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Local Economic Development Incentives in an Era of Globalization: The Exploitation of Decentralization and Mobility

Audrey McFarlane
University of Baltimore School of Law, amcfarlane@ubalt.edu

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Audrey G. McFarlane*

Editors' Note: *In 2002,* The Urban Lawyer *printed a series of articles from the AALS State and Local Government Section Annual Meeting Panel,* New Developments in State and Local Tax: E-Commerce, Tax Incentives for Business and Litigation-Generated Revenues.** *At the time local governments were beginning to feel the financial pinch of revenue shortfalls. Now, two years later, the situation is even more grave. Since the beginning of 2003, local newspapers have been filled with articles evaluating the wisdom of cities large and small that have mortgaged their financial well being by offering large incentive packages to lure corporations to come to their community or stay within their community.*†

Audrey McFarlane responds to this panel discussion and provides a closer examination of the realities of business tax incentives.

I. Introduction

THE PANEL TOPIC was relatively straightforward: consider various creative efforts by local government to raise revenues through taxation.

*Audrey G. McFarlane, Associate Professor, University of Baltimore School of Law.

**Peter D. Enrich, *Business Tax Incentives: A Status Report*, 34 URB. LAW. 415 (2002); Janice C. Griffith, *State and Local Revenue Enhancement and Taxation Policies in a Digital Age: E-Commerce Taxation, Business Tax Incentives, and Litigation Generated Revenues*, 34 URB. LAW. 429 (2002); Charles E. McLure, Jr., *Sales and Use Taxes on Electronic Commerce: Legal, Economic, Administrative, and Political Issues*, 34 URB. LAW. 487 (2002).

† *See, e.g.*, Analisa Nazareno, *Wising Up About Development; Even Before Toyota, City Leaders Had Refined Their Pitches to Potential Employers*, SAN ANTONIO EXPRESS NEWS, February 22, 2003 (detailing change in the city's Economic Development Department to a focused, organized, and strategic search for companies that fit within a specified group of industries known to have favorable growth and certain wage structures); Bob Mims, *Shattered Dreams*, SALT LAKE CITY TRIB., *reprinted in* PITTSBURGH POST-GAZETTE, March 7, 2003 (discussing millions of dollars in loans and tax incentives the City of Riverton, Utah, granted to Intel Corp. in hopes that the company would employ over 8,000 in their community, when in fact only 400 are currently employed); R.J. King, *Economy Blunts Impact of Compuware's Move*, THE DETROIT NEWS, March 2, 2003 (scaling back its plans, Compuware Corp. will bring 2,000 employees to downtown Detroit as opposed to the 4,100 employees it initially promised when it received more than $70 million in tax breaks).

The need to raise revenue is self-evident: maintaining community, governing, and providing essential services requires resources. The papers delivered during this panel were about more than revenue raising, however. They were about how this essentially local endeavor is taking place within the context of a globalized economy.[1] Globalization has led to unprecedented and rapid mobility through the decentralization of trade, production, and communication. The challenge to local governments is how best to cope with this unprecedented mobility and in particular, how to identify a valid nexus between resources and taxation.

This response first discusses briefly the common themes raised by the panelists about the mobility and nexus challenges presented by globalization. It then comments more extensively on Peter Enrich's article on the troubling proliferation of state and local business tax incentives.[2] While I agree that a national approach (whether through judicial interpretation of the Commerce Clause or federal legislative intervention) looks like it would be helpful,[3] I believe the discussion of this issue should be broadened to look more closely at why state and local governments offer incentives. Incentives should not simply be dismissed as arising merely from state and local government officials acting from corrupt or self-serving motives. On the other hand, the proliferation of business tax incentives begs a closer examination of the direction of public resources exclusively toward a narrow, if not skewed, vision of economic development.

1. Though the term globalization is used often and loosely, it is a useful term for characterizing a global process of increasing mobility and interconnectedness of trade, methods of production, communication, and people and capital flowing across national boundaries regulated only by the limits of technology and publicly unaccountable international trade organizations like the World Trade Organization. *See generally* SASKIA SASSEN, THE GLOBAL CITY: NEW YORK, LONDON, TOKYO (2d ed. 2000). While this has not broken down patterns of racial or economic segregation and in fact has probably enhanced them in new and troublingly intractable ways, the impact on local governments has been no less considerable.

2. Peter D. Enrich, *Business Tax Incentives: A Status Report*, 34 URB. LAW. 415 (2002).

3. A commerce clause challenge is ostensibly focused on the distortion of free commerce, it remains to be seen, however, how courts will sort through the difference between the natural versus the impermissible destructiveness of competition especially in the face of likely state claims that incentives have allowed them the discretion to experiment and successfully promote economic development. *See, e.g.*, Gregory v. Ashcroft, 501 U.S. 452, 456 (1991) (assessing the benefits of a federalist structure of government is that it produces "a decentralized government . . . more sensitive to diverse needs of a heterogeneous society . . . increases opportunity for citizen involvement in democratic processes . . . allows for more innovation and experimentation in government; and . . . makes government more responsive by putting the States in competition for a mobile citizenry.").

II. Globalization and the Mobility Challenge

Every day trillions of dollars circle the globe in seconds as foreign investments and currency speculation. Major corporations operate internationally facilitated by satellite communications, the Internet, as well as by the ability to outsource their production to independent contractors. Domestically, people need not live or shop where they work; instead they use automobiles, telephones, and computers to conduct the business of daily life. The three panel presentations dramatically illustrate the challenge that globalization presents for state and local governments that are fixed in place geographically. Each panelist highlighted the different dimensions of the mobility dilemma and challenge. Charles McLure's exhaustive examination of the appropriate way for state and local governments to tax internet transactions[4] highlights the problems raised by transactions that not only take place outside of a local government's boundaries but often arguably do not take place anywhere. The geographical nature of many of today's transactions raises daunting issues regarding the nexus between transactions and geographical place as well as enforcement problems.

David Gelfand considered the mobility of guns and cities' inability to close their borders to the influx of illegal weapons.[5] Gelfand's exploration of manufacturer products liability for the deadly consequences of urban gun violence highlights the ineffectiveness of local gun prohibitions against the influx of weapons into a city and their use by those inclined to violence.[6] The all too common media reports about murders by gun (often causing the resulting injury and devastation to seem ordinary) makes the notion of product liability as compensation for cities appealing by offering some action that can be taken.

The balance of this commentary will focus on Peter Enrich's article about the proliferation of business tax incentives. In many respects this topic highlights the quintessential local government attempt to meet the mobility challenge and transcend the limits of a fixed geographical position in a globalizing world. In this and other work,[7] Enrich argues, in effect, that cities and states are losing the mobility challenge. Locked in a competitive race to the bottom, they offer often staggering grants

4. Charles E. McLure, Jr., *Sales and Use Taxes on Electronic Commerce: Legal, Economic, Administrative and Political Issues,* 34 URB. LAW. 487 (2002).

5. David Gelfand, Address at the AALS Annual Meeting, State and Local Government Section Panel (Jan. 5, 2001).

6. *Id.*

7. *See, e.g.,* Peter D. Enrich, *Saving the States from Themselves: Commerce Clause Constraints on Business Tax Incentives,* 110 HARV. L. REV. 377 (1996).

of public monies to private corporations in a bid to attract new firms to relocate or prevent current in-state firms from leaving.[8] Enrich compellingly demonstrates the excesses that accompany the bargains made by cities and mobile business entities as certain firms use their mobility to exploit interstate and intercity competition for business. The transfer of substantial amounts of public dollars into the hands of private corporations is troubling. As Enrich notes, often these public dollars are transferred for relocations that a corporation might have made anyway.[9] Moreover, what results, at best, is not job creation but job relocation from one area in the United States to another.[10] Enrich argues that use of business tax incentives to direct commerce into a state in this manner violates the Commerce Clause of the U.S. Constitution.[11] Enrich's proposal, which is provocative from a local government scholar's perspective, that federal courts must intervene to protect state and local governments enthralled in a seemingly inescapable, self-destructive, zero-sum inter-city and inter-state competition.[12] Enrich posits correctly that many public officials feel they have no other choice when faced with competition from other states and localities that are offering incentives. Local politicians are often anxious to appear to provide jobs for constituents in order to reinforce their own political positions. While I agree with Professor Enrich's considered reasoning on the merits and viability of a Commerce Clause challenge,[13] it is helpful to consider further the actual context within which state and local governments offer business incentives in order to expand our understanding of why courts, state or federal, might have difficulty invalidating business incentives.

8. A number of mechanisms or forms of assistance exist: (1) real property tax abatement or exemption; (2) low interest loans or loan guarantees; (3) direct grants; (4) sales tax and franchise tax exemptions; (5) mortgage recording tax exemptions; (6) subsidized energy costs; (7) tax-exempt bond financing; (8) below-market lease rates; (9) public improvements that benefit the project; (10) use or threatened use of eminent domain to assist assemblage; and (11) special zoning variances that allow larger projects or use variations. Martin E. Gold, *Economic Development Projects: A Perspective*, 19 URB. LAW. 193 (1987).

9. Enrich, *supra* note 2, at 416.

10. Enrich, *supra* note 2, at 416.

11. Enrich, *supra* note 2, at 415; U.S. CONSTITUTION, art. I, § 8.

12. *See generally* Peter D. Enrich, *Business Tax Incentives: A Status Report*, 34 URB. LAW. 415 (2002).

13. *But see* Christopher R. Drahozal, *Preserving the American Common Market: State and Local Governments in the United States Supreme Court*, 7 SUP. CT. ECON. REV. 233, 244 (1999) (arguing that the empirical data shows that Supreme Court is unlikely to strike down dormant Commerce Clause challenges unless other states join the challenge); Edward A. Zelinsky, *Are Tax "Benefits" Constitutionally Equivalent to Direct Expenditures?*, 112 HARV. L. REV. 379 (1998).

We should consider that economic development is one of the endeavors of local government to provide for the common good. While the warlike metaphor of competition between states and cities to lure or retain businesses is an essential characterization, it is limited in its usefulness for understanding the context within which business incentives operate. In particular, the metaphor of competition looks outward for an understanding of incentives but fails to look inward at a particular local government's motivation to offer such incentives. Another metaphor, "good housekeeping" is illustrative: state and local officials are responsible for overseeing the orderly development of the metropolitan area. Since local governments depend on the presence of residents who must be employed, it has become part of local government's responsibility to ensure that such residents and employers are provided a clean and hospitable environment in which to reside and operate. Facilitating local development through tax or other incentives are part of a collection of tools that local government's "good housekeeping" and hospitality supplies.[14] In other words, incentives satisfy a psychological need as well as a political one: they give the impression to state and local officials that they are doing something; they have the power and ability to actually take control of or respond to the mobility challenge regardless of whether or not this is truly the case.

III. The Long-Standing Use of Business Incentives

This is not the first time that the question has arisen of if and how local governments should be constrained in their attempt to provide for their future development. State and local government promotion and support of business, as well as the actual conduct of business enterprises, have been fixtures of the history of state and local government. Beginning in the 1790s states actively promoted economic development (or, as it was termed then, "internal improvements") through investment in in-

14. Indeed, business incentives may have no other appeal or motivation other than an emotional one: state and local government officials know that it feels good to get a tax break. I speak from related personal experience because I received an incentive when I decided to move into the City of Baltimore. Even though I had independently made my decision to move, it felt good to receive a modest grant to reduce settlement costs from a city-sponsored program. I felt that the welcome wagon had been rolled out and felt reassured that I had made a good decision. Similarly, I imagine that business executives who are considering where to locate their businesses or where to stay in some ways seek and receive incentives as part of an emotional communication that the city is hospitable and to reassure the corporate decision-maker that its business is welcome and the city will be responsive to its needs. The state or local government signals that the company has made the right decision in choosing to remain in or relocate to their jurisdiction.

frastructure and transportation, legal innovation to promote corporations and banks as well as engaging in the sale of land.[15] Of course, such investment could and did take the form of business incentives such as tax exemptions, state chartering of companies or subscriptions for direct public ownership of stock in private corporations.[16] Local governments became more heavily involved in "internal improvement" during the 1840s, making "most of the important infrastructure investments in education, highways, water systems, sewer systems and public utilities."[17]

The mid-nineteenth century rivalry between cities competing first for canals and then for railroads resulted in the amassing of incredible amounts of debt to lure the railroads to a particular locality through public investment in construction, grant of state powers of eminent domain, and outright grants of public funds.[18] The need to go to these lengths seemed real: cities that failed to get the railroads no longer exist.[19]

The result was a series of debt crises, often with international significance. Local governments either defaulted or came perilously close to defaulting on repayment of bonds that often had European investors who failed to understand that, under the federal system of government, the bonds did not have the full faith and credit of the United States.[20] The nineteenth century legal response was twofold. First, state courts began to interpret the new and existing doctrines and provisions to prohibit state government from interacting with private business by developing and applying the public purpose doctrine to restrict state and local use of the taxing power [21] and indirectly the spending power, and the eminent domain power. Second, legislatures amended their state

15. John Joseph Wallis, *American Government Finance in the Long Run: 1790 to 1990*, 14 J. OF ECON. PERSPECTIVES 61, 62 (Winter 2000).

16. *See* Jennifer L. Gilbert, *Selling the City Without Selling Out: New Legislation on Development Incentives Emphasizes Accountability*, 27 URB. LAW. 427, 428 (1995) (observing that as early as 1791, Alexander Hamilton obtained a tax exemption from the state of New Jersey).

17. Wallis, *supra* note 15, at 62.

18. Wallis, *supra* note 15, at 66–68; JAMES W. ELY, JR., RAILROADS AND AMERICAN LAW 20–21 (2001).

19. ALBERTA M. SBRAGIA, DEBT WISH: ENTREPRENEURIAL CITIES, U.S. FEDERALISM, AND ECONOMIC DEVELOPMENT 48–50 (Bert A. Rockan ed., University of Pittsburgh Press 1996) (noting the demise of Sandusky, Ohio; Leavenworth, Missouri; and Galena and Park City, Kansas).

20. *Id.* at 37, 39–40.

21. Dale F. Rubin, *Constitutional Aid Limitation Provisions and the Public Purpose Doctrine*, 12 ST. LOUIS U. PUB. L. REV. 143, 148 (1993). *See* Sharpless v. Mayor of Philadelphia, 21 Pa. 147 (1853) (one of the earliest cases utilizing the public purpose doctrine).

constitutions to institute constitutional debt limits, prohibit gifts of public funds, and specify that taxation must be for public purposes. Throughout the twentieth century, the federal government played a substantial role in initiating and supporting economic development and, as compared to the nineteenth century, state and local government interaction with business receded, although never disappeared.[22] When federal support began to decline in the 1970s, states and local governments again took up the mantle of interacting closely with private business to ensure a business presence within their jurisdictions.[23] One might think that since the nineteenth century doctrines and constitutional provisions are still in place, states already have institutionalized a state-based curb on excessive business tax incentives. In fact the opposite is true; state doctrines are often insufficient to curb excessive business tax and other economic development incentives to private entities.

IV. Inadequacy of State Doctrine Against Excessive Use of Business Incentives in Face of the Mystical Nature of Economic Development

Ostensibly, state constitutions provide local citizens and courts considerable legal tools at their disposal to police and challenge incentives. As it turns out, however, these long-standing doctrines and constitutional limitations that are directly designed and intended to address the current problem are presently not enforced. In fact their evasion is an accepted, albeit bizarre, aspect of state and local government law.[24] Moreover, the current understanding of economic development (even if it means substantial transfers of public money to subsidize private corporate activity) is that such activity fulfills a public purpose. If a claimant challenges a business incentive as an expenditure of revenue received through taxation as not being for a valid public purpose, a court is likely to uphold the validity of the incentive under most cir-

22. *See* Gregory Squires, *Partnership and the Pursuit of the Private City, in* MARK GOTTDIENER & CHRIS PICKVANCE, URBAN LIFE IN TRANSITION 196–98 (1991) (attributing increased local government participation in public/private partnership in pursuit of economic development to the decline in federal revenues).

23. *See* Bruce J. Casino, *Federal Grants-in-Aid: Evolution, Crisis, and Future,* 20 URB. LAW. 25 (1988) (discussing impact of reduction in federal grants-in-aid on state and local governments); *See generally* PETER K. EISINGER, THE RISE OF THE ENTREPRENEURIAL STATE: STATE AND LOCAL ECONOMIC DEVELOPMENT POLICY IN THE UNITED STATES 3–6 (1988).

24. *See* SBRAGIA *supra* note 19, at 118–21, 135–36 (discussing the use of the revenue bond and public authorities to circumvent state constitutional debt limits); DENNIS ZIMMERMAN, THE PRIVATE USE OF TAX-EXEMPT BONDS: CONTROLLING PUBLIC SUBSIDY OF PRIVATE ACTIVITY (1991). *See, e.g.*, Mun. Bldg. Auth. of Iron County Utah v. Lowder, 711 P.2d 273 (Utah 1985) (approving construction of jail facilities financed by revenue bonds following voter disapproval of issuance of general obligation bonds).

cumstances.[25] If an incentive is challenged as a gift of public funds to a private entity, most courts will uphold the incentive as having a benefit to the general public.[26] If an exercise of eminent domain on behalf of a private developer or corporation is challenged for taking of property not for a public purpose, the exercise will likely be upheld as having a public purpose.[27] Public purpose has been and will continue to be read broadly, and this is probably a correct interpretation. Any activity with private benefit may be deemed by a court or a legislature to have public benefit. A distinct substantive line delineating public from private has proved very difficult to draw in the abstract.

The real reason, however, is that public purpose requires a substantive evaluation based on a judge's personal opinion about the validity of the underlying activity. Courts are loathe to second-guess many legislative decisions but in particular decisions that have "economic development" as their underlying justification. Even in the extreme cases, like Toledo's proposed deal with Daimler-Chrysler,[28] how can the court say that in the future, the deal, as lopsided as it is, will not work out or at least be publicly perceived to have had some benefit, albeit an expensive one? Even though incentives have not been proven directly to cause the promised benefits, who wishes to be the first to claim that the next set of incentives would not have the promised effect? State judges, particularly elected ones, could be said to have self-interested motives, which means they would never want to challenge economic development incentives. But even judges acting from purely selfless motives would be hard pressed to overturn incentives as not fulfilling a valid public purpose.

The reason for judicial deference is that a narrative or discourse of economic development plays a substantial role in the ineffectiveness of the public purpose clauses or doctrine as a method for policing business incentives. Aided by a discourse or narrative of economic development

25. *See, e.g.*, Maready v. Winston-Salem, 467 S.E.2d 615 (N.C. 1996) (upholding constitutionality of economic development incentive grants as satisfying the need for taxation to be for a public purpose).

26. *See, e.g.*, CLEAN v. City of Spokane, 947 P.2d 1169, 1172 (Wash. 1997) (public financing of privately-owned retail store parking garage upheld as having adequate consideration to satisfy prohibition on gift of public funds).

27. *See, e.g.*, Berman v. Parker, 348 U.S. 26, 31 (1954) (approving the use of eminent domain to transfer private property to private developers; fighting urban blight is a valid public purpose); Poletown Neighborhood Council v. City of Detroit, 304 N.W.2d 455, 459 (Mich. 1981) (approving use of eminent domain to transfer residential property to auto company; promoting economic development and combating unemployment is a valid public purpose).

28. *See* Peter D. Enrich, *Business Tax Incentives: A Status Report*, 34 URB. LAW. 415 (2002).

that relies on terms like "business-friendly," "public-private partnership," and "empowerment,"[29] public officials use these terms, along with the positive and unchallengeable associations these words evoke, to channel the definition and understanding of the public need and interest into the need to do whatever it takes, incentives and all, toward the imperative to promote growth.[30] Use of the term "discourse" is at once a way of describing a set of practices as well as identifying the effect that these practices have. The practices involve a dialogue, a set of activities and thought surrounding "development" that do not allow other thoughts (such as social development separate and apart from an economic justification) or seemingly contradictory actions (such as public participation in economic development decision-making) to take place within the public realm. The effect is to marginalize to the sidelines of public discussion or debate other equally important concerns or needs as competing realities that challenge the benefits of economic development.

For example, if we were to look beyond the discourse of economic development we might observe that local economic development is specifically structured to meet the high-end employment, service, entertainment, and shopping needs of the "global elite." The types of jobs attracted often are filled by existing employees who transfer with the company or require skills and education that do not benefit unemployed or underemployed low-income residents of a particular area.[31] To the extent economic development involves redevelopment, the emphasis is often on luxury hotels, sports complexes, festival market places, and convention centers.

Also, economic development tends to take part in an elite-dominated

29. *See* Tim Richardson & Ole B. Jensen, *Discourses of Mobility and Polycentric Development: A Contested View of European Spatial Planning*, 8 EUROPEAN PLANNING STUD. 503, 504 (2000); Rob Atkinson, *Discourses of Partnership and Empowerment in Contemporary British Urban Regeneration*, 36 URB. STUD. 59, 60 (1999); David Wilson, *Metaphors, Growth Coalition Discourses and Black Poverty Neighborhoods in a U.S. City*, 28 ANTIPODE 72, 73 (1996) (analyzing the metaphors used in "growth" discourse in urban development).

30. Also, once you make the claim that an activity is related to "development" of any sort, the very word itself stands for favorable change. Webster's dictionary defines it as moving from "inferior to the superior [and] from worse to better." Add in the term economic and the positive association is irrefutable. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED 618 (1961).

31. *See* TIMOTHY J. BARTIK, WHO BENEFITS FROM STATE AND LOCAL ECONOMIC DEVELOPMENT POLICIES? 192 (1991) (arguing that local economic development incentives may be justified when pursued by high unemployment areas but are to be deplored when pursued by low unemployment areas); TIMOTHY J. BARTIK, JOBS FOR THE POOR: CAN LABOR DEMAND POLICIES HELP? 249–86 (2001) (suggesting that national incentives could encourage on-the-job skills enhancement and training).

and privatized decision-making process in which avenues for citizen input are rare. Notwithstanding these undeniable facts, economic development continues to operate unabated to the benefit of the few and the comparatively well-off. Until courts perceive a crisis with similar dimensions to the nineteenth century debt crisis context, in which they feel a need to intervene to prevent rampant corruption or bad faith dealing, business incentives will continue to satisfy the public purpose requirement.[32] The public purpose and constitutional-aid provisions and doctrines were adopted at the time when the perception was of "public plunder by private entities."[33] Today, the perception is that public-private partnerships are beneficial, if not inevitable. The legacy of public-private partnerships is that the private renders the public legitimate. In an odd way it seems that private enterprise and business legitimizes public government.

V. The Global Context: Decentralization Leads to Exploitation in a Mobile Economy

The real issue we have to face in the overuse of business incentives is to acknowledge that we have decentralized economic decision-making without recognizing the exploitative potential of hyper-mobile capital and fixed cities. In this respect, perhaps local governments should be given a bit more credit for the basis of their economic development decision-making. If businesses are mobile then what choice do they have? A strong argument could be made that state and local governments should only serve as suppliers and providers of infrastructure, i.e., roads, utilities, and an educated workforce. But as long as one or a few states or cities make the money available, mobile corporations will be able to exploit the resulting vulnerability.

The problem is also lack of public accountability. Economic development is carried out through a set of privatized structures and processes designed primarily, if not exclusively, to meet the needs of business elites and encourage capital investment in particular geographic areas to promote growth and increase in land prices and rents.[34] That process is designed to be quickly responsive, private, and shielded from

32. *See, e.g.*, City of Springfield v. Dreison Investments Inc., No. 1999-1318, 99-1230, 2000 WL 782971 (Mass. Super. Ct. 2000) (invalidating exercise of eminent domain for economic development purposes for failing to meet public purpose standard).

33. Rubin, *supra* note 21, at 166.

34. *See* JOHN R. LOGAN & HARVEY L. MOLOTCH, URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE 62, 73 (1987).

public scrutiny.[35] This is accomplished through elites wielding informal channels of power as well as quasi-private government entities such as public authorities that operate free from public scrutiny.[36]

Contractual accountability agreements are somewhat appealing but Enrich notes quite correctly that as an overall solution to tax incentive abuse they probably will not work.[37] States can and should mandate their use, and mandate that incentives cannot be granted unless certain guarantees are made or benchmarks are reached. The problem is that accountability threatens to negate the attractiveness of the incentives because cities still face the competition problem. Any corporation that is held to a strict accountability standard could use this as a basis for a threat to leave. In particular, contractual accounting agreements cannot work when the city is against the ropes financially. But in the mean time, they could perhaps have a limited value as a political tool. For example, claiming that a corporation violated an agreement would at least be bad publicity for a company. The increasing use of accountability agreements also suggests that states are attempting to eliminate some of the lopsidedness in the incentive arrangements. The fact that states or cities are even willing to place an accountability document before a company suggests some giveaways or public subsidies are beginning to "smell." Finally, these agreements are potentially quite useful in those few geographic areas that offer a unique or special characteristic that the corporation will not pass up merely because the state stands up for itself.

VI. Conclusion—Redefine the Definition of Development

Business tax incentives, as well as other incentives, are an outgrowth of decentralized state and local competition. But they should also be seen as a way to take an active role in local "good housekeeping." If mobile companies are exploiting this decentralized form of managing local economic development, we may want to consider how to discourage this exploitation by making it less attractive without eliminating local flexibility initiative. One way might be to address the

35. *See* MATTHIAS STIEFEL & MARSHALL WOLFE, A VOICE FOR THE EXCLUDED: POPULAR PARTICIPATION IN DEVELOPMENT, UTOPIA OR NECESSITY? 10 (1994) ("The characteristic contemporary patterns of economic growth, of modernization, and of nation-building, all have strongly anti-participatory traits.").

36. *See* ROGER G. NOLL & ANDREW ZIMBALIST, SPORTS, JOBS, AND TAXES: THE ECONOMIC IMPACT OF SPORTS TEAMS AND STADIUMS (1997) (discussing the use of publicly unaccountable stadium authorities to finance, construct and operate the recent proliferation of sports stadiums).

37. Enrich, *supra* note 2, at 425.

public accountability issue by encouraging the expansion of citizen participation in economic development decision-making. Not only would this involve public oversight but would truly make the grant of public money come with public strings attached. In some ways, this suggestion is a cynical one because I do not believe the specter of hearings, meetings, and the often cumbersome features of direct democracy would be considered desirable. But it makes the point that the states themselves are not the sole cause of the problem and perhaps reducing the attractiveness of business tax incentives is a worthwhile approach to consider.

If the past is any predictor of the future, the geographical limits to mobility will continue to fade. The need to continue to think about local government in the context of globalization will increase. Norms and standards for appropriate state and local responses to globalization have and will continue to evolve. An economic development watchdog group has prepared guidelines for how economic development should be done.[38] Instead of paying cash to corporations or foregoing tax revenues, the better approach is to focus on educating and training a state's citizens as well as making the environment a safe and attractive place to live with amenities that would be attractive to the type of personnel employed by business corporations. Therefore, more important than eliminating business tax incentives is to ensure that development is conceived and undertaken with the interests of all current residents in mind resulting in development and amenities that suit the needs of a cross section of residents, not just the very top. This is not currently the case.

38. William Schwenke, *Improving Your Business Climate: A Guide to Smarter Public Investments in Economic Development, available at* http://www.cfed.org/main/econDev/bi/main/newdirection/ImprovClimate.htm (last visited Apr. 2, 2003) (advocating an alternate definition of a good business climate based on education, physical infrastructure, regulation, taxation, business modernization and entrepreneurship).