paying for the good (taxpayers) and their representatives (elected officials).

3. Management by fact and continual improvement

Total quality management encourages steady data collection and rational decision making based on data rather than on impressions or uninformed opinions. Labor-management committees are one way to collect data about many facets of a complex issue. Others include customer surveys and careful tracking and documentation of any cost or time savings. The second component, a philosophy of continual improvement, encourages employees and managers to exceed current standards. Continuous improvement is achieved through constant experimentation, learning from mistakes, and diffusing learning throughout the organization.

Goals

In both Tompkins and Ontario Counties, the goals of total quality management most often articulated by managers and employees were to improve labor-management relations and work conditions, leading to a more smoothly functioning organization. All parties also expressed a desire to improve service quality. This desire is exemplified by Ontario County's slogan for total quality management: "We aspire to excellence." In Tompkins County, elected officials' goals focused primarily on service improvement and cost savings.

Training

Participatory methods of decision making, identifying customer needs, and determining what kind of data to collect and how to collect it require skills of employees and managers that are not inborn or traditionally taught in schools or in the workplace. Thus, to effectively implement a total quality management program and achieve the paradigm shift required for success, training is essential.

Of the two counties, Tompkins has conducted more extensive training and spent more money. Tompkins County's Leadership Council (the labor-management committee charged with planning and managing the total quality management program) has the goal of training all employees, managers, and elected officials in quality methods. Initial training sessions were conducted by consultants, who are still involved in the process. In the fall of 1996, however, the county hired a full-time training coordinator, and now more sessions are conducted by in-house staff.

Between 1994 and 1997, Tompkins County spent just over \$300,000 for outside consultants to conduct training. In 1998, the county will spend an estimated \$170,000 on consultants to complete the bulk of the training. Since 1997, in-house costs have been around \$100,000. These costs will drop dramatically after 1998, when all employees, managers, and elected officials will have been trained in total quality management techniques and only training for new employees and refresher courses will be necessary.

Ontario County appears to have spent significantly less on their training program, particularly on outside consultants. Initially both labor and management leaders as well as county legislators were trained at the Rochester Institute of Technology. Initial training cost \$35,000 for employees and \$50,000 for supervisors, managers, and elected officials. The county gradually built their capacity to do training in-house, and today all county employees have been trained in TQM concepts.

It is important to remember when comparing these figures, however, that we obtained dollar amounts from Tompkins County for both outside and in-house costs, whereas the figures reported for Ontario County's training costs are only initial start-up costs for consultants. Still, there appears to be an appreciable difference in expenditures on consultants.

This difference may be due to the values held by county leaders. Tompkins County leaders are professionally and personally interested in organizational theory and process, and are willing to wait for long-term results. These may be the reasons for the strong emphasis on process and formal training. Ontario County leaders seem less interested in process and more interested in both short- and long-term results.

Support Structures

Individuals, however well trained in new ways of thinking and doing, will not be able to maintain the culture shift without a system of structural supports that devolve authority for decision making to labor-management teams. Supportive structures are probably one of the largest differences between total quality management programs which employees perceive to be "fake" and those which seem more real and effective.

Ontario County's Service Excellence program is structured around a countywide steering committee that acts as a core planning group, setting the direction for the program and coordinating the activities of the subgroups. The four departmental work group committees each have the same organizational structure as the steering committee and coordinate their corresponding functions.

Tompkins County's Leadership Council includes representatives from labor, top management, middle management, and elected officials. The Leadership Council guides the training process and the activities of departmental committees, and facilitates the work of smaller, project-oriented or cross-functional committees.

Another support mechanism is in-house training facilitators. Currently, Tompkins County employs a full-time training coordinator. An additional twenty employees act as facilitators, assuming leadership roles on various departmental and issue-related committees. They lend practical support based on their understanding of TQM and committee concepts. In addition, they are role models for other employees and managers.

Advantages

Total quality management is the most comprehensive cooperative tool for restructuring that the research team investigated. More than labor-management committees, total quality management programs can address inefficiencies in work processes and strive to identify customer needs. Unlike mutual-gains bargaining techniques, which are used primarily for contract negotiations once every few years, total quality management is ongoing and suffuses all work processes. It empowers labor to improve the workplace. In Tompkins County, for instance, labor-management relations had been good for some time, but TQM forced managers to rethink their traditional style to allow greater employee involvement in decision making. Employees and management now work together to solve problems, and by all accounts, both find the new process more productive and rewarding.

The cases studied indicate that total quality management does improve the functioning of the organization, employee morale, and labor-management relations. Based on the suggestions of a total quality management committee in the Department of Social Services, Tompkins County streamlined the intake process for several social service programs. A Tompkins County survey indicates that employee morale in the Department of Public Works improved 22% between 1990 and 1997. Further, since the TQM programs have been implemented, both Ontario and Tompkins Counties have had fewer frivolous grievances as a result of increased communication and trust.

The programs have also reduced costs in both counties, although the cost savings have not always been well documented. Tompkins County representatives believe they have saved a great deal due to improved morale and greater efficiency. Ontario County has documented savings through the efforts of its workplace safety team. The team project began with county safety coordinators identifying high-risk job duties, such as driving and heavy lifting, based on local and national accident and injury data. Employees performing these tasks were then trained in safer driving and lifting techniques, resulting in a 37% reduction of OSHA-recordable injuries in the county from 1994 to 1997. Lost days were reduced by 60% in the same time period. As a result of these safety improvements, a special tax assessment to pay for workers' compensation, to be spread out over five years, was paid off in only three, saving taxpayers \$1.5 million.

Limitations

Both middle managers and elected officials may resist the total quality management culture change because it devolves supervisory and decision-making power to TQM teams and committees. While middle managers and elected officials are formally involved in several levels of the TQM program in Tompkins County, they are absent from the committees in Ontario County, and have understandably been more resistant to the process. Middle managers may also fear for their jobs. Tompkins County is dealing with this issue by retaining middle managers as top-level technical employees and ensuring their representation on the TQM committees.

Another limitation of total quality management as a tool for restructuring is its internal focus. The difficulty in identifying the "customer" for public sector goods and services and the focus on internal work processes make it hard to truly involve citizens in these TQM efforts. Both counties seek to identify external customer needs with surveys, and Tompkins County includes elected representatives on committees, but neither county includes citizens on committees. In Ontario County, citizen involvement in the TQM program is slightly greater than in Tompkins, since it includes an advisory council made up of a select group of local business owners.

Tompkins and Ontario Counties both seem to focus more attention on internal customers, (through surveys and participation in labor-management committees), in the belief that process improvements will result in product and service improvements. This is not an unreasonable assumption, though it can be difficult to document. Customer satisfaction surveys in Ontario and Tompkins Counties indicate external customers are generally satisfied with service improvements generated by total quality management programs.

The substantial cost of total quality management training and implementation as well as the time required to reap benefits are also limitations of total quality management as a tool for local government restructuring. Finally, because total quality management focuses primarily on internal work processes, policy about external factors is outside its purview. The inability to address broader policy issues may limit the ultimate impact of investments in total quality management.

Conclusions

Goals of Cooperative Tools and Processes

Most of our informants articulated their goal as a more smoothly functioning organization, with more creative problem solving and positive interactions between management and labor. Managers and elected officials focused on increased efficiency, cost savings, and improved service quality. Labor representatives expressed goals of increasing employee participation in decision making and improving service delivery by widening employees' stake in the process and product. Thus, improving service delivery was a goal of all parties, but with slightly different emphases. Elected officials valued improved service delivery for its impact on citizen constituents, whereas labor representatives valued increased service quality for its effects on job quality.

Preconditions for Success

Several conditions existed in our counties prior to the successful introduction of formalized cooperative processes. First, the labor-management relationship in all three counties was already cooperative, or at least noncombative, providing fertile ground in which cooperative structures could thrive. Second, all the counties we studied were in relatively stable economic and political positions prior to establishing cooperative structures. We were not informed of any fiscal or political crises in recent memory that might put pressure on leaders to avoid the risk-taking inherent in cooperative initiatives. These three counties made a significant culture change not as a last-resort strategy, but as a means to improve already functional but imperfect processes. However, the cooperative structures have proven useful in dealing with crisis, such as the threatened sale of the nursing home in Genesee County.

We observed several other essential preconditions in our study counties. Committed, supportive leaders are required. This sometimes necessitates a change in the legislature, county administration, or union leadership. The attitudes of those in leadership positions proved crucial to the counties' ability to embrace the new ideas and paradigms of cooperative tools. Furthermore, in order to buy into the new cooperative relations, middle managers and line employees had to trust the intentions of both labor and management leaders. Even in counties where cooperative tools have been used successfully, the departments with a lower degree of labor-management trust have been slower to make the transition to new tools.

Impacts of Cooperation

Internal Process Improvements

The changes seen in government service delivery seem to be primarily internal in nature. Tompkins County, for instance, streamlined its intake processes for various social services. Genesee County instituted several policies that affect employee benefits, encouraging workplace efficiency and increased job satisfaction. The efficiency gains from internal restructuring are thought to "trickle down" to external improvements. The Genesee County Nursing Home, for instance, through its labor-management committee, has addressed staffing issues that are crucial to efficient functioning and effective service delivery.

Employee Morale

The second area where impacts have been significant is employee morale, which was uniformly reported by our informants to have improved under cooperative processes. Again, data for improvements are difficult to obtain, and most employee surveys were completed after new structures were implemented, and therefore lack a comparative benchmark. All counties stated the number of grievances has decreased, and the grievances that are filed are uniformly serious in nature, the less serious problems being resolved in other forums, due to improved communication and trust.

Cost Savings

Though gains and savings have sometimes proven difficult to measure due to a fear of budget cuts to agencies that report cost savings, the overriding sentiment is that cooperative efforts are resulting in real cost savings. Ontario County has documented at least one instance of large financial savings in its reduction of worker compensation costs due to a safety program implemented by a TQM committee. Genesee County's nursing home has become profitable again in part due to the efforts of its labor-management committee.

Key Elements for Cooperation

From the case studies, we have identified a number of elements that are necessary for cooperation to be successful:

Training

First, a substantial amount of time and resources were devoted to training labor and management leaders, and more often than not, legislators and line employees as well, in cooperative structures and processes. In Ontario and Tompkins Counties for instance, all employees are being trained in total quality management concepts. Line employees were less likely to be trained in mutual-gains bargaining, which is used primarily by representatives of labor and management for the contract agreement. In Genesee County, for instance, while the assistant county manager was trained to facilitate the negotiation process, the employees were not trained prior to the switch to mutual-gains bargaining, and perhaps for this reason, the first contract negotiated by this method was voted down by union members. On the other hand, the Genesee County Nursing Home sponsored a half-day training session for the entire nursing home staff with a CSEA facilitator, which helped their labor-management committee become much more effective. Whether or not all employees were trained, training brought about a critical shift in how members of the organization viewed labor-management relations.

Local colleges and universities were valuable resources for training in these methods. Both Tompkins and Ontario Counties made extensive use of nearby educational facilities.

Leadership Commitment and Support

The counties we studied all shared the presence of an appointed, professional administrator to manage the transition to cooperative tools. However, one expert on local government told us that the form of government is less important than the administrator or leader's commitment to the cooperative process. A high level of emotional maturity is essential, as is the ability to work well with people and to get them to buy into the process. The case study counties possessed leaders who were willing to work with, but ultimately hold responsible, resistant managers. The commitment of union leadership was also an important factor. Without the willingness of the union officials in these counties to try new ways of working with management, cooperative processes would not have been possible.

The role of elected officials was significant only to the extent they were generally supportive and did not interfere with

the process. We did not observe a high degree of involvement in cooperative tools on the part of county elected officials, with the notable exception of Tompkins County, where a legislator was actively engaged in developing the TQM initiative.

Additionally, in the three counties we observed a clear commitment to the *process* of implementing cooperative tools. Since gains from TQM, for instance, were not immediate, and could take several years after training to realize, the commitment of leaders to see the process through was essential to its success. Administrators and union officials' commitment to labor-management committees as an effective vehicle for problem solving also seemed to be a significant factor in their success. Tools that yield faster results, such as mutual-gains bargaining, perhaps require less depth of commitment from county leaders. In all cases, however, all parties must buy in to the process. Given the levels of trust required, cooperative efforts are likely to be sensitive to attempts to undermine them.

Communication

Communication of the goals, structure, and roles of key players in cooperative processes is also important, both within the organization and in the larger community. Umbrella or countywide committees play important roles here as the central forums for sharing of information and ideas. Creating public awareness of county efforts also may be desirable but was not emphasized in our case study counties.

Evaluation

Evaluation is essential to assure appropriate and effective implementation of cooperative tools and to create support among elected officials and the public. Better evaluation of the cooperative processes in all three counties is needed. For instance, in Ontario County cooperative relations are so strong that some perceive mutual-gains bargaining as an administrative burden that in and of itself may not add significant benefits. However, county leaders currently have no means to gauge MGB's effectiveness. Management in Genesee County indicated that evaluation was an area they hoped to address in the future. The private sector may be a source for evaluation tools that counties can use to measure the success of their efforts.

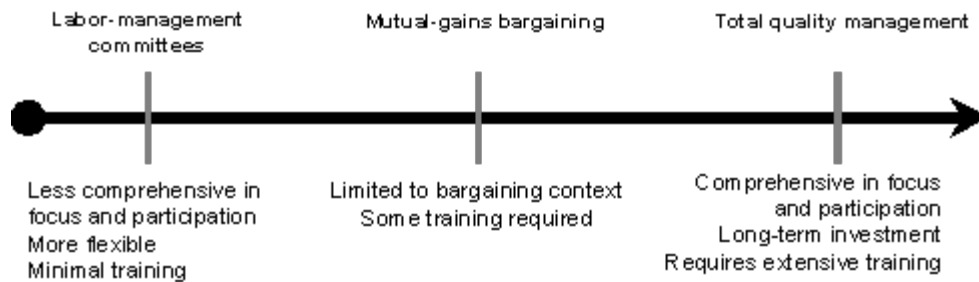
Key Differences Between the Counties

We recognized several key differences among the counties in the implementation of cooperative tools. First, the amount of money spent on training varied widely. Tompkins County had by far the greatest expenditures, almost entirely attributable to its TQM program. Tompkins' use of outside consultants on a regular basis also distinguished it from the other two counties. Genesee County, in contrast, only approached outside consultants on an infrequent basis. However, Genesee's labor-management committees required lower levels of training and hence less cost, compared to the formal TQM programs of Ontario and Tompkins. Interest in the process of workplace change rather than a focus on outcomes or products seemed to guide efforts in Tompkins County, perhaps partly because of its close ties to the academic community through Cornell University.

The level of involvement of elected officials and middle managers also varied. In Genesee County, middle managers may participate in the negotiating process and sit on labor-management committees. In Tompkins County, middle managers are well represented on total quality management committees. In Ontario, where the committees create a direct channel from workers to top management, it is less clear that middle managers are adequately incorporated into the structure. Tompkins is the only county in which an elected official sits on the countywide labor-management committee. In Genesee County, county management felt that by not participating in committees, elected officials maintained a beneficial distance from the process. Whether elected officials should be involved may depend on the extent of the changes being implemented; in a more formal and expensive process such as TQM, their participation seems more appropriate and essential, while it may not be necessary for internally focused committees.

Continuum of Cooperative Tools

The three cooperative tools exist along a continuum based on the complexity of the tool, the level of investment required, and its degree of departure from traditional labor-management relations. The following diagram illustrates this continuum:



A government with labor-management committees may not choose to implement a TQM program, but a government without labor-management committees may not be wise to implement TQM as its first cooperative effort. Thus, the diagram may also be viewed as a time line of cooperative structures, indicating a progression from relatively simple tools such as labor-management committees to more complex, formal, costly, and comprehensive processes such as TQM. Other tools we did not observe in our counties could be added to this model, such as gainsharing.

Limitations and Further Questions

As tools for restructuring, the cooperative methods discussed here have several limitations. Their ability to affect the external policy environment is limited, so they are constrained by the political contexts in which they must operate. They also do not afford an opportunity for citizens to become more involved in government. Since public support for its activities is important to local governments, they should come up with ways for creating greater citizen involvement in their restructuring efforts.

Many questions emerged during the course of our study. First, what is the true impact of cooperative tools and processes on middle management? Much has been written about the downsizing of middle management in the private sector. Is this also the case in government? Second, what are the appropriate roles for citizens and elected officials in efforts to restructure government—through both internal and external methods? Finally, our cases only addressed examples of successful cooperative tools and processes in counties that had developed a significant degree of trust between labor and management. What are the outcomes of cooperative initiatives in counties that lacked this precondition of trust?

Notes

1. Conducted by Cornell University in cooperation with the County Legislators and Supervisors Association of New York State, this survey was distributed to all towns (932) and upstate county governments (57) in New York State. Responses were received from 196 towns (21% response rate) and 26 counties (45.6% response rate).
2. The counties initially considered were Chautauqua, Clinton, Columbia, Dutchess, Erie, Genesee, Livingston, Oneida, Ontario, Putnam, Schenectady, Tioga, Tompkins, Ulster, and Westchester.
3. Of the 57 counties outside of New York City, 18 (31.5%) are governed by the county executive structure (elected official), 27 (47.5%) are governed by county managers or administrators (appointed), and 12 (21%) have no full-time manager or county executive.

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Appendix A: Key Informants

Steve Alviene, Deputy Director of Labor Relations, New York Civil Service Employees Association

John Bartow, Director, Division of Local Government, New York State Department of State

Franklin Bassett, Administrator, Livingston County Office of Aging

Kate Bronfenbrenner, Sr. Extension Associate, New York State School of Industrial Labor Relations Division of Extension and Public Service

Marcia Calicchia, Sr. Extension Associate, New York State School of Industrial Labor Relations Division of Extension and Public Service

Ken Crannell, Director of Research, New York State Association of Counties

John Crotty, Deputy Chair and Counsel, Public Employment Relations Board

Ron Dougherty, former County Chair, Tioga County

Kevin Flanigan, Supervising Public Employment Mediator, Public Employment Relations Board

Andrew Goodell, former County Executive, Chautauqua County

Todd Greci, Governor's Office of Employee Relations

Robert Hebdon, Assistant Professor, New York State School of Industrial Labor Relations

Scott Heyman, County Administrator, Tompkins County

Sally Klingel, Director, Programs for Employment and Workplace Systems, New York

State School of Industrial Labor Relations Division of Extension and Public Service

Karen Macintosh-Frering, Labor Management Coordinator, Ulster County

Alan McAdams, Associate Professor, Johnson School of Management, Cornell University

Barbara Mink, Chair, Tompkins County Board of Representatives and four-year member, Tompkins County Leadership Council

Jeff Osinski, Project Director, New York State Association of Counties

David Pilliod, Assistant Director, Department of State, Division of Local Government

Jim Platner, Director, Chemical Hazard Information Program, New York State School of Industrial and Labor Relations Division of Extension and Public Service

Keith Stack, Special Assistant, Department of State, Division of Local Government

Jeff Swain, Assistant Deputy Comptroller, New York State Office of the Comptroller

Appendix B: Case Study Informants

Genesee County

Darlene Acker, CSEA Nursing Home Unit President

Jay Gsell, County Manager

Jack Pease, Administrator, County Nursing Home

Nancy Smith, CSEA General Unit President

Martha Standish, County Personnel Officer

Ontario County

Geoffrey Astles, Deputy County Administrator

John Garvey, Human Resources Director
Edward Grace, County Administrator
Robert Russo, President, CSEA Local 7850

Tompkins County

David Chase, President, CSEA Local 855
Scott Heyman, County Administrator
Barbara Mink, Chair, Tompkins County Board of Representatives

County Case Studies

- [*Genesee County*](#)
- [*Ontario County*](#)
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NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

March 1, 2002

The Honorable Max Baucus, Chair
Senate Finance Committee
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Grassley, Ranking Member
Senate Finance Committee
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510

Stephen Saland
*State Senator
New York
President, NCSL*

Ramona Kenady
*Chief Clerk of the House
Oregon
Staff Chair, NCSL*

William T. Pound
Executive Director

RE: The Bipartisan Trade Promotion Authority Act of 2001 (H.R. 3005)

Dear Senators Baucus and Grassley:

The National Conference of State Legislatures (NCSL) has consistently supported international trade agreements that adequately protect the U.S. constitutional principles of federalism. Further, NCSL supports trade promotion authority that empowers the President and the U.S. Trade Representative (USTR) to negotiate sound and mutually beneficial trade pacts. However, we write to express concerns that the Bipartisan Trade Promotion Authority Act of 2001, H.R. 3005, does not adequately and explicitly guarantee that trade agreements negotiated under this authority will respect state sovereignty, provide open and transparent proceedings for the resolution of disputes, assure a level playing field for U.S. and foreign firms, nor incorporate well-defined and constitutional Fifth Amendment takings principles. Recognizing these concerns, we stand ready to work with you to ensure that sufficient and proper guarantees are put in place.

The National Conference of State Legislatures believes that international agreements that liberalize the world trading and investment system can and must be harmonized with traditional American values of constitutional federalism. In particular, NCSL recognizes that reservations can be made to trade and investment agreements that limit the unnecessary preemption of state law and preserve the authority of state legislatures. Implementing legislation also can be crafted that includes protections for our constitutional system of federalism.

Great care must be exercised to protect state laws from unjustified challenges that will predictably result from the broad language of trade agreements. In general, federalism protections consistent with NCSL's policy on Free Trade and Federalism, attached for your review, must be included in the agreement and its implementing legislation. The Uruguay Round Agreement's implementing legislation and accompanying Statement of Administrative Action also provide an excellent model.

Denver
1560 Broadway, Suite 700
Denver, Colorado 80202
Phone 303.830.2200 Fax 303.863.8003

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org
Email info@ncsl.org



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NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

AFI AGRICULTURE & INTERNATIONAL TRADE COMMITTEE

FREE TRADE AND FEDERALISM POLICY

The National Conference of State Legislatures (NCSL) believes in the principles of free trade and efforts to expand U.S. exports through international agreements. NCSL also believes that these agreements to liberalize the world trading and investment system can and must be harmonized with traditional American values of constitutional federalism. In particular, NCSL recognizes that reservations can be made to trade and investment agreements that limit the unnecessary preemption of state law and that preserve the authority of state legislatures. Implementing legislation for trade and investment agreements also can be crafted that includes protections for our constitutional system of federalism.

The states are committed and prepared to treat foreign firms that do business within their borders in a nondiscriminatory fashion, under a standard based on the broad protection afforded by the Commerce Clause and the Foreign Commerce Clause of the U.S. Constitution. What the states are not prepared to accept, however, is a challenge to their sovereignty and to state authority based on an arbitrary and unreasonable standard of discrimination against foreign commerce, similar to that employed by the GATT panel in the so-called Beer II decision.

Therefore, reservations must be made to trade and investment agreements to “grandfather” existing state laws that might otherwise be subject to challenge. Particular care must be exercised to ensure that state tax laws and revenue systems are not subject to unjustified challenge under international agreements, and they generally should be “carved out” of such agreements. Provisions must also be made in federal implementing legislation that so far as possible commit the federal government to protect state lawmaking authority when it is exercised in conformity with accepted U.S. constitutional principles of nondiscrimination against foreign commerce.

Provisions must be made to deny any new private right of action in U.S. courts or before international dispute resolution panels based on international trade or investment agreements,

especially if it could result in foreign firms gaining an advantage in terms of their tax and regulatory treatment over U.S. firms. Neither the decisions of international dispute resolution panels nor international trade and investment agreements themselves must be binding on the states as a matter of U.S. law. Implementing legislation for any agreement must include provisions that promote effective and meaningful consultation between the states and the federal government related to any dispute involving state law or any dispute that could prompt retaliation against states. These provisions should include a timetable for prompt notice to states of a potential state issue, as well as the right of attorneys for the state to participate as part of the “team” defending a state law before international tribunals. States must also be given the right to file amicus briefs before international dispute resolution panels, both independently and



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May 17, 2002

The Honorable Gordon Smith
United State Senate
404 Russell, Senate Office Bldg.
Washington, D.C. 20510

The Honorable Ron Wyden
United States Senator
516 Hart, Senate Office Bldg.
Washington, D.C. 20510

Dear Senators Smith and Wyden:

We are writing to express our concerns about the potential impact on Oregonians of granting Fast Track Authority to the President.

Last year, the Oregon State Legislature approved Senate Joint Memorial 2 with only one dissenting vote. In SJM 2, we noted that "within the United States federal system, the states are the units of government closest to and most representative of the people of the United States." We respectfully call your attention to provisions in U.S. trade agreements that appear to conflict with the lawmaking authority of the 50 state legislatures.

Trade negotiations are ever expanding. A new U.S.-Chile agreement is nearing completion, and numerous other bilateral agreements are in the works. The Free Trade Area of the Americas (FTAA), which would cover 34 nations of the Western Hemisphere, is a broader agreement than the North American Free Trade Agreement (NAFTA). The World Trade Organization (WTO) Ministerial in Doha recently authorized several global negotiations that could undermine the intentions of state and local municipalities.

We are alarmed at the potential impact these negotiations may have on the traditional authority of state and local governments to purchase, promote development, provide services and regulate public interests. For example, the rules on services being negotiated in the FTAA and the WTO's General Agreement on Trade in Services (GATS) would affect 75 percent of the economy, including issues crucial to working Oregonians such as health care, education, water and natural resources, energy, transportation, and land use. If negotiated as U.S. delegates desire, these rules will require state and local governments to notify all 144 WTO members every time a services regulation is proposed and then take their comments into

consideration before passing the law. These rules would create an undue burden on state and local governments by unnecessarily prolonging the legislative process.

Under the federal political structure established by the U.S. Constitution, regulation of services is, and always has been, primarily under the jurisdiction of state and local governments. Yet the current version of Fast Track lacks any mandate to protect traditional authority of states to protect public interests.

NAFTA's investment provisions are even more troubling because they empower private corporations to challenge state and local measures behind the closed doors of international tribunals. NAFTA is the model for investment negotiations in the U.S.-Chile agreement and the FTAA. The first four NAFTA claims against the United States are all against state or local actions, and they total \$1.8 billion. We agree



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Minnesota Senate

House | Senate | Legislation & Bill Status | Laws, Statutes & Rules | Joint Depts. & Commissions

BY: ~~stricken~~ = old language to be removed
underscored = new language to be added

OTE: If you cannot see any difference in the key above, you need to change the display of stricken and/or underscored language.

[Authors and Status](#) ■ [List versions](#)

F No. 3468, 2nd Engrossment: 82nd Legislative Session (2001-2002) Posted on May 17, 2002

- 1.1 A resolution
 1.2 memorializing the President, Congress, and the
 1.3 Governor to ensure that international trade agreements
 1.4 respect the traditional authority of state and local
 1.5 governments to protect the public interest.
 1.6 WHEREAS, the Minnesota legislature supports the benefits of
 1.7 fair trade for local economies; and
 1.8 **BACKGROUND**
 1.9 WHEREAS, the United States Trade Representative (USTR) is
 1.10 negotiating with 34 countries in the western hemisphere to
 1.11 extend the North American Free Trade Agreement (NAFTA) to those
 1.12 countries, thereby creating a Free Trade Area of the Americas
 1.13 (FTAA) that would eliminate barriers to trade, investment, and
 1.14 services, while creating a single set of trade rules among
 1.15 member countries; and
 1.16 WHEREAS, the USTR negotiated the World Trade Organization
 1.17 (WTO) General Agreement on Trade in Services (GATS), which went
 1.18 into effect January 1, 1995; is currently preparing for
 1.19 negotiations, due to begin June 30, 2002, to expand GATS
 1.20 coverage and relinquish additional local regulatory authority;
 1.21 and is anticipating the possible beginning of WTO negotiations
 1.22 on investment and procurement; and
 1.23 WHEREAS, trade agreements pertaining to services,
 1.24 investment, and government procurement constrain the exercise of
 1.25 state and local government authority to protect the health and
 2.1 welfare of its citizens; and
 2.2 WHEREAS, the traditional local authority of state and local
 2.3 officials to develop and implement necessary policies for their
 2.4 constituents must not be jeopardized by provisions of the FTAA;
 2.5 and
 2.6 WHEREAS, the USTR has declined to hold local hearings to
 2.7 inform the public about the potential impact of the FTAA and
 2.8 GATS negotiations on local communities; and
 2.9 WHEREAS, the National League of Cities, National
 2.10 Association of Counties, Council of State Governments, National
 2.11 Conference of State Legislatures, and National Association of
 2.12 Attorneys General have all adopted resolutions or otherwise
 2.13 taken positions similar to the concerns expressed in this
 2.14 resolution; and
 2.15 **SUBSIDIES, TRADE IN SERVICES, AND PUBLIC PROCUREMENT**
 2.16 WHEREAS, the FTAA chapter on subsidies includes subsidy
 2.17 rules that potentially conflict with state or local lawmaking to
 2.18 promote economic development; and
 2.19 WHEREAS, the risk of conflict between proposed FTAA and
 2.20 GATS rules on trade in services and state or local law is

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ENROLLED SENATE
CONCURRENT
RESOLUTION NO. 71

By: Muegge of the Senate

and

McCarter of the House

A Concurrent Resolution memorializing the President and Congress that the United States Trade Representative preserve the traditional powers of state and local governments while negotiating international investment agreements; and directing distribution.

WHEREAS, the United States government, through the United States Trade Representative, is negotiating to create or interpret investment agreements under the proposed Free Trade Area of the Americas (FTAA), bilateral agreements such as the United States-Chile agreement, the investment chapter of the North American Free Trade Agreement (NAFTA), and potentially under the World Trade Organization (WTO); and

WHEREAS, investment agreements affect state and local powers, including, but not limited to, zoning, protection of ground water

and other natural resources, corporate ownership of land and casinos, law enforcement by courts, public services, and sovereign immunity; and

WHEREAS, investment rules under these agreements deviate from United States legal precedents on takings law and deference to legislative determinations on protecting the public interest; and

WHEREAS, investment rules do not safeguard any category of law from investor complaints including, but not limited to, laws passed in the interest of protecting human or animal health, environmental resources, human rights, and labor rights; and



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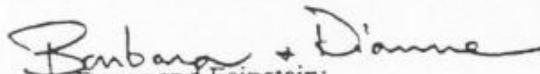
STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

April 3, 2002

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Bldg.
Washington, D.C. 20510

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Bldg.
Washington, DC 20510

Re: H.R. 3005 - Threat to State and Local Regulatory Programs


Dear Senators Boxer and Feinstein:

I wanted to let you know that on March 22, 2002, the National Association of Attorneys General, representing 54 states and territories, passed the attached resolution expressing concern over the inclusion of provisions in international trade agreements granting individual foreign investors new rights to challenge and seek compensation for state, local or federal government regulatory actions as "expropriations." I believe that similar provisions may proliferate in future trade agreements enacted under the pending "fast track" legislation unless Congress amends H.R. 3005 to ensure that foreign investors receive no greater rights than those afforded U.S. citizens under our constitutional guarantees.

As you know, I strongly support the promotion of international trade, including elimination of unfair and discriminatory barriers to the importation of foreign products and to

foreign investment. However, the potential in H.R. 3005 to create an expansive new international law of takings is unnecessary and, ultimately counter-productive to achieving the goals of promoting free trade and increased foreign investment.

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WILLIAM H. SORRELL
ATTORNEY GENERAL
J. WALLACE MALLEY, JR.
DEPUTY ATTORNEY GENERAL
WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171
FAX: (802) 828-2154
TTY: (802) 828-3665
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<http://www.state.vt.us/atg>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER
05609-1001

April 17, 2002

The Honorable Patrick Leahy
United States Senate
433 Russell Senate Office Building
Washington, DC 20510

The Honorable Jim Jeffords
United States Senate
728 Hart Senate Office Building
Washington, DC 20510

Dear Senators Leahy and Jeffords:

I wanted to communicate with you briefly about H.R. 3005, the so-called "fast-track" trade legislation, that is presently pending in the Senate. The National Association of Attorneys General recently passed a resolution (a copy is attached) expressing concerns about a section of H.R. 3005 that deals with "investor protection" provisions in future international trade agreements. As presently drafted, H.R. 3005 may authorize U.S. trade negotiators to grant foreign investors new and greater rights to seek financial compensation based on state, local, or federal regulatory actions. I share the concerns expressed by the nation's Attorneys General. I also believe that this issue is important to Vermonters, who are justifiably proud of their State's commitment to environmental protection.

As you may know, a similar investor provision is found in Chapter 11 of the North American Free Trade Agreement (NAFTA) and has already presented problems. Under Chapter 11, for example, foreign corporations have sought to undermine attempts by state and local governments to regulate hazardous chemicals. Events such as these raise serious concerns over the potential impact of new "investor protection" provisions on the power of state or local governments to protect the welfare and environment of their citizens. The vague standards found in Chapter 11 invite expansive claims by disappointed foreign investors who challenge state and local environmental protections as



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STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
120 BROADWAY
NEW YORK, NY 10271

ELIOT SPITZER
Attorney General

(212) 416-8050

May 9, 2002

Senator Charles E. Schumer
SH-313 Hart Senate Office Building
Washington, D.C. 20516-3202

Senator Hillary Rodham Clinton
SR-476 Russell Senate Office Building
Washington, D.C. 20510-3203

Dear Senators Schumer and Clinton:

I write to share with you my concern about the threat that H.R. 3005, the "Bipartisan Trade Promotion Authority Act of 2001," poses to the federal, state and local governments' authority to protect public health and the environment, and to offer some ways to address this threat. This concern should not derail efforts to expand fair and free trade. My staff has spoken with your staffs and I know that you are both following this issue closely.

H.R. 3005 is intended to facilitate international trade agreements by establishing a fast track procedure whereby a trade agreement submitted to Congress for approval must be voted up or down and cannot be amended. To advance this end, the bill creates framework principles for U.S. trade negotiators to follow in negotiating bilateral or multilateral agreements with foreign countries.

One of the proposed provisions, which is intended to protect foreign investments from expropriation, is so broadly drawn as to potentially grant foreign, *but not U.S.*, investors compensation rights far *greater* than those available under American constitutional takings and due process law. Such a provision in the North American Free Trade Agreement ("NAFTA"), which was enacted under "fast track" legislation comparable to H.R. 3005, has resulted in claims alleging expropriation by federal, state or local regulation. These claims, which total in the billions of dollars, are adjudicated in closed proceedings conducted by arbitration panels that are not bound by U.S. judicial precedent or the rulings of other arbitration panels. The panels' determinations are not subject to appeal on the merits and any compensation award is payable directly from the U.S. Treasury. Finally, public policy concerns of NAFTA's signatory nations



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G. STEVEN ROWE
ATTORNEY GENERAL



Telephone: (207) 626-6600
TDD: (207) 626-6665

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES:

84 HAWLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

44 OAK STREET, 4TH FLOOR
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8600

128 SWEDEN ST., STE. 2
CARIBOU, MAINE 04736
TEL: (207) 496-3792
FAX: (207) 496-3291

April 25, 2002

The Honorable Olympia J. Snowe
United States Senate
154 Russell Senate Office Building
Washington DC 20510-1903

The Honorable Susan M. Collins
United States Senate
172 Russell Senate Office Building
Washington DC 20510-1904

Re: H.R. 3005 – Threat to State and Local Regulatory Programs

Dear Senators Snowe and Collins:

I recently joined my colleagues at the National Association of Attorneys General in passing the attached resolution expressing concern over the inclusion of provisions in international trade agreements, by which foreign investors are granted new rights to challenge and seek compensation for state, local and federal government regulatory actions. Similar provisions may proliferate in future trade agreements enacted under H.R. 3005, the "fast track" trade legislation now pending before Congress, unless the bill is amended to ensure that foreign investors receive no greater rights than those afforded U.S. citizens under our Constitution.

Please know that this issue has no bearing on the promotion of international trade. However, the potential in H.R. 3005, as currently written, to create an expansive new international law of takings, having no derivation in our Constitution, is contrary to our Constitution's principles as well as to promotion of even-handed trade.

My concerns arise from real experiences encountered by state and local governments with similar investor-protection provisions in Chapter 11 of the North American Free Trade Agreement (NAFTA). These provisions have raised serious problems with the ability of state and local governments to take constitutional actions to protect public welfare and the environment.



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ATTORNEY GENERAL STATE OF MONTANA

Mike McGrath
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

May 14, 2002

Senator Max Baucus
511 Hart Senate Office Building
United States Senate
Washington, D.C. 20510-2602

Dear Max:

I am writing to express my concern about the evolving language of H.R. 3005, the "Bipartisan Trade Promotion Authority Act of 2002." I understand that you intend to offer an amendment to your bill that would direct United States trade negotiators to adopt, as one of the trade negotiating objectives, ensuring that "foreign investors in the United States are not accorded greater rights than U.S. investors in the United States." I applaud this positive change in the bill, but remain concerned that the amendment would not be adequate to protect U.S. sovereign interests and preserve the authority of the U.S. government at all levels to enact and enforce reasonable measures to protect the public welfare.

The fundamental difficulty lies in the fact that United States' law itself is subject to a variety of conflicting interpretations. Assuming foreign arbitration panels would be willing to attempt to enforce U.S. legal standards, as opposed to international legal rules, the question remains: how would they interpret U.S. law and what would be the remedy if they misinterpreted U.S. law? Foreign arbitrators commonly would not be U.S. citizens and would not be trained in U.S. law and, therefore, would not likely be competent to interpret and apply U.S. law. In addition, panel members would possess none of the basic attributes of judicial independence which we demand of judges on

United States federal and state courts; arbitrators would apparently be selected on a case by case basis and, unlike federal judges, for example, could maintain extensive private legal practices while serving as arbitrators. Whereas federal judges are selected by the President with the advice and consent of the Senate, panel members would presumably be chosen, as under NAFTA, through a combination of selections by the foreign claimants themselves, mid-level officials in the federal agencies, and international institutions such as the United Nations or the World Bank.

TELEPHONE: (406) 444-2026 FAX: (406) 444-3349 E-MAIL: contactdoj@state.mt.us





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TOM REILLY
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108-1698

(617) 727-2200

May 17, 2002

The Honorable Edward M. Kennedy
United States Senate
315 Russell Senate Office Building
Washington, DC 20510

The Honorable John F. Kerry
United States Senate
304 Russell Senate Office Building
Washington, DC 20510

Dear Senators Kennedy and Kerry:

I enclose a resolution passed in March, 2002 by the National Association of Attorneys General concerning the impact of international trade agreements on state laws that protect "the welfare and environment of their citizens." The resolution is directed at H.R. 3005, which would authorize "fast track" consideration by the Congress of future trade agreements. The bill is pending in the Senate.

I am concerned that the future trade agreements covered by the bill will increase the exposure of the Commonwealth to actions by foreign companies challenging state laws. Under agreements such as the North American Free Trade Agreement (NAFTA), compensation is

awarded by international arbitration panels without public disclosure of their proceedings. The States are now the subjects of at least three cases brought by foreign companies under NAFTA.

In Massachusetts, a Canadian developer (Mondev International Ltd.) has invoked NAFTA in a challenge to a decision of the Supreme Judicial Court that upheld action by the City of Boston allegedly adverse to the developer. The Canadian company seeks \$50 million in compensation against the United States. The case is scheduled for hearings before a panel of



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STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

May 13, 2002

The Honorable Bill Nelson
United States Senator
716 Hart Senate Office Building
Washington, DC 20510

The Honorable Bob Graham
United States Senator
524 Hart Senate Office Building
Washington, DC 20510

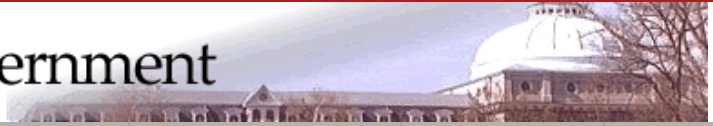
Dear Senators Nelson and Graham:

The purpose of this letter is to express my concerns with H.R. 3005 known as "fast track" trade legislation. This legislation is presently pending before the Senate and will be deliberated in the very near future.

Attached you will find a resolution passed this Spring by the National Association of Attorneys General expressing concerns with the section of H.R. 3005 that addresses "investor protection" provisions in future international trade agreements. Many States Attorneys General are concerned that the legislation as currently drafted may allow trade negotiators to grant foreign investors greater rights to seek financial compensation than would apply to American citizens when based on state, local, or federal governmental regulatory actions. The previous implementation of standards in Chapter 11 of the North American Free Trade Agreement (NAFTA), raised serious concerns over its' potential impact on the power of state and local governments to protect the welfare environment of their citizens. While I strongly support the promotion of international trade, and the elimination of barriers to the importation of foreign products and foreign investment, I do not believe it is necessary to create different legal standards for foreign investors when it comes to the protection of Florida's environment.



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Chief Judge
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Court of Appeals
500 Indiana Avenue, NW
Washington, D.C. 20001
(202) 879-2770
Fax: (202) 626-8841
awagner@dcca.state.dc.us

May 15, 2002

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Supreme Court of Idaho

Government Relations Office

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2425 Wilson Boulevard
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FAX: (703) 841-0206

Honorable Thomas A. Daschle
Senate Majority Leader
United States Senate
509 Senate Hart Office Building
Washington, D.C. 20510-4103

Honorable Trent Lott
Senate Minority Leader
United States Senate
487-Senate-Russell-Office-Building
Washington, D.C. 20510-2403

Re: H.R. 3005

Dear Senator Daschle and Senator Lott:

On behalf of the Board of Directors of the Conference of Chief Justices (CCJ), I write to express CCJ's concerns about aspects of H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002, which is before the Senate as part of H.R. 3009, the Andean Trade Preference Expansion Act. As you may know, CCJ is an organization comprised of the chief justice or chief judge of the highest court of each state, the District of Columbia and several territories, working to improve the administration of justice in the United States. Our issues relate to the impact of the implementation of the bill on the integrity of state and federal courts.

Specifically, we are concerned that the bill does not protect adequately the traditional values of constitutional federalism and that its implementation poses risks to the finality of judgments, so important to our system of justice. Issues arising under similar investor protection provisions in Chapter 11 of the North American Free Trade Agreement (NAFTA) have demonstrated that such concerns are well-founded.

We are aware that various state and local organizations such as the National Association of Attorneys General, the Conference of



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THE UNITED STATES CONFERENCE OF MAYORS

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FAX (202) 293-2352
TDD (202) 293-9445
URL: www.usmayors.org

March 21, 2002

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Mayor of Charleston, SC
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Mayor of Denver

The Honorable Tom Daschle
Senate Majority Leader
SH-509 Hart Senate Office Building
Washington, D.C. 20510-4103

Dear Senator Daschle:

On behalf of the U.S. Conference of Mayors, I am writing to express our strong opposition to the current provisions of H.R. 3005, the pending trade promotion legislation, which would grant broad new rights to foreign investors to sue the U.S. based on the actions of U.S. cities, and of other units of local government, the states and federal government, pursuant to "investor protection" provisions in international trade agreements.

H.R. 3005 would grant U.S. trade negotiators broad authority to negotiate trade agreements with other nations and, once the agreements have been negotiated, would allow Congress to only cast an up or down vote on the agreements pursuant to legislative "fast track" procedures. Thus, while the pending legislation does not actually ratify any pending agreements, it will have enormous significance in terms of the contents of international trade agreements which the U.S. will negotiate in the future.

The language on "investor protection" in H.R. 3005 is so broad and open-ended that it would allow trade officials to include investor protection standards in future trade agreements that go beyond U.S. law and that effectively grant foreign investors greater rights than U.S. citizens enjoy. The billions of dollars in claims which have been filed under Chapter 11 of the North American Free Trade Agreement confirm the serious risk posed by the investor protection language in the trade promotion legislation.

The U.S. Conference of Mayors has strongly opposed domestic "takings" bills designed to alter the established constitutional reading of the Fifth Amendment or change the established administrative and judicial procedures for resolving taking disputes. Fortunately, Congress has rejected these proposals. However, the pending legislation threatens to undermine Congress' decision to reject proposals to revise the established constitutional test for a taking by creating an expansive new right to bring "expropriation" claims against the U.S. under international trade agreements.

Trustees:
MICHAEL A. CUIDO
Mayor of Dearborn
PATRICK HENRY HAYS
Mayor of North Little Rock
SHARTE JAMES
Mayor of Newark, NJ
WILLIAM A. JOHNSON, JR.
Mayor of Rochester, NY
RITA L. MULLINS
Mayor of Tallahassee
MEYER L. OHEENKORF
Mayor of Virginia Beach
BEVERLY O'NEILL
Mayor of Long Beach
DONALD L. PLUSQUELLIC
Mayor of Akron
M. SUSAN SAVAGE
Mayor of Tulsa
DAVID W. SMITH
Mayor of Newark, CA

Advisory Board:
JAMES A. GARNER, Chair
Mayor of Hempstead
KENNETH L. BARR
Mayor of Fort Worth
SUSAN J. M. KAUFMAN
Mayor of Madison
CHRISTIAN BOLLWEGER
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SARA B. BOST
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WILLIE L. BROWN, JR.
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VINCENT A. GIACCI, JR.
Mayor of Providence
PETER A. CLAVELLE
Mayor of Burlington
ELIZABETH G. FLORES
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JOSEPH P. GANIM
Mayor of Bridgeport
JEFF GRIFFIN
Mayor of Keesee
JOSEPH A. GRIFFO
Mayor of Rome, NY
ELIZABETH B. KAUTZ
Mayor of Hornsville
SCOTT L. KING
Mayor of Gary
BOB KNIGHT
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DANIEL F. MALLOY
Mayor of Stamford
PATRICK McCHURRY
Mayor of Charlotte
DAVID W. MOORE
Mayor of Huntsville
GUS MORRISON
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Mayor of Arlington Heights
DOUGLAS H. PALMER
Mayor of Trenton
DAK PETERSON
Mayor of Indianapolis
NLL PURCELL
Mayor of Nashville
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Mayor of Philadelphia
ROB YOUNG
Mayor of Augusta, GA
SHEJIA YOUNG
Mayor of San Leandro
Executive Director:
I. THOMAS COCHRAN



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RESOLUTIONS ADOPTED

at the 70 TH ANNUAL CONFERENCE OF MAYORS
Madison, WI - June 14-18, 2002

* * * * *

URGING THAT FOREIGN INVESTORS BE GIVEN NO GREATER RIGHTS THAN U.S. INVESTORS IN THE TRADE PROMOTION AUTHORITY ACT OF 2001

WHEREAS, the U.S. House of Representatives and the U.S. Senate have approved separate legislative proposals, (Trade Promotion Authority Act of 2001) that would grant U.S. trade negotiators broad discretion to include so called "investor protection" provisions in future trade agreements with other countries; and

WHEREAS, the bills list among the principal negotiating objectives of the United States, "seeking to establish standards for expropriation and compensation for expropriation, consistent with United States legal principles and practices," which is subject to broad interpretation and does not bind U.S. trade negotiators to follow U.S. legal precedents; and

WHEREAS, these provisions would expand the opportunities of foreign investors operating in the United States to challenge the action of federal, state and local governments as "regulatory takings," particularly federal, state and local actions restricting the use of property to protect the environment, public health and safety, and public morals; and

WHEREAS, foreign investors would be given the exclusive right to circumvent the U.S. court system and the process in place at the state and local level for addressing takings claims. They would be permitted to sue the U.S. government for financial compensation based on federal, state or local actions before an international arbitration panel which would not be obligated to follow the U.S. Supreme Court's interpretations of the Fifth Amendment on takings claims or to follow U.S. legal precedents in this area; and

WHEREAS, the investor protection provisions in the proposed legislation are modeled after Chapter 11 of the North American Free Trade Agreement, which allows foreign investors to sue for damages if any court or regulatory agency of the federal, state or local government takes an action that can be viewed as a trade barrier; and

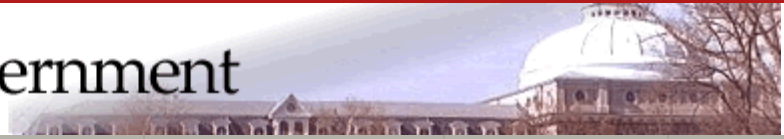
WHEREAS, foreign investors have filed billions of dollars in takings claims under Chapter 11 of NAFTA, including a \$1 billion claim pending against the United States that was filed by Methanex Corporation of Canadian (which is the world's largest producer of one of the key ingredients used to make MTBE) in response to the State of California's decision to ban MTBE, a gasoline additive, in order to protect groundwater supplies: and

WHEREAS, the Senate attempted to address some of these concerns before passing its version of the bill by including language that specifically states that foreign investors will not be accorded greater rights than U.S. investors in the United States but it does not establish clear standards or an effective enforcement mechanism to ensure that this objective is carried out,

NOW, THEREFOR, BE IT RESOLVED, that The United States Conference of Mayors urges House and Senate Conferees on the Trade Promotion Authority Act of 2001 to include language providing that decisions and other orders of the courts of the United States, including the U.S. Supreme Court and the highest courts of states, cannot be



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Better Cities - A Better Life

League of California Cities

www.calcities.org

May 20, 2002

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

On behalf of California's 477 cities, I am writing to express our concerns about the potential impact on local governments of the investor-state provisions in H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002. The League of California Cities (League) is concerned that this bill would enable future trade negotiations to expand the definition of a "regulatory taking" and would give too much power to international corporations at the expense of the health and safety of California's citizens.

At the core of the League's concerns are the "expropriation" provisions that have become the standard of international trade agreements, such as that included in Chapter 11 of the North American Free Trade Agreement. The principle of expropriation is similar to that of regulatory takings, except it is more extreme. While the takings clause of the U.S. Constitution limits compensation to the physical appropriation (or its regulatory equivalent) of property, expropriation provisions require payment anytime health and safety regulations have a negative effect on a foreign corporation's investment. Even more troubling is that these provisions are often written with vague language that makes it difficult for local agencies to predict if and when their regulations may amount to an expropriation requiring compensation.

This issue is of particular importance to Californians. The largest claim for compensation to date involves California's ban on methyl tertiary-butyl ether (MTBE). The State ordered a phase out of MTBE after studies showed it was contaminating California's drinking water. However, as reasonable as this action seems, the Canadian corporation Methanex is now seeking compensation of \$970 million from the United States on grounds that the plan to remove MTBE from California's gasoline amounts to an expropriation. The alleged expropriation comes in the form of Methanex's lost sales of methanol, a component of MTBE.

Expropriation language in international trade agreements gives international corporations more rights than those given to domestic companies. Additionally, the process for resolving disputes is extremely troubling. Most international agreements rely on tribunals modeled after private commercial arbitrations, which are held behind closed doors, with no avenue for public or local government participation.

Headquarters
1400 K Street
Sacramento, CA 95814
916.638.8200

Southern California Office
602 East Huntington Dr., Suite C
Monrovia, CA 91016
626.305.1313
FAX 626.308.1328



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OKLAHOMA MUNICIPAL LEAGUE, INC.

201 N.E. 23rd STREET • OKLAHOMA CITY, OK 73105
(405) 528-7515 • 1-800-324-8651 • FAX (405) 528-7560 • www.omi.org

Board Resolution No. 02-01 Oklahoma Municipal League

WHEREAS, in the past many of us have joined together to protest efforts in Congress to invade state and local government sovereign prerogatives with regard to takings claims issues; and

WHEREAS, state and local governments are by law uniquely situated to provide the best safeguards for their citizens in many areas involving health, safety, land use, consumer and environmental protection; and

WHEREAS, we strongly support the promotion of international trade, including the elimination of unfair and discriminatory barriers to the importation of foreign products and foreign investment; however,

WHEREAS, H.R. 3005 as currently drafted may allow trade negotiators to grant foreign investors new and greater rights to seek financial compensation based on state, local, or federal governmental regulatory actions; and

WHEREAS, implementation of the standards in Chapter 11 of the North American Free Trade Agreement (NAFTA) raises serious concerns over its potential impact on the power of state or local governments to protect the welfare and environment of their citizens; and

NOW, THEREFORE BE IT RESOLVED THAT THE OKLAHOMA MUNICIPAL LEAGUE:

1. Encourages Congress to ensure that in any new legislation providing for international trade agreements foreign investors shall not circumvent established U.S. administrative and judicial proceedings and shall receive no greater legal rights than those afforded to our U.S. citizens;

2. Trade Agreements negotiated by the U.S. Government shall

2. Trade Agreements negotiated by the U.S. Government shall respect state and local government sovereignty, provide open and transparent proceedings for the resolution of disputes, assure a level playing field for U.S. and foreign firms, and incorporate well-defined U.S. Constitutional 5th Amendment takings principles.

2002 Annual Conference
September 18-20 • Tulsa

Serving the Officials of Oklahoma's Cities & Towns

Official Publication
OKLAHOMA CITIES & TOWNS



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OKLAHOMA MUNICIPAL LEAGUE, INC.

201 N.E. 23rd STREET • OKLAHOMA CITY, OK 73105
(405) 528-7515 • 1-800-324-8651 • FAX (405) 528-7560 • www.ohl.org

May 1, 2002

The Honorable Don Nickles
United States Senate
133 Hart Senate Office Building
Washington DC 20510

Dear Senator Nickles:

On behalf of the Oklahoma Municipal League and its more than 2,700 elected governing municipal officials in the State of Oklahoma, I am writing to express serious concerns about the potential impact on local governments of the investor-state provisions in H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002. In your recent press release calling for speedy Senate action on a bill to give the President authority to negotiate trade agreements you state that you must pass Trade Promotion Authority to secure the best trade deals on behalf of American producers. While that is a worthy goal, the broader ramifications of international trade agreements on local government sovereignty are also an important consideration and we encourage your office to address these concerns.

The Government of Mexico is currently pursuing reimbursement from the State of San Luis Potosi, and a local Mexican municipality for the \$16,000,000.00 NAFTA Chapter 11 claim awarded to a U.S. company against Mexico in the *Metalclad Corp. v. United Mexican States* case. If a multi-million dollar claim is awarded against the United States our concern is that the U.S. government will pursue recovery against the state or local government whose local laws are not in "harmony" with the NAFTA international arbitration tribunal's version of international law. The investor protection provisions threaten to produce massive new financial claims against the U.S. federal treasury which will no doubt be passed on to the state or local level and will impose a serious new burden on the American taxpayer.

The Oklahoma Municipal League supports the goal of expanded trade and recognizes the benefits of reducing unreasonable barriers to international trade and investment for local economies. However there continues to be uncertainty whether there is an inherent conflict between global trade agreements and local authority. The Oklahoma Municipal League urges the Senate to amend H.R. 3005 in order to protect the legal authority of America's municipalities to enact local laws necessary to safeguard the health and welfare of our citizens. Specifically, we are concerned that future trade negotiations, particularly a hemispheric Free Trade Area of the Americas (FTAA) could include provisions that expand the definition of a regulatory taking. As evidenced by disputes under Chapter 11 of NAFTA, vague expropriation language has allowed new avenues of recourse for foreign investors to challenge current state and local ordinances as "regulatory takings".



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RESOLUTION NO. 01-113

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE
OPPOSING THE EXTENSION OF THE NORTH AMERICAN FREE TRADE
AGREEMENT TO THE FREE TRADE AREA OF THE AMERICAS

WHEREAS, the North American Free Trade Agreement ("NAFTA") Chapter 11 has provisions which allow investors to seek monetary compensation from a signatory government through international arbitration if that government expropriates the investor's investment; and

WHEREAS, there is no clear definition of "expropriation" in NAFTA Chapter 11; and

WHEREAS, the nature of international arbitration is such that municipalities or the public are not directly involved in the process, and arbitration proceedings can be secretive without documents being publicly available through regular channels; and

WHEREAS, there is uncertainty regarding the outcome of any NAFTA arbitration because the arbitration decisions by definition are not binding on other arbitration proceedings; and

WHEREAS, large monetary awards may lead a signatory government to attempt to influence laws on a local level; and

WHEREAS, due to the lack of transparency of the arbitration process under NAFTA and the lack of a clear definition of "expropriation," there is a concern that claims pursuant to NAFTA Chapter 11 may lead to unintended results which affect the legitimate police power of local governments; and

WHEREAS, it is anticipated that the negotiations in progress to finalize the Free Trade Area of the Americas ("FTAA") will include provisions similar to NAFTA Chapter 11; and

WHEREAS, the City of Glendale should not be subjected to the unintended results of an FTAA which includes the Chapter 11 language of NAFTA.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE,
CALIFORNIA:

SECTION 1. The Council does hereby oppose the extension of NAFTA to the FTAA.

SECTION 2. The Council does hereby request the U.S. Trade Representative to release proposals for the agreement and written submissions to the nine negotiating groups of the FTAA so that local governments may assess the impact of the agreement on their sovereignty.

SECTION 3. The Council does hereby request that the State Legislature investigate NAFTA and the proposed FTAA, and adopt implementing legislation for the agreements that prevent the interference with or dilution of the sovereignty of local governments.

SECTION 4. The Council urges Congress to take an active role in ensuring that the proposed FTAA agreement includes safeguards for the sovereignty of local agencies and protection of state and local environmental laws.

SECTION 5. The City Clerk shall send a copy of this resolution to George W. Bush, President of the United States, U.S. Trade Representatives, Honorable Adam Schiff, Congressman, 27th District, Honorable Dianne Feinstein and Honorable Barbara Boxer (members of the U.S. Senate), Honorable Sheila Kuehl, Senator, 23rd Dist., Honorable Jack Scott, Senator, 21st Dist., Honorable Dario Frommer, Assemblyman, 43rd Dist., and Honorable Carol Liu, Assemblywoman, 44th Dist.

Adopted this 26th day of June, 2001.

Gus Gomez, Mayor

I, DORIS TWEDT, City Clerk of the City of Glendale, certify that the foregoing Resolution No. 01-113 was adopted by the Council of the City of Glendale, California, at a regular meeting held on the 26th day of June, 2001, and that same was adopted by the following vote:

Ayes:	Manoukian, Quintero, Yousefian, Gomez
Noes:	Weaver
Absent:	None
Abstain:	None

DORIS TWEDT

by: Rita Buchanan, Assistant City Clerk

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RESOLUTION

Council of the City of Philadelphia, PA
May 2, 2002

Opposing the granting of "Fast Track" trade promotion authority by the United States Congress to the President of the United States, which authority threatens to undermine, if not destroy, the power of municipalities and States to protect their police and regulatory powers against the demands of foreign corporations.

WHEREAS Fast Track "Trade Promotional Authority" (TPA), soon to be voted on in the United States Senate, circumvents democratic procedures by eliminating Congress' right to amend trade agreements submitted to it for approval by the President, thereby also sharply limiting citizen input into Congressional deliberations on trade issues; and

WHEREAS, trade agreements negotiated in recent years have severely constrained the exercise of local government authority to protect the health and welfare of local residents; and

WHEREAS, for example, Chapter 11 of the North American Free Trade Agreement ("NAFTA") has provisions which allow investors to seek monetary compensation from a signatory government through international arbitration if that government, or any of its subdivisions, such as cities or states, "expropriates" the investor's investment; and

WHEREAS, there is no clear definition of "expropriates" in NAFTA; and

WHEREAS, the nature of international arbitration is such that municipalities and the public are not allowed to participate in the process, although they may be deeply affected by the result; and

WHEREAS, due to the lack of transparency of the arbitration process under NAFTA and the lack of a clear definition of "expropriates," claims made pursuant to Chapter 11 of NAFTA may sharply penalize, if not eliminate, the legitimate police power of local governments; and

WHEREAS, negotiations are now in progress to finalize a variety of new trade agreements, including creation of a Free Trade Area of the Americas (FTAA) among 34 nations of the Western Hemisphere, creation of bilateral agreements such as a U.S.-Chile agreement, and expansion of the General Agreement on Trade in Services (GATS); and

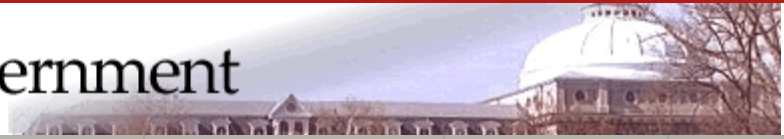
...negotiations on trade in services (GATS), and

WHEREAS, these negotiations, if conducted on a “fast track” basis, may well result in the inclusion in these trade agreements of provisions similar to Chapter 11 of NAFTA, as well as a variety of other infringements on national sovereignty, all of which would serve to insulate multinational corporations from state and local government regulatory power; and

WHEREAS, for instance, certain “investment provisions” on the negotiating table are intended to increase foreign investor rights by allowing challenges to core functions of state and local government such as zoning, protection of ground water and other natural resources, law enforcement by courts, and sovereign immunity; and



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March 12, 2002

United States Senate
Washington, DC 20510

Re: IMLA Concerns About Investor-Protection Provisions of H.R. 3005

Dear Senator:

On behalf of the International Municipal Lawyers Association and its more than 1450 members, I am writing to express serious concerns about the "investor-protection" provisions of H.R. 3005, the Bipartisan Trade Promotion Authority Act of 2002. IMLA urges the Senate to amend the investor protection provisions in order to protect the legal authority of America's municipalities to enact measures necessary to safeguard the health and welfare of our citizens.

IMLA is a non-profit, professional organization that has been an advocate and resource for local government attorneys since 1935. Governed solely by its members, IMLA is the legal voice for the nation's local governments.

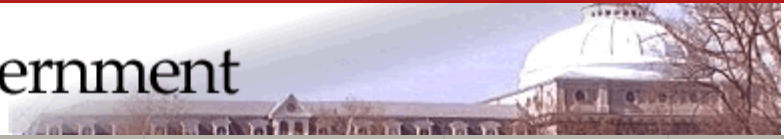
As currently drafted, H.R. 3005 would authorize U.S. trade officials to negotiate international agreements granting foreign investors operating in the U.S. broad new legal rights to challenge the actions of local governments before international arbitration panels.

The bill's open-ended language also would allow trade negotiators to adopt expansive "takings" and other provisions that go beyond U.S. law. The arbitration panels hearing the suits filed under these provisions would not be bound by U.S. law and their decisions would not be subject to meaningful review in U.S. courts. Thus, H.R. 3005 would create a unique, specially favorable forum for use exclusively by foreign investors seeking to challenge the actions of local governments. The full range of municipal government actions could be challenged under the investor-protection provisions, including planning and zoning functions, licensing decisions, and contracting practices.

Experience with Chapter 11 of the North American Free Trade Agreement confirms the threat posed by the investor protection provisions in the trade promotion legislation. Several billion dollars in legal claims have been filed under Chapter 11, and tens of millions of dollars have already been awarded. Most of the claims which have been filed rely on legal theories that significantly depart from U.S. legal standards, and, in the few years since NAFTA went into effect, a few of these claims have already succeeded. It is our understanding that NAFTA Chapter 11 is generally viewed as the model for the future trade agreements which would be negotiated under the trade promotion legislation. Certainly nothing in H.R. 3005 would prevent the proliferation of NAFTA Chapter 11 claims on a worldwide basis.



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American Public Health Association

Working for a Healthier World

800 I Street, NW • Washington, DC 20001-3710
(202) 777-APHA • Fax: (202) 777-2534 • comments@apha.org • www.apha.org

May 3, 2002

United States Senate
Washington, DC 20510

Dear Senator:

On behalf of our organizations and our members, we are writing to express our concerns about the so-called "investor protection" provisions in the pending Baucus/Grassley fast-track trade legislation (H.R. 3005) and their potential to undermine public health in the United States and in other countries around the world.

The proposed legislation would authorize U.S. trade officials to negotiate trade agreements that grant foreign investors the right to sue their host countries for actions that reduce the value of their investments. Foreign investors could demand financial compensation from governments based on violations of a series of vaguely worded legal standards which differ from U.S. laws or the laws of other nations, and may well grant foreign investors greater legal rights than domestic entities or individuals possess. We understand that the investor-protection provisions in the North American Free Trade Agreement (NAFTA) are the likely model for future agreements with other countries around the world.

Experience under the NAFTA demonstrates the potential for investor protection provisions to undermine public health protections:

- In the Methanex case, a Canadian firm brought a nearly \$1,000,000,000 claim based on the State of California's decision to ban the sale of MTBE, a suspected carcinogen, in order to protect the State's drinking water supplies;
- In the Metalclad case, a U.S. firm recovered \$16,000,0000 under NAFTA, based on the refusal of a Mexican municipality to grant a permit for the construction of a hazardous waste treatment facility in the community.
- In the SD Meyers case, a U.S. firm brought a successful NAFTA challenge to a Canadian government ban on the export of PCB wastes to the U.S.; and
- Recently, the U.S. Crompton corporation has threatened a NAFTA suit over Canadian restrictions on a dangerous pesticide called lindane, which is a possible human carcinogen banned in Europe for agricultural use, and in California for use in anti-lice shampoo.

Beyond these specific examples, a wide variety of government measures relating to public health could potentially be challenged under NAFTA and other future trade agreements. These include adverse judicial decisions against foreign drug or medical device manufacturers, health product labeling and restrictions on dangerous pesticides, drugs, and alcohol, and occupational safety and health measures. Regulations that monitor and



PUTTING THE
PUBLIC BACK INTO
PUBLIC HEALTH

130TH ANNUAL MEETING & EXPOSITION • NOVEMBER 9-13, 2002 • PHILADELPHIA, PA



Big Questions

- **What strengths do county homes already have that can be built upon?**
-
- **How have county homes across the state responded to changes in the long-term care landscape?**
-
- **Where can county homes go from here?**

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Quality of Care:Summary

- **Staff turnover lower in county homes**
- **Low turnover strongly related to high quality care**
- **HCFA data unclear on quality of care in county homes**

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Methods

- **Collaborative research design**
- **Surveys of administrators**
 - initial survey (N= 35)
 - subsequent survey (N=20)
- **Survey of labor officials (N=14)**
- **Supplemented with other data sources:**
 - CGR Report 1997
 - HCFA Quality of Care Data 1999
 - CSEA Survey 1998

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Two Unexpected Findings

1) Nationally, low staff turnover is strongly related to high quality care, but...

Quality of care data on New York county homes are inconclusive despite low turnover rates.

2) Fiscal stress is typically a cause for local government restructuring, but...

County homes in NYS considering restructuring are not under fiscal stress.

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New York county homes have low annual staff turnover

**National rates of nursing home staff
turnover**

- non-profits: 48 to 86%**
- for-profits: 72 to 118%**

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New York county homes have low annual staff turnover

Among responding New York county

homes:

- Eighty percent have RN, LPN and support staff turnover of 25% or less**
- Sixty percent have CNA turnover of 25% or less**

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Why is low staff turnover important?

- **Quality and continuity of care**

- Fewer certification violations
- Lower death rates
- Fewer problems with bedsores

- **Better cost containment**

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Our use of New York State DOH data as quality index

- Scope and severity of deficiencies vary widely**
- We examined only incidence**
- Apparently wide variance between counties**
- We took incidence reports at face value**
- We took out metro New York**

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Quality of care data show mixed results

Average Deficiencies Per Facility

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Quality of care data show mixed results

Average Number of Beds by Sector

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Quality of care data show mixed results

Deficiencies Per 100 Beds

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Statistical Analysis Results

- **Facility size does not explain variation in deficiency rates across New York State nursing facilities**

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Forms of restructuring

- **Performance-based budgeting**
- **Voluntary or non-profit status**
- **Public Benefit Corporation**
- **Privatization**
- **Closure**

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Methods

-
- **This section draws from the survey of nursing home administrators**
- **Higher response rate for management surveys increases confidence in our findings**
- **Managers more knowledgeable about restructuring possibilities**

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Which forms of restructuring are county homes considering?

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Why do county homes choose to restructure?

-

-

- **Fiscal stress**

- at the nursing home
- in county government

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Restructuring as a response to fiscal stress in the nursing home*

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Is your county under fiscal stress? If yes, does it affect the nursing home?

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Why do county homes choose to restructure?

-
- **Political pressure**
 - poor relations with the county
 - shrinking of government

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How would you characterize the relationship between the nursing home and county government?

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Does your county legislature see the nursing home as essential to the mission of local government?

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Why do county homes choose to restructure?

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-
-
- **poor labor-management relations**

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How would you characterize the relationship between management and labor at your facility?

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Principal findings from administrator surveys

- **County homes are financially stable**
- **County homes have excellent relationships with local government officials**
- **Relations between management and labor are strong**
- **Restructuring is under consideration at one third of county homes in New York State**

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Questions for Discussion

- **We have presented two puzzles on county nursing homes that our surveys cannot answer.**
- **After-lunch discussion: Can you help us understand these issues better?**

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Restructuring: Unanswered Questions

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- **Why are some county homes interested in restructuring?**
-
- **Can the benefits of restructuring be captured by county homes while keeping the nursing home public?**

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