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***471 WHY THE GLOBAL ENVIRONMENT NEEDS LOCAL GOVERNMENT: LESSONS FROM THE JOHANNESBURG SUMMIT**

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HAS ANYONE ELSE NOTICED how hard it is to "think globally" and "act locally"? Players on the international stage are good at global thinking, but weak on local action. Consider the history of the United Nations and local government. For years, when municipalities participated in UN conferences on topics like poverty or the environment, the UN would classify them as "nongovernmental organizations" and give them less access than national governments. [\[FN1\]](#) Being a local government at a UN conference was like sitting at the kids' table during a wedding banquet. The grown-ups chinked glasses and talked about challenges for the future, while you slouched in your seat, kept your hands to yourself, and prayed the waiter would bring something you liked.

Players on the local stage have their own foibles. Consumed with road work, sanitation, police protection, and myriad other services, it is little wonder that city councils emphasize the local consequences of local action, with little concern for regional or international effects. Few voters would want it any other way. We will always have the visionary cities, the park-like Santa Monicas, [\[FN2\]](#) where Democrats and Greens compete for the hearts and minds of an affluent electorate. But most of the world lives somewhere else. The electricity and buses must run before ***472** local politicians can concern themselves with deforestation or the ozone layer.

Yet slowly the importance of local action in sustainable development is gaining attention. Ten years ago at the Rio Earth Summit, the international community, with the support of municipal governments, adopted a global environmental agenda, "Agenda 21," which first acknowledged the potential for local action. [\[FN3\]](#) Last summer, at the World Summit for Sustainable Development in Johannesburg, South Africa, the resulting "Plan of Implementation" emphasized the role of local government throughout the summit. The document spoke of "[s]trengthening capacities for sustainable development at all levels, including the local level, in particular those of developing countries." [\[FN4\]](#) In Johannesburg, for the first time at a UN summit, delegates of local government were provided designated seating at the official plenary sessions. And local governments were promoted from "nongovernmental organization" to "major group."

Similarly, many municipal governments now lead the call for global sustainability. Acting out of their own self-interest, local governments have begun to see that thinking and acting locally not only improve local conditions, but also contribute substantially to national and international environmental goals. Many commentators rightly lament the spotty progress made since the first Earth Summit ten years ago. In Johannesburg, however, a delegation of 700 representatives and supporters of local government (a delegation larger than any single national delegation) appeared at the Johannesburg Summit to report on a decade's worth of local initiatives to eradicate poverty, fight racism, address climate change, preserve biodiversity, and collect the garbage. [\[FN5\]](#) According to Zéphirin Diabré, associate administrator of the U.N. Development Programme, the initiatives of local government that followed the Rio Summit make up "perhaps the single most important" effort toward sustainable development. [\[FN6\]](#) This assessment finds support ***473** in a 2001 survey showing that since Rio, 6,416 local authorities in 113 countries have become involved in so-called "Local Agenda 21" activities, that is, local initiatives designed to implement the Rio Summit's Agenda 21. [\[FN7\]](#) The number of local authorities involved in such activities has more than tripled in the

last five years. [\[FN8\]](#)

This essay examines how the efforts of local government can best be marshaled to achieve sustainable development on the local and the international levels. What is "sustainable development"? At the international level, "development" is commonly understood to mean progress toward peace and security, economic development, self-governance, and human rights. [\[FN9\]](#) Development is "sustainable" when, in the words of the World Commission on Environment and Development, the development "meets the needs of the present without compromising the ability of future generations to meet their own needs." [\[FN10\]](#) Reflecting this view, the new Johannesburg Declaration refers to "the interdependent and mutually reinforcing pillars of sustainable development--economic development, social development and environmental protection." [\[FN11\]](#)

Local authorities boast many advantages in addressing the three pillars of economic development, social development, and environmental protection, but they are burdened by important weaknesses related to their small scale. Only through cooperative endeavors among all levels of government can the promise of local action be fulfilled. If local authority is to be our link to global sustainability, and I believe it is the linchpin, then it will be in circumstances in which thinking and acting locally are set up to yield global pay-offs.

Part I of this essay examines the impressive advantages that local government has in pursuing sustainable development. These include their proximity to ecological effects, their potential for democratic participation, their ability to integrate priorities, and their ability to shield against distributional inequalities. Part II points to the weak spots in local control and argues that local authority, left substantially on its own, cannot achieve sustainability to any significant degree. Specifically *474 local authorities are vulnerable to paralyzing trans-border disputes, fragmentation of resources, and "race to the bottom" inefficiencies. Part III provides two examples of local sustainable initiatives, one from a developed country and one from a developing country, to show how cooperation among levels of government can take advantage of the benefits of small-scale governance while avoiding the most serious weaknesses. Part IV concludes with a set of general recommendations that the national and international actors could take to prepare local initiatives for success.

I. The Hometown Advantage

Because local governments are relatively small, they offer important advantages for sustainable development. Among the most important advantages, local government resides closest to ecological effects, it holds the greatest potential for democracy, it is capable of flexible and innovative implementation, and it has the potential to protect local constituents from distributional imbalances on the regional scale. I will take each in turn.

A. Facing Benefits and Harms

First, local government unquestionably has the greatest direct effect on the well being of the people. From Stockholm to São Paulo, it is local authority that, for the most part, provides the water, sanitation, transportation, education, food, health care, crime prevention, and countless other necessities that people depend on. [\[FN12\]](#) Thanks to the lobbying efforts of local authorities, the Johannesburg Plan of Implementation refers to the role of local government several times. As one example, the Plan calls for nations to "[s]upport local authorities in elaborating slum upgrading programmes within the framework of urban development plans" [\[FN13\]](#) But even where levels of government are undefined, the Plan's very mention of certain initiatives implies local cooperation. Take, for example, the Plan's injunction to make available within developing countries "safe low-cost technologies that provide or conserve fuel for cooking and water heating," [\[FN14\]](#) or its call to strengthen research and services in developing countries to "trigger farmer-to-farmer exchange on good practices, such as those related to environmentally sound, low-cost technologies." [\[FN15\]](#) Such "in the field" programs could not *475 be efficiently implemented at the national or even regional level in any but the smallest countries.

The influence of local authority is particularly great in urban areas, now home to nearly half the world's population. [\[FN16\]](#) In thirty years, an estimated 70 percent of the world's population will live in cities, most of them in developing countries. [\[FN17\]](#) The flip side of this observation is that cities, the main providers of human services, are often the main contributors to environmental damage. Cities, for instance, emit nearly 80 percent of all carbon

dioxide [\[FN18\]](#) and are responsible for 75 percent of industrial wood use. [\[FN19\]](#) High densities of commerce and population, however efficient, inevitably translate into high densities of solid and liquid waste. There is a reason that the largest human-made structure on earth is a landfill that for generations served the City of New York. [\[FN20\]](#) Sustainability initiatives need cooperation at the local level. For the most part, that is where the pollution is, and the people it most directly affects.

B. Enriching Democratic Participation and Social Equity

Local governments have the greatest potential for democratic participation and social equity--necessary elements for "social development." In addition to sound economic and environmental policy, the Johannesburg Plan explicitly calls for "democratic institutions responsive to the needs of the people." [\[FN21\]](#) Agenda 21 similarly called for the commitment and genuine involvement of all social groups. [\[FN22\]](#) Local governments hold special promise for self-rule because, to state the obvious, local authorities are closest to the people. In democracies, elected officials tend to be more responsive to voter demands because it is easier for members of the public to monitor politicians and it is easier for new politicians to challenge unpopular incumbents. Further, smaller political units allow for more deliberation and consensus building among ⁴⁷⁶ members. For instance, of the 6,416 local authorities engaged in Local Agenda 21 initiatives, 73 percent of them have incorporated community stakeholder groups. [\[FN23\]](#) These more deliberative, or "civic," styles of policy making can help realize the local common good. [\[FN24\]](#)

Politics on a small scale also enables less affluent grassroots organizations to promote their interests through marches, speeches, and creative forms of activism that would not work on a national or regional scale. For this reason, some American environmental justice organizations have proved remarkably effective in fighting local environmental battles on behalf of the poor or people of color. [\[FN25\]](#) Indeed, some environmental justice advocates have warned against emphasizing national solutions to environmental discrimination, out of the belief that national forums like the Congress or the federal courts favor the business elite over the common citizen. [\[FN26\]](#)

When power is exercised at local levels, hybrids between local government and local activism are more easily possible. In the United States, community-based environmental decision-making is pushing what some have called a "fundamental reorientation" in regulatory law. [\[FN27\]](#) One common model involves an ad hoc partnership between governmental actors and private stakeholders. In such a collaboration, local governments and state agencies might join with private landowners and environmentalists to address concerns about a shared watershed. Such groups have successfully developed management plans for common-pool resources throughout the country. [\[FN28\]](#) A second model institutionalizes community collaboration in permanent community advisory groups. These local, site-based groups bring public and private interests together to consider pollution-control or land-management decisions made pursuant to statutory or regulatory law. [\[FN29\]](#)

The local advantages for political participation are particularly important⁴⁷⁷ in developing countries where, owing to bureaucracy, disparities in education, and poor infrastructure, many national governments are all but impenetrable to the average citizen. And here I am talking about democracies. Nondemocratic, authoritarian countries offer even less access. But what little opportunity for self-determination that does exist for citizens in, for instance, China or Indonesia almost always resides at the local level, whether institutionalized by the government or tolerated in the guise of extra- legal "customary law."

There is reason to believe that social equity is in some cases more easily available at the local level. Social equity challenges us to provide equal opportunity to citizens regardless of sex, race, or religion. It also demands that we shrink the widening gap between rich and poor. The Johannesburg Declaration highlights social equity concerns by calling specifically for "gender equality" [\[FN30\]](#) and acknowledging "the vital role of the indigenous people in sustainable development." [\[FN31\]](#) In addition, the Johannesburg Plan of Implementation seeks outcomes that respect "cultural diversity" [\[FN32\]](#) and "benefit all, particularly women, youth, children and vulnerable groups." [\[FN33\]](#)

Anti-discrimination laws at the national level are unquestionably needed to fulfill the promise of social equity. But wider-scale participation of women, ethnic minorities, and other vulnerable peoples in political life will first take place at the community level. In India, where the majority of national public officials are men, some of the most well-known grassroots preservation groups are run by women. [\[FN34\]](#) In the United States, where men head the

national Sierra Club and the Environmental Defense Fund, local environmental justice campaigns have been spearheaded by Mothers of East Los Angeles and Mothers' Air Watch of Texarkana, Arkansas. [FN35] Indeed, women appear to dominate grassroots environmental campaigns in general. [FN36]

Local participation allows disenfranchised groups to seize power themselves rather than waiting for national officials to ride to the rescue. *478 For instance, in some townships on the outskirts of Cape Town, South Africa, the government supports grassroots efforts to organize recycling centers and operate urban "eco-tours" of their neighborhoods. [FN37] These centers, run by residents of the townships, operate as lively community meeting halls where neighbors gather to socialize, learn about health issues, take English classes, make handicrafts from discarded material for commercial sale, and, yes, collect and bail material for municipal recycling. [FN38] Such groups can define their own interests and strategies for achieving them. Local participation also leads to the development of social networks and community status, elements that will enable local groups to maintain influence in the future. The aim here is not just social equity, but sustainable social equity.

C. Integrating and Implementing

Achieving sustainable development requires integrated thinking. [FN39] For instance, a government cannot attack rural poverty without considering how energy can be made affordable to the targeted area; and a government cannot responsibly provide power to an area without pondering the methods of power generation and the patterns of consumption. To influence the activities of power generators and consumers, a government may have to consider economic incentives, that is, subsidies or taxes. This exercise could continue for many more steps.

The Johannesburg Plan enthusiastically acknowledges the need for an "integrated approach to policymaking at the national, regional, and local levels." [FN40] Indeed, in this fifty-four-page document, some variation of the word integrate appears forty-five times. Integrated thinking is recommended for poverty reduction, [FN41] land management, [FN42] water management, [FN43] disaster relief, [FN44] and so on. The idea is that for virtually any important initiative, government leaders should be thinking about its implications for a host of crosscutting issues important to the overall goal of sustainable development.

While integrated thinking is needed at all levels, there is reason to believe that some of the most successful models will surface first at the *479 local level. This is because in a small system, it is easier to watch all of the moving parts at the same time. Because in a bureaucracy, many of the "moving parts" tend to be people, a small scale allows for workers in different departments to interact, share information, and form personal bonds. At the local level, issues of hierarchy or control of turf are often easier to identify early and resolve. [FN45] Of the world's 6,416 Local Agenda 21 initiatives, 59 percent have decided to integrate the sustainable development process into the existing political systems, while only 41 percent have chosen to operate a sustainability system parallel to the existing one. [FN46]

Integrated systems also depend on actors who can be encouraged to care about people or things that are not in their immediate field of view. This, too, is easier at the local level. Human experience tells us that it is harder to care about issues as they recede farther away in space or time. The phenomenon may be rooted in our evolutionary past, as a preference for kin, or a disproportionate emphasis on the sense of sight. [FN47] Whatever the explanation, the potential for improved sensitivity and even empathy is greater at the community level, where decision-makers are more likely to know or at least see the people and places their actions affect. Once local contact makes outside issues more familiar and memorable, the potential for extending that degree of caring to larger regions, across longer distances is enhanced.

For similar reasons, implementation is often easier at the local level. Smaller governments, like smaller businesses, tend to have less bureaucracy and more flexibility in choosing processes or changing directions. Innovations in the ecological sciences now counsel toward resource-management techniques that are dynamic, flexible, and reactive to changes in natural systems or to improvements in scientific knowledge. [FN48] The enhancements in public participation, discussed previously, also ensure that community members will see themselves as having a stake in the process and outcomes, which in turn will enhance implementation. Local planning and implementation can also take into account the particular needs of the local economy, local customs, or *480 local geography. In Mumbai, India, for instance, sustainability efforts began with a project people would immediately relate to: garbage

collection. [FN49] In the sprawling slums of Mumbai, mounting garbage contributed to high rates of infection and other illnesses. The city distributed nearly 7,000 garbage bins in the area and instructed residents as to their location and use. [FN50] Local workers were employed in pairs to sweep the narrow streets each day. [FN51] In addition, the city embarked upon a tree planting campaign, but could not convince local residents to participate until someone came upon the innovative idea by which people would be encouraged to plant a tree, not in the name of the abstract environment, but in dedication to a newborn in the family. [FN52] The idea took off and a new tradition has been formed. [FN53] Such creativity and leadership blossoms mainly at the local level. Thus, Agenda 21 of the 1992 Rio Conference urges the global community to "[d]elegat[e] planning and management responsibilities to the lowest level of public authority consistent with effective action." [FN54]

D. Meeting the Challenges of Globalization

In theory, globalization has much to offer advocates of sustainable development. Interconnected national economies promote greater geopolitical stability. Open trade promotes the efficient use of natural resources and the sharing of information and technology. The engine of economic growth furthers positive development and helps fight global poverty. But real-world obstacles can derail this train. One obstacle is that liberalized markets enrich different sectors of the population at different rates. According to James Gustave Speth, dean of the Yale School of Forestry and Environmental Studies:

[Seventy-five percent] of direct foreign investment in the developing world goes to fewer than a dozen countries, all middle-income countries, except for China. Just 6% goes to Africa, and 2% to the 47 least developed countries There is no correlation between need and direct foreign investment. [FN55]

The Johannesburg Plan recognizes this inequality, noting that "the benefits and costs of globalization are unevenly distributed, with developing countries facing special difficulties in meeting this challenge." *481 [FN56] The Plan later recognizes a "strong need for policies and measures" to make liberalized global trade more "inclusive and equitable." [FN57] This is good news, but the same economic dynamics that allow poverty pockets among countries also allow poverty pockets within countries. [FN58] The impoverished farming villages of central China, for instance, present a dark contrast to Shanghai's "Just Do It" culture of cell phones, lattés, and high-rise living. And no one visiting the upscale Summit venue in Johannesburg could avoid seeing that South Africa is very much "a small rich country in a large poor country." [FN59] Sometimes, as in the case of both China and South Africa, investment disparities within countries stem directly from economic choices made at the national level. [FN60]

The best protection against internal disparities is a strong local government that can alert its national government to such imbalances and lobby for the resources to correct them. To abate disparities within developing countries (and, perhaps, even in developed countries), one must focus on the local level. Solutions might include technological assistance, business consulting, or educational programs designed for and implemented in specific geographic areas of a country. Impoverished local governments could be allowed limited use of trade restrictions or preferences within their national economies while they adjust to the new economy. [FN61] Either of these ideas would, of course, depend on the complicity of the national government to varying degrees. To help nations respond to the challenges of globalization the Johannesburg Plan speaks only of policies "at the national and international levels." [FN62] In the same paragraph, however, the Plan calls for "urgent action at all levels." [FN63] This may be enough to carve out a role for local implementation.

II. Hometown Disadvantages

At first blush, a local agenda for protecting the global commons is counterintuitive. The traditional theory of commons management looks *482 skeptically upon individual users of a shared resource. Recall Garrett Hardin's imaginary pasture where individual ranchers graze the grasslands into dust rather than unilaterally limit their cattle's consumption. [FN64] The story teaches that where multiple actors benefit from consuming a highly valued, shared resource, they will over use the resource in an effort to internalize all the benefits of consumption while externalizing nearly all of the harms. [FN65]

Examples of so-called "tragedies of the commons" include massive deforestation in the tropics, the collapse of fisheries on the high seas, and the over abundance of greenhouse gases in the atmosphere. Although local

governments are collective bodies, when they compete with other users for regional or global assets they become Hardin's Hobbesian ranchers. It is, thus, local action that puts the planet at risk. Three of the strongest objections to local authority all relate to the commons metaphor. I will call them the problems of transboundary pollution, political fragmentation, and the "race to the bottom." Each problem poses a serious barrier to sustainable development, which must be resolved for local action to work.

A. Transboundary Pollution

Ecology teaches that it is hard to consume resources in ways that do not affect someone else's access to resources. In various ways, we, and the communities we live in, are all in a commons together. In early twentieth-century America, for instance, Missouri complained that Chicago's disposal of raw sewage into the Mississippi River (by way of the Chicago River) resulted in elevated levels of typhoid in St. Louis. [\[FN66\]](#) Today, coal-burning emissions in the Ohio Valley cause acid rain problems in the Catskills of New York.

One cannot rely on polluting localities such as these to stem their emissions out of self-interest because the long-range dispersal of local contaminants is actually helpful to local constituents. In many cases, one cannot even rely on the polluting localities to come together to resolve their differences by mutually agreeing to be better stewards: the polluting upstream parties have little to gain from well-behaved downstream parties. Regulation at a higher level of government is needed. Thus, in the United States and in other countries, laws controlling air and water pollution have evolved into large regulatory schemes designed at the national level. For similar reasons, the European *483 Union has proposed directives on air, water, and waste disposal at the supranational level.

The lesson here is that local authorities cannot protect transboundary resources on their own, and even if they could unilaterally act to improve a shared resource, there is little incentive for them to do so unless they can internalize enough benefits to make it worthwhile. This observation suggests two corollaries. First, regulation at higher levels of government is frequently needed to encourage or require local governments within a commons to adhere to responsible behavior that protects the resource and benefits all users. [\[FN67\]](#) Second, governments at all levels need to think of ways to make unilateral stewardship on the part of local entities worthwhile in cases in which national regulation does not require sustainable conduct. In the United States, for instance, more than 140 cities and counties participate in plans aimed at reducing emissions of carbon dioxide and other greenhouse gases even though federal law does not directly regulate carbon dioxide. [\[FN68\]](#) This is because climate-change programs, promise not only global benefits (not easily internalized by the participating city), but local benefits as well, including reductions in traffic and smog, financial savings from more efficient energy use, and an increase in local jobs and investment in the renewable energy sector. [\[FN69\]](#)

B. Political Fragmentation

Let us assume that a local government has decided to act unilaterally to reap a "worthwhile" environmental benefit. Despite the hometown advantages discussed earlier, it may still be hampered by a lack of resources in the areas of political power and funding. That is because resources of government authority and tax bases are divided or shared across many levels and sectors of government. If we think of political power and financial resources as a commons, we can say that the problem we have is a reversal of the tragedy of the commons: rather than individual actors having too much access to a shared resource, individual actors here have too little access to the shared resources of government. [\[FN70\]](#)

*484 Some problems involving political authority reflect issues of geographic boundaries. Neither suburban nor urban governments acting alone can tackle regional issues such as traffic congestion from the suburbs to the city. Other authority problems reflect issues of hierarchical boundaries. In the United States, authority over traditional zoning regulation was commonly delegated by the states to its municipalities; authority over environmental regulation was not. [\[FN71\]](#) Thus only cities with so-called "home rule" powers or broadly delegated responsibilities could unilaterally form management plans or other initiatives to protect river corridors, fragile vegetation, or wetlands. [\[FN72\]](#) Still, for less developed countries, the problem of stunted local authority can be even more daunting. According to Nabel Makarim, Indonesia's environmental minister, Indonesians cannot even access basic environmental health information from their local governments because of national restrictions on free speech.

[FN73] Finally, the lack of money poses a significant barrier to local action toward sustainability. Local governments are limited practically and often legally as to the amounts of money they can raise in taxes. Other financial resources must come from higher levels of government or from outside. In the case of outside resources, fundraising can be difficult. Poor cities in Eastern Europe, for instance, present high risks for global lenders. They have poor credit, usually no sovereign guarantees, and uncertain authority under their national constitutions. [FN74] Under its rules, the World Bank cannot loan money to local governments at all, although it is considering partnership frameworks by which it might be able to direct funds to certain municipalities. [FN75]

An unlikely example of the fragmentation problem is climate change. Most of us think of climate change as a quintessentially "global" issue. This is true in the sense that reducing the production of greenhouse gases by any meaningful amount will certainly require multilateral efforts (though, of course, many specific initiatives will be implemented at more local levels). But any responsible approach to climate change *485 must also involve adaptation strategies to protect people and ecosystems from climate shifts that are already occurring and that will continue to occur despite the world's best pollution-prevention strategies. But while the cause of climate change (greenhouse gases circulating above) is fungible and diffuse, the effects to be mitigated (droughts, storms, illness) will be particularized and local.

How is a local government to prepare itself to confront these new, particularized changes? Certainly, one hopes, not on its own. Yet in the United States, for instance, only a small portion of government research and planning is earmarked for local research and mitigation. Consider a recent review of the Bush Administration's proposed plan to research climate change. Earlier this year an expert panel appointed by the National Academy of Sciences (NAS) reviewed the draft of the U.S. Climate Change Science Program Strategic Plan and strongly criticized it. [FN76] Much of the NAS's criticism related to the proposal's dismissal of regional and local concerns. On the subject of climatic observation, for instance, the NAS charged that the Climate Change Science Program (CCSP) undervalued the need for observation and modeling of climate shifts in localized regions. [FN77] "Scaling down from global to regional and local scales, is an important research endeavor that the CCSP must address," wrote the NAS. [FN78] "Such information," it continued, "is essential for federal, regional, and local decision makers and resource managers addressing such issues as public health and economic development, water use planning, the condition of forests and fisheries, and endangered species" [FN79]

The NAS also found the CCSP plan seriously lacking in its consideration of human and economic resources that local governments will need to handle possible modifications in their regional climates. The plan's discussion of such issues was, wrote the NAS, "sufficiently weak that it raises serious questions about the CCSP's ability to meet current and future needs of decision-makers at local, state, regional, and national levels." [FN80]

Finally, the NAS criticized the CCSP for failing to integrate local*486 government into the national process, thus ignoring localism's political fragmentation issues. As such it faulted the CCSP for failing to take advantage of "new mechanisms for federal government to engage local participants in assessments." [FN81] In a separate chapter on reporting and outreach, the NAS found that on this subject "[the plan's] most glaring shortfall is the adoption of an outmoded, one-way, top-down mode of interacting with decision makers and other stakeholders." [FN82] Here the most glaring irony is that this "outmoded," "top-down" governance style was designed by an Administration that purports to be a champion of federalism and local authority. Whether the topic is climate change, wetlands preservation, or something else, local governments cannot maximize their "hometown advantages" without leave to dip into the national commons of technological, economic, and political resources.

C. Races to the Bottom

The phrase, "race to the bottom," refers to the progressive relaxation of environmental rules that sometimes occurs when local or state governments compete to attract industry. In the absence of uniform national standards, a "race to the bottom" becomes at least theoretically possible. One can imagine at least two kinds of ladders a competitive local government might be prepared to race down: the "ladder of environmental quality" and the "ladder of economic efficiency," both of which are important to sustainable development. It is probably true that in the absence of national standards, sub-national governments tend to compete for new industry by lowering their standards of environmental protection. [FN83] Some economic thinkers are not bothered by this fact, because they would consider the decline "beneficial," as long as the costs of added pollution and the benefits of added industry were

borne locally. [FN84] This is because what a local government loses in environmental health, it gains in tax revenue, employment, and so on. Because a government would only lower its standards to such a degree that the benefits of added industry were outweighed by the costs of added pollution, its actions would actually be more efficient, and the "ladder of *487 efficiency," which translates to "optimal human benefit" is what we should care about.

While this might appear sharp, "integrated thinking," the analysis has two problems, one theoretical and one practical. First, the reasoning assumes that the only purpose of environmental regulation is to internalize externalities and to make resource consumption as efficient as possible (meaning that the aggregate benefits of resource consumption are not outweighed by the aggregate costs). Left out of this justification are minimum health and safety standards for all or most citizens, concerns for distributional fairness, concerns for future generations, concern for environmental benefits that cannot be monetized, and concern for nature as an independent value.

The second problem is that even if we accept the efficiency view, at least some empirical data in the United States suggests that in the absence of national standards, states do indeed slide down the "ladder of economic efficiency." [FN85] This is because states may misjudge the costs and benefits of new industry, industrial firms wield excessive power in the marketplace, and competing states end up cheating themselves out of optimal results in ways that suggest a Prisoner's Dilemma. In short, the "race to the bottom" phenomenon is a problem. Any effort to incorporate local authority into the march toward sustainability must protect against this effect.

III. Two Examples from North and South

Despite the disadvantages discussed above, local governments have succeeded in many attempts to improve sustainability in their communities. Many of the improvements create spillover benefits for those in a wider region or serve as templates for other communities to build upon, or both. Below are two examples of municipalities that have made significant inroads toward sustainable development, Malmö, Sweden, and Midrand, South Africa. While both are about the same size, their challenges were obviously very different. Yet both found ways to cooperate with other levels of government and with nongovernmental organizations in order to promote their local strengths and shore up their local weaknesses.

A. Eco-Procurement in Malmö

Eco-procurement, also called "green purchasing," means purchasing goods and services in ecologically and economically responsible *488 ways. In the last decade, municipalities throughout the world, including several in Europe, North America, and Asia, have pursued eco-procurement in some form, with the idea that investment in sound products up front will save the public money by "avoiding unnecessary follow-up costs" (costs of replacement, maintenance, clean-up) and by preserving a healthy environment. [FN86] Advocates believe that city-based green purchasing will not only result in economic and ecological savings for the locality, but will push providers of goods and services to create better products that will eventually be marketed to everyone. [FN87] Many cities experimenting with green purchasing are affiliated with international nongovernmental programs by which they can share information and experiences.

The City of Malmö, Sweden, [FN88] provides a relatively comprehensive example of a green purchasing initiative. In 1997, this city of 250,000 [FN89] people established a procurement framework under which a centralized procurement department had authority to negotiate purchase agreements with suppliers according to eco-standards established by the city council. The department's purchasing jurisdiction is broad, ranging everywhere from new buildings to children's toys, from transportation services to eyeglasses. The over-all purchasing standards take into account several factors, including price, service, hardware capacity, logistics, and environmental sustainability. Procurement choices are evaluated on a point system, in which the department will choose the bid that promises the highest total advantage. Significantly, this municipal framework is not only allowed, but encouraged by Sweden's national law. The national government also provides an extensive manual, which is used by Malmö as well as other cities, in assigning purchasing "points" to various products.

Thus far, the city has not reached comprehensive conclusions about the effects this initiative has had at the local and global levels, although decisions have clearly reduced air emissions and waste generation. Further study is

needed to identify the most successful parts of the program and the targets for improvement.

Eco-procurement makes use of many advantages inherent in local action. The strategy recognizes, for instance, the considerable purchasing ^{*489} power of public authorities. On average, public purchasing accounts for roughly 11 percent of a nation's gross domestic product. [FN90] In the European Union, the figure hits 15 percent. [FN91] Eco-procurement also enhances the potential for democratic self-rule. Liberal economics holds that at least part of a citizenry's liberty can be measured by the range of available consumer choice. In our example, Swedish citizens, acting through their local government, are able to have more information and influence about the products they consume. To the extent that providers modify their offerings to appeal to Malmö's preferences, other citizens in other cities may be able to bargain for those new products too. The initiative also takes advantage of governance on a smaller scale. In Malmö, one department was able to integrate and manage purchasing decisions related to nearly all aspects of municipal service. Local implementation in multiple countries also leads to experimental diversity. By studying eco-procurement plans in Malmö, Tucson, and even Miskolc, Hungary, we can identify successful strategies and learn how to replicate them elsewhere.

Green purchasing, as implemented in Malmö, also seeks to avoid the pitfalls of hometown disadvantages. Taking the commons problem to heart, Malmö's initiative does not depend on "think globally" altruism. The program specifically aims for cost savings over time and promises environmental benefits to locals. Reductions in greenhouse-gas emissions are gravy. Malmö also appears to have avoided problems associated with fragmented authority and fiscal resources, but not by chance. Sweden's national government specifically allows its cities to exercise green purchasing authority. The national government also devotes considerable resources toward consumer information to its municipal purchasers. Malmö's partnership with thirty-seven other cities in an international eco-procurement network further provides the city with a network of information and lobbying power to aid its endeavors. [FN92]

Still, at least one significant legal challenge remains. Because municipal purchases affect foreign and domestic trade, municipalities must take care not to violate international trade laws as well as their own national trade laws. Suppose that, pursuant to the Johannesburg Plan, a European city attempts to promote energy derived from cleaner ^{*490} sources. [FN93] In pursuit of that goal, it restricts its purchases of electricity generated by coal-fired plants in the neighboring country. This restriction could amount to an impermissible nontariff barrier under the rules of the World Trade Organization or of the European Union (assuming the city resides in a member state). [FN94] If we imagine the city is in the United States and is limiting energy imports from a sister state, it is conceivable that this conduct would run afoul of the federal Constitution's Commerce Clause. [FN95]

The wisdom of liberalized trade rules lies beyond the scope of this article. Similarly, I will avoid for now the strategies a city might try to insulate itself from free-trade challenges. But local governments must be on notice that their considerable purchasing power, when focused, can have profound effects on global markets as well as the global environment. With that power come responsibilities toward the global community that must be defined and evaluated before action takes place.

B. Bottom-up Collaboration in Midrand

A second instructive example comes from a municipality that could not be farther from Malmö, culturally or geographically: Midrand, South Africa. [FN96] Until recently, Midrand was an independent municipality of ^{*491} 240,000 residents that abutted the City of Johannesburg. (It is now a part of Johannesburg.) The area is a combination of affluent suburbs, town- house developments, and a crazy quilt of "informal settlements," spun from newspaper, wire, and corrugated metal. Eighty percent of the population lives in these densely populated shantytowns, with only limited access to potable water, electricity, and garbage collection. The use of coal for heat in the winter brings air pollution and respiratory illness. Community wetlands and other sensitive ecosystems are severely degraded. "[W]ater in the Kaalspruit River has been described as more polluted than that which arrives in sewage treatment plants." [FN97]

In 1999 the Midrand Town Council and a nongovernmental organization called the Midrand EcoCity Trust created a partnership aimed at reducing poverty and instilling ecological values in the community. Two principles drove the project. First, "[I]ong term environmental successes are dependent on the economic, social and environmental

security of the person, the home and the community." [FN98] Second, progress in Midrand would grow from the bottom up and would be based on community participation and local resources. Residents met in community workshops to evaluate needs and plot a strategy. They set up business cooperatives to create employment and generate support for project initiatives. An organization of seventy organic farmers worked to stabilize the floodplains and wetlands around which they farmed. A group of local women formed a construction cooperative to build homes using environmentally sustainable techniques. Many new homes feature re-claimed brick, solar panels, and gray water recycling. Another cooperative provides bicycles to commuters in an effort to reduce the harms of automobile congestion. Now that Midrand has been officially incorporated into the City of Johannesburg, the project is hoping to extend its initiatives into other sectors of that city.

Like Malmö, Midrand's citizens also made deft use of the hometown advantage. Organizers employed local knowledge to identify the most pressing needs (housing, jobs) and addressed them in ways that were immediate and practical for the context. The participatory workshops proved to be a crucial step in fostering individual commitment and personal responsibility. When the public first discussed housing options, many residents did not care what type of housing would be provided. But after participating in the planning process and deciding *492 countless issues, citizens took "ownership" of the outcome and pushed for many of the environmentally friendly features. The community workshops were small enough to incorporate the ideas of many residents and to integrate the needs of the people and of the environment. The community's emphasis on business cooperatives boosted the local economy, which years of governmental neglect had nearly destroyed.

Significantly, Midrand was able to compensate for its fragmented resources by tapping into the private resources of the EcoCity Trust and, later, the City of Johannesburg. The project could not have succeeded otherwise. In addition, the community's commitment to seeing human poverty and environmental degradation as related phenomena enabled planners to resist "racing to the bottom" of environmental health for quick (but unsustainable) gains in economic health. Although just in the beginning stage, the progress in Midrand has changed people's lives. If its initiatives remain successful, they may be replicated in other settlements across South Africa. In this way, Midrand, along with many other developing cities, may be quietly preparing their citizens for a future revolution in sustainable living.

IV. Conclusion

Local governments are a key to global sustainable development. They are closest to the many environmental problems and they are closest to those who can best effect change. They have the greatest potential for self-rule and participation across race, class, and gender lines. Local governments can be flexible and context specific. Furthermore, in an increasing move toward global markets and culture that leave some people behind, local governments look after their own. But while local governments require as much attention as other levels of government, they have weaknesses that any successful government partnership must minimize. Local governments must be given shared parameters to avoid commons problems. They must have political and fiscal tools commensurate to the task. Plus, they must be prevented from sliding down the ladders of environmental health and efficiency. The experiences of Malmö and Midrand suggest specific methods by which local government can pursue global sustainability. While local governments bear the responsibility toward the global commons, national governments and the international community bear significant responsibilities toward local government. By way of ending this article--and hopefully beginning future discussions--I list a few recommendations in general terms.

*493 First, the international community should institutionalize strong, permanent relationships with local governments from around the world. The United Nations should recognize local government as an equal level of government, rather than as a "nongovernmental" or a sectoral group. Nations should regularly include leaders of local government in their delegations at UN conferences where issues of sustainability are discussed. UN agencies, including the UN Advisory Committee of Local Authorities and UN Habitat (dedicated to housing issues), should strengthen their relationships with local governments. In addition, the United Nations should increase within its highest ranks the representation of officials who have governed at the local level. Perhaps, as Professor Calestous Juma of Harvard's Kennedy School remarked to me last fall, the next U.N. Deputy Secretary should be a former mayor. [FN99] Such innovations would allow the international community to take advantage of the knowledge and skills available at the local level. They may also lead to frameworks in which national governments could allow local governments flexible control without spurring trans-border pollution or "races to the bottom." Other

international organizations, such as the World Bank and the World Trade Organization, should also strengthen the representation of local government within their ranks.

Second, the international community and national governments should do significantly more to fund the infrastructure and environmental technology that municipalities around the world so desperately need. Developed countries should consider earmarking a percentage of their global aid to local government programs and services. Global lending institutions should work to develop programs by which funds can be more precisely directed to local government projects, perhaps with conditions requiring that national governments de-centralize relevant political authority. National governments, on their own, must commit to providing local government with adequate funds to meet their obligations toward sustainable development. [\[FN100\]](#) One promising trend involves the adoption of national Local Agenda 21 campaigns, by which national governments encourage their municipalities to pursue Local Agenda 21 by promising financing or technical expertise. National support in this form correlates highly with local environmental results. According to the International Council for Local Environmental Initiatives, "[o]f the total *494 6,416 local governments committed to Local Agenda 21 processes worldwide, 2,682 of these processes exist in the eighteen countries with national Local Agenda 21 campaigns." [\[FN101\]](#) Not surprisingly, countries able to marshal such national campaigns also tend to be among the most affluent. [\[FN102\]](#) National commitment to Local Agenda 21 in poorer countries will thus depend on international commitments as well.

Third, the international community and national governments should monitor trade liberalization in terms of distributional equality. International bodies such as the United Nations, the World Bank, and the WTO, should not assume that the "rising tide lifts all boats," but instead help to ensure that local governments harmed by freer trade are given the means to provide basic goods and services to their people without destroying their environments. National governments, both rich and poor, should monitor distributions of prosperity within their own borders toward the same end.

Finally, national governments should experiment with more decentralized collaboration programs as now used in the United States, making sure that "downwind" groups and national environmental interests are represented alongside local constituents, so as to discourage trans-boundary externalities and "races to the bottom."

The Local Government Session of the Johannesburg Summit produced its own declaration outlining the challenges and promises of the next stage in our march toward sustainability. The declaration closes with a statement worth repeating:

We live in an increasingly interconnected, interdependent world Local government cannot afford to be insular and inward looking. Fighting poverty, exclusion and environmental decay is a moral issue, but also one of self-interest. Ten years after Rio, it is time for action by all spheres of government, all partners. And local action, undertaken in solidarity, can move the world. [\[FN103\]](#)

Can local action really move the world? To borrow Margaret Mead's response to a similar question, "It is the only thing that ever has." [\[FN104\]](#)

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This article is based partially on my experience as a Major Group Delegate at the World Summit on Sustainable Development (WSSD) in Johannesburg, South Africa (August 24-September 4, 2002). There I represented UMKC's Center for the City at the Summit's "Local Government Session," a four-day event organized by the International Council on Local Environmental Initiatives and co-sponsored by the United Nations. While the Center for the City funded my travel, the views expressed here are my own. A shorter version of this piece, an essay titled Can Local Government Save the Global Commons?, is scheduled to appear in the legal-interest periodical the STANFORD AGORA.

[\[FN1\]](#). Remarks by Nancy Skinner, International Council on Local Economic Initiatives (ICLEI), at the Local Government Session, World Summit on Sustainable Development (WSSD) (Aug. 28, 2002) (notes on file with the author).

[FN2]. To fuel your envy, see Santa Monica's official website at [http:// www.santa-monica.org/cm](http://www.santa-monica.org/cm) (Oct. 7, 2002).

[FN3]. U.N. Conference on Environment and Development (UNCED), Agenda 21 (1992) available at <http://www.un.org/esa/sustdev/agenda21.htm> (visited Oct. 3, 2002).

[FN4]. REPORT OF WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, PLAN OF IMPLEMENTATION, Johannesburg, South Africa, 26 Aug.-4 Sept. 2002, at 65, *∂* 139(h), available at http://www.johannesburgsummit.org/html/documents/summit_docs/131302_wssd_report_reissued.pdf [hereinafter "JOHANNESBURG PLAN OF IMPLEMENTATION"].

[FN5]. For reports on this event, see Local Government and the World Summit on Sustainability, available at <http://www.iclei.org/johannesburg2002> (last visited Oct. 7, 2002).

[FN6]. Remarks by Zéphirin Diabré, Associate Administrator of the U.N. Development Programme, at the Local Government Session, World Summit on Sustainable Development (WSSD) (Aug. 30, 2002) (notes on file with the author).

[FN7]. U.N. Dep't. of Economic and Social Affairs, Second Local Agenda 21 Survey 3, U.N. Doc. DESA/DSD/PL2/BP15 (2002), available at [http:// www.iclei.org/rioplusten/final_document.pdf](http://www.iclei.org/rioplusten/final_document.pdf) (last visited Oct. 29, 2002).

[FN8]. See *id.* at 8.

[FN9]. John C. Dernbach, Synthesis, in *STUMBLING TOWARD SUSTAINABILITY* 1, 5 (John C. Dernbach ed., 2002).

[FN10]. WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* 43 (1987).

[FN11]. Political Declaration, REPORT OF WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT, Johannesburg, South Africa, 26 Aug.-4 Sept. 2002, at 65, *∂* 1, available at <http://www.johannesburgsummit.org> [hereinafter "JOHANNESBURG DECLARATION"].

[FN12]. See Jonathan D. Weiss, Local Governance, in *STUMBLING TOWARD SUSTAINABILITY*, *supra*, note 9, at 683, 686.

[FN13]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, at 13, *∂* 11(e).

[FN14]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, at 12, *∂* 10(e).

[FN15]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, at 30, *∂* 40(g).

[FN16]. MOLLY O'MEARA SHEEHAN, CITY LIMITS: PUTTING THE BRAKES ON SPRAWL 6- 7 (2000).

[FN17]. Id.

[FN18]. See Jonathan D. Weiss, Local Governance, in STUMBLING TOWARD SUSTAINABILITY, supra note 9, at 683, 686 (citing JOSEF LEITMANN, SUSTAINING CITIES: ENVIRONMENTAL PLANNING AND MANAGEMENT IN URBAN DESIGN 7 (1999)).

[FN19]. Id.

[FN20]. See Robert R.M. Verchick, The [Commerce Clause, Environmental Justice, and the Interstate Garbage Wars](#), 70 S. CAL. L. REV. 1239, 1239 (1997) (describing the Fresh Kills Landfill on Staten Island). The previously closed Fresh Kills Landfill was re-opened one last time to accommodate the nearly 2 million tons of debris left after the September 11 attack on the World Trade Center. Ceremony Closes "Ground Zero" Cleanup, CNN.com, May 30, 2002, available at <http://www.cnn.com/2002/US/05/30/rec.wtc.cleanup> (Aug. 15, 2002).

[FN21]. JOHANNESBURG PLAN OF IMPLEMENTATION, supra note 4, at 8, *id.* 4.

[FN22]. Agenda 21, supra note 3, at ch. 23.1.

[FN23]. Second Local Agenda 21 Survey, supra note 7, at 3.

[FN24]. See Cass R. Sunstein, [Beyond the Republican Revival](#), 97 YALE L.J. 1539, 1552-53 (1988). Of course, there will be exceptions to this generalization: local governments may also be more susceptible to capture by a political demagogue or by a single company. But one imagines that even those forces can be unseated more easily by concentrated local opposition than is possible with, say, the aerospace or petroleum lobbies at the national level.

[FN25]. See LUKE COLE & SHEILA FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT (2001).

[FN26]. See *id.*

[FN27]. Charles Sabel et al., Beyond Backyard Environmentalism: How Communities Are Quietly Refashioning Environmental Regulation, BOSTON REV., Oct.-Nov. 1999, at 4.

[FN28]. See Cole & Foster, supra note 25, at 474.

[FN29]. See Cole & Foster, supra note 25, at 477.

[FN30]. JOHANNESBURG DECLARATION, supra note 11, at 4, *id.* 20.

[FN31]. JOHANNESBURG DECLARATION, *supra* note 11, *at* 25.

[FN32]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, *at* 9, *at* 5.

[FN33]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, *at* 8, *at* 3.

[FN34]. See, e.g., Carolyn Merchant, Ecofeminism and Feminist Theory, in REWEAVING THE WORLD: THE EMERGENCE OF ECOFEMINISM 100, 105 (Irene Diamond & Gloria Feman Orenstein eds., 1990) (describing the women's Chipco ("tree- hugging") movement).

[FN35]. Robert R.M. Verchick, In [a Greener Voice: Feminist Theory and Environmental Justice](#), 19 HARV. WOMEN'S L. J. 23, 27 (1996). It is worth noting that today the heads of both the U.S. Department of Interior (Gale Norton) and the U.S. Environmental Protection Agency (Christine Todd Whitman) are women.

[FN36]. *Id.*

[FN37]. Interview with Jimmy Jimta, Local Tour Guide, Tsoga Tours, and township resident, in Langa, Cape Town, South Africa (Aug. 31, 2002).

[FN38]. *Id.*

[FN39]. See John C. Dernbach & Scott Bernstein, [Pursuing Sustainable Communities: Looking Back, Looking Ahead](#), 35 URB. LAW. 495 (2003).

[FN40]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, *at* 18, *at* 21.

[FN41]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, *at* 16.

[FN42]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, *at* 23.

[FN43]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, *at* 25.

[FN44]. JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, *at* 35.

[FN45]. MALCOLM GLADWELL, THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE (2001).

[FN46]. Second Local Agenda 21 Survey, *supra* note 7, *at* 18 (Fig. 14).

[FN47]. See PAUL R. EHRLICH, HUMAN NATURES 126, 290 (2001).

[FN48]. Holly Doremus, [Adaptive Management, the Endangered Species Act, and the Institutional Challenges of "New Age" Environmental Protection](#), 41 WASHBURN L.J. 50, 52 (2001); J.B. Ruhl, [Thinking of Environmental Law as a Complex Adaptive System: How to Clean up the Environment by Making a Mess of Environmental Law](#), 34 HOUS. L. REV. 933, 937-38 (1997).

[FN49]. Remarks by Karun Srivastava, Commissioner, Greater Mumbai, India, at Local Government Session, WSSD (Aug. 29, 2002) (notes on file with the author).

[FN50]. Id.

[FN51]. Id.

[FN52]. Id.

[FN53]. Id.

[FN54]. Agenda 21, supra note 3, ¶ 8.5(g).

[FN55]. James Gustave Speth, Development Assistance and Poverty, in STUMBLING TOWARD SUSTAINABILITY, supra note 9, at 163, 167-68.

[FN56]. JOHANNESBURG PLAN OF IMPLEMENTATION, supra note 4, ¶ 14.

[FN57]. Id. ¶ 45.

[FN58]. Colin Picker, Neither Here Nor There--Countries That Fall between the Developed and the Developing World in the WTO, 36 GEO. WASH. U. INTERNAT'L L. REV. (forthcoming).

[FN59]. ROY SIEGFRIED, KEEPING THE RAINBOW: THE ENVIRONMENTAL CHALLENGE FOR AFRICA AND THE WORLD 122 (2002).

[FN60]. Id.

[FN61]. Despite the many complications, one could also imagine an agreement in which impoverished local governments were allowed to use limited trade restrictions, such as protective tariffs, in international markets, even if their home nations did not themselves qualify for such advantages. See Picker, supra note 58.

[FN62]. JOHANNESBURG PLAN OF IMPLEMENTATION, supra note 4, ¶ 45.

[FN63]. Id.

[FN64]. Garrett Hardin, The Tragedy of the Commons, 162 SCIENCE 243-48 (1968).

[FN65]. See id.

[FN66]. [Missouri v. Illinois, 200 U.S. 496 \(1903\)](#).

[FN67]. As it happens, both the U.S. Clean Water Act and the U.S. Clean Air Act incorporate a pattern of "cooperative federalism" in which minimum standards are established by the federal government and state governments are charged with the more specific implementation of their programs. While such systems are common in American environmental law, they remain uncommon in many other countries.

[FN68]. See ICLEI, U.S. Cities for Climate Protection Campaign (Feb. 26, 2003), available at <http://www.iclei.org/us/ccp/>.

[FN69]. Id.

[FN70]. Cf. Michael A. Heller & Rebecca S. Eisenberg, Can Patents Deter Innovation? The Anticommons in Biomedical Research, 280 SCIENCE 698 (1998) (describing an "anticommons" phenomenon, in which the problem is not overuse of a scarce resource, but underuse, caused by a conflict among users who individually own only fragments of the resource).

[FN71]. John R. Nolon, In [Praise of Parochialism: The Advent of Local Environmental Law](#), 26 HARV. ENVTL L. REV. 365, 377-78 (2002).

[FN72]. See [id. at 380-81](#); see also A. Dan Tarlock, [Connecting Land, Water and Growth](#), 34 URB. LAW. 971 (2002).

[FN73]. Remarks by Nabel Makarim, Minister of the Environment, Indonesia, at Local Government Session, WSSD (Aug. 28, 2002) (notes on file with the author).

[FN74]. Alistair Clark, Director, European Bank for Reconstruction and Development, Remarks at Local Government Session, WSSD (Aug. 29, 2002) (notes on file with author).

[FN75]. Remarks by Fitz Ford, Acting Urban Sector Leader, World Bank, at Local Government Session, WSSD (Aug. 29, 2002) (notes on file with the author).

[FN76]. See Andrew C. Revkin, Panel of Experts Faults Bush Plan to Study Climate, N.Y. TIMES, Feb. 26, 2003, at A1.

[FN77]. COMMITTEE TO REVIEW THE U.S. CLIMATE CHANGE SCIENCE PROGRAM STRATEGIC PLAN, NATIONAL ACADEMY OF SCIENCES, PLANNING CLIMATE AND GLOBAL CHANGE RESEARCH: A REVIEW OF THE DRAFT U.S. CLIMATE CHANGE SCIENCE PROGRAM STRATEGIC PLAN 20-21 (2003).

[FN78]. Id. at 21; see also id. at 43.

[FN79]. Id. at 21.

[FN80]. Id. at 22.

[FN81]. Id. at 45.

[FN82]. COMMITTEE TO REVIEW THE U.S. CLIMATE CHANGE SCIENCE PROGRAM STRATEGIC PLAN, *supra* note 77, at 60.

[FN83]. Scott R. Saleska & Kirsten H. Engel, "[Facts Are Stubborn Things": An Empirical Reality Check in the Theoretical Debate Over the Race-to-the-Bottom in State Environmental Standard-Setting](#), 8 CORNELL J. L. & PUB. POL'Y 55 (1988).

[FN84]. Richard Revesz, [Rehabilitating Interstate Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation](#), 67 N.Y.U. L. REV. 1210 (1992).

[FN85]. Saleska & Engel, *supra* note 83, at 53, 73-74.

[FN86]. International Council for Local Environmental Initiatives, Ecoefficient Economy, available at <http://www.iclei.org/europe/ecoprocura/info/index.htm> (visited Oct. 6, 2002).

[FN87]. Id.

[FN88]. For an introduction to Malmö, see Malmö Stad, <http://www.malmo.se/> (visited Oct 7, 2002).

[FN89]. Id.

[FN90]. ICLEI, Ecoefficient Economy, *supra* note 86.

[FN91]. Christoph Erdmenger, Director of Eco-Procurement Programme and Eco-Efficient Economy, ICLEI, Remarks at Local Government Session, WSSD (Aug. 29, 2002) (notes on file with the author).

[FN92]. The City of Malmö participates in ICLEI's Eco-Procurement Programme.

<http://www.iclei.org/Europe/ecoprocura/network/partic.htm> (last accessed June 5, 2003).

[FN93]. See JOHANNESBURG PLAN OF IMPLEMENTATION, *supra* note 4, ¶ 19.

[FN94]. Arndt Mielisch, Green Procurement at the Municipal Level--The Local and the European Dimension, available at <http://www.iclei.org/europe/ecoprocura/info/mielisch.htm> (Oct. 7, 2002).

[FN95]. The "negative" aspect of the Interstate Commerce Clause forbids states and local governments from enacting regulations that place an undue burden on interstate commerce. [Fort Gratiot Sanitary Landfill v. Michigan Dep't. of Natural Res., 504 U.S. 353 \(1992\)](#). A regulation that discriminates against interstate commerce either on its face or in effect is subject to a "virtual[] per se rule of invalidity." [City of Philadelphia v. New Jersey, 437 U.S. 617, 624 \(1978\)](#). When this threshold test does not apply, a court will review the challenged regulation under a second, more flexible test suggested in [Pike v. Bruce Church, Inc., 397 U.S. 137 \(1970\)](#). Under that test, regulations that are "even-handed" and affect commerce only "incidentally" will survive challenge, "unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits [of the regulation]." [Id. at 142](#). Local action that directly or incidentally restricts interstate commerce can survive both tests if its action constitutes that of a "market participant" (that is, a buyer or seller of goods and services) rather than that of a public regulator. See [Hughes v. Alexandria Scrap Corp., 426 U.S. 794, 810 \(1976\)](#). In the above example, the American city would argue against a constitutional violation by claiming that even if its conduct unduly burdens commerce, the effect results not from an attempt to regulate, but from a permissible attempt to participate in the market. See *id.* Nonetheless, the Supreme Court has held that a state government's participation in the market can sometimes go so far that it becomes a de facto attempt to regulate activities beyond its jurisdiction. See [South-Central Timber Dev., Inc. v. Wunnicke, 467 U.S. 82, 97-98 \(1984\)](#). When this is so, the Commerce Clause is violated. *Id.* Thus if our hypothetical American city uses its purchasing power to influence modes of power generation beyond its borders (which, after all, is an explicit goal of eco-procurement), then its activity would be unconstitutional.

[FN96]. For an introduction to Midrand and the surrounding Johannesburg area, see Joburg: Official Site of the City of Johannesburg, available at <http://www.goafrica.co.za/joburg> (visited Oct. 7, 2002).

[FN97]. *Id.*

[FN98]. *Id.*

[FN99]. Interview with Calestous Juma, Professor of the Practice of International Development, Kennedy School of Government, Harvard University, in Cambridge, Mass. (Oct. 26, 2002).

[FN100]. Calestous Juma, How Not to Save the World, *NEW SCIENTIST*, Sept. 28, 2002, at 24.

[FN101]. Second Local Agenda 21 Survey, *supra* note 7, at 26.

[FN102]. Second Local Agenda 21 Survey, *supra* note 7, at 26.

[FN103]. International Council for Local Environmental Initiatives, Local Government Declaration to the World Summit on Sustainable Development (Aug. 2002), available at http://www.iclei.org/rioplusten/declaration_org.pdf.

[\[FN104\]](#). The full statement reads, "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has." While attributed to Margaret Mead, the more specific source of the quotation is unknown. Margaret Mead: 1901-1978, available at http://www.mead2001.org/faq_page.html.

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