LOCAL INNOVATION INCENTIVES

Camilla A. Hrdy*

Abstract

In this article I describe the significant efforts of state and local governments to promote innovation in their jurisdictions by offering a variety of financial incentives – such as R&D tax credits, research grants, commercialization awards, and procurement contracts (collectively, “local innovation incentives”), and access to supporting programs like “technology commercialization centers” – in order to help companies develop and commercialize new technologies and ideas. I will explore the implications of increased use of these incentives for legal scholarship on patent law and innovation policy and economic theories of federalism. I make two key insights.

First, the United States has a bifurcated innovation policy in which the federal government’s primary role is in protecting intellectual property and sponsoring investment in early stage and basic research, while state and local governments play an indispensable role in promoting commercialization and early-stage technology development (ESTD) to help companies attract private funding for new technologies or business models that would not otherwise cross the “valley of death” between invention and true innovation. I provide several rationales for this division based on political economy, efficiency-based theories of federalism, and historical contingency.

Second, although state and local innovation incentives, particularly R&D tax credits and blanket subsidies, may in some cases simply shift investment in innovation from one state to another (i.e. to the state willing to pay more), these distributional concerns are not as salient in this context as they are for other types of business incentives. The reason is that local innovation incentives have the capacity to generate what I call national innovation spillovers: technical and market information that is uncompensated both with respect to the private actors that produced the information and with respect to the U.S. state or region whose resources paid for it. Local innovation incentives can also generate spillovers in the form of legal innovations, such as new strategies for promoting commercialization or tested ‘recipes’ for building innovation clusters that other states and regions can replicate and build upon.

Given the opportunity for a better system for promoting commercialization of technology and new ideas, as well as the opportunity for policy experimentation and national innovation spillovers, I suggest that state and local governments should continue and even increase their efforts to promote commercialization and grow innovation clusters and that they should retain significant authority in setting innovation policy within their own jurisdictions.

* Postdoctoral Fellow at the Yale Law School Information Society Project. J.D., Berkeley Law; M.Phil. in History and Philosophy of Science, University of Cambridge; B.A. Harvard University.