

The NEW RULES

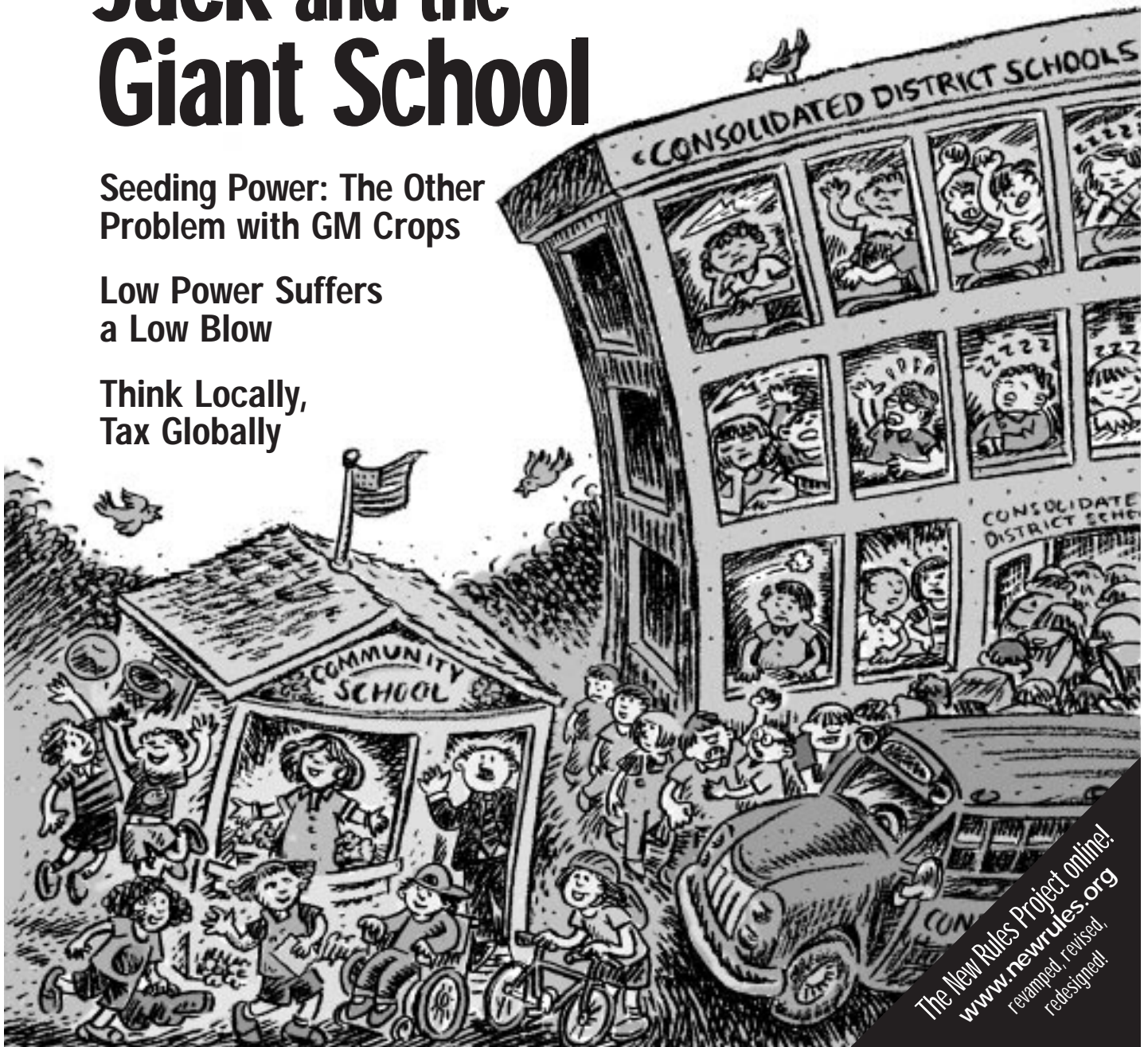
EXPLORING COMMUNITY, MOBILITY, SCALE AND TRADE • SUMMER 2000

Jack and the Giant School

Seeding Power: The Other Problem with GM Crops

Low Power Suffers a Low Blow

Think Locally, Tax Globally



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Designing rules as if community matters



It's the Community, Stupid!

Presidential advisor James Carville helped keep the 1992 Clinton campaign in focus and "on message" with a simple four-word phrase written on notecards and tacked on the headquarter walls: "It's the economy, stupid." Wouldn't it be wonderful if the successful candidates in this election campaign had a note pinned to the wall of their headquarters declaring, "It's the community, stupid"? It could happen. After all, we all identify in one way or another with our local surroundings. Moreover, the evidence that community and proximity are assets to be nurtured is fast becoming conclusive. Yet policymakers at every level continue to act as if locally scaled, community-based systems are a hangover from an inefficient and primitive yesteryear.

As Stacy Mitchell points out in our cover story, even as the one-room schoolhouses disappear and school districts continue to consolidate, the empirical evidence is screaming for us to reverse direction. Small schools better serve teachers, students, parents and communities. Violence declines. Attendance goes up. Performance soars. Small schools may cost a bit more per student taught, but they actually cost less per student graduated.

The issue of community has always been important in agricultural areas. The evidence is persuasive that family-sized farms are as efficient and far better for their surrounding communities, than large, absentee-owned farms. In December 1997 the United States Department of Agriculture issued a definition of "organic" that included such things as genetically modified crops. The definition clearly favored a certain structure of agricul-

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ture: industrialized, absentee-owned, vertically integrated. The USDA's action sparked massive public disapproval and in May 1998 it was withdrawn. Earlier this year the USDA issued a new definition, which represents a major step in the right direction. But as Brian Levy points out in these pages, the new standards raise another question. Should the definition of "organic" encourage organic communities as well as organic crops? Should its definition protect the farmer as well as the soil?

In our courts, the health of communities is rarely given serious consideration, except when it comes to public health issues. The U.S. Supreme Court, for example, repeat-

edly has denied states the right to impose sales taxes on mail order goods equal to the sales taxes they impose on their in-state businesses. To decide whether the business must pay state or local taxes, the Court developed the concept of "nexus," or physical connection. The Court ruled that a business should pay taxes to a community only when its operation need public services, like streets or police protection. But as Simona Fuma Shapiro points out, Europeans have a decidedly more commensal definition of nexus. European courts have decided that a business must pay taxes if its sales are sufficiently significant to impact a community and its local merchants, even if the business in question lacks a physical presence. That means e-commerce is taxed by European states. The U.S. Congress, on the other hand, continues to prohibit states from taxing goods and services sold over the internet. Some in Congress argue that internet taxation would be an administrative nightmare. Europe's policy disproves that contention.

Consolidated school districts. Concentrated agriculture. Preemption of local and state taxing authority. These are the dominant trends in the U.S. today, and all of our political candidates to date support policies that exacerbate this trend. Yet at the grassroots level, where the voters live, a rebellion is in process. Small schools. Family farms. Local businesses. These are what people want. Because these are the bones and tissue of healthy communities.

"It's the community, stupid." Could it be a winning political slogan? [!]

—David Morris

Missouri Gives Cooperatives Incentive

The Missouri New Generation Cooperative Incentive Tax Credit Program is provided by the Missouri Agricultural and Small Business Development Authority to encourage investments in new generation co-ops. Authorized under H.B. 888 (passed in July 1999), the credit is allocated specifically for incorporated cooperatives that own or develop renewable fuel production facilities or facilities that manufacture products derived from agricultural commodities. The tax credits are only available to individuals or entities that are members of the new generation co-ops. Outside investors are ineligible. The amount of a tax credit issued to a member may be the lesser of 50 percent of the member's cash investment or \$15,000. Under the program, farmers have eight years to apply the tax credit, and may transfer or sell the credits. The credit program has a maximum allocation per project of \$1.5 million. Three million dollars are available in the program this year, with \$6 million per year in subsequent years until 2010.

Since enactment, the program has encouraged the development of two new farmer-owned ethanol cooperatives. On the federal level, James Talent (R-MO) will soon introduce legislation to apply his state's program nationally. The bill will provide a producer investment tax credit for up to 50 percent of the producer investment in value-added co-ops, up to \$30,000.

For more information, visit the New Rules website at <http://www.newrules.org/agri/motax.html>.

—BL

Iowa's ATM Law Endangered

In late April, the U.S. Supreme Court let stand an 8th Circuit Court of Appeals ruling that struck down portions of Iowa's ATM law. The state had been sued in 1998 by Bank One, which contended that, as a nationally chartered institution, it did not have to comply with state rules governing the placement and operation of its ATMs. The district court ruled against Bank One, but the decision was overturned by the 8th Circuit. Without comment, the Supreme Court chose not to hear the case.

The decision weakens and may ultimately lead to the demise of Iowa's ATM law. The law is unique among the states in that it treats the ATM network as a common carrier and ensures that both small and large financial institutions have fair and equitable access. The system is efficient—ranking as one of the lowest-cost ATM networks in the nation—and wildly popular with both consumers and financial institutions. It even enjoys the support of the Iowa Bankers

Association, whose national affiliate, the American Bankers Association, has fought aggressively to block state authority over national banks.

Three of the law's provisions—requiring banks that want to install ATMs to submit an application, maintain an in-state branch, and post their name and phone number on the machine—are now moot. The Supreme Court's decision sends the case back to a district court, where the fate of the remainder of the law, including the state's ban on surcharges and universal access requirement, will be decided.

Bank One has the support of the federal Office of the Comptroller of Currency, which contends that state ATM rules are preempted by federal law and that it alone has the power to regulate national banks. Over the last few years, the OCC has assisted national banks in several attempts to use the courts to dismantle state and local laws.

On the other side, 20 state attorneys general co-signed a brief urging the Supreme Court to uphold the traditional role of states in governing how banks operate within their borders. They believe that the dual nature of state and federal oversight is critical to protecting consumers and maintaining a competitive banking system.

Two related cases, concerning local bans on ATM surcharges, are pending in federal courts in New Jersey and California.

—SM

State Meat Inspection Programs Revived

In 1967, the Wholesome Meat Inspection Act and the Wholesome Poultry Products Act authorized states with inspection programs certified by the U.S. Department of Agriculture (USDA) as "at least equal to" the federal program to inspect meat and poultry products for distribution within a state's borders. An adversarial relationship between state programs and the USDA and little interest in direct marketing caused many of the programs to be dropped. Today, meat producers' interest in niche markets and marketing have resulted in 25 state meat inspection programs being reinstated and expanded across the country. Several more states are considering bills to establish similar programs. The state programs are able to provide more technical support and guidance than the USDA, which now caters almost exclusively to large processors.

An example of such a program is Minnesota's State Meat Inspection Program, created by the Minnesota Department of Agriculture (MDA) in November 1998. It is designed to make it easier for the state's meat producers to sell their homegrown

beef, pork and poultry directly to consumers in the state. The Minnesota program was allocated \$350,000 under a 1998 omnibus appropriations bill (SF. 3353) and codified in the 1998 Minnesota Session Laws (Chapter 401, Section 6). Prior to the program, regulations mandated that meat could only be handled by 1) a USDA-certified plant before sale to markets or 2) a custom meat handler for the owner's sole consumption. The new program certifies smaller meat processors to handle meat for sale in-state. By taking their livestock to smaller processors, farmers receive more individualized service and retain ownership of the meat. Many choose to sell the meat directly to consumers, while others sell through local grocery stores. Minnesota currently has approximately 100 slaughter and processing facilities, of which half are smaller, non-USDA certified plants. In January 1999, only one meat processor had volunteered to register with the MDA program and the state was inspecting 100 pounds of meat per month. Today the program has 20 plants enrolled, representing a monthly processing volume of 125,000 pounds of meat. As a result of the program, 10 new meat facilities have been built and many more have been remodeled.

Now the challenge lies in allowing state-inspected meat to cross state lines (currently prohibited by federal law). Currently, plants under state inspection must be equal to the USDA standards but can only sell their products intrastate. A pending bill introduced by Tom Daschle (S-SD)—the New Markets for State Inspected Meat Act of 1999 (S. 1988)—would allow interstate marketing. Hearings were held in the Senate Agriculture Committee in April 2000.

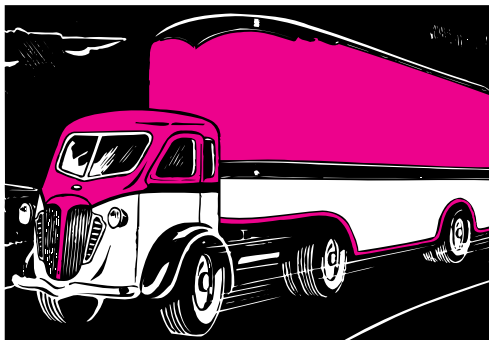
For more information, visit the New Rules web-site at <http://www.newrules.org/agri/inspect.html>.

—BL

Large Trucks Banned from Local Jersey Roads

New Jersey has become the first state in the country to ban large tractor-trailers from its state roads and highways. The restriction, which went into effect in July 1999, confines large trucks (more than 102 inches wide) that do not do business in the state to interstate highways and the National Network, a system of major highways and connector roads.

Gov. Christine Todd Whitman issued the ban through an emergency order in July 1999, announcing that, "Large trucks that are not doing business in New Jersey have no business using local roads in New Jersey." The order was followed by permanent regulations in September, and on January 13, 2000, she signed companion legislation that lays out the



penalties for truckers found breaking the new rules: \$400 for a first offense, \$700 for a second infraction and then \$1,000 for every violation afterward.

The ban followed years of complaints from residents and local officials that out-of-state truckers using local roads as shortcuts were a safety hazard and a noisy nuisance. Several accidents on country roads involving collisions with trucks stoked the public's anger.

Big-rig traffic is particularly heavy in New Jersey due to its status as a corridor between large East Coast cities. Each day about 135,000 large semis pass through New Jersey. In recent years, many truckers started taking shortcuts between major highways and veering off the New Jersey Turnpike to avoid tolls. The ban has already reduced truck traffic by as much as 30 percent on some roads.

However, shippers worry that other states may follow Jersey's lead, and this could substantially affect their business.

The American Trucking Association has filed suit in U.S. District Court to overturn the ban, charging that it impedes interstate commerce by forcing some truckers "to deviate from more direct routes, which lengthens travel time and can be more expensive," according to Beth Law, chief counsel for the ATA. The association's lawsuit also claims that the restriction violates the U.S. Constitution's equal protection clause because it treats trucks based in New Jersey differently from those based outside the state.

John Dourgarian, a spokesman for the New Jersey Transportation Department, said the state was well within its rights to impose the ban.

"The U.S. Department of Transportation advised us last summer that the D.O.T. had the authority to regulate truck traffic on non-national highways," he said. "We feel quite strongly that the law does not impact interstate commerce because we're providing a good system of roads for truckers to use." [!]

—SFS

Seeding Power: The Other Problem with Genetically Modified Crops



No one knows what effect genetically modified foods will eventually have on the environment or on human bodies, but one thing is certain: the benefits of using GM seed will accrue mainly to a handful of corporations. The top-down ownership structure of biotechnology is in stark contrast to the burgeoning organic foods movement, which embraces independent farms and supports local economies.

By Brian Levy

Two visions of agriculture are battling today for our hearts and minds. One is marked by potentially harmful environmental impacts, the privatization of agricultural knowledge, the concentration of power and control in a handful of companies and the transformation of farmers into laborers. The other embraces independent ownership, small-scale production and sustainable agricultural practices that preserve diversity and local control.

In discussions of genetically engineered food, the debate has largely centered on genetic engineering's potential impact on public health and safety. But behind the environmental fears are broader social and economic concerns. Biotechnology firms designed GM seeds to be grown in a large-scale agricultural system; in such a system, farmers become renters of seed technology. Organic farms are typically independently owned and contribute to a stable local economy.

In the late 1990s, these two visions collided.

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GM's Golden Days

The genetic engineers won the first round. When genetically modified crops (GMs) were first introduced in 1994, they were widely viewed as the next technological revolution in an agricultural system already dependent on synthetic fertilizers and hybrids. Unlike previously developed hybrid crops, GM crops are created by combining the genetic material from two distinctly different organisms. In other words, where hybrid corn crops were made by selectively breeding different types of corn, GM technology crosses species boundaries, inserting genes from bacteria into corn, from fish into tomatoes.

The Food and Drug Administration (FDA), the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture (USDA) rapidly approved 50 GM varieties for use, from corn and soybeans to tomatoes and potatoes. Genetically modified sugar beets, rice, wheat, peppers, bananas, strawberries and fish were expected to follow shortly.

Despite higher seed costs, by 1999 approximately 25 percent of U.S. cropland had been planted in GM varieties. Monsanto, whose GM seeds accounted for 88 percent of the total transgenic crop area in 1998,

predicted that by 2000 almost 100 percent of all soybeans planted in the U.S. would use GM seeds. GM seed sales reached \$1 billion. The International Seed Trade Federation confidently predicted sales would reach \$2 billion by 2001 and \$20 billion by 2010. Food processors accepted the new technology without question.

A Grassroots Movement

The genetic engineering revolution was spawned by a handful of chemical and seed companies. The organic revolution, on the other hand, was spawned from the ground up, on tens of thousands of independent family farms. Natural food sales began with a handful of tiny health food stores, and later, modestly sized food cooperatives. In the U.S., Europe and Japan, sales reached \$1 billion in 1990 and grew 25-30 percent annually over the next ten years. In 1999, U.S. organic food sales alone exceeded \$6.5 billion through 6,000 retailers. Over the past five years, U.S. organic acreage has more than doubled to 2.2 million acres.

A showdown between two agricultural futures was inevitable. In the U.S., the 1990 Organic Foods Production Act ordered the USDA to develop national organic standards. In December 1997, the USDA issued draft standards that largely reflected the interests of the biotech industry and corporate agriculture. The standards would have defined genetically engineered crops as "natural foods" and would have allowed the irradiation of food and the use of waste sludge as fertilizer. These standards contradicted those recommended by the National Organic Standards Board, a USDA-sanctioned non-governmental body of organic growers, processors, certifiers, retailers and environmentalists.

In an unprecedented and largely unorchestrated rebellion, consumers and producers of organic produce flooded the USDA with 275,000 overwhelmingly negative comments in less than six months. Food coops, which had been instrumental in creating and building the market for organic foods, now played a key role in defeating the proposed standards: their infrastructure was crucial in spreading the word and encouraging consumers to respond. In May 1998 the USDA withdrew the draft standards and went back to the drawing board. The organic community began to adjust to its newfound strength and move from a what-are-we-against to a what-are-we-for stance.

GM Hits the Wall: Europe

In Europe, where food is viewed as a cultural issue as much as an economic one, GM crops were never enthusiastically embraced by farmers

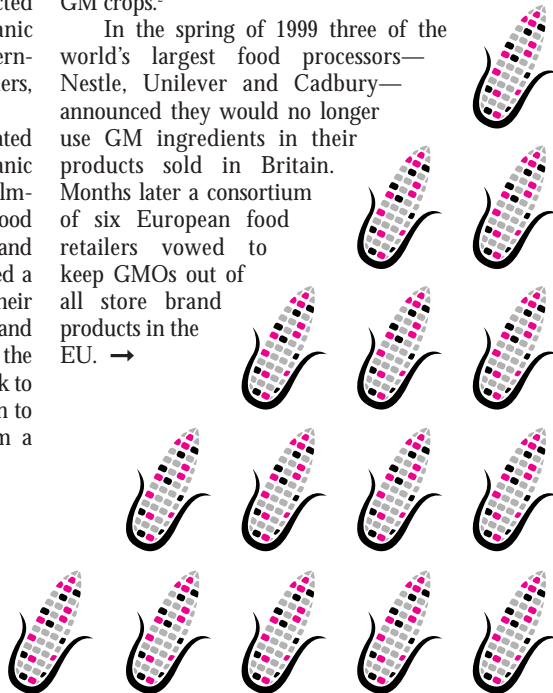
or the public. Because citizens distrust government pronouncements about food safety after public health crises like mad cow disease, public policy with regard to GM crops was more cautious from the beginning.

In 1990 the European Union issued Directive 90/220, which allowed countries citing health or environmental concerns to ban for three months the growing of specific GM crops. In practice, these bans were extended indefinitely, and no new GM crop has gotten a green light in Europe since 1998. In February 1999, Germany joined France, Luxembourg, Portugal and Austria in formally banning the planting of Novartis Bt corn. In June 1999 the EU Council of Environmental Ministers agreed to continue the de facto moratorium on new approvals of GM crops.

When the first GM foods appeared on European grocery shelves in 1995, consumer resistance led to two new EU directives. The so-called "Novel Foods Regulation" (97/258) of 1997 created a new testing and approval system for any foods not used for human consumption before, including any GM products. It also required that all new GM foods be labeled. A 1998 EU regulation (98/1139) mandated the labeling of GM soya and maize already on the shelves.

As EU member states translated the directives into national legislation, Britain chose to impose fines of up to \$8000 on shops and supermarkets that failed to label.¹ In early 1999 several European countries enacted legislation that required food outlets to inform customers whether they were using GM crops.²

In the spring of 1999 three of the world's largest food processors—Nestle, Unilever and Cadbury—announced they would no longer use GM ingredients in their products sold in Britain. Months later a consortium of six European food retailers vowed to keep GMOs out of all store brand products in the EU. →



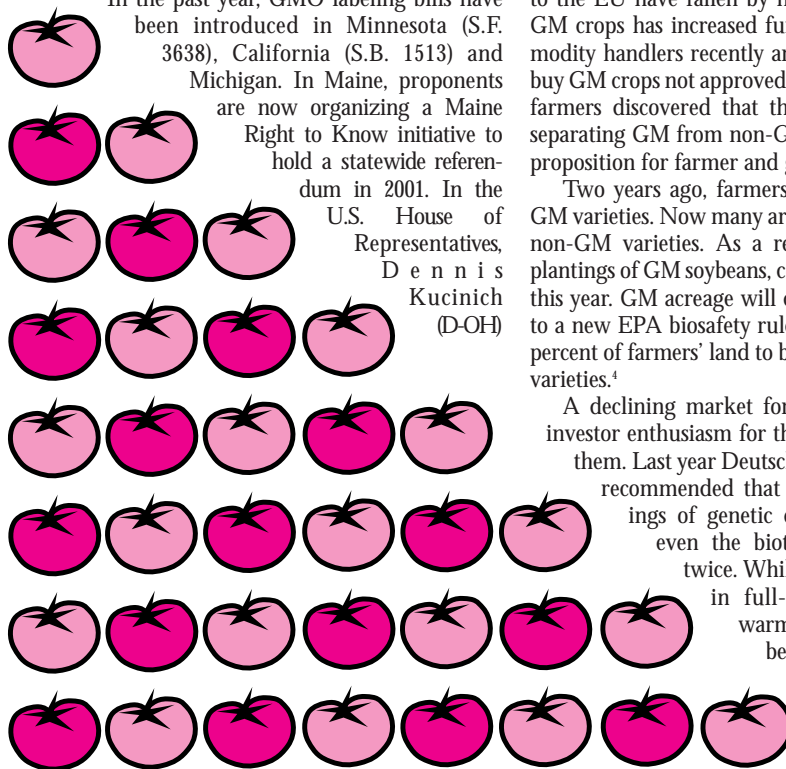
Multinational food companies that market GM food elsewhere began introducing GMO-free product lines for EU distribution. Even food chains such as Burger King, Domino's Pizza and KFC announced they would no longer use GM ingredients in the EU. It was truly a sign of the times when the cafeteria at Monsanto's UK offices stopped serving GMO foods, "protecting" workers from the very foods they helped to create.

Today Europe supports over 110,000 organic farms that cover 2 percent of the land in agricultural production. Some countries, such as Austria, already have 10 percent of land in organic production. In 1999 about 11 million acres of European cropland was planted in GM crops, a number that is not increasing. That same year 7 million acres were organically farmed. At present rates, European organic acreage should exceed GM acreage by next year.³

GM Hits the Wall: United States

The U.S. is behind Europe but moving in the same direction. A January 1999 *Time* magazine poll revealed that 81 percent of U.S. respondents wanted GM foods to be labeled. In a movement reminiscent of the organic standards groundswell, 500,000 signatures were sent to Congress and the President last summer calling for the labeling of such foods.

In the past year, GMO labeling bills have been introduced in Minnesota (S.F. 3638), California (S.B. 1513) and Michigan. In Maine, proponents are now organizing a Maine Right to Know initiative to hold a statewide referendum in 2001. In the U.S. House of Representatives, Dennis Kucinich (D-OH)



introduced the Genetically Engineered Food Right to Know Act (H.R. 3377) last November. Barbara Boxer (D-CA) has introduced a companion bill (S. 2080) to the Senate. Several states—New York, Minnesota and Vermont—have also introduced bills to ban the selling, cultivating, planting or harvesting of GMOs.

American food businesses have begun to imitate their European brethren. Whole Foods and Wild Oats natural food companies announced they would remove GM products from their shelves altogether. Frito-Lay Inc. announced it would accept only GE-free corn for use in its snacks. Gerber and several other food processors followed suit. In April, McDonald's announced it would use only non-GM potatoes. In early May, the White House put forth new proposals that make submission of company data on GM crops mandatory rather than voluntary. The proposals also direct the FDA to develop guidelines for companies that want to voluntarily put labels on foods indicating whether they contain GM ingredients or not.

Farmers have begun to reconsider their reliance on GM seeds. For many the more expensive seeds have not translated into higher profits. And the markets for GM crops are shrinking. Since 1998, the EU has ceased importing American GM corn, costing the U.S. \$200 million a year in lost sales. Soybean exports to the EU have fallen by half. The pressure against GM crops has increased further as major U.S. commodity handlers recently announced they would not buy GM crops not approved for the EU market. Many farmers discovered that they would have to begin separating GM from non-GM varieties, an expensive proposition for farmer and grain elevator.

Two years ago, farmers received a premium for GM varieties. Now many are receiving a premium for non-GM varieties. As a result, the USDA expects plantings of GM soybeans, corn and cotton to decrease this year. GM acreage will decrease even further due to a new EPA biosafety rule on Bt corn requiring 20 percent of farmers' land to be sown with conventional varieties.⁴

A declining market for GM seeds has dimmed investor enthusiasm for the companies that market them. Last year Deutsche Bank, Europe's largest, recommended that investors sell their holdings of genetic engineering stocks. Now even the biotech giants are thinking twice. While the industry may not be in full-scale retreat, finding a warm reception these days can be a challenge. As thousands converged to attend a Biotechnology Industry

Organization's conference in March 2000, the Boston City Council unanimously passed a resolution declaring March 26 "You Are What You Eat Day."

Will Global Authorities Preempt National Decisions?

Who has the right to regulate GM crops? This was a primary dispute that led to the collapse of the December 1999 World Trade Organization (WTO) meeting in Seattle. The U.S. aggressively pushed to create a working group on biotechnology within WTO. If successful, this would have set in motion the inclusion of GMOs under the General Agreement on Tariffs and Trade (GATT). Under GATT, countries cannot make distinctions between products on the basis of how they are grown or manufactured or caught. Thus a shoe or a tomato or a tuna fish must be treated the same no matter what environmental or labor or safety concerns are associated with the way they were produced. Under the WTO, GM corn would be considered regular corn, and any attempts by nations to regulate or label GMOs would be deemed protectionist.

The tumultuous situation in Seattle and opposition by European countries stalled the attempt to bring GMOs under the WTO. Attention turned instead to the ongoing negotiations under the United Nations Protocol on Biosafety (widely known as the Cartagena Protocol on Biosafety). Negotiated under the Convention on Biological Diversity, the Protocol talks focused on regulating the movement of GM goods with the goal of safeguarding biodiversity and human health. Unlike the WTO, this venue was more likely to consider environmental and consumer concerns to be valid even when they interfere with trade.

As the biosafety talks began in January 2000, intense pressure to minimize efforts at regulating biotechnology came from the so-called "Miami group" of six countries—the U.S., Canada, Australia, Argentina, Chile and Uruguay. However, the biotech industry began to recognize that without clear international rules on GM safety, public mistrust would only continue to increase. When the talks concluded, several important provisions had been adopted by the 135 participating countries. GMO exporters are required to indicate that their shipments contain GM material. Both GM seeds and grains used for food and

feed must be identified and approved before importation. Countries can bar the importation of GMOs, even when lacking scientific certainty about a GMO's potentially harmful effects. It was a rare triumph of the "precautionary principle" in international law—the idea that we are better safe than sorry.

Once ratified by 50 countries, the Protocol will impose greater restrictions on international trade than any prior international environmental agreement. The gingerly worded Protocol must somehow assert independence from existing WTO regulations without being struck down as a barrier to trade.⁵

Better Rules To Grow By

Today we are writing the rules that may determine the technological underpinnings and perhaps even the organizational structure of future agriculture. Negotiations at the state, national and international

level revolve around several key issues, most of which have to do with ownership and economic sustainability.

In the U.S., the battle over organic standards has been a contest to define the very meaning of what constitutes organic production. When the USDA included GM crops as "natural" crops it clearly was favoring an agricultural system in which power is concentrated in the hands of a few. With the new organic standards, a key question is whether they too should favor a certain kind of agricultural ownership system. Should organic standards protect the independent farmer as well as the soil?

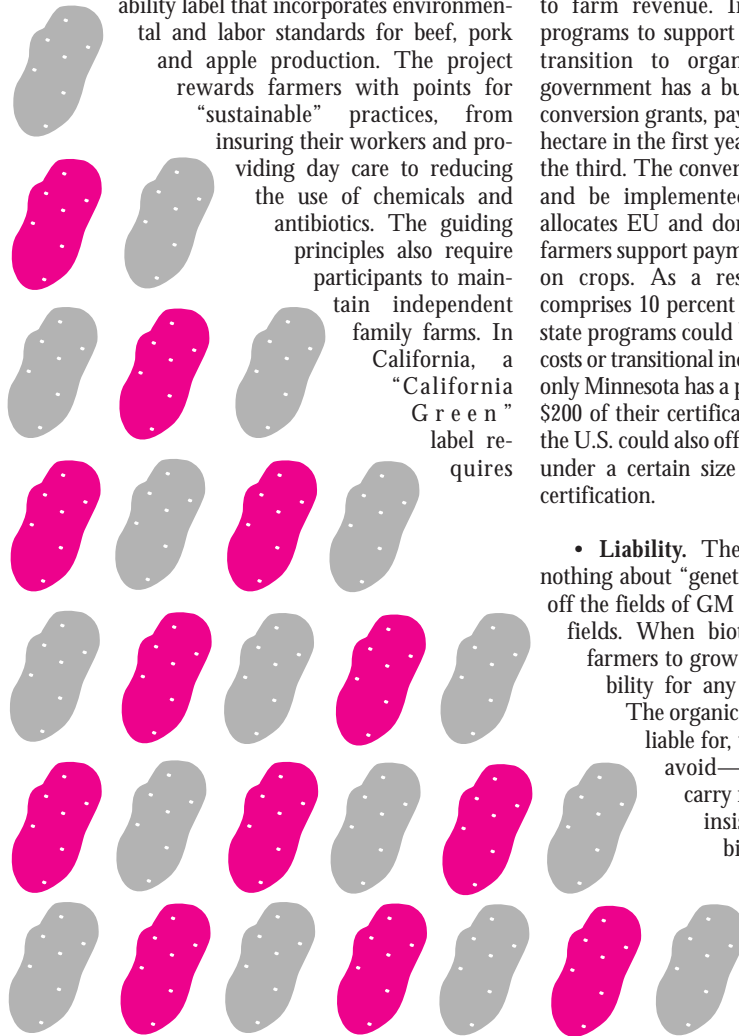
In February 2000 the USDA issued revised organic guidelines. They were largely taken from rules developed by the organic community since the outcry over the initial USDA standards. After a final comment period, the new standards will go into effect later this year. While the proposed standards ensure food safety and some measure of environmental protection, there is nothing in them that favors independent ownership and decentralized, smaller-scale farms.

Large California growers such as Cal-Organic already grow and ship carrots nationwide, to the detriment of local organic producers across the U.S. As more producers adopt organic techniques, the price premium that organic growers once captured will further diminish, providing a financial incentive to increase in size. →

Europe stresses the “multifunctional” role of agriculture—the idea that agriculture has a much wider role than just the production of food, from protecting the environment and maintaining rural communities to preserving a cultural heritage and utilizing existing rural infrastructure. Are we prepared to expand the definition of organic to include the fostering of a socially organic, diversified and locally rooted food production system? It is within this context that several questions are being raised.

- **Labeling.** The term “organic” traditionally referred to environmentally sustainable farming. More recently, environmental sustainability is seen as just one aspect of a healthy agricultural system.

The Land Stewardship Project (MN) and the Food Alliance (OR) are developing a sustainability label that incorporates environmental and labor standards for beef, pork and apple production. The project rewards farmers with points for “sustainable” practices, from insuring their workers and providing day care to reducing the use of chemicals and antibiotics. The guiding principles also require participants to maintain independent family farms. In California, a “California Green” label requires



certified growers to reside on farms of less than 100 acres of row crops or 500 acres of forage crops. While these standards begin to broaden the scope of labeling, they are also able to include the many sustainable or transitional growers who are not certifiable under current USDA standards.

- **Costs of Organic Certification.** Under the current system, farmers will bear the entire cost of becoming certified, leaving smaller producers to pay a proportionately higher cost than their larger competitors. The three-year transition to organic agriculture typically involves yield drops with no price premiums—an income loss that smaller farmers find more difficult to cover.

At present, the USDA offers no guidelines on making certification fees reasonable or proportionate to farm revenue. In Europe, all countries have programs to support farmers during and after their transition to organic agriculture. The Danish government has a budget of \$5 million for organic conversion grants, paying farmers \$192 per converted hectare in the first year, \$102 in the second and \$38 in the third. The conversion must cover the entire farm and be implemented within four years. Sweden allocates EU and domestic funds to pay all organic farmers support payments of \$57-862/acre, depending on crops. As a result organic production now comprises 10 percent of Swedish agriculture. Similar state programs could be adopted to cover certification costs or transitional income losses. At present, however, only Minnesota has a program that reimburses farmers \$200 of their certification costs. States or localities in the U.S. could also offer property tax rebates for farms under a certain size to cover their cost of organic certification.

- **Liability.** The USDA draft standards say nothing about “genetic drift”—the pollen that blows off the fields of GM crops and contaminates organic fields. When biotech companies contract with farmers to grow GM crops, they place responsibility for any contamination on the farmer. The organic grower is thus at risk from, and liable for, the very crops they are trying to avoid—while the biotech companies carry no liability. Organic farmers are insisting that the USDA hold biotech patent holders and seed companies liable for any economic and environmental damage caused by drifting. Both Minnesota and Nebraska legislators

have introduced and lost bills that emphasize the strict liability of the manufacturer in cases of GM contamination. While the USDA ignores the issue, other EU nations have at least set standards for genetic contamination and distance requirements between GM and non-GM fields.

- **National Preemption.** Ultimately, the organic standards must have the capacity to evolve to accommodate concerns over ownership, scale and liability. At present, USDA guidelines stipulate that a state's organic requirements cannot be less restrictive than the National Organic Program guidelines. However, the USDA must approve more restrictive organic requirements should states wish to go further. The USDA acts as an accreditor, not certifier, but forbids independent certifiers from enacting higher standards. The standards currently act as a ceiling, not a floor. Private and state certifiers must be able to state on their label that this product "meets or exceeds" or "exceeds" USDA organic standards. Furthermore, the USDA contends that the Organic Food Production Act authorizing the USDA organic standards also limits their scope, presenting a barrier to future improvements. Thus the room needed to allow evolution of the standards appears narrow, and this is unfortunate. It is instructive to recall that decades ago, federal minimum wage requirements surpassed any state standards. Today, states lead the federal government. Similarly, while federal organic standards are currently strong, states must have the authority to go even further. This is the case in Europe, where member states may surpass the EU directive (91/2092) that defines EU organic standards.

Conclusion

Five years ago, the president of Monsanto predicted that as for biotechnology, "In a few years, the public will have lost interest." Few predictions have proven so wrong so fast. Rather than losing interest, the public has shown widespread support for organic agriculture and has moved governments to reconsider the future of biotechnology.

Until now, the struggle between competing agricultural systems has focused on environmental concerns and food safety. Although supporters of small-scale, locally owned farms have been active, they have not yet gained a presence in the USDA's organic guidelines. In order to create an equitable, sustainable agricultural system, our policies must reflect the importance of independent farms, not just for our health but for our communities and our economies. [!]

Notes

1. Remarkably, the British Retail Consortium (BRC)—representing 90 percent of British retailers—issued a statement saying the government legislation didn't go far enough to help consumers.

2. Now every few months brings an additional directive on GM foods. In January 2000 new rules passed requiring GM labeling if food manufacturers cannot guarantee each ingredient contains less than 1 percent of GM material. As of April 10, all nonpackaged GM products—food served in restaurants, on the street, or catered—must be labeled (Amendment 49/2000). Rules concerning additives and flavorings from GM sources also came into force then. An EU "GMO-free" label is in the works for later this year, and the EU Parliament has considered a bill to impose full liability on GM companies for any damage done by their products.

The movement for GM labeling quickly spread around the world. Australia and New Zealand recently passed labeling laws, and South Korea plans to follow suit next year. Japan will soon implement mandatory labeling for food containing GM ingredients, and plans the first GM-free futures contract on the Tokyo Grain Exchange this May. In March Mexico's Senate voted unanimously to require GM food labeling. Thailand has banned the importation of GM seeds and Sri Lanka has banned all GMO imports.

3. In 1999, there were 7 million organic acres in the EU on 115,000 farms, representing 2.05 percent agricultural area. Growth of organic acreage from 1988-98 averaged 32 percent/year (Eurostat).

4. US GM-planted corn acreage (19.5 million acres in 1999) is expected to decrease 24 percent this year; GM-planted soybean acreage (42.6 million in 1999) is expected to decrease by 9 percent. (USDA/ERS)

5. Further debate over the international regulation of GMOs is now taking place inside the Codex Alimentarius Commission, an organization charged with the development of an international food code. Members of the organization are primarily food industry representatives. Standards adopted at the Codex meetings are considered international benchmarks against which national food regulations are evaluated by the WTO. The Codex Committee on food labeling and a newly formed Codex Task Force on Foods Derived from Biotechnology will be at the center of these international debates as they unfold.

Low Power Suffers a Low Blow

Microradio supporters who cheered the FCC's January decision to license up to 1,000 low-watt stations watched in disbelief as the House caved to pressure from the NAB and passed the shamefully misnamed Radio Broadcasting Preservation Act. *By Simona Fuma Shapiro*

If you're looking for a textbook case on the defeat of a grassroots initiative by powerful corporate lobbyists, the House's passage, on April 13, of the Radio Broadcasting Preservation Act (HR 3439) is it. HR 3439 has now made its way to the Senate. If passed, it will significantly scale back the Federal Communication Commission's recent commitment to award low-power radio licenses to community groups around the country. The National Association of Broadcasters (NAB), an organization that represents the commercial radio industry and one of Washington's most powerful lobbies, is behind the effort to stymie the creation of new stations.

The 1996 Telecommunications Act encouraged an unprecedented consolidation of broadcast media. Suddenly, a broadcaster was allowed to own an unlimited number of stations nationwide and up to eight in one market. As a result, it is now common for two or three companies to own 80 to 90 percent of the radio ad revenues in a market. In the Twin Cities, 13 of Arbitron's 20 top-ranked radio stations will soon be owned by just three multinational companies.

Community radio activists have lobbied the FCC for years to license low-power (1-1000 watt) stations, which would create the kind of local programming remote corporate broadcasters fail to provide. But the FCC has been no friend to microradio over the years. In 1978 the commission outlawed low-power radio, which had been legal since 1948. During the 1990s, the FCC periodically raided and shut down hundreds of so-called "pirate" stations that had sprung up in defiance of their policy. Relenting to public pressure, the FCC issued an initial petition for LPFM rule-making in February 1998. That year the commission received over 13,000 inquiries from "churches, community groups, elementary schools, universities, small businesses and minority groups" seeking to

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make their voices heard on the airwaves. Two years later, on January 20, 2000, the FCC announced its decision to license up to 1,000 noncommercial low-power stations.

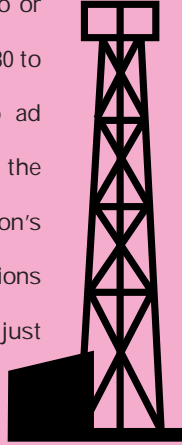
In fact, the FCC's decision was very conservative. The FCC had originally considered licensing three sizes of radio stations: 10 watts, 100 watts and 1000 watts. It also considered lifting third and second adjacent channel protections in order to make room for the new stations. These spacing rules create buffer zones around radio stations so that their transmissions do not interfere or "bleed" with one another. Third adjacent channel protections were mandated by the FCC several decades ago, when fixed and portable radios had less advanced tuning mechanisms. They meant that a radio station at 91.1 in a particular market would have a buffer zone of three channels on either side: 91.3, 91.5, and 91.7 would be free, and 89.5, 89.7 and 89.9 would also be free, so that the next available channels would be 89.3 and 91.9.

Engineers at the FCC and elsewhere agreed that for small 10 and 100 watt-stations, third and even second channel protections were unnecessary. But the FCC relented to NAB pressure and in its final decision lifted only the third-channel protection, keeping the second-channel protection in place. The FCC also decided not to license any new 1000-watt stations.

Despite these concessions, those who already possess radio licenses are determined to stop microradio at any cost. The NAB continues to argue that the new stations will cause interference with existing ones. They have been circulating a CD on Capitol Hill that purportedly demonstrates what interference from low-power stations would sound like. They are also behind the Radio Broadcasting Preservation Act, which recently passed by 274 votes to 110.

The bill passed the House in a modified version that reflects the "Dingell-Wilson" amendment. The Dingell-Wilson amendment has been presented as a

It is now common for two or three companies to own 80 to 90 percent of the radio ad revenues in a market. In the Twin Cities, 13 of Arbitron's 20 top-ranked radio stations will soon be owned by just three multinational companies.



compromise that “saves” low power radio, because it does not ban the service altogether but simply reverts back to the third-channel protection the FCC had lifted. In fact, it cuts the service drastically. If the FCC’s plan allowed for between 1,000 and 3,000 new stations nationwide (with approximately 250 in the top 60 markets), the bill passed by the House would allow for a few hundred, with some estimates as low as 70. Virtually none of these new stations could be in major markets. Needless to say, the NAB is pleased with the amendment. Low-power supporters are not.

FCC Chairman William Kennard has correctly stated that the NAB’s interference claims are a “red herring.” First, because the FCC set much higher interference protections than the engineering studies would have warranted. Two separations between broadcast signals are more than adequate with today’s modern integrated circuit design and filtering technologies for FM receivers, especially when one of the broadcasts is as weak as 100 watts or less. (A typical large commercial station broadcasts at 100,000 watts.)

Second, there are currently 312 full power stations operating under FCC authority without third adjacent channel protection—many of them without second adjacent channel protection—and there have been no complaints about interference, according to the FCC. In fact, NAB members fail to mention that in 1996 they lobbied the FCC to relax third adjacent channel protections to benefit their own stations, saying that the standard was “overly restrictive.”

The NAB has also found allies in nonprofit groups like National Public Radio and the

International Association of Audio Information Services (the national association of reading services for the blind.) These groups argue that new LPFM stations could cause interference with FM subcarrier channels like those used to broadcast readings from daily newspapers to the blind on special radios. Subcarrier signals are more susceptible, the argument goes, because they ride on the outer edge of an FM station’s allotted frequency. However, there are numerous examples of FM subcarrier channels with only second adjacent protection that have reported no interference. If a low-power station does cause interference to one of these FM subcarriers, the subcarrier can be awarded a buffer zone on a case by case basis, without seriously scaling back the LPFM project.

When the Broadcasting Preservation Act passed the House, FCC Chairman Kennard remarked, “Special interests triumphed over community interests today.” He also singled out National Public Radio for opprobrium: “While the National Association of Broadcasters frequently opposes new competitive services, I’m particularly disappointed that National Public Radio joined with commercial interests to stifle greater diversity of voices on the airwaves. I can only wonder how an organization that excels in national programming could fear competition from local programming by these tiny stations operated by churches, schools, community groups and public safety agencies.”

And indeed, the LPFM movement is truly in the community interest. The stations will serve local communities because they will broadcast at 10 or 100 watts, meaning they can be heard for distances of only 1-10 miles. And the FCC will choose licensees from the pool of applicants in each community on the basis of established local presence, proposed hours of service and the amount of locally originated programming.

This concept harks back to the early days of radio—in the 1920s—when noncommercial radio stations outnumbered commercial stations two-to-one. It revives the practice of the 30 years after 1948, when the FCC issued class D low-power licenses to community groups, colleges and churches. It also fulfills the dictate of the Communications Act of 1934, which states that the “airwaves belong to the people.”

Fortunately, the low-power initiative is not dead yet. Public interest groups have launched campaigns in recent weeks urging citizens to contact their senators and ask them to oppose the bill. A companion bill, introduced in the Senate in February, has 29 cosponsors. Perhaps with enough of a public outcry, senators will act in the interests of citizens rather than one of Washington’s most powerful lobbies. [!]



Jack and the Giant School

Higher graduation rates, less violence, a sense of belonging instead of alienation: the case for small schools is supported by mountains of evidence and a growing number of innovative models. But many state and local governments persist in consolidation efforts, fueled by a misguided belief in the effectiveness of giant schools. *By Stacy Mitchell*

On October 4, 1957, the Soviet Union launched the first artificial object into Earth's orbit. Dubbed Sputnik, the satellite measured only two feet in diameter, but it had a profound impact on the American psyche. Sputnik provided an undeniable demonstration of Soviet technological superiority and, more significantly, the power and reach of Soviet rockets.

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Among its many impacts, Sputnik galvanized a movement to modernize and enlarge America's schools. The best and the brightest agreed that small schools burdened our ability to win the Cold War. The campaign to abolish them was led by Harvard University President James Bryant Conant, who contended that those who resisted school consolidation were "still living in imagination in a world which knew neither nuclear weapons nor Soviet imperialism."

State and local governments began aggressively closing small schools and herding kids into larger facilities. In 1930, one-room schoolhouses accounted for nearly 70 percent of the nation's public educational facilities. Between 1940 and 1990, the number of

elementary and secondary schools decreased from 200,000 to 62,000, despite a 70 percent rise in U.S. population. Average enrollments skyrocketed from 127 to 653.

The trend toward giantism continues. The number of high schools with more than 1,500 students doubled in the last decade. Two-fifths of the nation's secondary schools now enroll more than 1,000 students. Some schools have as many as 5,000 students and enrollments of 2,000 or 3,000 are common.

Proponents argue that big schools allow for more courses, advanced equipment and significantly lower cost, per pupil year, than small schools. But, a growing number of critics are asking, do big schools produce better students? In the 1970s a handful of educators began to question whether the failings of the nation's schools weren't directly related to their size. Large schools, they believed, bred alienation and isolation, which in turn fostered poor student achievement, violence and high dropout rates.

Today, riding on a wave of real-world success and a mountain of empirical evidence, a full-fledged small schools movement has emerged. It's transforming public education in several big cities and, in rural areas, reinvigorating a long-standing fight to wrest local schools from the jaws of consolidation.

The movement has received endorsement from high offices. In May 1999, prompted largely by the shootings at Columbine High, a school with 2,000 students, Vice President Al Gore criticized the practice of "herding all students into overcrowded, factory-style high schools." A panel of school security experts was convened by Education Secretary Richard Riley. Their top recommendation had nothing to do with gun control, metal detectors or police on the premises. Rather, they said, reduce the size of the



Small schools enable teachers to work more closely with a smaller number of students. This encourages teachers to go the extra mile and enables them to respond to individual needs. The result is that both students and teachers have a more positive attitude about school.

nation's schools. Small schools are a powerful antidote to the sense of alienation that can lead to violence.

In September, Riley told the National Press Club that the nation needs to "create small, supportive learning environments that give students a sense of connection. That's hard to do when we are building high schools the size of shopping malls. Size matters."

According to the U.S. Department of Education's report, *Violence and Discipline Problems in U.S. Public Schools: 1996-97*, more than half of small school principals report either no discipline or minor discipline problems, compared to only 14 percent of big school principals. Furthermore, compared to schools with fewer than 300 students, big schools (1,000 or more) have 825 percent more violent crime, 270 percent more vandalism, 394 percent more fights and assaults and 1000 percent more weapons incidents.

The federal government now provides a small amount of money to districts seeking to restructure large high schools by breaking them into small learning communities or autonomous schools housed within the same building. But the real action is at the local and state level, where the notion that large schools offer superior learning opportunities persists, despite substantial evidence to the contrary.

The Empirical Record

In 1996, Kathleen Cotton, a research specialist with the Northwest Regional Educational Laboratory, reviewed the results of over 100 studies on school size. "Student achievement in small schools is at least equal and often superior to achievement in large schools," she concluded. "In addition, a large body of research in the affective and social realms overwhelmingly →

affirms the superiority of small schools.”

Aside from financial resources, many teachers and researchers believe that school size is the single most important factor in the success of public schools. In her 1999 review of school size studies, Mary Anne Raywid of Hofstra University writes that the relationship between size and positive educational outcomes has been “confirmed with a clarity and at a level of confidence rare in the annals of education research.”

There is no standard definition of small. Generally, small school advocates suggest no more than 400 for elementary schools and 800 for secondary schools, although many recommend smaller sizes of fewer than 300 in elementary and 500 in secondary.

Achievement: Small school students equal or outperform large school students. Indicators used include grades, test scores, honor roll enrollment, subject-area achievement, higher-order thinking skills and years of education attained after high school. In Nebraska, 73 percent of students in districts with fewer than 70 high school students enrolled in a post-secondary institution, compared to 64 percent of those in districts of 600 to 999 high school students. These findings hold even when other variables, such as student attributes or staff characteristics, are taken into account. Many small schools are in rural areas, but researchers have concluded that it is the smallness of the school, not its setting, that makes it successful.

Sense of belonging: Large schools function like bureaucracies, small schools more like communities. Small school students are less likely to feel alienated and more likely to report a strong sense of belonging. Teachers in large schools might have 150 students each semester. Students tend to be relatively anonymous and easily slip through the cracks. Small schools enable teachers to work more closely with a smaller number of students. This encourages teachers to go the extra mile and enables them to respond to individual needs. The result is that both students and teachers have a more positive attitude about school.



Studies have found that small schools parents are more likely to be involved in their child’s education and to volunteer at the school.

students dropped out, compared to a statewide average of 15 percent.

Extracurricular activities: Studies have found that participation in extracurricular activities improves attendance and academic performance. Students at small schools exhibit higher rates of participation in extracurricular activities and individuals participate in a wider variety of activities. In a school of 2,000 students, only the most talented will be recruited for the basketball team or the drama club. The result is that a small number of gifted students dominate the sports and activity rosters, while the vast majority are relegated to spectator status. In small schools, sports teams, musical groups and clubs depend on broader participation.

The number of extracurricular opportunities does increase with school size. But a twentyfold increase in population produces only a fivefold increase in opportunities. That is, as the school expands, an increasingly smaller percentage of students are needed to fill the available slots.

Poverty: Research has consistently shown that poverty exercises a substantial negative effect on student achievement. The impact of poverty is significantly reduced when kids attend small schools. In fact, the larger the school, the more likely poor students are to fail; the smaller the school, the more likely they are to succeed.

Parental involvement: Kids are not the only ones who are alienated by large schools. Parents are as well. Studies have found that small schools parents are more likely to be involved in their child’s education and to volunteer at the school. In rural areas, this is due in part to the fact that small, local schools are close to home, while consolidated schools may be many miles away.

Attendance/Dropout: Closely connected to a strong sense of belonging, students at small schools have higher attendance rates. Students who transfer from large to small schools also exhibit improved attendance. Small schools graduate more of their students. In Nebraska, only 3 percent of those attending high schools with fewer than 100

Resources

There are many organizations and a wealth of resources on small schools.

Here are a few:

*Clearinghouse on Rural Education and Small Schools
Created by the Education Resources Information Center (ERIC), this clearinghouse contains an extensive database of academic research on rural education and small schools.
telephone: 800-624-9120;
website: www.aef.org/eric*

Craig Howley of Ohio University and Robert Bikel of Marshall University recently studied this relationship in Georgia, Montana, Ohio and Texas. In all four states, smaller schools cut poverty's "power rating," or impact on test scores, by 20 to 70 percent, depending on the grade level. Researchers concluded that one-fourth of schools serving moderate to low income students in Texas, one-third in Georgia and two-fifths in Ohio were too large to maximize student performance. Interestingly, the researchers controlled for class size and found that it did not impact their results. That is, poor students are better off in small schools, even if the class sizes are larger.

Curriculum: Even the smallest schools (100-200 students) are able to offer core curricula comparable to schools of more than 1,200. Moreover, small schools tend to be more flexible and allow teachers to exercise greater control over curricula. As a result, small schools more often apply innovative teaching methods, such as team teaching, integrated curriculum and multi-age grouping, all of which have been shown to improve student achievement.

Very small schools may not be able to offer many advanced or specialized courses, but bigness does not guarantee breadth. Researcher William Fowler concluded, "Above 400 students, increases in enrollment made little difference in improving students' access to courses or in offering teachers the opportunity to teach more specialized classes."

Collaboration and advances in technology continue to broaden curriculum at small schools. Three rural schools, for example, can each hire a language teacher and, by broadcasting classes through fiber optic connections, enable their students to choose among three languages. Collaboration is even more feasible in urban areas, where schools can share course materials and even teachers.

Small Schools, Big Cities

The small schools movement traces its roots to 1974 when Deborah Meier opened Central Park East, the first of about two dozen small elementary and middle

schools in the East Harlem district. By 1982, the district's ranking on reading tests had moved from 32nd, dead last in the city, to 15th.

In 1985, Meier went on to found a secondary school, also known as Central Park East, with 550 students in grades seven through twelve. More than half of the students qualify for free lunches and the school has twice as many students with learning disabilities as the average New York public school. Despite these challenges, Central Park East has a graduation rate of 90 percent, compared to 55 percent citywide. Even more striking, between 85 and 95 percent of its graduates go on to college.

These successes spawned an explosion of small schools in the 1990s, driven in large part by the efforts of the Center for Collaborative Education. Today, 150 of New York's 1,000 public schools have fewer than 600 students.

Julia Richman High School is a good example of the impact of these changes. In 1992, this school of 3,000 had the highest rate of violence in the New York school system. Only one out of three students graduated in four years. Following the advice of small school advocates, the Board of Education and the teachers' union broke the school into six separate high schools.

Today, the Julia Richman Education Complex houses four of those schools, along with an elementary school and daycare for toddlers. The building now has one of the lowest rates of violence among the city's schools. Gone are the weapon scanners and the police patrols.

According to Columbia University researchers, students in the complex's high schools are poorer than the students of the former Julia Richman High. Yet they have higher attendance, fewer dropouts and better achievement. One of the schools, the Urban Academy, sends 90 percent of its students to college and has won a U.S. Department of Education award for excellence.

Despite their successes, New York's small schools have struggled to justify themselves. In late 1997, facing stiff budget cuts, Schools Chancellor Rudy Crew questioned the cost-effectiveness of small schools. Staff at the Board of Education →

Resources

Bay Area Coalition of Essential Schools
1629 Telegraph Ave
5th Fl
Oakland, CA 94612
telephone:
510-208-0160;
website:
www.bayces.org

Center for Collaborative Education
1573 Madison Ave
Rm 201
New York, NY 10029
telephone:
212-348-7821;
website: www.cce.org

Center for Rural Affairs
(member of the Nebraska Alliance for Rural Education)
PO Box 406
Walthill, NE 68067;
telephone:
402-846-5428;
website: www.cfra.org

floated a preliminary proposal to set minimum enrollments at 400 for elementary schools and 800 for high schools. The proposal shocked small school teachers and administrators, some of whom noted children would be better served by a ceiling, not a floor, on enrollments.

A few months later, New York University researchers released a study that silenced the critics. Although smaller schools had higher per pupil costs, “their much higher graduation rates and lower dropout rates produce among the lowest cost per graduate in the entire New York City system.” Schools with fewer than 600 students spent \$7,628 per student, or 23 percent more than the cheapest schools, those with populations of more than 2,000. But lower dropout rates meant small schools spent slightly less per graduate—\$49,553 compared to \$49,578.

New small schools have been launched or are in the works in cities across the nation. In Boston, the teachers’ union and school district have worked together to launch several successful small schools. Chicago’s Board of Education has contracted with the nonprofit Small Schools Workshop to decentralize its large schools. In Oakland, the Board of Education will soon adopt a policy creating ten small schools and plans to create more in the future.

Governance

Small schools may revive the role of parents and neighbors in the governance of their school. Over the years, large, centralized school systems have steadily eroded this role. The number of citizens serving on school boards dropped from 1 million in 1930 to fewer than 200,000 today (while U.S. population doubled). In many of the new generation of small schools, parents and community members are actively involved in running the school.

Mark Gordan, of the Bay Area Coalition for Essential Schools, points out that although the movement for downsizing and decentralization has come from education professionals in many cases, elsewhere it has risen from the ground up. In

Oakland, parents tired of sending their children to distant, impersonal, failing schools demanded that the school board offer small, autonomous, close-to-home alternatives. They feel that with control over the school, they can create a learning environment where their children will succeed.

Research has suggested that the greater the degree of local control, the more likely community members are to vote in school board elections and to authorize additional spending for education. This participation has a spillover effect: those who vote on school issues tend to exercise their vote on other matters and to take a more active role in democracy.

Rural Schools

While small schools are undergoing a rebirth in urban neighborhoods, many of rural America’s remaining small schools are struggling against the forces of consolidation.

In small towns, more is at stake than educational quality. When the local school closes, the town loses a major industry with a significant annual budget and payroll. A Nevada study found that retail sales decline by 8 percent when the local high school closes. Often the school is a critical component of the town’s collective identity. Nowhere is this more evident than affiliation with the school’s sports teams. Schools are important community institutions; they provide a common connection and a gathering place for events and services, including political forums, community theater and health care clinics.

For children in rural areas, consolidation often means going to school miles from home, spending as much as three hours a day on the bus and missing after-school activities as a result. The nation’s 400,000 schoolbuses travel 21 million miles every day.

Until recently, the size, structure and location of public schools was exclusively the domain of local governments. Although public education is a state responsibility, local governments were given substantial control over their schools. School revenue was primarily derived from local taxes, particularly

Resources

Coalition of Essential Schools
1814 Franklin St
Suite 700
Oakland, CA 94612;
telephone:
510-433-1451;
website:
www.
essentialschools.org

Cross City Campaign for Urban School Reform
407 South Dearborn
Suite 1500
Chicago, IL 60605;
telephone:
312-322-4880;
website:
www.crosscity.org

Rural School and Community Trust
808 17th St NW
Suite 220
Washington, DC 20006;
telephone:
202-955-7177;
website:
www.ruraledu.org

.....
“When we talk with school officials and local politicians about restructuring large high schools,” says Deborah Meier, “the first thing they worry about is what will happen to the basketball or baseball teams, the after-school program, and other sideshows; that the heart of the school, its capacity to educate, is missing, seems almost beside the point.”
.....



Students at small schools exhibit higher rates of participation in extracurricular activities and individuals participate in a wider variety of activities.

property taxes. Those districts that chose consolidation did so (and still do today) for many reasons, including declining populations, lack of resources and the feeling that large schools provide a better education.

Today, the size and structure of public schools is as much a function of state policy as it is of local policy. Over the last 30 years, states have exercised increasing control over education. Many states, for example, have adopted statewide standards for student achievement. States are now the single largest source of education revenue.

For many small rural districts, state financing has been a lifesaver, providing desperately needed resources. But state control of the purse strings has also been problematic for small schools. In many states, funding formulas have given priority to maximizing efficiency (as measured by annual per pupil costs). These states have devised policies that favor big suburban districts and pressure rural schools to consolidate. Meanwhile, a few states have recognized the effectiveness of small-scale, local education. Two states—Nebraska and Vermont—illustrate each approach.

Nebraska

Nebraska is home to many small schools. In fact, the state has the largest number of school districts per capita in the nation. During the 1950s and 1960s,

Nebraska resisted the trend towards consolidation. After a 1968 report concluded that the Midwest's schools were too numerous to be effective, Nebraska's neighbors—Iowa, South Dakota, and Missouri—embarked on a major reorganization. But Nebraska residents chose instead to oust the state education commissioner, who had endorsed the report.

Today, however, Nebraska's small schools are struggling to survive. Beginning in 1996, the state adopted a series of policies aimed at forcing small schools to consolidate. The state increased its share of school funding from about one-quarter to one-half. But unlike the old funding formula, which had doled out funds based on each school district's costs, the new formula provides a flat rate per pupil. This rewards the state's largest school districts, which have low per pupil, per year costs, and penalizes the state's smallest school districts.

Ninety small rural districts have lost more than 10 percent of their state aid. Meanwhile, the largest school districts saw their funding increase by \$78 million.

Nebraska's small school districts now face a difficult choice. To survive, they must either slash school budgets or raise property taxes. But the schools affected by funding cuts are in some of the poorest areas in the state. The farm crisis has further aggravated the situation.

Dozens of small school districts are now considering consolidation. According to the Nebraska Alliance for Rural Education, the state is losing some of its best schools. Those who attend high schools with fewer than 100 students are significantly more likely to graduate and go on to college.

By narrowly focusing on short-term efficiencies, the state is missing the bigger picture: the cost per graduate for the 90 school systems that have lost funding is \$6,717 per year, only 7 percent more than the state's largest schools (1,000 or more). Add to this the societal impact of college educated citizens and the community impact of having a local school and Nebraska's small schools easily provide the best value.

Vermont

Like Nebraska, Vermont has many small schools. The average school in the state has only 310 students. But with regard to its smallest schools, Vermont has taken a very different approach than has Nebraska.

In 1997, following a court ruling that concluded that the state's method of financing education was inequitable and unconstitutional, Vermont adopted Act 60. The law replaced local school taxes with a →

Resources

Small Schools

Coalition

21 South Clark St

Suite 3120

Chicago, IL 60603;

telephone:

312-853-3696;

website:

www.smallschools.org

Small Schools

Workshop

115 S. Sangamon St

Chicago, IL 60607;

telephone:

312-413-0866;

website:

www.smallschools

workshop.org

statewide property tax, ensuring that every citizen pays the same tax rate (\$1.10 per \$100 of value) and that each district, rich and poor, receives a basic per pupil grant for education.

On top of this, lawmakers provided additional funds to cover the higher costs of the state's smallest schools. Act 60 allocated \$1 million annually to those school districts with fewer than 100 students. Initially, this was meant to be a temporary arrangement. Many legislators favored consolidating

small schools. Act 60 contained a section (known as the "base closing" section by small school supporters) that directed the Education Department to determine which schools, if any, should continue to receive the extra funding. The department was to recommend "alternative physical arrangements for those small schools."

But early in 1998, the department's report came to a surprising conclusion. "Small schools in Vermont cost more to operate than larger schools but they are worth the investment because of the value they add to student learning and community cohesion." Academically, small school students do as well or better than large school students, despite living in communities with higher rates of poverty and lower education levels.

Rather than suggesting "alternative physical arrangements," the department urged the legislature to increase the small schools grant and expand the number of districts that qualified. The state responded by increasing the grant to \$4 million and extending it to districts with fewer than 20 students per grade level. This year, one-third of all school districts qualify. The additional funds provide an average of 5 percent of their revenue.



Although smaller schools had higher per pupil costs, "their much higher graduation rates and lower dropout rates produce among the lowest cost per graduate in the entire New York City system." — *NYU researchers*

theless, the urban movement for small schools has gathered significant momentum in the last decade.

The future of rural small schools is less certain. In many states, the push to consolidate continues. In South Dakota, the state legislature is considering abolishing the state's small school funding adjustment, which provides 20 percent more aid for schools with fewer than 200 students.

In West Virginia, a group of parents in the town of Circleville sued the state School Building Authority (SBA), which controls funding for school construction and repair. The SBA allocates funds only to those schools that meet minimum enrollment requirements (1,050 for schools with grades 7-12). Since the SBA's creation in 1990, one-quarter of the state's schools have closed. Circleville's school was one of these. The town's children spend up to two and half hours on the bus each day. Parents contend that this amounts to an unequal education. The state Supreme Court ruled against them, concluding that they did not provide enough evidence of the harm caused by lengthy bus rides.

But the parents may get the last word. Their cause has ignited a statewide grassroots movement, which is backing a bill to limit the time kids can spend on a bus each day. [!]

Future

The effort to create small urban schools still faces a long road and many challenges. "When we talk with school officials and local politicians about restructuring large high schools," says Deborah Meier, "the first thing they worry about is what will happen to the basketball or baseball teams, the after-school program, and other sideshows; that the heart of the school, its capacity to educate, is missing, seems almost beside the point." Never-

Think Locally, Tax Globally

In the U.S., local businesses are at a 5-7 percent price disadvantage because web retailers are exempt from collecting state and local sales taxes. Some look to the European Union for a more equitable model: there remote sellers are taxed using a system that looks at economic influence rather than physical presence.

By Simona Fuma Shapiro

Web retailers in the U.S. are largely exempt from collecting state and local sales taxes. In allowing this exemption, Congress agrees to give out-of-state businesses a 5 to 7 percent price advantage over local stores. Proponents of the exemption argue internet-based suppliers would stagger under the administrative burden of collecting thousands of different state and local sales taxes; opponents of the exemption argue that the electronic commerce companies don't need help siphoning business away from already-struggling downtowns.

Unlike the United States, the European Union never considered making the internet a tax-free zone. The difference in approaches can be traced to the treatment of mail-order goods. Mail-order goods present a problem for taxation authorities because a taxing jurisdiction must either collect taxes from a supplier outside its borders (hard to administer) or tax the consumer within its borders as soon as she receives the product (hard to enforce). European countries figured out a way to tax these items. The U.S. exempted them.

For Europe, then, a system was already in place to handle the taxation of physical goods purchased on the internet. To exempt goods sold on the internet, in the European view, would be to violate the principle of neutrality.

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E.U. and U.S. Views Differ

In 1998, E.U. tax authorities voiced their concerns that, "aside from revenue considerations, it would be essential to be able to apply VAT (value-added tax) to trade over the networks in order to avoid distortion of competition with conventionally traded products." In October of that year, an international conference on the subject of e-commerce was held in Ottawa, Canada. Participants included ministers and high-level officials from all 29 OECD (Organization for Economic Cooperation and Development) member countries, as well as participants from 12 non-member countries, representatives of international business organizations and various trade

unions, consumer groups and other non-governmental organizations. The OECD issued a report on "framework conditions" for the taxation of e-commerce. The first principle cited is that of neutrality:

Taxation should seek to be neutral and equitable between forms of electronic commerce and between conventional and electronic forms of commerce. Business decisions should be motivated by

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economic rather than tax considerations. Taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.

This approach is in stark contrast to the Clinton administration's December 1997 policy paper, "A Framework for Global Electronic Commerce," which argued that the internet be tariff-free.

Point of Collection

All E.U. purchases are subject to a value-added tax, or VAT, which is similar to U.S. states' sales taxes on retail goods. Each of the 15 E.U. member states has its own VAT rate, ranging from 15-25 percent of the price of the good sold. (In many member states, reduced or even zero rates are applied to "essential" products—such as food, fuel and children's clothes—and to products of cultural or educational significance, such as books and newspapers.) One difference between VAT and state sales taxes, however, is that VAT is collected at the final destination where consumption occurs (usually the vendor in the consumer's own country), while U.S. states' sales taxes are charged where the product is purchased. Thus, a visitor to a European country can be refunded the VAT he paid on a product purchased in that country if he carries that product with him across the border. In addition, products entering international trade do so free of VAT. However, a foreign tourist visiting Minnesota is not refunded the sales tax on her purchases once she leaves the state.

VAT collection becomes logistically more difficult when an individual makes mail-order purchases across European borders. Which country has the right to collect tax on the transaction? Is this practical? If not, can one country collect the tax and remit it to the other? How can this be accomplished? According to European rules, if I live in E.U. member state A and buy a product from E.U. member state B, it is state A that has the right to charge VAT on my purchase, since VAT is collected at the point of consumption. But because the vendor is the best place for the tax authorities to intercept my purchase, the E.U. nations early on developed a framework whereby the vendor in state B must collect VAT and remit it to state A.

Physical Presence vs. Economic Influence

Both the U.S. and Europe use a similar test to decide whether a tax can be imposed on remote suppliers. In the United States "nexus" occurs when the seller has a physical presence in the state (e.g. a store or warehouse or agents).

In Europe, what corresponds to nexus occurs when a seller has a sufficiently large economic presence that it can affect local enterprises. According to Arthur Kerrigan, head of the Section of International Services-Taxation at the European Commission, "if a merchant is transacting a material level of business in a particular jurisdiction, they should do so on the same terms and conditions as a local merchant." The threshold for registration for distance sales is set out in European Commission (EC) legislation and is generally 100,000 Euro a year (about \$90,000 USD), with some exceptions.

Taxing Distant Purchases

On a practical level, VAT collection in E.U. countries on distance (i.e., mail-order or internet) sales is carried out as follows:

Situation 1: A supplier in E.U. member nation A sells a product to a business customer in E.U. member nation B. The supplier checks the validity of the VAT registration number the customer gave him against a central database, which is maintained by the national tax authorities of nation B. The supplier quotes the customer's VAT registration number on the invoice and dispatches the goods (without charging VAT). Businesses are charged VAT on their purchases, but this is a provisionary tax, which is reimbursed once they sell the product.

Situation 2: A supplier in nation A sells a product to a private individual or organization in nation B that does not have a VAT registration number. If the value of the supplier's sales in country B exceeds a certain pre-determined limit (usually 100,000 Euro a year) that supplier must register with the VAT authorities in state B, charge local VAT and file returns there.

Situation 3: A customer living in an E.U. nation buys goods from outside the E.U. These goods are considered imports, and are subject to customs duty and VAT upon being imported. However, there is a key exception. Goods worth under UK18Pd (about \$27 USD) such as CDs or books, are not subject to either VAT or customs duty. Small items are apparently considered not worth the customs paperwork.

Situation 4: A U.S. customer buys a product over the internet from a European vendor. No VAT is paid. However, if she visits the E.U., she pays VAT on an item purchased there, but then is reimbursed upon leaving European territory.

Situation 5: A customer in European country A purchases downloadable music or software over the internet. The European Union treats these transac-

Resources

The website of the European Commission contains information on VATs and other European Union tax policies.
http://europa.eu.int/comm/dgs/taxation_customs/index_en.htm

National Governors' Association maintains a webpage that lays out the case for taxing e-commerce in the U.S.
www.nga.org/internet/equality.asp

E-commerce Tax News is a website that presents global tax issues from a U.S. perspective.
www.ecommercetax.com

Contact Simona Shapiro for information on E.U. internet taxation experts.

tions as services for tax purposes. Under VAT rules, services (unlike goods) are taxed at the place where they are provided. Thus, the European operator is often obliged to charge tax on all such sales, no matter where the customer is located. On the other hand, a non-E.U. supplier can sell to European customers free of tax, since at present it is logistically impossible for the tax authorities to monitor such transactions.

The EC is currently working on ways to change this. One suggestion by staff at the German finance ministry has been that banks and credit card organizations retain the tax and transfer it to the tax authorities. This is similar to the trusted third party proposal suggested by the National Governors Association in the U.S. (See "Local Retailers Hit the Web," *The New Rules*, Winter 2000). This has met with stiff opposition in the European financial sector, however, where it is argued that the huge administrative costs would be involved in distinguishing between conventional payments and purchases subject to VAT, and correctly applying the right rates of tax.

Another possibility is to extend the notion of an origin-based (as opposed to a destination-based) tax on services to countries outside the E.U., and require any foreign vendor (outside the E.U.) with a certain threshold of business in the E.U. to register and remit taxes to Europe. This is similar to what already occurs between E.U. countries. Such a system would be easier to implement, but not problem-free (because, for example, of the difficulty in monitoring sales bought with unaccounted money.)

Saving Retail in the Digital Age

One complaint of those who oppose e-commerce taxation in the United States is that with so many taxing jurisdictions (approximately 7600, each of which has the right to impose its own sales tax rate), collecting and remitting taxes to the appropriate authority would be impracticable. The European system, while encompassing far fewer taxing

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In Europe, a tax can be imposed on a remote supplier when it has a sufficiently large economic presence that it can affect local enterprises. According to Arthur Kerrigan, head of the Section of International Services-Taxation at the European Commission, "if a merchant is transacting a material level of business in a particular jurisdiction, they should do so on the same terms and conditions as a local merchant."
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entities, offers a model of how interstate taxation can be achieved when there is a political will to do so. Indeed, a larger number of taxing jurisdictions makes it that much less likely for a truly small-time operation to achieve nexus in any one of them. Internet vendors of jam and maple syrup will not likely have to register in many jurisdictions. It is the internet giants like Amazon.com and eBay that would have to remit taxes in those areas where their business was sufficient to establish "nexus."

While we have been busy undermining our traditional retail sector, the Europeans have been devising ways to treat theirs fairly. We should learn from them in developing tax policies for the digital age. [!]

Notes

1. In 1967 the U.S. Supreme Court (*National Bellas Hess Inc. v. Department of Revenue of Illinois*) concluded that states cannot compel out-of-state mail order firms to collect sales taxes. The court said that state taxation on remote business is justified only where the tax is necessary to make the business bear its fair share of the cost of the government whose protection it enjoys. Thus, it conditioned nexus upon finding that the retailer had a physical presence in the state. In 1998 Congress extended the exemption for mail-order merchants to e-commerce. The 1998 Internet Tax Freedom Act imposed a three-year moratorium on any new taxes on electronic transactions and created a commission to study this issue.

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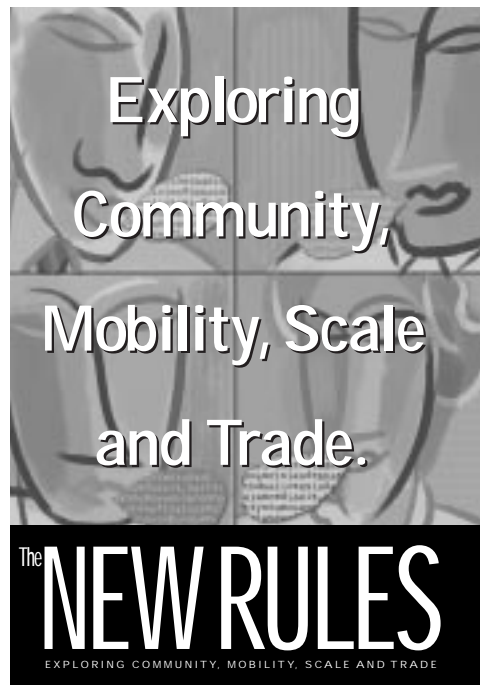
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