

Fourth Edition

Governing New York State

**Edited by
Jeffrey M. Stonecash**



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Contents

List of Illustrations	vii
List of Tables	ix
Introduction to the Volume <i>Jeffrey M. Stonecash</i>	1
 I. POLITICAL CONFLICTS AND THEIR REPRESENTATION	
Introduction to Part I: Political Conflicts and Their Representation <i>Jeffrey M. Stonecash</i>	5
1. The Two New Yorks Revisited: The City and The State <i>Robert F. Pecorella</i>	7
2. Political Conflict and Intergovernmental Relations: Federal-State and State-Local Relations <i>David S. Liebschutz and Sarah F. Liebschutz</i>	25
3. Political Parties and Elections <i>Mark D. Brewer and Jeffrey M. Stonecash</i>	43
4. Third Parties in New York <i>Robert J. Spitzer</i>	63
5. The Influence of Interest Groups <i>David Louis Cingranelli</i>	77
6. Media Coverage of State Politics <i>Jeffrey M. Stonecash</i>	99

II. POLITICAL INSTITUTIONS AND DECISION-MAKING

Introduction to Part II: State Government Institutions <i>Gerald Benjamin</i>	111
7. New York's Governorship: Back to the Future? <i>Gerald Benjamin and Robert C. Lawton</i>	123
8. The Legislature, Parties, and Resolving Conflict <i>R. Eric Petersen and Jeffrey M. Stonecash</i>	143
9. New York's Courts <i>Thomas W. Church and Brian J. Nickerson</i>	165
10. Other Governments: The Public Authorities <i>Keith M. Henderson</i>	187

III. PUBLIC POLICY

Introduction to Part III: Public Policy <i>Jeffrey M. Stonecash</i>	203
11. The Economy, Taxes, and Policy Constraints in New York <i>Mark D. Brewer and Jeffrey M. Stonecash</i>	205
12. The Politics of Local Education <i>Edward Schneier</i>	215
13. Contested Futures: Public Policy and the State University of New York <i>Henry Steck</i>	241
14. Health Policy in New York State: Market Models and Access Issues <i>Alice Sardell and Harvey Catchen</i>	275
15. Ending Welfare as We Know It <i>Harvey Catchen</i>	291
16. The Politics of Transportation <i>Jeffrey M. Stonecash with Mitchell H. Pally</i>	309
17. Environmental Policy in New York <i>Gary Weiskopf and David L. Markell</i>	327
18. Guide to Further Research on New York Politics <i>Sarah F. Liebschutz</i>	349
List of Contributors	359
Index	365

List of Illustrations

Figure 3.1.	Democratic proportion of Assembly seats, by area, 1900 to 1998	45
Figure 3.2.	Geographical bases of parties: Percent of seats won by area for Senate Republicans and Assembly Democrats, 1998	47
Figure 3.3.	Race and income bases of parties: Percent of seats won by race and income of district, Senate Republicans and Assembly Democrats, 1998	48
Figure 3.4.	Party enrollment trends in New York, 1950 to 1999	53
Figure 3.5.	Split-ticket voting in New York legislative elections, 1910 to 1996	54
Figure 3.6.	Incumbent and challenger average expenditure, by year, 1984 to 1996, New York Assembly and Senate	55
Figure 3.7.	Average expenditure by incumbents and challengers, by proportion of the vote won, 1996 Assembly and Senate elections	56
Figure 4.1.	Sample ballot of voting machine	72
Figure 8.1.	Percent of Assembly members and Senators seeking and winning reelection, 1870s to 1990s	146
Figure 8.2.	Percent of freshmen and percent of all members with ten years or more of experience, 1900 to 1997	147
Figure 8.3.	Average years of prior legislative experience at beginning of each new session, 1901 to 1997	147
Figure 8.4.	New York legislative budget, in real dollars, 1900 to 1998	152
Figure 8.5.	New York budget passage: Days budget early or late from 1944 to 1998	154
Figure 9.1.	New York State Court System and routes of appeal	169
Figure 11.1.	State and local tax effort, 1950 to 1996	209

List of Tables

Table 1.1.	New York City/State: A socioeconomic profile.	11
Table 1.2.	The New York State Legislature: An ideological profile.	16
Table 1.3.	New York City/State: Republican gubernatorial victories.	18
Table 2.1.	FY 1994 local direct expenditures as percent of state and local direct expenditures.	29
Table 2.2.	1994 local direct expenditures as percent of state and local direct expenditures for the twelve most populous states.	31
Table 2.3.	Total local revenue and total local intergovernmental from state, 1977, 1987, and 1994.	32
Table 2.4.	Local per capita direct general expenditures, FY 1994.	34
Table 2.5.	Local direct general expenditures as a percent of personal income, 1994.	34
Table 3.1.	Gubernatorial electoral bases, 1990 to 1998.	51
Table 4.1.	Minor-party endorsements of major-party candidates for New York State legislative races, 1998.	68
Table 5.1.	Interest groups taking a stand on the future of the Adirondack Park, 1991 to 1992.	83
Table 8.1.	Rent Control: A leader simply can't ask members to vote against their districts.	158
Table 9.1.	New York State court system characteristics.	170
Table 12.1.	Public grading of schools.	224
Table 12.2.	Constant dollar expenditures per pupil in New York and the nation, 1970 to 1995.	226

Table 16.1.	Public transit service by region in New York State, 1994 to 1996.	310
Table 16.2.	Distribution of population, highway miles, and driver and vehicle registrations, by area, 1990s.	311
Table 16.3.	The distribution of population and Rebuild New York Bond Funds.	316
Table 16.4.	The distribution of population and Rebuild New York Bond Funds.	319

Introduction to the Volume

Jeffrey M. Stonecash

The Political Significance of New York

New York State is politically important. The size of the state alone would justify trying to understand it. But its importance stems from the political situation the state represents. All of the challenges, difficulties, and criticisms of democracy exist in New York. There is enormous diversity in the state. In some areas, such as New York City as well as in upstate rural counties and inner cities, people have desperate needs for Medicaid, housing allowances, nutrition assistance, and other forms of support. Others in the state are more concerned about high taxes imposed to pay for these health and welfare services. Business groups, in particular, want state and local taxes reduced. There are also conflicts that stem from regional identities. There are conflicts that originate from differences in transportation systems. New York City has a greater reliance on mass transit than any state in the country and wants extensive state aid for mass transit. Residents outside New York City want more funds spent on road and bridge repair. These conflicts represent only a small sample of those that exist within the state.

Organizing, representing, and reconciling these conflicts represents one of democracy's most fundamental challenges. How these differences get represented, and how politicians reconcile these conflicts tells us a lot about democracy. New York provides us with one very important example of how the democratic political process works. Further, New York's political process is of interest because the state's political institutions embody the traditions of "strong" institutions. The governor of New York is regularly ranked as having more formal powers than almost all other states. Analyzing the governor's office provides insight into what has happened to executives in recent years. The legislature with its tradition of strong leaders is also of interest. It has become much more of a professional legislature in recent decades. It has dramatically increased its staff size and resources. The political parties in the legislature have built up well-funded campaign committees to allow them to support their own candidates. The legislative parties are major actors in making decisions.

The interactions of the governor with the legislature capture all of the problems of reaching decisions in a democracy. The conflicts in the society are considerable, and some way must be found to present and accommodate the differing needs of groups while still reaching decisions. The process in New York is often complicated, lengthy, and filled with compromises that make constituents unhappy. There have been harsh criticisms of these institutions and the process by which they arrive at decisions in New York. Understanding how these institutions have changed, and why they proceed as they do in New York tells us much about how democratic institutions cope with conflict.

Finally, there are the enormous demands of establishing public policies to try to respond to social problems. To acquire revenues to respond to these diverse needs, New York has one of the highest tax rates in the country. It also has some of the most extensive public policy programs in the country. Each policy area is complicated, and understanding these matters sheds some light on the difficulties government faces in trying to have an impact on society.

The Plan of the Book

The book contains three sections. The first presents conflicts and their representation, whether by parties or interest groups within the state. This section presents chapters on conflicts between New York City and the rest of the state (Robert Pecorella), the intergovernmental issues that preoccupy officials (Sarah and David Liebschutz), the organization of these conflicts by the political parties (Mark Brewer and Jeff Stonecash), the role of third parties (Robert Spitzer), representation by interest groups (David Cingranelli), and the approaches of journalists to covering issues for the electorate (Jeff Stonecash).

The next section assesses the institutions that constitute the decision process. Chapters cover the governor (Gerald Benjamin and Robert Lawton), the legislature (Eric Petersen and Jeff Stonecash), the courts (Tom Church and Brian Nickerson), and public authorities (Keith Henderson).

The final section covers public policy issues in the state. The areas covered are: the economy and taxes (Mark Brewer and Jeff Stonecash), primary and secondary education (Ned Schneier), higher education (Henry Steck), health care (Alice Sardell and Harvey Catchen), welfare (Harvey Catchen), transportation (Jeff Stonecash and Mitch Pally), and environmental issues (Gary Weiskopf and David Markell).

These chapters provide an introduction to the state. Of course, there is much more to learn in order to fully understand the state. Anyone seeking more material should review the references cited in the endnotes to each chapter or consult the last chapter (Sarah Liebschutz), which provides additional resources.

Part I

Political Conflicts and Their Representation

Introduction to Part I: Political Conflicts and Their Representation

Jeffrey M. Stonecash

The Sources of Conflict

Democracies exist because people have different values and needs. The political process represents these differing wants to politicians who must struggle with trying to reach publicly accepted policy decisions. The greater the conflict within a society, the more difficult it is to reach accommodations. New York State represents a state where the diversity is considerable and the conflicts are acute. Part one of this book focuses on the conflicts within the state that politicians struggle with in trying to reach decisions. There are significant conflicts that revolve around region, class, and race that make it difficult to reach decisions within the state.

One of the enduring sources of conflict within the state revolves around New York City and how its population differs from the rest of the state. Robert Pecorella reviews how New York City differs in terms of its ethnic and racial composition and its economy and how those differences lead to conflicts within the political process. New York City has a higher percentage of renters and minorities. It has more people who rely on mass transit. It has many low-income individuals, who have many needs for government social programs. The rest of the state, of course, has substantial numbers of low-income individuals, but the political perception has emerged that New York City is different from the rest of the state and that it spends more on social programs than the rest of the state. This creates a continual concern with whether New York City is getting more or less than it deserves.

There are also significant disputes that stem from intergovernmental programs. As Sarah and David Liebschutz indicate, the state adopts various programs that create state obligations and require state revenues. This leads to disputes about whether the state is doing too much (or too little) and whether taxes are too high. When the state adopts programs, it often results

in the state imposing accompanying obligations on local governments. While the state defines what the state will do in Medicaid and welfare, counties must pay part of Medicaid costs, and counties administer welfare programs. Many at the local level are not happy with the burdens imposed by the state in these policy areas and want the state to either cut mandates or provide more revenue. The same conflicts over mandates and state aid occur with local education.

There are also consistent differences among demographic groups, and these become bases for differences between the parties. The nonwhite population has grown in the state, and it tends, on average, to be more liberal than whites. Nonwhites are generally more concerned with social programs and jobs. Urban populations differ from suburban and rural populations. Urban areas, for example, have less affluent tax bases and need more state aid for schools than suburban communities do. The affluent have less need for government assistance to go to college than those with lesser incomes. In New York nonwhites, urban groups, and the less affluent tend to align with the Democratic party, while whites, suburban and rural groups, and the affluent are more likely to align with the Republican party. These differences between the parties in their electoral bases become the basis for ongoing policy disputes within the state and are reviewed by Jeff Stonecash.

The political arena also draws the attention of a large number of interest groups that want to make sure their interests are considered and protected. While there are broad conflicts revolving around geographical areas, race, class, and intergovernmental programs in New York politics, there is also a steady stream of lobbyists who present arguments for specific groups. David Cingranelli presents an overview of the diversity of groups seeking attention. He argues that lobbying activities have grown in recent years. This activity is part of the endless process of attempting to persuade state officials that specific concerns need to be addressed. While the conflicts of region, class, and race may receive more media coverage, the presentations of lobbyists are enduring and crucial in the political process.

Finally, there is the important issue of how much the electorate is informed about the issues and conflicts within the state political process. Journalists must regularly decide how much information to convey to the public, what events have priority, and how policy conflicts are presented. To provide some idea of how journalists make these decisions, a panel of journalists was interviewed about these issues. Their comments provide insight into what guidelines they use when making choices about what to convey to the electorate.

1

The Two New Yorks Revisited: The City and The State

Robert F. Pecorella

On February 3, 1997, five members of the New York State Assembly from upstate districts introduced a concurrent resolution petitioning Congress to allow the division of New York into two states. The proponents defended the resolution in the following terms: “Due to the extreme diversity of New York State, it has become almost ungovernable. It is extremely difficult to write good law which is fair to all concerned when you have areas as diverse as Manhattan and Jefferson County, for instance.”¹

This was certainly not the first proposal for geographical division of New York State, and it is unlikely that it will be the last. Regardless of whether the idea emanates from upstate or from New York City, it stands as a symbolic gesture of intense political frustration. People from New York City and people from other areas of the state and their political representatives often view each other with emotions ranging from bemusement to hostility. “Rural folk and city dwellers in many countries and over many centuries have viewed each other with fear and suspicion. . . . [T]he sharp differences—racial, religious, cultural, political—between New York City and upstate have aggravated the normal rural-urban cleavages.”²

As creations of modernity, cities challenge traditional culture by incubating liberal social and political attitudes; as the nation’s most international city, New York represents the greatest challenge to the traditions of rural life. “From its earliest times . . . New York was a place of remarkable ethnic, cultural, and racial differences.”³ The differences between people in New York City and those in the rest of the state are both long-standing and easily summarized: city residents have been and are less Protestant, more ethnically diverse, more likely to be foreign-born, and far more likely to be Democrats than people in the rest of the state.

The rural-urban dichotomy, however, is not based solely in culture and demography; it is also a function of each area's different relationships with government. Given the social interdependence that defines their existence, cities need more activist governments than do rural areas. The urban economy, for example, requires public transportation systems. While 54 percent of city residents use mass transit to get to work, fewer than 14 percent of residents in other parts of the state do. Urban density makes government regulation of multifamily housing construction and maintenance a critical issue. While over 70 percent of city households live in rental units, many of which are government price stabilized, fewer than 30 percent of households outside the city reside in rental units. Moreover, the nature and extent of urban social problems require roughly two-thirds of all state spending on welfare and health care programs in New York City. These different public-sector needs generate rural-urban conflicts over the size and scope of government generally as well as conflicts over the degree of autonomy that city government should have.

For much of the state's history these conflicts were considered within a context that defined the city as downstate and everything else as upstate. Although this dichotomy still has substantial cultural and psychological import, it excludes important aspects of recent state politics. The city's suburbs, geographically downstate but in many ways philosophically upstate, have emerged as a potent political force, and the larger upstate cities now share many of the urban problems once associated exclusively with downstate politics.

With these caveats in mind, this chapter takes a threefold approach to examining the relationship of New York City to the rest of the state. First, it establishes the legal context for the political interactions between state and city governments in New York. Second, it explores the socioeconomic bases for the political interactions between city and state representatives. And third, it analyzes the city's relative influence within the arenas where the political interactions occur.

The Legal Relationship: State Constraints on City Autonomy

With 40 percent of the state's population, New York City plays an important role in the state's social, economic, and political life. Indeed, elected and appointed state and city officials interact constantly on a host of intergovernmental issues including school aid formulas, Medicaid costs, and tax policy. Such interactions, whether between the governor and mayor, state and city service agencies, or city lobbyists and state legislators, are constrained by both legal rules and political variables.

The primary legal principle guiding state-city relationships is quite direct: cities are public corporations created by state law with authority derived

solely from the state.⁴ As they have in other states, local governments in New York have sought relief from the legal straightjacket of state control in the principle of home rule, i.e., the practice of providing localities with some degree of governing autonomy. After years of effort, advocates for city autonomy saw home rule enacted in New York. An amendment to the state constitution, incorporated in 1923, and the City Home Rule Law, enacted a year later, codified home rule in New York by defining local government authority over local “property, affairs and government.”⁵ However, when the principles of state preeminence and home rule conflict, as they often do, state courts have ruled consistently that a “state concern” doctrine preempts home rule.⁶

Despite the formal adoption of home rule, therefore, the state government continues to exercise considerable influence on city policymaking. Such influence takes the form of general rules applicable to all local governments as well as specific mandates applying only to New York City. There are four basic types of state constitutional and statutory restrictions on New York City’s autonomy including: limits on the city’s revenue-raising authority; limits on the city’s debt-issuing authority, state mandates requiring city action, and provisions for state administrative supervision of city operations.

Article XVI of the state constitution limits local governments to state-specified taxing authority, which once granted, is subject to continual state review. For city officials to institute a tax or change the rates of any revenue, other than the property tax, they must first receive approval from the state legislature. This stipulation applies even if officials want to lower tax rates, as in 1997 when Mayor Guiliani proposed removing the city share of the sales tax on clothing purchases under \$500. Even the property tax, the only constitutionally defined local revenue, is limited to an annual total of 2.5 percent of the “average full valuation of taxable real estate” in the city.⁷

The rigid state control of the city’s revenue-raising capacity is coupled with strict constitutional limitations on the city’s authority to contract debt and provide for its long-term capital needs. Total city debt is limited to 10 percent of a five-year rolling average of the full valuation of annual taxable real estate.⁸ Because debt limits are calculated as a percentage of the value of real property and because that value has decreased substantially in New York since the mid-1980s, the city has been forced in recent years to search for alternative methods to finance such needed capital programs as school construction and bridge maintenance and repair.

State mandates, the other side of the fiscal restrictions coin, require local governments to undertake some action; partially funded or unfunded mandates require them to assume some or all of the costs for the action. Studies have shown that New York State imposes a comparatively large number of mandates that collectively have a substantial fiscal impact.⁹ State legislative mandates, for example, force New York City to expend billions of dollars

annually on Medicaid and welfare. Indeed, in 1995, Mayor Giuliani initially supported *less state spending* in the city in these policy areas in order to save the city's mandated matching costs.

State administrative involvement in the city takes a number of forms. City agencies operate under administrative regulations that mandate state preclearance for and review of agency actions.¹⁰ Public authorities, created by the state legislature and governed by boards appointed largely by state officials, have administrative control of important city services. The governor's appointees, for example, control a majority of the seats on the Metropolitan Transportation Authority, which runs the city's transit system. Moreover, state fiscal monitors, created as a consequence of the 1975 fiscal crisis, still emerge periodically as influential participants in city politics.¹¹ In the early 1990s, for example, the state Financial Control Board openly pressured the Dinkins administration to move in the fiscal directions the board desired.¹²

On balance, therefore, court interpretations of the state constitution, continuing and recent statutory restrictions, and the increased use of public authorities provide the government in Albany with substantial influence over New York City. As a result, city officials must come to the state capital "hat in hand" seeking the resources and waivers from controls they need to govern effectively.

The Political Relationship: Diversity and Balance

Legal primacy aside, the state and city interact within a web of political relationships. Politics concerns choices about who gets what share of scarce resources, and one group's share is often perceived as another's loss. Political relationships, therefore, involve the conflicts emerging from the socioeconomic differences among groups of people, which to a large extent determine the nature of their interaction with government. Given its diversity, New York State provides a firm empirical base to study the political conflicts emerging from group differences.

Demography and Political Conflict

In the 1990s, New York City remains more heterogeneous than any other area of the state (Table 1.1). Despite the constancy of the fact of demographic differences between the city and the rest of the state, however, the nature of these differences has changed over the years.

During the first half of the twentieth century, *religious and ethnic divisions* carried regional political implications. New York City was home to large numbers of Catholic immigrants who supported the Democratic Party, as well

TABLE 1.1.
New York City/State: A socioeconomic profile.

	New York City	New York suburbs ¹	Upstate cities ²	Rural counties ³
<i>Percentage which is:</i>				
African American	25.6	9.1	25.0	2.2
Latino	24.1	7.2	5.0	1.7
Asian	6.9	2.7	2.0	0.1
Foreign-born	28.5	12.3	5.0	3.1
Catholic	39.8	50.2	43.5	25.9
Unemployed	9.3	4.5	9.0	7.0
Below poverty level	19.3	5.0	23.2	12.0
Female-headed household	35.3	12.9	41.5	28.0
Without high school diploma	31.7	17.3	29.0	25.0
Speak English poorly ⁴	20.0	6.2	4.8	2.0

1. Nassau, Putnam, Rockland, Suffolk, and Westchester counties (includes city of Yonkers).
2. Albany, Buffalo, Rochester, and Syracuse.
3. 22 counties not within Standard Metropolitan Areas (SMAs) and with fewer than 100 people per square mile.
4. Self-described on 1990 census form.

as Jewish immigrants active in liberal reform movements, while upstate was populated largely with the Republican descendants of northern European Protestants. This division, reflected in local political conflicts over Prohibition, legislative reapportionment, and aid to parochial schools, came to have national implications as the city's ethnic voters helped form the national urban electoral base for the Democrat's "New Deal coalition," while upstate remained firmly Republican.

By the 1960s, much of the ethnic tension had been superseded by *racial distinctions* between an increasingly African-American and Latino New York City and the European-American rural areas and suburbs. In the 1950s and 1960s, millions of white residents, encouraged by federal subsidies, left the cities of the northeast and midwest to settle in suburbs. One of the largest migrations was the eastern and northern exodus from New York City. Initially settling in Nassau and Westchester Counties, the suburban migration would eventually expand into Suffolk County on the east end of Long Island, and Putnam and Rockland Counties to the north.¹³ Indeed, by the 1990s, Catholic ethnics were dispersed widely around the state, particularly in the suburbs, where, although they are often hostile to city interests, they are less conservative than the original suburban populations.¹⁴

While large numbers of white families were leaving New York City for the suburbs, the mechanization of southern agriculture, the racist policies of the Deep South, and the expectation of employment in the cities were producing a northern migration of African Americans. Following train lines north, blacks transformed themselves from a rural to an urban population and in so doing transformed national and state politics. "Between 1950 and 1974, as a result of the net out-migration of whites and in-migration of blacks and Hispanics, New York's black and Hispanic population rose from about 13 percent to 42 percent."¹⁵

By the 1990s, "people of color" made up a majority of New York City's population. From a macro perspective, the city's racial make-up is quite distinct from that of the rest of the state. A more focused analysis, however, yields a more nuanced picture. Although largely white, the suburbs include areas like Mount Vernon and Yonkers in Westchester County as well as communities in Nassau and Suffolk Counties with significant minority populations. In recent years, African Americans have been relocating to inner-ring suburbs, although racial discrimination makes that process more difficult than it was for their European-American counterparts.

Upstate cities also include large "minority" populations. Between 1980 and 1990, for example, the African-American population in Buffalo increased by more than 5 percent and now accounts for roughly one-quarter of that city's population. During that same ten-year period, Rochester saw a 16 percent increase in African Americans who by 1990 made up nearly one-third of the population.¹⁶ Because the negative impacts of racism are not geographically bounded, these upstate cities experience the same social and economic problems manifest in race relations downstate. Therefore, the general demographic picture affirming that New York City remains the most racially heterogeneous area of the state, while correct overall, may be masking important social nuances with cross-regional political implications.

The New York City experience with *foreign born* residents is *sui generis* in the state and perhaps in the nation. For most of its history, the city has been the port of entry for immigrants from around the globe. At the turn of the twenty-first century, over 30 percent of the city's population was foreign-born. The most recent arrivals are largely from the Caribbean, Asia, and Eastern Europe. By 1996, "more than 11 out of every 20 New Yorkers [were] immigrants or the children of immigrants."¹⁷

The city's role as port of entry continues to have political implications. Like mayors before him, Rudy Guiliani has become a national spokesperson for the rights of immigrants. The mayor resisted those elements of federal welfare reform that impacted negatively on legal immigrants. Moreover, with strong support from the Democratic State Assembly, he lobbied to change the governor's original plan to implement the welfare act in New York by arguing against proposals to remove immigrants from home relief.

Economics and Political Conflict

Economic status is a primary influence on group relationships with government. "Politics generally comes down, over the long run, to a conflict between those who have and those who have less. In state politics the crucial issues tend to turn around taxation and expenditure."¹⁸ In considering the city's political relationships with the state then, it is useful to examine the economic resources the city has and the economic demands the city makes on state government.

New York City's economy in the 1990s was characterized by a fundamental contradiction. While the city acts as the financial center of an increasingly global economy, it is also the regional center for seemingly intransigent social and economic problems. And in a related paradox, while the city's financial sector provides state government with large amounts of revenue, the extent of its social problems demands correspondingly large amounts of state expenditures.

At the top of New York's economy is a world-class city that "accounts for half of all securities traded on a global basis, leading London and Tokyo by a wide margin."¹⁹ The city's share of financial institutions and resources has led to "a single, shared global insight: New York is where the money is."²⁰ With just over 40 percent of the state's populations, the city accounted for: 44 percent of the state's personal income; 52 percent of state jobs in finance, insurance, and real estate; and more than 70 percent of "nonfamily households" in the state with incomes of \$100,000 or more.²¹ A 1992 study indicated that city residents paid roughly 39 percent of total state revenues and receive back roughly 39 percent in value of state services. In fact, when commuter taxes are added to the equation, the city accounted for nearly 45 percent of state revenue.²²

Conversely, the city has a greater concentration of social and economic problems than rural areas and other cities in the state and far greater difficulty than the suburbs (see Table 1.1). As a consequence of the concentration of social and economic problems, over 60 percent of all the state's household on public assistance and 72 percent of all Medicaid personal care cases reside in the city, and two-thirds of all state funds allocated for these two programs are spent in the city.²³ Maintaining state spending on social welfare programs, therefore, will be of primary interest to a population with such needs, just as reducing such spending is of interest to people further removed economically and geographically from the problems.

Such contradictions are not new. The city's economy has always included large numbers of people at polar ends of the economic continuum, as the wealth produced by the city's business sector existed side by side with the poverty of newly arrived immigrants. In the past, that economic chasm was bridged by a growing middle class employed largely in the city's then substantial manufacturing sector.

Since the 1970s, however, part of the middle-class bridge has left the city as have many of the manufacturing jobs that supported them. The income gap between rich and poor, which grew wider across the country in the 1990s, is greater in New York than in any other state, and a large part of it results from the bifurcation in the city's economy.²⁴ Moreover, the gap between low-income people and other city residents has become increasingly rigid as poor families, locked into poor neighborhoods with substandard schools, see their economic plight perpetuated from one generation to the next. With the highest unemployment figures in the state and with over 30 percent of its school-age population not finishing high school, the city may be seeing several more generations locked into economic stagnation.

The city's socioeconomic dichotomy, a result of national and international economic transformations and segregated housing and job markets, produces intense political reactions among the victims that, in turn, generate increased resistance from beneficiaries of the status quo. The resulting deep political divisions provoke maximum conflict potential and allow minimum conflict accommodation among the diverse groups and the public officials representing them.

In summary, New York City remains generally distinct from the rest of the state in terms of the overall diversity of its population and the extent of its socioeconomic problems. In the past, these characteristics encouraged the city's representatives in Albany to be the state's primary spokespersons for liberal social and economic programs. In the future, we should expect that city representatives, particularly those who represent communities with severe social and economic problems, will take the lead in fighting the political battle against retrenchment of the welfare state. It is useful to note, however, that the social problems that plague the city are also present in upstate cities and in some parts of rural communities. In many of these areas, the counterbalance of growth at the top of the economy is not present as it is in New York City. As the century ends, it may be only the psychological depth of the upstate-downstate chasm that keeps cross-regional coalitions from redefining state politics.

The Political Arenas

The political conflicts generated by the diverse interests outlined above are most directly evident within the three political arenas: of the state legislature, statewide electoral contests, and the relationships between the mayor and state government officials. It is within these three venues that the city's political resources are particularly effective in pushing an urban agenda by counterbalancing both the influence of the state's other regions and the legal primacy of state government.

New York City and Legislature Politics

Since 1975, control of the state legislature has been divided with the Democrats firmly in charge of the Assembly and the Republicans holding a majority in the Senate. Under a highly partisan system, majority party conferences charge their legislative leaders with developing unified policy positions and representing them in negotiations with the other house and the governor. To assist the leaders in their task, the conferences grant them the authority to select the chairs and majority members of committees, to fill lower leadership positions, and to allocate staff among members. The majority party conference, therefore, effectively makes the policy decisions for each house.

The majority conferences reflect the regional nature of party politics in the state. While the Republican majority in the Senate includes mostly suburban and rural members, there is a decided “downstate cast” to the Democratic conference in the Assembly. Since gaining control of the Assembly in 1974, more than 60 percent of the Democratic conferences each session and all five Assembly speakers have been from New York City.

Given the city’s influence, it is not surprising that for a quarter century, the Assembly has emphasized a liberal approach to government, which includes support for social spending and protection of civil liberties. Democrats in the Assembly continue to be significantly more liberal than Republicans, and New York City Democrats remain the most liberal of the regional groupings (Table 1.2). This was quite evident in the Assembly’s opposition to a number of Governor Pataki’s initiatives, including ones to cut benefits for welfare families, increase tuition for SUNY/CUNY students, mandate drug testing for welfare recipients, and increase sentences for juvenile offenders. The liberal approach was also evident in the Assembly’s strong support for continued rent regulations, the perennial effort to secure a larger proportion of state school aid for city schools, and a series of bias-related crime bills that defined sexual orientation as a protected category.

The Democratic conference, however, is not ideologically monolithic. Party conferences in the legislature reflect the diversity of party interests in the electorate, and issue positions that may appear “rock solid” on the floor are often the result of negotiations among conference factions. As a rule, upstate Democrats are less liberal than their New York City counterparts. In fact, a number of upstate Democrats campaign with Conservative party cross-endorsement. The Democratic leadership simply cannot afford to ignore the interests of these upstate members, however, if the party is to hold its majority in the Assembly. Indeed, in seeking to overcome Assembly opposition to the 1995 tax cuts, the Pataki administration targeted upstate districts represented by moderate Democrats for “attack ads” in what proved to be

TABLE 1.2.
The New York State Legislature: An ideological profile.

Liberalism scale ratings 1995–96					
Assembly			Senate		
Democrats		Republicans	Democrats		Republicans
90.1	Overall	29.1	75.4	Overall	7.3
93.7	NYC	60.8	82.8	NYC	14.0
88.0	Suburban	41.2	na	Suburban	6.8
82.3	Upstate	19.1	51.8	Upstate	5.4
96.8	Black and Hispanic caucus				
90.1	Upstate cities				

Note: Liberalism is measured by ratings given legislators by the ADA, American for Democratic Action. They choose bills that support liberal ideas (more state assistance to the poor, more regulation to protect consumers, and protection of civil liberties and civil rights), and give legislators higher scores if they vote for more of such bills.

a largely successful effort to influence the party conference from inside on the tax issue.

The diversity within the Democratic conference is not solely regional. Although the New York City delegation includes a decisive majority of white “liberals” and African-American and Hispanic members who emphasize civil liberties and social welfare programs, it also includes a small group of “moderates” who represent white working-class areas of the outer boroughs and who emphasize more conservative social agendas. In recent years, three of these downstate Democrats have accepted Conservative party cross-endorsement, which has proven important to electoral success in their white-ethnic districts.

In summary, despite some internal tensions, the Assembly Democratic Conference takes issue positions reflective of its New York City base. The strong “liberal direction” of some of these positions, which are often unpopular in upstate districts and in some city neighborhoods, is a function of the Democrats’ large majority in the Assembly. If that majority were to shrink, the politics around policy formulation would, in all likelihood, become more accommodative of moderate positions.

In contradistinction, the majority conference in the Senate is composed largely of upstate rural “conservatives” and suburban “moderates.” Of the 35–26 Senate majority the Republicans held in 1997, for example, nineteen were

from upstate areas of the state, 11 were from suburban districts, and only five were from New York City. Nevertheless, even in so “nonurban” a body, New York City is not without impact.

The city’s influence in the Senate arises from the critical nature of its vote block. With only a slim legislative majority, the Senate leadership must be constantly aware that the party’s continued success is a function, in no small part, of electoral support for Republican senators from in New York City and that maintaining this support requires addressing at least some of their city constituents’ needs.

In extraordinary cases, a small block can gain political leverage by threatening to act as a swing vote, i.e., join their votes with those of the minority party and create a new majority on the floor.²⁵ This does not occur often because potential swing voters are as willing as others to negotiate within conference and settle for a compromise that keeps in place the benefits of strong leadership. Moreover, legislative leaders can impose sanctions on rebellious members. Such rebellions, therefore, are likely to occur only on issues of conscience or when the fear of external sanctions outweighs concerns over leadership authority, such as in the recent battle over rent regulations.

In January 1997, Senate Majority Leader Joseph Bruno announced that, without basic changes in the system of rent stabilization, the Senate would allow the program to expire later that summer. The consequences of such an abrupt termination to a long-standing policy escaped neither city tenants protected by the regulations nor the five Republican Senators who represented them.²⁶ The Assembly speaker and the Senate minority leader immediately announced their support for continued rent regulations.

The five Senate Republicans from the city were faced with a clash between party loyalty and constituent interest. With twenty-seven Democratic Senate votes solidly in support of continued rent regulations, four Republican votes would serve as a swing vote on the issue. Two of the Republicans announced their support for continued rent regulation; the others attempted with varying degrees of success to deflect the issue in public statements. In the end, it became clear that pressure from this block of potential swing voters coupled with gubernatorial misplays and a firm Assembly position convinced the Senate Majority Leader to reach a compromise settlement favorable to city tenants.

The rent regulation issue highlights two important points: One, even without the threat of a swing vote defeating him on the floor, the majority leader would have faced the prospect that, because of the intensity of the issue to so many city voters, “success” on his original proposal may have cost the Republicans their majority in the 1998 elections. And two, New York City’s friends, who largely control the Assembly, are few but strategically located within the Republican-controlled state Senate.

New York City and Statewide Elections

The unwritten rule for winning statewide elections in New York is simple: Republican candidates must maximize their winning margins in upstate New York, secure the suburban vote, and hold down their losing margins in New York City; Democratic candidates, on the other hand, need to carry the city by a wide margin, run close in the suburbs, and hold down their losing margins upstate. Since the end of World War II, successful gubernatorial candidates from both parties have built their campaigns around this strategy. Republican governors, like Thomas Dewey and Nelson Rockefeller, attended to city interests and were rewarded with sufficient urban support to win seven statewide contests between them (Table 1.3). Rockefeller, in particular, developed good working relationships with union leaders and prominent Democrats in the city, which served him well in his four gubernatorial campaigns. Democrats Averell Harriman, Hugh Carey, and Mario Cuomo based their combined six victories at least in part on the overwhelming support of New York City voters.

Historically then, the city's focused vote block has been an important statewide political resource. Indeed, the fact that a city resident has served as governor for fifty-eight of the last ninety-seven years is further evidence of this importance. The development of the suburbs and the proportionately smaller turnout of the city's increasing number of low-income voters, however, have decreased the salience of the city vote over the years. As recently as 1950, city voters accounted for nearly one-half of the votes cast in statewide elections; in the 1990s, that total dropped to barely 30 percent while the

TABLE 1.3.
New York City/State: Republican gubernatorial victories

Vote	NYC	Suburbs	Upstate cities	Rural counties	NYC % of state
<i>Percentage or vote won by republicans:</i>					
1994 Pataki	27	53	49	65	30
1970 Rockefeller	47	58	47	59	41
1966 Rockefeller	39	53	40	52	41
1962 Rockefeller	44	64	49	65	42
1958 Rockefeller	43	65	56	68	41
1950 Dewey	44	68	54	69	49
1946 Dewey	46	76	60	73	51
1942 Dewey	37	68	59	71	48

Note: Voting data for upstate cities reflects county vote. See Table 1.1 for definitions of areas.

suburban vote rose from 12 percent to nearly one-quarter of the total. In an era where the allocation of state resources is increasingly seen as a zero-sum game, the fact that the city is losing statewide electoral influence relative to the suburbs has important political implications.

In 1994 George Pataki won election with a smaller percentage of the New York City vote than any other successful gubernatorial candidate in the twentieth century. He accomplished this largely by winning a substantial majority of a notably large upstate turnout. Whereas previous Republican governors had averaged roughly 40 percent of the city vote, Pataki captured just over one-quarter of the city. Continuing upstate economic problems combined with the absence of the once powerful anti-Cuomo factor in rural areas, however, may mean that the city vote was more important to Pataki in 1998. Indeed, many of the governor's initiatives, such as using his control of the Metropolitan Transit Authority to lower automobile tolls and mass transit fares in the city as well as his support for economic and recreational development on Manhattan's West Side Point, can be viewed as an attempt to broaden his city support base for the 1998 election.

The Mayor in Albany

Much of the city's influence in the period between statewide elections is played out in the ongoing relationships between the mayor and state officials. The governor and mayor have conflicting responsibilities. It is the mayor's job to secure the city's interests in Albany; it is the governor's job to consider the city's interests within the context of the entire state. "As the two leading elected officials in a populous and nationally influential state, the governor and mayor cannot avoid friction or even overt collision; their cooperation is always tense."²⁷

Mayors push the city's agenda in a variety of ways. The mayor makes several largely symbolic but nevertheless important trips to Albany each session to lobby for or against legislation impacting the city's interests. Mayors have used their local political skills to try and influence state legislators from city districts and their media access to make the city's policy positions more broadly known around the state. In the 1960s, Mayor John Lindsay attempted to create a coalition of the "big six" city mayors in the state as an urban lobbying force in Albany. Mayors have also had a continuing institutional presence in the state capital in the form of the city's Legislative Affairs Office. This office monitors policy proposals to ascertain their impact on the city and lobbies for the mayor's legislative initiatives in Albany and against initiatives perceived as harmful to city interests.

The interactions between the mayor and state officials are inherently political. While the governor holds the legal upper hand in the relationship, a

persuasive mayor can influence the governor's political fortunes with city voters. In that regard, however, political party appears to play a limited role in the relationship between the two executives. Indeed, several of the better working relationships have been between governors and mayors of different parties while some of the more intensely negative ones have involved executives from the same party. Democratic Governor Herbert Lehman and Republican Mayor Fiorello LaGuardia had a notably positive working relationship as did Republican Governor Nelson Rockefeller and Democratic Mayor Robert Wagner. On the other hand, Rockefeller and John Lindsay, a Republican mayor for his first term, were open political enemies, and the relationships between Democratic governors Hugh Carey and Mario Cuomo with Democratic mayors Abraham Beame and Ed Koch were often tense and difficult.

Personality issues notwithstanding, there may be more systemic explanations for this counterintuitive dynamic. Party labels often mean something very different to executives than they do at the legislative level. As mentioned above, the historic need for Republican governors to hold down their margin of loss in the city has encouraged them to broaden their political base and address city interests, a process which can only prove helpful to Democratic mayors and distressing to Republican party loyalists. Moreover, sharing partisan affiliations may actually further strain inherent institutional tensions by generating intraparty leadership competition between the state's chief executive and the mayor from the world's media capital.

Despite Guiliani's support for Cuomo's reelection in 1994, he and Governor Pataki built a good *public* working relationship over the course of the governor's first term. Early on, the governor concluded a watershed-preservation agreement between the city and a number of upstate communities that removed, at least for the time being, the threat that the city would have to borrow billions of dollars in capital funds to construct a major purification system for its water supply. Moreover, gubernatorial vetoes prevented the city from having to implement expensive wage and pension bills enacted by the legislature at the behest of the city's police and teachers. In turn, Guiliani's specific criticisms of Pataki's welfare plan and property-tax cut proposal have been tempered by consistent praise of the governor's overall record.

The mayor's relationship with the legislature, however, has been far rockier. Over the last quarter century, Democratic mayors have been able to rely on generally strong support for their initiatives from the Assembly majority. As a fusion mayor, however, Guiliani has a more complex relationship with the legislature.²⁸ "Fusion mayors encounter upstate Republican legislators who doubt the mayor's party loyalty and New York City Democratic legislators who regard him as a city hall interloper."²⁹ While Democrats in the Assembly are focused on helping their constituents in the city, they are not especially

interested in accomplishing this in ways that accrue political benefits to a Republican mayor. Such hesitancy was only enforced in Guiliani's initial relationships with the legislature, which included calls for less social spending in the city. Further complicating the picture, Senate Republicans had every reason to doubt Guiliani's party loyalty in wake of the mayor's endorsement of Mario Cuomo in 1994. Since those early days, however, the mayor's relationship with state legislators improved as political mutuality of interests overcame personality issues.³⁰

Conclusions

Over the course of the twentieth century, the relationship between New York City and State has been one of constancy and change. The city remains the most heterogeneous area in the state, although the nature of the heterogeneity has changed. The city continues to generate wealth for the state, although it makes expensive demands on state social service resources, and it continues to be a center of Democratic party and liberal politics in the state, although there are internal pressures to restructure its welfare state. Moreover, the once all-encompassing upstate-downstate division has been complicated by suburban growth and the appearance of downstate economic and social problems in upstate cities.

In Albany, elected representatives of these diverse forces contest for their constituents' share of state resources. In recent years, an inconsistent state economy and a more conservative national political climate have threatened the social programs so critical to many city residents. The election of a Republican governor in 1994, with notably little support in the city, coupled with a Republican Senate, focused largely on suburban and rural interests, makes the Assembly the "last bastion" of city interests in Albany. There is good reason to suspect a continuation of the kind of geographically based partisan politics characterized by the current tripartite breakdown of political power.

There is, however, an alternative scenario based on reformulated political coalitions. The spread of economic and social problems to the suburban inner rings and the ubiquity of these problems in upstate cities may eventually lead to the development of a cross-regional progressive coalition favoring redistributive policies. Such a coalition would find much of its conservative opposition not in another region of the state but from wealthier areas of the same cities and suburbs, which provide it with support. Under such a scenario, cross-regional partisan battles would supersede the geographical partisanship so apparent today.

Notes

1. New York State Senate, *Introducer's Memorandum in Support*, A3663, February 5, 1997, referred to Local Governments Committee.
2. David Ellis, *New York: State and City* (Ithaca, NY: Cornell University Press), p. 198.
3. Neal Peirce and Jerry Hagstrom, *The Book of America: Inside the Fifty States Today* (New York: Norton, 1983), p. 40.
4. The common legal term for state preeminence is *Dillon's rule*.
5. See Article IX, *New York State Constitution*; and *New York Laws of 1924*, chapter 363.
6. For a discussion, see Richard Briffault, "Intergovernmental Relations," in Gerald Benjamin, ed., *The New York State Constitution: A Briefing Book* (New York: The Temporary State Commission on Constitutional Revision, 1994), pp. 119–38.
7. *New York State Constitution*, Article VIII, Section 10.
8. *New York State Constitution*, Article VIII, Section 4.
9. See Steven Gold and Sarah Ritchie, "The Role of the State in the Finances of Cities and Counties in New York," in Jeffrey Stonecash, John White and Peter Colby, eds., *Governing New York State, 3rd ed.* (Albany: SUNY Press, 1994), p. 67.
10. Wallace Sayre and Herbert Kaufman, *Governing New York City* (New York: Russell Sage, 1960), pp. 564–84.
11. For a thorough discussion of the state fiscal monitors, see Robert Bailey, *The Crisis Regime* (Albany: SUNY, 1984), pp. 15–46.
12. See Robert F. Pecorella, *Community Power in a Postreform City* (New York: M. E. Sharpe, 1994), pp. 120–22.
13. The Regional Plan Association now considers the metropolitan area around New York City to include three states and twenty counties. See Robert Yaro and Tony Hiss, *A Region at Risk* (Washington, D.C.: Island Press, 1996), pp. 19–21.
14. See Lee Miringoff and Barbara Carvalho, *The Cuomo Factor* (Poughkeepsie, NY: Marist Institute, 1986), chap. 3.
15. Twentieth Century Fund, *New York World City* (Cambridge, MA: Oelgeschlager, Gunn and Hain, 1980), p. 62.
16. Ester Fuchs and J. Phillip Thompson, "Racial Politics in New York State," in Stonecash, White and Colby, p. 32.
17. David Halbfinger, "Immigrants Continue to Reshape the City," *New York Times*, Dec. 1, 1997, B3.
18. V. O. Key, *Southern Politics* (New York: Knopf, 1949), p. 307; quoted in Jeffrey Stonecash, *American State and Local Politics* (Fort Worth, TX: Harcourt Brace, 1995), p. 7.
19. Yaro and Hiss, pp. 26–31.
20. Kirk Johnson, "Crisis in Asia Brings World to New York," *New York Times*, January 12, 1998, B1.
21. Census data
22. Richard Perez-Pena, "The Tax Pipeline to Albany: Does It Flow North or South?" *New York Times*, May 10, 1997, p. 1.

23. Citizens's Budget Commission, *New York City and New York State Finances: Fiscal Year 1997–98* (pocket ed.), table VII; New York City Comptroller's, *News Report*, May 27, 1997; *Statistical Abstract of the United States*, 1995, table K–24.

24. Richard Perez-Pena, "Study Shows New York Has Greatest Income Gap," *New York Times*, Dec. 17, 1997, p. 1.

25. For an example of the swing vote phenomenon, see Robert F. Pecorella, "Federal Mandates, State Policy Coalitions, and Hazardous Waste Management in New York State," in Stonecash, White and Colby, pp. 338–43.

26. There was also opposition to Bruno from several suburban Republican senators whose districts had rent-stabilized housing.

27. Wallace Sayre, "The Mayor," in Lyle Fitch and Annmarie Hauck Walsh, eds., *Agenda for a City* (New York: Sage, 1970), p. 586.

28. Fusion mayors in city history are those elected by a coalition of Republican and Liberal party support. Mayors Seth Low, John Purroy Mitchell, Fiorello LaGuardia, John Lindsay, and Rudy Guiliani are the five fusion mayors elected since Greater New York was formed in 1898.

29. Sayre, "The Mayor," p. 587.

30. David Firestone, "Study in Harmony," *New York Times*, April 13, 1997, p. 33.

2

Political Conflict and Intergovernmental Relations: Federal-State and State-Local Relations

David S. Liebschutz and Sarah F. Liebschutz

American Federalism: The Legal and Constitutional Setting

The National-State Framework

Federalism is “the central characteristic of the American political system, its principles animating the greater part of the nation’s political process.”¹ The U.S. Constitution, the basic document of the American federal system, delineates the sharing of powers between the national and state governments—those delegated to the national government, those reserved to the states, and those denied to both the national government and the states.² Constitutional structure is an important starting place for understanding the relationships between the fifty states and Washington, generally, and New York and the national government, specifically.

The dynamics of federalism involve “endless debates over divisions of authority, constant adjustments to changing circumstances, and ambiguous political rhetoric.”³ Such debates, adjustments, and rhetoric are incorporated in laws enacted by Congress and interpreted by the New York State legislature, in regulations issued by federal agencies and their New York agency counterparts, and in decisions by United States and New York State courts.

The State-Local Framework

State constitutions are the starting point for understanding state-local relationships. The United States Constitution contains no provisions on the status of local governments; in fact, the term *local government* is not found in it.

Unlike states with independent standing in the federal system, “local governments possess no sovereignty and come into existence only at the will of the states. They have only those powers granted by the states.”⁴ The words of Judge John F. Dillon, asserted more than 100 years ago in an Iowa court case, and upheld by the United States Supreme Court, are still pertinent. Local governments, Judge Dillon stated simply and emphatically in what has become known as Dillon’s Rule, are creatures of the state legislature. They may exercise only “those [powers] granted in express words; . . . those expressly granted; and . . . those absolutely essential to the declared objects and purposes of the [municipal] corporations.”⁵

Dillon’s Rule is the most narrow of three general approaches utilized by state legislatures to assign powers to local governments. It is embodied in the *ultra vires* (“beyond the authority”) approach, which stipulates that local governments have no powers beyond those specifically assigned. A second approach, *imperium in imperio* (“an empire within an empire”), grants general purpose local governments (i.e., counties, cities, towns, and villages) broad powers regarding governmental structure and “local affairs.” A third approach, *devolution of powers*, provides for delegation by the state legislature to general purpose local governments of all powers capable of delegation.

The New York State Constitution contains all three approaches to assign powers to local governments. Dillon’s Rule (*ultra vires*) is manifested in specific provisions that limit local spending, revenues, and debt (Article VIII). The *imperium in imperio* approach is embodied in Article IX, giving cities, towns, and villages power to adopt local laws relating to a number of distinct local matters.⁶ Finally, New York’s liberal construction of “home rule” powers of general purpose local governments in Article IX illustrates the *devolution of powers* approach. As Joseph Zimmerman has written, “the inclusion of three methods of distributing powers between the state and its general purpose local governments is attributable to competition between . . . supporters of political centralization and supporters . . . of political decentralization, and the tendency to add provisions to the constitution without deleting existing provisions.”⁷

Intergovernmental Relations

If federalism is the formal, legal structure within which national, state, and local governments interact to redefine their roles and responsibilities as social and economic conditions and political expectations change, intergovernmental relations is its dynamic reality. New York is both actor and reactor within the federal system. At the national level, New York attempts to influence laws, regulations, and court decisions and reacts to those laws, regulations, and

court decisions during implementation. A parallel process occurs for local governments vis-à-vis the state government.

During the intergovernmental policy implementation process, three dimensions of public policy are involved—financing, policymaking, and administration. As we shall demonstrate later, federal welfare reform implementation in New York involves national, state, and local governments in funding, policymaking, and administrative activities.

Within New York, intergovernmental policy implementation occurs within the context of fiscal decentralization. New York has an unusually decentralized fiscal system. Strong evidence for such fiscal decentralization is that local taxes account for a larger share of state-local taxes than in other states. “It is well known that New York places a heavier tax burden on its citizens than other states . . . [but it is not well known that] local taxes, not state taxes, account for [the state’s] extremely high tax burdens.”⁸

The explanation for the heavy local tax burden rests in two related factors—local government responsibilities and state mandates and restraints. New York State “assigns more responsibilities to local governments than is true in most other states.”⁹ In New York, local governments are responsible for providing a wide range of public services, including education, highways, corrections, social services, and public welfare.

A mandate is a “constitutional, statutory or administrative regulation that requires a local government to undertake a specified activity or to provide a service meeting minimum state standards. In contrast, a state restraint prevents or restricts the ability of a local government to initiate or continue an action.”¹⁰ Mandates typically cover a wide range of policy areas, such as employment, environmental protection, and civil rights. Several studies have reported that New York imposes more mandates on its local governments than any other state.¹¹ In addition, taxing or borrowing limits, technically, are state restraints, although local officials often describe them as mandates.

Two public welfare policies, Medicaid and income maintenance, are particularly burdensome to county governments and New York City. Not only are these local governments mandated by the state government to administer Medicaid and income maintenance, they must also share the cost with the state for funding them. Because these programs are expensive, they “go a long way in explaining why New York’s local taxes are so much higher than those in other states.”¹² Just how much more expensive will be discussed below.

The Devolution Revolution

The most recent sorting-out of federal, state, and local responsibilities has been called a “devolution revolution.” Although the devolution revolution is

most commonly associated with Republican control of the 104th Congress, the result of the 1994 elections, it is more appropriately seen as the continuation of “a long-term realignment for American federalism . . . [with] roots in the late sixties [that] picked up steam when Ronald Reagan was elected president in 1980.”¹³ In 1994, when Republicans articulated their Contract with America, with several devolution initiatives, discontent about the American federal system was already fairly widespread. It included dissatisfaction in many quarters with an extremely complex system of federal grants to states and localities, and with seemingly unlimited federal expenditure growth. Governors were eager to (1) rid themselves of federal mandates perceived as costly and controversial, (2) experiment with program innovations, and (3) cut costs. The resulting devolution revolution shifted responsibilities to the states in several policy areas; the major devolution initiatives enacted by the 104th Congress concerned mandate reform (Unfunded Mandates Reform Act of 1995) and welfare reform (Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

New York’s financial stakes at the federal level, and those of local governments at the state level, are enormous; thus, New York has long been an active player in intergovernmental fiscal matters. It is that arena to which we next turn.

The Intergovernmental Fiscal Context

The burdens that state government places on localities in New York may go a long way in explaining why the local tax burden in New York is among the highest in the nation. In addition, the fact that state aid to localities in New York has not kept pace with increasing local responsibility compounds the need for local governments to raise revenues. This is particularly true for the largest state and local expenditure, elementary and secondary education. In education, there is little federal aid to cushion the shifting sands of state policy with additional funds.¹⁴ Even with the recent proposals to increase the state share of education spending, New York is still well below the national average.

A thorough search of prior research yielded no single comprehensive source comparing how states and local governments split responsibilities. It is clear that the distribution of state and local responsibilities varies markedly from state to state and function to function. The split of responsibilities in any given state generally does not seem to reflect a comprehensive set of policy choices but rather reflects historical development.

A quick way to gain some insight into the distribution of state and local responsibility is to look at local spending as a percentage of state and local spending.¹⁵ Table 2.1 shows these percentages by major functions. All catego-

ries except education are based on Census Bureau data. The column for education is based on data from the National Center for Education Statistics, which provides better information for our purpose than does the Census data. As Table 2.1 shows, New York local governments' share (65 percent) of total state and local direct general expenditures was the fourth highest in the nation. Among the twelve most populous states, New York ranked second, behind California, in the percentage of state and local spending borne by localities (Table 2.2). New York localities also bore a greater share than the national average in four of the six major noneducation spending categories (highways, housing and community development, police, and public health and welfare). New York local governments' percent share of public welfare spending (38 percent) was particularly noteworthy, as it was more than double the national average of 18 percent. Only California's local share (45 percent) was higher.

Although these data provide insights, they give an incomplete picture. The fact that local governments bear a large share of total direct spending does not mean the state role is small. States also provide aid to localities, which local governments can use to finance their spending. We can gain further insight by looking at state aid as a percentage of total local revenue. As Table 2.3 shows,

TABLE 2.1.
GY 1994 local direct expenditures as percent of
state and local direct expenditures.

State	Direct exp	Direct gnrl exp	Total ed	K-12 ed	Higher ed	Highways	Housing	Parks	Police	Welfare	Gen admin
US	56	57	44	50	10	39	90	83	86	18	60
AL	51	49	20	27	1	37	99	94	84	3	52
AK	35	35	19	22	1	18	58	78	66	3	29
AZ	61	60	47	53	23	39	100	93	85	16	67
AR	45	45	27	33	1	30	97	54	79	1	52
CA	65	66	34	38	21	53	98	90	88	45	71
CO	64	66	45	52	5	47	82	93	91	29	64
CT	43	46	52	57	0	28	71	83	80	8	38
DE	37	38	24	29	4	18	53	46	65	0	25
FL	64	64	37	44	1	36	89	94	92	4	61
GA	59	57	37	44	2	36	87	58	86	1	70
HI	24	23	1	1	0	14	53	33	97	2	52
ID	49	52	27	33	4	38	61	74	74	6	59
IL	58	58	62	69	22	42	96	94	89	5	68
IN	55	54	36	43	0	37	80	93	78	11	68
IA	54	55	37	46	4	49	98	91	83	8	49

(continued on next page)

TABLE 2.1. (continued)
 GY 1994 local direct expenditures as percent of
 state and local direct expenditures.

State	Direct exp	Direct gnrl exp	Total ed	K-12 ed	Higher ed	High-ways	Housing	Parks	Police	Welfare	Gen admin
KS	59	59	33	37	18	42	98	94	87	3	60
LA	47	47	31	38	1	31	99	60	84	2	59
ME	42	45	42	48	0	34	84	72	75	2	44
MD	50	54	51	58	15	38	85	90	80	1	52
MA	46	43	57	63	1	28	71	63	80	1	32
MI	54	57	61	69	13	60	74	81	85	6	66
MN	60	61	34	40	3	61	97	85	88	25	61
MS	51	53	26	32	7	37	98	55	81	1	59
MO	55	55	50	57	9	35	76	91	85	2	59
MT	44	48	35	40	4	25	67	53	78	5	40
NE	65	55	51	63	13	39	98	78	80	5	61
NV	60	66	55	64	3	40	90	93	88	8	73
NH	42	45	85	91	2	37	80	66	82	10	45
NJ	51	58	52	57	13	28	66	49	87	20	64
NM	45	46	13	14	10	21	92	78	79	4	47
NY	61	66	53	59	13	54	95	78	92	3	50
NC	57	56	21	27	5	15	87	82	78	16	51
ND	42	43	37	48	0	35	66	86	8	58	
OH	51	56	48	54	6	44	93	90	89	15	63
OK	51	54	27	32	3	40	94	74	86	1	45
OR	55	57	50	56	21	52	73	89	79	2	42
PA	51	53	52	56	7	31	98	79	77	13	63
RI	36	39	52	58	0	18	86	62	83	3	29
SC	45	47	39	47	4	15	86	77	73	0	60
SD	47	46	59	70	1	33	77	75	77	4	47
TN	60	52	35	44	2	35	95	73	86	3	60
TX	60	59	47	55	9	35	97	94	90	2	63
UT	55	51	31	37	5	37	67	78	83	2	54
VT	40	39	62	66	0	37	32	54	56	0	26
VA	55	56	57	66	2	21	86	82	82	22	62
WA	55	53	20	23	1	43	76	91	84	1	67
WV	38	42	24	29	0	5	86	39	71	0	42
WI	59	61	52	59	21	60	95	88	93	26	61
WY	54	58	38	44	10	21	35	67	85	2	52

Source: Census Department data.

Definitions: el&sec ed = elementary and secondary education; direct gnrl exp = direct general expenditures; exp = expenditures; gen admin = general administration; housing = housing and community development

TABLE 2.2.
1994 local direct expenditures as percent of state and
local direct expenditures for the twelve most populous states.

State	Direct exp	Direct gnrl exp	Total ed	K-12 ed	Higher ed	High-ways	Housing	Parks	Police	Welfare	Gen admin
US	56	57	44	50	10	39	90	83	86	18	60
CA	65	66	34	38	21	53	98	90	88	45	71
FL	64	64	37	44	1	36	89	94	92	4	61
GA	59	57	37	44	2	36	87	58	86	1	70
IL	58	58	62	69	22	42	96	94	89	5	68
MA	46	43	57	63	1	28	71	63	80	1	32
MI	54	57	61	69	13	60	74	81	85	6	66
NJ	51	58	52	57	13	28	66	49	87	20	64
NY	61	65	53	59	13	54	95	78	92	38	50
NC	57	56	21	27	5	15	87	82	78	16	51
OH	51	56	48	54	6	44	93	90	89	15	63
PA	51	53	52	56	7	31	98	79	77	13	63
TX	60	59	47	5	9	35	97	94	90	2	63

Sources: Bureau of the Census *Government Finance Series 1994*; Digest of Education Statistics, 1996. NCES (Nov 1996), Tables 156, 327.

Definitions: el&sec ed = elementary and secondary education; direct gnrl exp = direct general expenditures; exp = expenditures; gen admin = general administration; housing = housing and community development

New York state aid as a percentage of local revenue was the same as the national average of 30 percent. However, New York State aid as a percentage of local revenue declined from 37 percent in 1977 (20 percent above the national average) to 30 percent in 1994 (exactly the national average). By contrast, the California state aid percentage, in large part due to Proposition 13 passed by voters in 1978, increased from 32 percent in 1977 (4 percent above the national average) to 36 percent in 1994 (22 percent above the national average).

New York local governments spend \$1,668 (50 percent) more than other states' local governments per person (Table 2.4). This extra spending reflects two factors—the total level of state-local spending and the local share of funding responsibility. Fully \$1,217 of the extra \$1,668 that localities spend reflects higher total state-local spending with the remaining \$451 due to the greater share that New York localities fund. For two of the largest government functions, education and public welfare, if New York's local governments were to finance the same share of these expenditures as in the other states,

TABLE 2.3.
Total local revenue and total local intergovernmental
from state, 1977, 1987, and 1994.

State	1994		1987		1977	
	State aid as percent of local revenues	Index	State aid as percent of local revenues	Index	State aid as percent of local revenues	Index
US	30	100	29	100	31	100
AL	26	89	27	92	30	98
AK	34	114	35	119	37	122
AZ	31	105	29	101	31	102
AR	38	127	35	120	37	119
CA	36	122	37	129	32	104
CO	24	80	21	71	26	85
CT	26	87	23	78	19	61
DE	40	134	38	131	38	124
FL	23	79	25	86	29	96
GA	25	84	27	93	24	77
HI	11	39	8	29	8	26
ID	36	123	36	124	35	114
IL	24	83	24	81	26	86
IN	30	101	34	118	36	117
IA	31	104	30	104	34	112
KS	28	95	19	64	23	76
KY	37	125	35	121	32	103
LA	30	102	27	92	36	118
ME	30	102	30	104	34	112
MD	25	84	25	87	34	112
MA	28	94	33	114	22	71
MI	27	92	28	97	31	102
MN	35	120	35	120	40	131
MS	36	123	35	121	41	133
MO	26	88	24	81	21	70
MT	37	124	24	82	27	88
NE	17	57	12	40	14	45
NV	35	118	35	121	27	88
NH	12	41	12	41	15	49
NJ	31	106	32	111	25	83
NM	47	160	45	156	49	160
NY	30	100	29	99	37	120
NC	33	113	34	117	41	134
ND	32	110	36	123	35	115
OH	31	104	31	108	31	103
OK	34	115	29	101	32	103

(continued on next page)

TABLE 2.3. (continued)
Total local revenue and total local intergovernmental
from state, 1977, 1987, and 1994.

State	1994		1987		1977	
	State aid as percent of local revenues	Index	State aid as percent of local revenues	Index	State aid as percent of local revenues	Index
OR	28	96	22	76	23	76
PA	30	101	28	98	30	96
RI	24	81	26	89	25	80
SC	27	91	30	105	36	116
SD	20	67	20	68	15	51
TN	20	66	18	61	20	65
TX	27	90	21	72	24	78
UT	27	90	26	88	35	115
VT	23	78	21	73	21	68
VA	28	95	29	101	30	97
WA	32	109	30	102	30	98
WV	41	140	42	144	46	151
WI	37	124	38	132	46	149
WY	35	118	32	112	28	90

Source: Bureau of the Census *Government Finance Series* {1977, 1987, 1994}.

local spending for these two functions would be \$374 lower per capita (\$107 for education and \$267 for welfare), and state spending would be correspondingly higher.

When comparing total expenditures as a percentage of personal income, we discover that New York local governments spent 4.7 percent more on services than did other states' local governments (Table 2.5). In other words, for every \$100 of personal income generated in the state, New York local governments on average spent \$4.70 more than did other states' local governments. Three dollars of the extra \$4.70 that New York localities needed to raise was due to overall greater spending levels. The remaining \$1.70 of the extra money was due to the higher share of service expenditures New York localities fund. Thus, because New York localities funded a higher share of service costs, for every \$100 of personal income, they have to raise an extra \$1.70 in tax revenue.

From this analysis we can see that state and local policy choices about how to split responsibilities for major functions *do* have an impact upon the level of local taxes and spending. A more detailed discussion of its effect on two program areas—welfare and education—follows.

TABLE 2.4.
Local per capita direct general expenditures, FY 1994.

A. Per capita figures at New York's actual local share of 65 percent for direct general expenditures.

	State-local direct general expenditures (000s)	Per capita	% Local of direct general expenditures	Local per capita
United States	\$1,074,017,028	\$4,125	57	\$2,367
New York	113,411,530	6,248	65	4,035
			Difference =	\$1,668

B. Per capita figures, if New York's local share was at the national average (57 percent).

	State-local direct general expenditures (000s)	Per capita	% Local of direct general expenditures	Local per capita
United States	\$1,074,017,028	\$4,125	57	\$2,367
New York	113,411,530	6,248	57	3,584
			Difference =	\$1,217

New York state localities spent \$1,668 more per capita than did other states' localities in FY1994.

On average, \$1,217 of this \$1,668 was due to higher spending than other states.

On average, \$451 of this \$1,668 was due to the split of New York's state-local funding responsibility.

TABLE 2.5.
Local direct general expenditures, as a percent of personal income, 1994.

A. Figures for direct general expenditures as a percent of PI at New York's local share of 65 percent.

	State-local direct general expenditures (000s)	As % of personal income	% Local of direct general expenditures	Local as % of personal income
United States	\$1,074,017,028	18.7	57	10.7
New York	113,411,530	23.8	65	15.4
			Difference =	4.7

(continued on next page)

TABLE 2.5. (continued)

Local direct general expenditures, as a percent of personal income, 1994.

B. Figures, if New York's local share was at the national average (57 percent).

	State-local direct general expenditures (000s)	As % of personal income	% Local of direct general expenditures	Local as % of personal income
United States	1,074,017,028	18.7	57	10.7
New York	113,411,530	23.8	57	13.7
			Difference =	3.0

New York state localities' direct general expenditures as a percent of personal income are 4.7 percent higher than other states' localities, on average.

3.0 percent of this 4.7 percent is due to New York simply spending more than other states. 1.7 percent of this 4.7 percent is due to the specific split of New York's state-local responsibility.

Welfare Reform: Intergovernmental Issues

On August 22, 1996, President Bill Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The Act—a radical revision of the federal program welfare program—was heralded by Donna Shalala, Secretary of the United States Department of Health and Human Services, as “transform[ing] our nation's welfare system into one that requires work, promotes parental responsibility, and protects children.”¹⁶ PRWORA contained many changes affecting families, children, immigrants, and persons with disabilities. Of these, many of the most far-reaching involved Aid to Families with Dependent Children (AFDC), the open-ended entitlement program that since 1935 provided eligible families with public assistance funded by federal and state governments (for a review of the history of welfare policy, see chapter 15). AFDC was replaced by the Temporary Assistance to Needy Families (TANF) block grant to states, which incorporated time limitations (5 years) and work requirements for adult recipients of public assistance. The power to design welfare programs was shifted to states, who were given broad flexibility to determine eligibility, method of assistance, and benefit levels.

“We have an historic opportunity to change the failed welfare system,” Governor George Pataki asserted after enactment of the federal welfare reform law. “We must return welfare to its original intent: a temporary benefit to help those in need move back into the workplace.”¹⁷ The governor proposed a welfare reform program for New York that would enable New Yorkers, he argued, to “to restructure the entire public assistance system in New

York State in a rational and efficient manner.”¹⁸ His proposal replaced AFDC and Home Relief (the state-local general assistance program for persons ineligible for AFDC) with two time-limited programs—Family Assistance, a five-year program for families with children, financed by TANF, and Safety Net, a two-year state-local funded program. To encourage work, both programs were more generous in disregarding earnings in the calculation of welfare benefits than their predecessors. Both programs, however, were less liberal in benefits provided. Family Assistance/TANF benefits were scheduled in the governor’s proposal to decrease over five years; the governor also proposed that persons who had not lived in New York State twelve months could receive benefits no higher than those of their former state or more than 50 percent of New York’s benefits. Article XVII Safety Net assistance was in the form of in-kind benefits and vouchers, not cash. To understand the details of governor’s proposal as well as its transformation into the New York State Welfare Reform Act of 1997, adopted by the state legislature on August 4, 1997, some background on two key factors in New York is necessary.

Key Factors in New York’s Welfare Policy

First, it is important to appreciate the significance of the Social Welfare Article (Article XVII) of the New York State Constitution. Article XVII is frequently cited as a symbol of New York’s liberal political culture and its tradition of big government.¹⁹ The article identifies the “aid, care, and support of the needy” and “the protection and promotion of the health of the inhabitants of the state,” as public concerns and stipulates that the state provide these “in such manner and by such means, as the legislature may from time to time determine.” Until the adoption of Article XVII, “care for the needy was a local responsibility and services were delivered by local governments and by private institutions and charities.”²⁰ The inability of localities and private agencies to meet the needs of people during the Great Depression led delegates to the 1938 Constitutional Convention and, subsequently, voters to agree on the need for permanent state involvement. While the Court of Appeals, the state’s highest court, has issued opinions that have varied with respect to the extent to which the state must provide assistance to the needy, it has consistently taken the position that aid per se is not a legislative option.²¹

The second key factor is that in New York welfare is state-directed and locally administered. As already noted, counties and New York City are mandated to administer welfare programs and to share their costs with the state government. Counties assume 25 percent of cash benefits paid to local AFDC/TANF recipients, and 50 percent of those for Home Relief/Safety Net recipients. The counties and New York City have very little discretion over

eligibility for cash programs and amount of benefits, but they do have considerable flexibility in designing and enforcing work requirements and other rules affecting individual behavior. This latter point, plus the fact that they are equal funding partners with the state, gives New York's fifty-seven counties (Social Services Districts) and New York City a huge stake in both welfare programs. Consequently, they were not passive in the face of Governor Pataki's welfare reform proposal.²²

The New York Legislature's Response

The New York State Welfare Reform Act of 1997 was a compromise of positions advanced by Governor Pataki, the Assembly Democratic majority, and the Senate Republican majority reflecting their different constituency bases. For example, the governor appealed to conservative Republicans and anti-tax groups. His recommendations to (1) increase the amount of money welfare participants can earn; (2) narrowly define work; (3) deny benefits to welfare applicants who failed drug tests; (4) limit exemption from work requirements to parents with a child under 3 months and, at the same time, establish a Child Care Block Grant with increased funding; (5) lower welfare benefits over five years; (6) pay less than the minimum wage to workfare participants; and (7) provide Safety Net benefits only in voucher or noncash forms conveyed "the message that welfare is temporary and . . . a bridge to self-sufficiency."²³

Assembly Democrats responded to organized labor and to advocates for the poor, children, and families. They favored (1) a broader definition of work to include vocational and educational training; (2) benefit levels the same up to the five-year cutoff point; (3) minimum or, if applicable, prevailing union wages for working recipients; (4) antidisplacement language; (5) elimination of benefits only if drug treatment were refused; and (6) small cash allowances in addition to vouchers and in-kind assistance to Safety Net recipients. Senate Republicans reflected the concerns of county officials that benefit cuts would shift greater costs of public assistance to county governments and that the vouchers and in-kind benefits only of the Safety Net would increase the costs of local operations.

The Welfare Reform Act of 1997 was a compromise that reaffirmed the historic liberalism of New York State. The governor's proposal to replace AFDC with Family Assistance, and Home Relief with Safety Net, was generally approved, as were expansion of the earned income disregard, narrower exemption from work participation, and the Child Care Block Grant. Antidisplacement language and broad definitions of work, included in the act, were concessions to Assembly Democrats; stable benefit levels during the five-year Family Assistance limit, Safety Net cash assistance for two years, and after that, largely vouchers and in-kind aid were concessions to majorities

of both Houses. Counties, though apprehensive about forthcoming regulations by state agencies for the 123-page act, were pleased at opportunities afforded them for local flexibility in interpretation and administration.

Welfare reform negotiations in New York were entangled with those of the state's 1997–1998 budget; the budget set a record for late adoption—126 days after the start of the state's fiscal year. Despite the protracted bargaining that surrounded the New York State Welfare Reform Act of 1997, it was characterized, one month after the governor signed it into law, as “a dissatisfying mixed bag.” “Critics on both the left and the right,” a *New York Times* reporter commented, “question how much has truly changed. . . . [B]oth sides agree that this approach does not represent a significant financial carrot or stick for getting recipients off the welfare rolls.”²⁴ The state's fifty-seven counties and New York City took some issue with that characterization.

Local Variations

Officially, as we have already stated, welfare policies in New York are state-directed and locally administered. However, the reality “on the ground” is that variations in emphasis and organizational structure, rather than strict uniformity, characterize New York's local welfare policies. As New York's version of federal welfare reform went into effect in 1997, it was apparent that counties and New York City chose to emphasize goals and management elements consistent with historic practices. Some counties, whose focus prior to welfare reform had been local cost-containment (i.e., low administrative costs through high caseload/worker ratios) continued that practice. Other counties, which had emphasized supporting work and work-related activities, stressed case management to even more aggressively move clients from welfare to work. Other counties, whose goal had been cost avoidance, continued to strongly divert recipients from applying or qualifying for public assistance in the first place. These prior emphases notwithstanding, New York's counties and New York City were paying close attention to changes in the 1997 legislation. They did not view the federal-state or state-local dimensions of welfare reform in New York as business as usual.

Elementary and Secondary Education: Intergovernmental Issues

Spending on elementary and secondary education is the largest single expenditure for state and local government in New York. In the 1994–95 school year—according to the U.S. Department of Education's *Digest of Education Statistics*—\$23.8 billion in revenues were raised for public elementary and

secondary education, 41 percent from the state, 54 percent by localities, and the remaining 5 percent from the federal government.²⁵

Despite the seemingly large state share, New York ranks in the bottom third of all states in terms of the state's share of education spending. This combined with the fact that New York spends more than any other state per pupil except New Jersey,²⁶ causes local school districts in the state to be caught having to provide an expensive level of services while getting relatively less aid than many other states. As Table 2.2 shows, compared with the twelve most populous states, New York ranked fourth in the share its localities spend on elementary and secondary education. Since the majority of local education funds come from local property taxes, New York's high local share of elementary and secondary education funding translates into relatively high property taxes for local residents.²⁷

In the last few years there has been a change in this funding pattern. A cornerstone of Governor Pataki's legislative initiatives in the 1997 and 1998 legislative sessions was the State Tax Reduction (STAR) program, a state-funded homestead exemption²⁸ for property-owners against their local school and general property taxes. The program works as follows. A certain amount of the value of a home is defined as exempt from local taxation. The taxes lost to the local school district (or local government for school districts funded by cities) because of the exemption are then made up by state reimbursement to the local government. (For more on this program, and the politics involved, see chapter 8). This \$2 billion program will take some of the fiscal pressure off local school districts by increasing the amount of money the state contributes to education spending. In addition, the state has also proposed increasing direct state aid to school districts as well. It remains to be seen, however, whether these increased state contributions will continue if there is a future economic downturn as occurred in the early 1990s.

Future Challenges of Intergovernmental Relations in New York

It seems clear from both the general legal and political framework as well as the economic realities of the world of devolution that local governments in New York State will continue to play a crucial role in carrying out the most basic functions of government. While the balance of power between the state and local governments will continue to shift back and forth depending on the nature of the program and the relative strength or weakness of the economy, there is no doubt that local governments will be full partners in delivering and financing government services well into the next century.

The wild card is the role of the federal government. If it continues to devolve responsibility to states and local governments for both operational

and the financial aspects of key government programs, there will surely be a continued sorting out of program responsibilities. In New York this may mean that programs like Medicaid, which have a large federal share, will be squeezed even further. While it is doubtful that the federal government will ever fully cede its involvement in social welfare and education to states and localities, given the demographic and financial realities of an aging baby boom, it is likely that the federal government will play a relatively smaller role as time goes on.

Notes

1. Daniel J. Elazar, *American Federalism: A View from the States* (New York: Harper and Row, 1984), p. 2.
2. For more on the constitutional perspective, see Sarah F. Liebschutz, *Bargaining Under Federalism* (Albany: SUNY Press, 1991), pp. 12–18.
3. Thomas J. Anton, *American Federalism and Public Policy* (New York: Random House, 1989), p. 35.
4. Leonard I. Ruchelman, “The Fiscal Problems of the Evolving Metropolitan,” in Richard J. Aronson, ed., *Management Policies in Local Government Finance* (Washington, DC: International City/County Management Association, 1996), p. 16.
5. *Merriman v. Moody’s Executors*, 25 Iowa 163 at 170 (1868).
6. See Richard Briffault, “Intergovernmental Relations,” in Gerald Benjamin and Henrick N. Dullea, eds., *Decision 1997: Constitutional Change in New York* (Albany: Rockefeller Institute Press, 1997), pp. 166–68.
7. Joseph F. Zimmerman in Sarah F. Liebschutz, *New York Politics and Government: Competition and Compassion* (Omaha: University of Nebraska Press, 1998), p. 140.
8. Steven D. Gold and Sarah Ritchie, “The Role of the State in the Finances of Cities and Counties in New York,” in Jeffrey M. Stonecash et al., eds., *Governing New York State* (Albany: SUNY Press, 1994), pp. 65–66.
9. *Ibid.*
10. Zimmerman, p. 41.
11. *Ibid.*
12. Gold and Ritchie, p. 66.
13. Richard P. Nathan, “The ‘Devolution Revolution,’: An Overview,” *Rockefeller Institute Bulletin*, 1996: 5.
14. In the 1994–95 school year, the federal government only supplied about 7 percent of total revenues for public elementary and secondary schools.
15. The concept we employ here is “direct” spending, which, to avoid double counting, does not include aid from states to local governments as part of state spending.

16. Donna E. Shalala, *Personal Responsibility and Work Opportunity Reconciliation Act: Compilation of Implementation Materials* (Washington: Health and Human Services, April 1997), p. 1.

17. George E. Pataki, November 13, 1996. Press release, governor's office.

18. George E. Pataki, *State of New York Executive Budget Message 1996–1997*, p. 64.

19. Sarah F. Liebschutz, "The Character of New York," in Liebschutz, *New York Politics and Government*, pp. 18–20.

20. Gerald Benjamin and Melissa Cusa, "Social Policy," in Benjamin and Dullea, p. 304.

21. See Sarah F. Liebschutz, *Bargaining Under Federalism*, pp. 31–32.

22. As was noted above, under the old AFDC program New York local governments financed a much greater share of public welfare expenditures than the national average. As of October 1994, New York required its localities to fund 50 percent of AFDC benefit payments. Only ten other states required localities to fund a share of AFDC benefit costs, and of these states, only North Carolina required this share to be as high as New York.

23. George E. Pataki, *State of New York Executive Budget Message 1996–1997*, p. 66.

24. Raymond Hernandez, "New York's No Model Welfare State," *New York Times*, 22 September 1997.

25. The U.S. Census data for all programs lags the U.S. Department of Education's school spending data, and thus the numbers in this section are from a different fiscal year.

26. Average per pupil spending in the United States was \$5,988 in school year 1994–95, while New York spent \$9,623 and New Jersey spent \$9,774.

27. In FY 1994, property taxes in New York were about 43 percent above the national average when measured against personal income.

28. A homestead exemption is a state or locally financed reduction in the amount of the valuation of a principal residence resulting in a reduction in the amount of property taxes owed. The STAR program would provide a greater exemption for elderly homeowners (about twice as large as other taxpayers).

3

Political Parties and Elections

Mark D. Brewer and Jeffrey M. Stonecash

Political parties are central to New York politics. Their electoral bases differ significantly, and they “organize” political debates by taking differing positions on policy issues. The policy positions taken by the legislative parties heavily influence policy negotiations. At the same time, however, parties are experiencing change. The percentage of the public registering to vote as party members—Democrat, Republican, or some third party—has declined in recent decades, and split-ticket voting is on the rise. In many elections independents are the pivotal group candidates must win.

These two situations—the enduring dominance of parties while partisan attachments are declining—might be seen as contradictory. They are not, however. More voters are hesitant to identify with parties, but high regional concentrations of partisan attachments persist. These regional divisions provide strong electoral bases for each party. There are areas where loyalties are divided, and these become political battlegrounds, but most areas have clear partisan inclinations. These differing electoral bases lead to parties taking differing policy positions and a continuing role for parties in the process.

This chapter reviews the electoral bases of the parties, the decline in attachment to the parties, and the response of party organizations to these changes over the years. The role of the parties in structuring the political debates within the state will then be examined.

Third Parties

The focus here is on the two major parties. State law also allows for additional parties. Any party whose gubernatorial candidate receives at least 50,000 votes is certified as a legitimate party until the next election. In New York the

current third parties are the Conservative, Independence, Liberal, Right-to-Life, Green, and Working Families parties. (For full discussions of third parties see chapter 4.) The Liberal party has been in existence for over fifty years. The Conservative party began in 1963 as a reaction to domination of the Republican party by the relatively liberal Governor Nelson Rockefeller. The Right-to-Life party began in 1978 as an effort to make abortion issues an explicit part of campaigns. None of the “third” parties enrolls large numbers of individuals. As of 2000 the total number of registrants was 10,696,472, with 4,960,666 enrolled as Democrats, and 3,089,345 as Republicans. The third-party enrollments were Conservative, 171,496; Independence, 172,471; Liberal, 92,074; Right-to-Life, 51,392; Green, 3,611, and; Working Families, 4,611. There were also 2,150,806 who chose no party, and are listed as nonenrolled. In New York they are also characterized as independents.

A candidate can be endorsed by more than one party. On the ballot each party has a row to list its candidates, and candidates can appear on more than one party line. Voters can vote for a candidate under any line. Candidates seek to run on third-party lines because they believe it allows voters to register a more specific political message (voting on the Conservative line) in addition to voting for a candidate. Candidates also do not want opponents to receive the endorsements.

Third parties have influence primarily through their strategies of endorsing major-party candidates. The Liberal party usually endorses Democrats, while the Conservative and Right-to-Life parties endorse Republicans.¹ The power to endorse is of some consequence because candidates believe an endorsement and the additional line can provide more votes. While some candidates worry about endorsements a great deal, evidence from the last forty years indicates that votes on third-party lines provide the margin of victory in only about 3 percent of legislative races.² In gubernatorial and mayoral races, there are occasions where votes on third-party lines play a significant role, however. In 1982 Mario Cuomo won the governor’s race with the votes on the Liberal line. The Liberal party also played a major role in helping Republican Rudy Guliani defeat incumbent Democrat David Dinkins for mayor of New York City in 1993. Republican George Pataki’s votes (328,605) on the Conservative party line in 1994 provided his margin of victory to beat Mario Cuomo. Third parties can be pivotal in some races, but the major parties continue to dominate the state.

Party Electoral Bases: Regionalism, Class, and Race

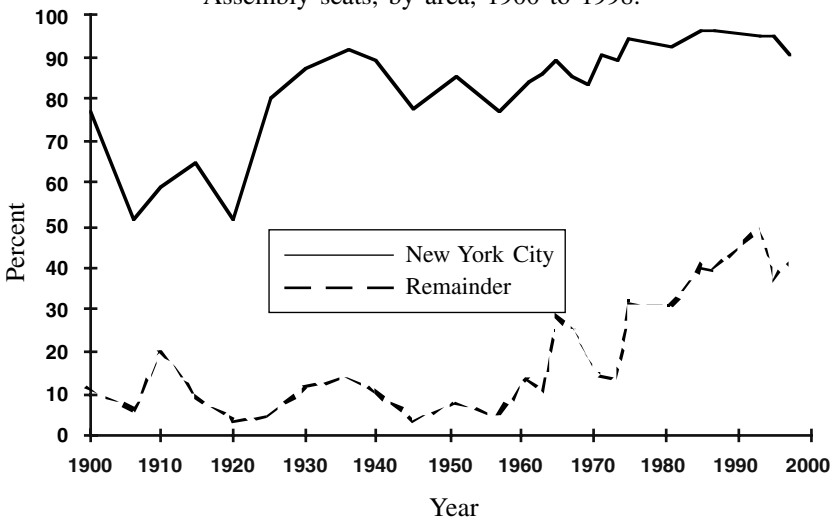
The important matter for politics is whether the parties represent different groups and serve as advocates of different policies. Political parties in New York draw upon very different constituencies. Results from polls conducted

by CBS/*New York Times*, indicate that individuals who identified themselves as liberals tend to identify with the Democratic party, while conservatives tend to identify with the Republican party.³ Differences by income are not as pronounced, but there are still differences. Low-income individuals are more likely to identify with the Democratic party, while high-income individuals are more likely to identify with the Republican party.⁴

This aggregate portrait of party bases is helpful, but it is relevant primarily for statewide candidates. Legislative districts are more revealing of the regional, class, and racial bases of the parties. Region has been significant for some time. Republicans do well upstate and in suburban areas around New York City. Democrats do well in New York City and a few upstate urban areas. There has been a long-standing division between upstate and downstate areas.

Much of this division has been driven by a sense among upstate residents that New York City is different (see chapter 1). The influx of immigrants, seen as “different,” into the city in the late 1800s played a significant role in this. The Democratic Tammany machine built a strong base among ethnics, which further convinced Republicans upstate that New York City politicians and Democrats were not to be trusted.⁵ This regional dominance was not complete, but it was sufficient for areas of the state to have clear political identities.⁶ Republicans enjoyed an enormous edge in upstate areas in party

FIGURE 3.1.
Democratic proportion of
Assembly seats, by area, 1900 to 1998.



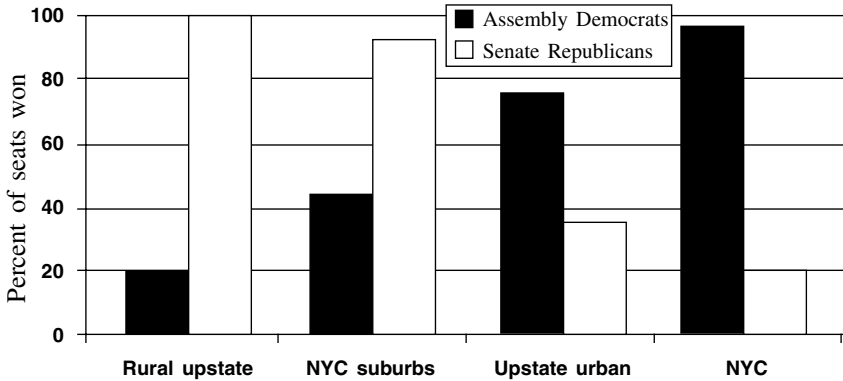
enrollment and the ability to win legislative races. The regional dominance of the parties can be seen in the geographical bases of the legislative parties across time. Figure 3.1 presents the proportion of Assembly seats held by Democrats for New York City and the rest of the state since 1900. Democrats have dominated New York City for a long time, while Republicans have dominated upstate. These regional differences in support for parties have, with few exceptions, also prevailed in gubernatorial elections.⁷

Because of these different party bases, many policy proposals were seen as benefiting either New York City or the rest of the state. Issue differences might have split along urban versus suburban-rural lines, with Buffalo and Rochester aligning with New York City, but instead, the division between New York City and the remainder of the state dominated politics.

In turn, many people in each area who might normally have been in a different party stayed in the dominant party of their region because of hostility to the other region. Many blue-collar workers upstate, for example, might normally have been Democrats, but were Republicans because their primary concern was opposition to New York City.⁸ Many wealthy residents of New York City might have been Republicans, but they were Democrats because they felt that Republicans were unsympathetic to New York City needs.

As Figure 3.1 indicates, the sharp division in support by region for the parties has declined somewhat since the early 1970s, largely because Democrats made some inroads into areas outside New York City. The 1974 election was particularly important for increasing Democratic success outside New York City. In 1975 the Democrats became the majority party in the Assembly. Assembly Democrats took twenty-one seats that were held by Republicans and lost two to the Republicans for a net gain of nineteen. Most of these Democratic seat changes (fourteen of twenty-one) were upstate. That election gave the party a significant base upstate. In 1974 Democrats held ten of the sixty-four upstate seats (16 percent). After the 1974 elections the Democrats held twenty-four of sixty-four seats (38 percent). In subsequent years the Democrats won even more seats upstate and expanded their legislative base. In 1982 and 1992 Democrats used their control over drawing district lines to create more districts favorable to Democrats, which increased the number of seats they held.⁹ By 1997 they held thirty-six of eighty-nine (40 percent) of the seats outside New York City. The Assembly Democratic party is now more of an urban statewide party than a New York City party. While change has occurred, the parties still differ greatly in how they fare by region of the state. Figure 3.2 presents success for the majority parties in each house, by area of the state, for the 1996 elections. Republicans, who control the Senate, win a much higher percentage of the seats in upstate rural and in suburban areas. Democrats, who control the Assembly, win a high percentage of the seats in New York City and urban areas.

FIGURE 3.2.
 Geographic bases of parties: Percent of seats won by area
 for Senate Republicans and Assembly Democrats, 1998.



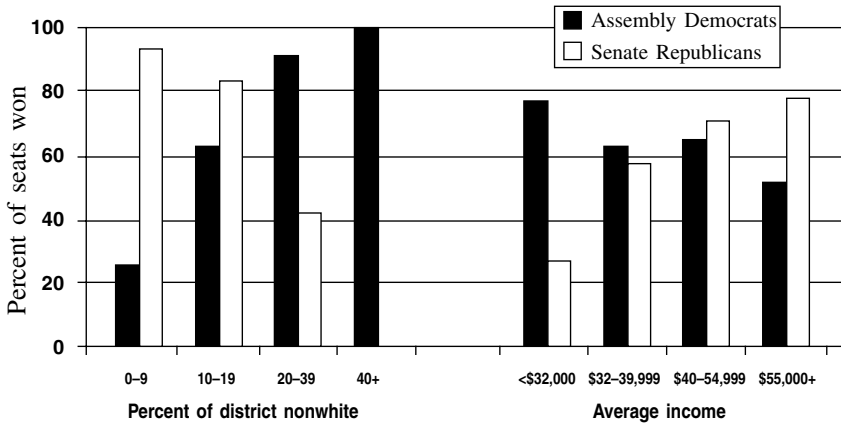
The parties also differ in their class and racial bases. There are significant differences by class and race in support for government action, and these affect party loyalties. Lower income individuals are more likely to live in communities that need more state aid for schools. They are more likely to need help with job training, and assistance to go to college. They are less likely to have health insurance.¹⁰ Affluent individuals are less likely to need this government assistance, and many are less likely to be sympathetic to those needing this assistance.

There are also significant differences by race in attitudes towards government. Blacks and Latinos, on average, have lower incomes than whites. Minorities are more likely to believe that discrimination is still a significant problem in housing, jobs, and civil rights. They are more likely to support government activity and spending to deal with problems of race relations, increasing job opportunities, and integration. Blacks are more likely to support state tax increases for schools. They are more likely to see state and federal government action as beneficial to them, rather than local action.¹¹ In general, minorities are more supportive of state government action, and they are much more likely to see the Democratic party as more responsive to their concerns than the Republican party.

Figure 3.3 indicates for the 1998 elections, how the racial and income composition of state legislative districts translates into party success.¹² The first part of the graph presents party success by the percent of districts which is non-white, while the second part indicates party success as the average

FIGURE 3.3.

Race and income bases of parties: Percent of seats won by race and income of district, Senate Republicans and Assembly Democrats, 1998.



income of districts varies.¹³ Senate Republicans do very well in districts with a low percent of nonwhites and in districts with higher incomes. Assembly Democrats do very well in districts with lower average incomes and in districts where the nonwhite percent is relatively high. In New York, the political parties clearly have electoral bases shaped by region, race, and income.

Party Bases and Position Taking

The electoral bases of the parties affect their policy concerns. Democrats have held the Assembly since 1974, while Republicans have held the Senate, with only minor disruptions, for most of the century. The parties, with differing electoral bases, use their control of the separate houses to advocate different policy positions and negotiate legislation favorable to their constituencies.¹⁴ Republicans continually advocate policies that they believe will encourage more economic competition and new businesses within the state. They propose lower taxes because they argue that high taxes make it harder to retain business and professional workers.¹⁵ They advocate fewer regulations on business and less government bureaucratic intervention into business practices. They advocate reductions in Medicaid and other social programs. Republicans consistently argue that too much is spent on welfare and Medicaid, and that there should be limits on the benefits clients receive.

Democrats, on the other hand, are much more likely to speak of compassion for the needs of working and lower-class interests. They seek to restrain

increases in tuition at the state universities. They consistently support social services and making the tax structure more progressive.¹⁶ They seek to maintain welfare benefits, while restraining the reimbursement paid to providers. They support building more public housing, and seek to preserve that public housing built in the past.

These party differences are reflected in the ratings interest groups give the parties. Interest groups select bills important to them, and score legislators according to whether they vote "right." The higher a score, the more the legislator has voted in accordance with the interest group. Averages by party provide an indication of each party's compatibility with different interest group concerns.

The 1994 ratings indicate party differences. In the Senate, Republicans averaged 57 in their Conservative party ratings, while Democrats averaged 22. For the Environmental Planning Lobby, Republicans averaged 58, while Democrats were at 78. In the Assembly, Republicans averaged 74 for the Conservative party, while Democrats averaged 10. For the EPL, Republicans averaged 72, while Democrats averaged 88. Past ratings indicate the same differences between parties.¹⁷ While some argue the parties do not differ,¹⁸ interest-group ratings indicate there are clear differences.

The parties in New York serve as vehicles for presenting different ideas about the role of government and its relationship to society. Republicans are worried about the decline/stagnation of the state's economy, and think individualism and economic activity can be encouraged by cutting state programs and reducing tax and regulation burdens. Democrats have argued for maintaining more of a state role to help people who they see as vulnerable and in need of assistance.

Moderating Party Differences

While New York's parties are generally regarded as cohesive and different, there are tensions within each party which lead to some moderation of the general stances just described. Many Assembly Democrats, particularly those from Queens and upstate, are more moderate and conservative than liberal. This creates continual tensions within the party, which must be worked out in party conferences. Within the Senate, upstate Republicans tend to be more conservative than those from the New York City metropolitan area. The nine Republicans on Long Island are continually seeking more school aid to hold down local property taxes. This requires maintaining state taxes to maintain revenue flows, which leads to a continuing tension within the party over whether to cut taxes or keep revenues.

Each majority party has fundamental tensions. As Figure 3.2 indicates, each party does very well in its traditional areas, but *each, in order to retain power, also needs the seats it has in areas less receptive to its core approach*

*to government.*¹⁹ In the Assembly, the Democrats hold almost all the seats in New York City. The key to their majority in the Assembly, however, lies in the forty-three Democratic seats held outside New York City. These areas outside New York City are often not as liberal as the areas within New York City, and they do not support New York City needs. The need to maintain suburban members, for example, led in 1999 to the Assembly Speaker supporting repeal of the “commuter” tax, or an income tax on suburban residents to support the Metropolitan Transit Authority. The Senate said it would repeal it, and the Assembly did not want to look as if it was unsympathetic to suburban needs.²⁰ In the Senate, the areas of Republican dominance are the upstate rural areas and Long Island. They hold all twenty-one seats in these areas. But Republicans could not hold the Senate without the five seats they hold in New York City and the three seats they hold in upstate urban areas. Much as with the Democrats, the Republicans control their house by being able to win seats in areas that are not inclined to elect Republicans. For both parties, some moderation of policy stances is forced on the center of the party because of the members from areas outside the party’s strength.

There have also been tensions between the legislative and gubernatorial wings of each party. The Republican party’s primary base of support is outside New York City, but for the last fifty years Republican gubernatorial candidates have needed to win substantial votes in relatively liberal New York City because the city constitutes 40 percent of the electorate. Governors such as Dewey and Rockefeller were able to get elected and reelected only by adopting relatively liberal Republican stances, which created clashes with their more conservative legislative party.²¹ The Republican “party” was sometimes less conservative than it might have wanted to be because of the moderate to liberal leanings of the governor.

Democratic gubernatorial candidates also have tensions with wings of their party. The Democratic party’s strongest base of support is in New York City, but Democratic candidates have usually had to be sensitive to the need to gather votes outside New York City. As New York City’s population has declined, Democratic candidates have become even more concerned about winning votes outside the city. Lee Miringoff argued that the clue to Mario Cuomo’s vote success during the 1980s was his popularity in the suburbs around New York City.²² Table 3.1 indicates how much the success of Cuomo depended on areas outside New York City for 1990. The table presents the proportion of the vote Cuomo received in each area, along with the percent of his total vote which came from the area. The first indicates his popularity within an area, and the second indicates how much he relied on votes from each area. In 1990 Cuomo faced Republican and Conservative party candidates, winning by 53 percent of the vote. Cuomo was able to achieve 50 percent of the vote in the New York City suburbs and upstate urban counties

and derived about two-thirds of his total vote from areas outside New York City. In 1994, his support in the New York City suburbs and upstate urban areas declined, and his reliance on New York City increased. His inability to do well outside New York City led to his loss.

The 1994 elections suggest this tension *may* be declining in importance for Republicans. New York City was over 50 percent of the state population for many years, but that percent has now declined to just over 40. The lesser turnout in 1994 by New York City voters (just under 50 percent) compared to upstate voters (about 70 percent) reduced the importance of New York City in the gubernatorial election. This made it possible for Republican George Pataki to win, even though he won only 28 percent of the vote in New York City (see Table 3.1). This vote proportion in New York City was the lowest percentage won by a winning Republican candidate in over 60 years and suggested that the governor would not have to cater to New York City in the budget process.²³ This possibility of Republican political estrangement from New York City was despite the presence of Rudy Guliani, a Republican mayor, elected in 1993 and 1997. In the 1994 election Guliani endorsed Cuomo, further separating Pataki from New York City, and leaving him in a situation where he was not indebted to Guliani. As Table 3.1 indicates, Pataki received only 17 percent of his votes from New York City, so he was less dependent on that area for votes.

While New York City may have declined as a percentage of the state's electorate, the 1998 election indicates it still presents difficulties for Republican gubernatorial candidates. George Pataki ran with very favorable conditions for an incumbent. The economy was improving, he had succeeded in

TABLE 3.1.
Gubernatorial electoral bases, 1990 to 1998.

Area of state	1990		1994		1998	
	% Democratic vote: Within	From	% Republican vote: Within	From	% Republican vote: Within	From
New York City	73	35	28	17	34	18
NYC suburbs	50	25	55	31	57	32
Upstate urban	48	20	51	21	55	19
Upstate rural	43	21	65	32	80	31

Notes: The first column for each year indicates the proportion of the vote each governor won within each area. The second column indicates the percent of his entire vote which came from that area. New York City suburban counties are Dutchess, Nassau, Orange, Rockland, Suffolk, and Westchester. Upstate urban counties are Albany, Broome, Erie, Monroe, and Onondaga. Sources: *Legislative Manual*, various years; New York State Board of Elections official results, 1994 and 1998.

cutting taxes, and Wall Street was generating sufficient tax revenues that funding for many programs could be increased in the 1998 budget. Yet he won reelection with only 55 percent of the vote. He was able to improve the percentage of the vote he won in the New York City suburbs, the upstate urban counties, and in the rural counties, but he received only 34 percent of the vote in New York City. That held his winning percentage down, and indicated how important New York City can be.

It should also be noted that intraparty tensions are not confined to the majority parties. The minority parties in each house also have internal conflicts, but those conflicts are less significant because the minority party does not control policy decisions, so party members have more freedom to vote as they wish. There is less pressure to reconcile the conflicts within these party conferences.

Political Change: Party Voting and Electoral Competition

The situations of New York political parties are in some ways very stable. The bases of the parties are relatively clear and stable, and divided control of the legislature has persisted for some time. But amidst this continuity, considerable change is occurring in the situation the parties face in the electorate. The attachment of the electorate to parties is declining, and the organizations parties work through are changing.

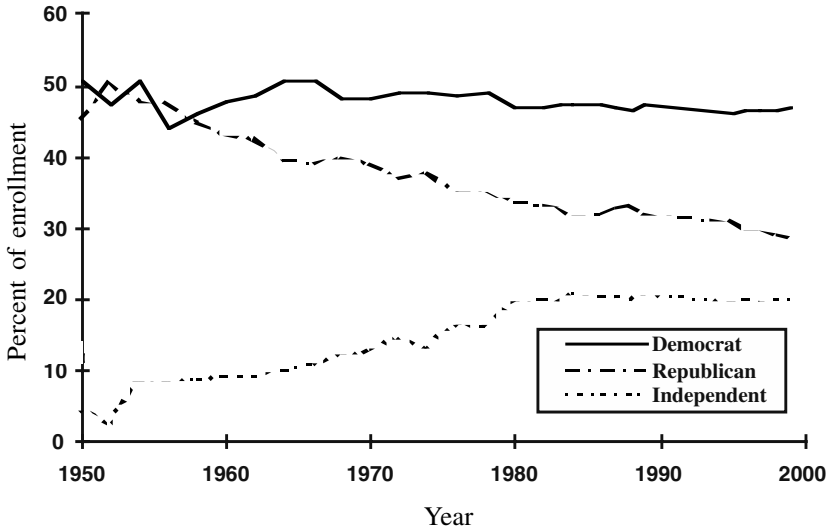
Party competition begins with the electorate, and their attachments are changing. Three related changes in electoral behavior have emerged in recent decades. The proportion of independents has increased, split-ticket voting has increased, and party competition in legislative elections has declined in recent years.

The Rise of Independents

As Figure 3.4 indicates, two significant changes have occurred in party enrollment since 1950. First, enrollment in the Republican party has steadily declined since the 1950s.²⁴ Democrats have remained at about 50 percent of all registrants. The other significant change has been the increase in independents, or those who register to vote but chose not to enroll in any party. By 1998, the percent in the “Independent” column had risen to 21.0 percent.

Independents create problems for parties and their candidates. Voters without party attachments are more volatile than partisans in their vote choices. They rely on other criteria, such as familiarity with the candidate, personalities, reactions to current events, along with positions of specific issues, rather than some enduring partisan attachment, to make their vote choices. The

FIGURE 3.4.
Party enrollment trends in New York, 1950 to 1999.



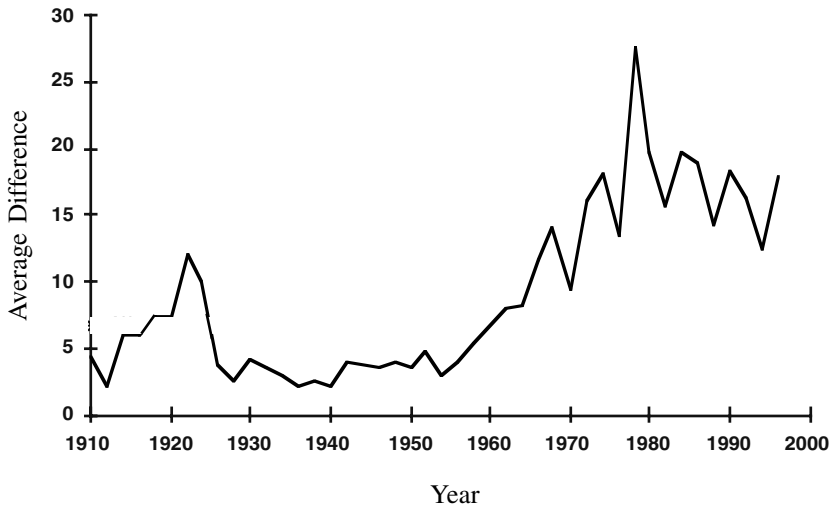
reliance on factors other than partisanship may make voting patterns more volatile from election to election, and result in voters splitting their vote among candidates from different parties.

The impact of these independents in New York politics will also grow in the future. Enrollment in parties is strongly associated with age. Older individuals are more likely to be enrolled in a party, while younger individuals are much more likely to choose the independent category.²⁵ As the voting population gets older, those without partisan attachments will constitute a larger part of the electorate. Unless something happens in future years to forge strong attachments to the parties, candidates will face an electorate less and less likely to vote regularly for one party.

The Rise of Split-Ticket Voting

There has also been a rise in split-ticket voting in state legislative elections. Split-ticket voting is defined here as the difference in the vote for Assembly Democratic candidates and Senate Democratic candidates within the same county.²⁶ Figure 3.5 presents the average of differences in Assembly and Senate vote proportions by county. The trend is clearly toward more ticketsplitting. As politicians are aware, the party vote for an Assembly candidate within a county often diverges considerably from the Senate vote. If

FIGURE 3.5.
Split-ticket voting in New York legislative elections, 1910 to 1996.



straight party voting is declining, then candidates can focus more on creating personal images. It may also lead to less inclination of legislators to work with and be associated with the party. If the electorate is not engaging in as much “party voting,” it may be politically expedient for legislators to be cautious about their association with the party and its image. This behavior makes it more difficult to create cohesive party positions within the legislature.

The Decline of Electoral Competition

Many observers of politics argue that it is crucial to have competition between political parties within legislative districts so that voters have a real choice. Electoral competition has changed dramatically in New York. Since 1900 the average margin of victory (percentage points by which the winner leads the loser) in legislative elections has steadily increased from a little over 20 to the current level of over 50 percentage points.²⁷ Few districts have close elections. As the proportion of independents has risen, and as split-ticket voting has increased, incumbents have been able to win with larger and larger margins. This decline in party competition within districts has occurred at the same time that the parties have continued to differ in the legislature. This seeming contradiction will be discussed later.

As competition has declined, there is considerable concern that the decline is a product of the level of spending on campaigns by incumbents. Figure 3.6

presents the average expenditure by incumbents and challengers from 1984 to 1996 in Assembly and Senate elections. The figures, unadjusted for inflation,²⁸ indicate there has been a steady rise in spending by incumbents. In the Assembly in 1984 incumbents on average spent \$22,625. By 1996 the average had increased to \$85,777. In the Senate, the average expenditure increased from \$35,054 in 1984 to \$159,074 in 1996.

While incumbent spending relative to challenger spending has increased, the impact of spending on election outcomes is not as clear.²⁹ In regions such as upstate rural counties and New York City, one party has such an overwhelming advantage in party enrollment, that there are no close elections in these areas. This lack of closeness would be the case even if incumbents in those areas did not spend more than challengers. The greater fundraising by incumbents in recent years has probably served to increase the margins but not to fundamentally change the differences in party support by area. In other areas of the state, such as the suburbs around New York City and in some of the upstate urban areas, party enrollment is more evenly divided, and elections are closer. The closer elections are, the more money is spent on them in an effort to win these “marginal” seats.³⁰ When elections are close, the amount of money spent by incumbents and challengers is closer. Figure 3.7 presents spending in 1996 races for the Assembly and Senate by how close the election was. There is, to be sure, a dynamic between closeness and fundraising. Competitive elections prompt candidates to raise more money, and

FIGURE 3.6.
Incumbent and challenger average expenditure, by Year, 1984 to 1996,
New York Assembly and Senate.

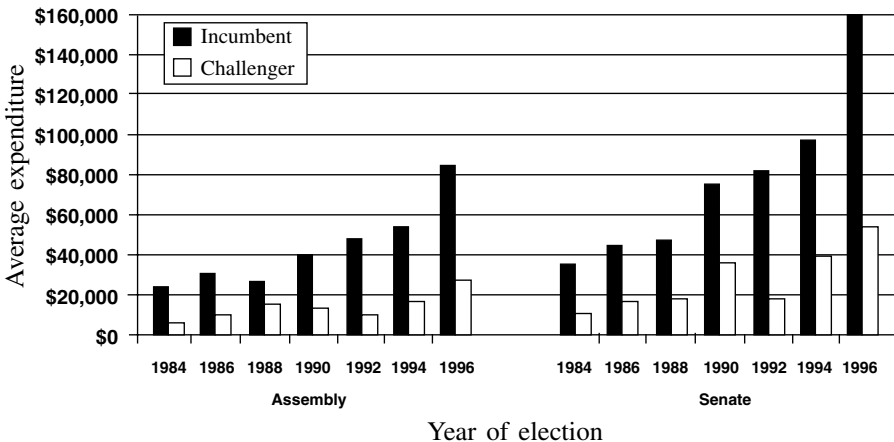
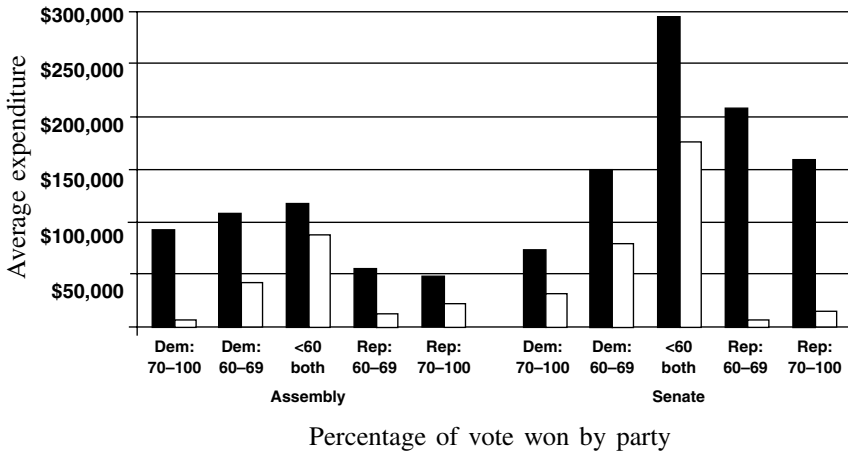


FIGURE 3.7.
Average expenditure by incumbents and challengers,
by proportion of the vote won, 1996 Assembly and Senate elections.



spending more money can make a race closer. What causes what is often not clear, but it is clear that the most money is spent in the close races.

What is not clear about elections is how much money may have created a decline in the competitiveness of elections. In fact, we do not know what has caused this change. Fund-raising advantages of incumbents are one possibility. It is also very possible that the decline in closeness is a product of more legislators devoting more time to their position. As will be discussed in chapter 8, there has been a significant increase in the proportion of legislators who are only legislators and do not hold a private-sector job. Legislators now have district offices, and more staff resources to work with constituents. With legislators devoting more time to their position, and having more resources to present themselves to constituents, the increase in electoral margins may be more a product of what is done while in office than what is spent during campaigns.³¹

Evolving Party Organizations

The organizations used by politicians to pursue political goals have experienced considerable change over recent decades. While governors continue to create their own campaign committees, and use the state party committee as a means to mobilize supporters and to raise funds, the organizations relied upon by legislators have changed. Local county organizations have declined

as the primary party organizations used by state politicians. The legislative parties have created legislative campaign committees, and legislative candidates now have their own campaign organizations

These changes emerged gradually. At one time, most political party activity was organized by county organizations. We have no detailed studies of how significant their roles were, but numerous accounts of the county party organizations indicate they had a significant role in shaping nominations, mobilizing volunteers, and raising money for candidates from the local area.³² Governors could at one time negotiate state legislative agreement with county leaders, and be able to count on the county leader being able to “deliver” a county delegation.³³ County leaders no longer have those powers over legislators. County organizations have fewer patronage positions to distribute and have more difficulty attracting volunteers.³⁴ With the rise of independents, candidates now create organizations separate from county party organizations so they can make their own personal presentations to the electorate. With the rise of television and direct mail campaigns, candidates raise their own funds and plan their own campaigns. All these changes have reduced the role of county organizations. They still play a role in interviewing candidates, gathering petition signatures, raising some funds, and performing various other activities, but candidates now can be and generally must be more independent and entrepreneurial in conducting their campaigns.

The legislative parties, responding to the decline of county organizations and desiring to affect the success of legislative candidates, formed legislative campaign committees. During the 1970s, the parties in the legislature became concerned about having the resources to conduct their own campaigns so they could preserve their incumbents and add new ones. These organizations have grown to considerable significance. Each party in each house has developed its own organization. The committees are directed by the leadership of each party in each house. They raise substantial funds within each election cycle (from \$4 to \$6 million for the majority party in each house in the late 1980s). They conduct their own polling, and they plan their own campaign strategies. Their primary focus is on marginal races, or races where they face the greatest risk of losing a seat, or have the greatest potential of gaining a seat.³⁵ The greatest resources go to the closest elections, and the organizations have sufficient discipline to deny resources to those who do not need them.³⁶ In 1994, for example, the Assembly Democrats spent an average of \$35,000, and as much as \$150,000, on candidates in close elections, while Republicans in the Assembly spent an average of \$23,000, and as much as \$91,000 on behalf of candidates in close elections. These are funds spent by the campaign committees independent of what candidates spend. In the Senate the Republicans spent an average of \$186,000, and as much as \$409,000 on close elections, while Democrats spent an average of \$67,000 and as much as

\$237,000 on behalf of candidates in close elections. Close races draw the overwhelming bulk of party money, as the parties seek to win marginal seats, or seats where an incumbent chooses to retire.³⁷

These legislative campaign committees (LCCs) have become a significant part of the state party organization scheme. Legislative candidates receive virtually no funds from “state” committees, and almost no direct financial support from gubernatorial candidates. LCCs have emerged to provide that assistance. The organizations raise their own funds, engage in recruiting candidates for office, and even help candidates who run for local offices. Although the point should not be stretched too far, the legislative campaign committees have become somewhat of the permanent party organization. They worry about recruiting candidates, raising funds, and the long-term position of the party.

These organizations have not completely replaced local organizations. Indeed, some research suggests that local organizations have revived somewhat from the decline that occurred during the 1960s and 1970s.³⁸ On many campaigns the local and state organizations work together. On other races and concerns there is some friction between the two.³⁹ While their status and significance is not entirely clear, it is clear that party organizations are changing in the state, and that healthy party organizations exist, but in more diverse forms.

The emergence of these organizations does not mean that legislators are less constituent-oriented. Organizations in the capital may design strategy, write and print brochures, conduct polls, and mail literature, but all these activities are designed around the nature of the constituency in specific districts. Legislators receive assistance in passing legislation which is pertinent to their district. The focus continues to be on the local district, but the resources to respond to that constituency and to design a campaign for that constituency are more likely to come from Albany.

The effects of this transformation in party organizations is not entirely clear, but it surely has contributed to maintaining party cohesion within each house of the legislature. The legislative parties have their own resources and organization. Legislators may have relied on these resources in the past, or anticipate needing them in the future. Since this reliance is greatest among marginal legislators, it may create some loyalty among those most likely to be otherwise mavericks within the party. But this presumption of an impact on loyalty among these legislators must be tempered by a recognition that the party also is dependent on the survival of these marginal legislators and is more likely to understand that they need considerable autonomy from party discipline to survive.

These electoral trends and new party organizations have also increased the independence of the legislative parties from the governor. Legislators know

their elections are not tied to gubernatorial results, and they have campaign resources independent of the governor.

Conclusion

Parties are significant in New York. They play a major role in organizing the electorate, but their political environment is changing. The electorate votes less on the basis of party. This discrepancy between partisan conflict in the legislature and the decline of party in the electorate may appear to be puzzling. If the electorate is less concerned with parties, why then does such strong party competition and conflict persist in the legislature? Why do legislators line up in opposition while the electorate is less concerned about such divisions?

The answer lies in the spatial clustering of the population. Areas of the state differ in their populations and dominant concerns. Those areas, in turn, elect legislators typical of the area. Rural areas tend to be Republican and relatively conservative and they invariably elect someone typical of their area, even if partisan competition within the area is low. Urban areas tend to be Democratic and relatively liberal. They also elect legislators typical of the area. Republicans tend to come from areas with more conservative attitudes on fiscal issues. Democrats tend to come from areas more liberal on fiscal issues.

When legislators assemble in Albany, members within each party find themselves in rough agreement with each other on many major issues, and they find themselves in opposition to legislators from other areas. Organized partisan competition persists in Albany even while partisan attachments are declining in the electorate.

Notes

1. Robert J. Spitzer, "Third Parties in New York," in Jeffrey M. Stonecash, John K. White, and Peter W. Colby, ed., *Governing New York State*, 3rd ed. (Albany: SUNY Press, 1994), p. 107.

2. Chao-Chi Shan, "The Decline of Electoral Competition in New York State Senate Elections, 1950–88," Ph.D. dissertation, Department of Political Science, Syracuse University, 1991, p. 45.

3. The data were compiled by Gerald Wright, University of Indiana, and Robert Brown, University of Mississippi. I greatly appreciate their willingness to provide their data and let me use it. *Low income* was defined in The *New York Times* polls as less than \$12,500. *High income* was defined as above \$50,000. Robert D. Brown, "Party Cleavages and Welfare Effort in the American States," *American Political Science Review*, 89 (March) 23–33, 1995.

4. Other analyses report similar finds. See John K. White, "New York's Selective Majority," in Maureen Moakley, ed., *Party Realignment and State Politics* (Columbus: Ohio State University, 1992), p. 217; and Jeffrey M. Stonecash, "Political Parties and Partisan Conflict," in Jeffrey M. Stonecash, John K. White, Peter W. Colby, eds., *Governing New York State*, 3rd ed. (Albany: SUNY Press, 1994), p. 89.

5. David Ellis, "Upstate vs. Downstate," in *New York: State and City*. (Ithaca, Cornell University Press, 1979).

6. Stuart Rice, *Quantitative Methods in Politics* (New York: Knopf, 1928).

7. Jeffrey M. Stonecash, "'Split' Constituencies and the Impact of Party Control," *Social Science History* 16 (3): 455–77.

8. Ralph Straetz and Frank Munger, *New York Politics* (New York: New York University, 1960).

9. Jeffrey M. Stonecash, "New York," in Leroy Hardy, Alan Heslop, and George S. Blair, eds., *Redistricting in the 1980s* (Claremont: Rose Institute of State and Local Government, 1993), pp. 185–90.

10. For overviews of different in policy concerns by class, see John J. Harrigan, *Empty Dreams, Empty Pockets: Class and Bias in American Politics* (New York: Macmillan, 1993); and Lawrence Mishel, Jared Bernstein, and John Schmitt, *The State of Working America, 1996–97* (Armonk, NY: M. E. Sharpe, 1997).

11. For a review of race differences with specific regard to New York, see Ester R. Fuchs and J. Phillip Thompson, "Racial Politics in New York State," in Jeffrey M. Stonecash, John K. White, Peter W. Colby, eds., *Governing New York State*, 3rd ed. (Albany: SUNY Press, 1994), pp. 23–48.

12. To compare New York's situation with other states, see Jeffrey M. Stonecash, "Political Cleavage in State Legislative Houses," *Legislative Studies Quarterly* 24 (2): 281–302, 1999.

13. The data for these analyses are taken from Michael Barone, William Lilley III, and Laurence J. DeFranco, *State Legislative Elections: Voting Patterns and Demographics*, (Washington, DC: Congressional Quarterly, 1998), pp. 254–64.

14. For an analysis of differences in the 1960s and 1970s, see Alan G. Hevesi, *Legislative Politics in New York* (New York: Praeger, 1975).

15. The Public Policy Institute, *The Comeback State* (Albany: The Business Council, 1994).

16. Diana Dwyre, Mark O'Gorman, Jeffrey M. Stonecash, and Rosalie Young, "Disorganized Politics and the Have-Nots: Politics and Taxes in New York and California," *Polity* 27 (1): 25–47.

17. Jeffrey M. Stonecash, "Political Parties and Partisan Conflict," in Stonecash et al., eds., *Governing New York State*, p. 90.

18. Ken Auletta, "Profiles: Governor Mario Cuomo—Part II," *The New Yorker*. April 16, 1984.

19. Also see Gerald Benjamin, "The Political Relationship," in Gerald Benjamin and Charles Brecher, eds., *The Two New Yorks* (New York: Russell Sage Foundation, 1989).

20. Richard Perez-Pena, "Dual Interests Leave Speaker in the Middle," *The New York Times*, May 19, 1999, p. B1.

21. Judith Stein, "The Birth of Liberal Republicanism in New York State, 1932–1938," unpublished dissertation, Yale University, 1968; Jeffrey M. Stonecash, "Politi-

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22. Lee M. Miringoff and Barbara L. Varvalho, *The Cuomo Factor* (Poughkeepsie, NY: Marist Institute for Public Opinion, 1986).

23. James Traub, “Dollface,” *The New Yorker*, January 15, 1996, p. 34.

24. Jeffrey M. Stonecash, “An Eroding Base: The GOP’s Upstate Foundation is Showing Some Cracks,” *Empire State Report*, May 1986, pp. 53-58.

25. A 1985 statewide survey conducted at the Maxwell School, Syracuse University, showed this same pattern across the state. In that survey people were asked to indicate with which party they identify. A 1986 survey also provides evidence of this. A survey conducted during that year by the *Syracuse Herald-Journal* in the upstate counties of Madison and Onondaga during the 1986 election found that registering as an independent is much higher among younger individuals. In my own polling in various counties in the state I also found that to be the case.

26. The ideal way to assess the existence of this would be to have individual level data across years, which indicates the proportion of voters who choose opposing party candidates, but such data do not exist. It is possible to achieve a somewhat equivalent analysis by using counties as the unit of analysis. Legislative results have been reported in *The Legislative Manual of New York* since 1900. The results are presented by legislative district and then by county within districts. It is possible to construct a county by county analysis of partisan voting for Assembly and Senate races. This approach is limited in that some counties represent only a part of a district while others represent combinations of several or numerous districts (particularly in New York City and other large urban areas). Nonetheless, this is the only feasible way to undertake a historical analysis of party and split-ticket voting over any period of time. Using these data, it is possible to calculate for each county the extent to which the partisan vote for each house is the same. That is determined by subtracting the partisan vote for one house from the partisan vote for the other house. If the two are the same, the difference will be zero. If the difference is zero across all counties, then it indicates that the electorate is voting essentially a straight party ticket. (The aggregate data may conceal some ticket-splitting, but this approach provides a reasonably good estimate of ticket-splitting.) If the difference between Assembly and Senate votes is high in a county, it suggests a great deal of ticket-splitting. If the difference is high across all counties, then it suggests that ticket splitting is a wide spread practice in state legislative elections.

Those calculations were made for Assembly and Senate races from 1900 to 1996 for each county. The differences were expressed in terms of absolute scores (a difference of -12.5 percent becomes a difference of 12.5 and +12.5, which becomes 12.5) to allow a calculation of average differences across the state. Once the difference was determined for each county, the average of the scores across all counties was calculated. The results give an indication of the divergence of Assembly and Senate results over the years.

27. Chao-Chi Shan and Jeffrey M. Stonecash, "Legislative Resources and Electoral Margins: The New York State Senate, 1950–1990," *Legislative Studies Quarterly* 19 (1): 79–93, 1994.

28. The figures are presented in nominal dollars, or the current dollars of each year, so the magnitudes will be comparable to other published figures on campaign spending that readers may encounter. It would be difficult to compare adjusted figures. If the figures were adjusted, the apparent rise in spending by incumbents would be considerably less.

29. Jeffrey M. Stonecash, "Chickens and Eggs, Money and Votes: What's the Question and Does it Matter?" presented at the Conference on Campaign Finance sponsored by the Committee for the Study of the American Electorate, Washington, DC, July 29–30, 1994.

30. Jeffrey M. Stonecash, "Money, Elections, and Public Policy in New York Politics," in Paul Scheele, ed., *We Get What We Pay For. . . Or Do We? The Impact of Elections on Governing* (Wesport, CT: Greenwood Press, 2000).

31. For a critical presentation of this argument, see Morris Fiorina, *Congress: Keystone of the Washington Establishment*, 2nd ed. (New Haven, CT: Yale University Press, 1989).

32. Roy V. Peel, *The Political Clubs of New York City* (New York: G. P. Putnam's, 1935); Norman M. Adler and Blanche Davis Blank, *Political Clubs in New York* (New York: Praeger, 1975); and Jerome Krase, *Ethnicity and Machine Politics* (Lanham, Maryland: University Press of America, 1991).

33. Robert H. Connery and Gerald Benjamin, *Rockefeller of New York: Executive Power in the Statehouse* (Ithaca, NY: Cornell University Press, 1979); and Alan Hevesi, *Legislative Politics in New York* (New York: Praeger, 1975).

34. David R. Mayhew, *Placing Parties in American Politics* (Princeton, NJ: Princeton University Press, 1986).

35. Jeffrey M. Stonecash, "Working at the Margins: Campaign Finance and Party Strategy in New York Assembly Elections," *Legislative Studies Quarterly* 13 (4): 477–93, 1988; Jeffrey M. Stonecash, "Campaign Finance in New York Senate Elections," *Legislative Studies Quarterly* 15 (2): 247–62, 1990; and Jeffrey M. Stonecash, "Where's the Party? Changing State Party Organizations." *American Politics Quarterly* 20 (3): 326–44, 1992.

36. Jeffrey M. Stonecash and Sara E. Keith, "Maintaining a Political Party: Providing and Withdrawing Campaign Funds," *Party Politics* 2 (3): 313–28, 1996.

37. As an example of how money can affect results in close races, see Jeffrey M. Stonecash et al., "Maintaining A Republican Senate in New York: Apportionment, Incumbency, and Campaign Spending," *Comparative State Politics* 19 (4): 19–29, 1998.

38. Cornelius P. Cotter, James L. Gibson, John F. Bibby, and Robert J. Huckshorn, *Party Organizations in American Politics* (New York: Praeger, 1984), pp. 51–56.

39. Daniel M. Shea, "The Myth of Party Adaptation: Linkages Between Legislative Campaign Committees and Party," 1991 presented at the New York State Political Science Association Meetings, New York City, April, 1991.

4

Third Parties in New York

Robert J. Spitzer

I believe that the people of the state of New York are finding that the minor parties are the tail that wags the dog, and are seeking to impose their candidates on the major parties.

—Edward I. Koch, Mayor
New York City, as quoted in the *Ithaca Journal*, August 26, 1982.

Any basic textbook in American politics will inform the reader that America has a two-party system. Despite periodic regional and national third-party thrusts,¹ party politics has been dominated by the Democrats and Republicans. Why, then, did former Mayor Koch worry about minor-party “black-mail” in New York?

The answer begins with the acknowledgment that the structure of federalism in the United States has engendered not merely one national party system, but fifty-one party systems: one at the national level and one for each of the fifty states. The U.S. Constitution left to each state the responsibility of formulating and regulating its own electoral structure. Thus, many states have evolved unusual if not unique party practices, and New York’s system is certainly one of the more esoteric. But aside from illustrating how federalism causes electoral permutations, the case of New York also demonstrates the decisive importance of electoral/legal structures in shaping party politics, and the key role minor parties can play, especially when the two major parties compete actively, as they do in New York.

History

New York has witnessed the emergence of no less than sixteen minor parties during the twentieth century.² Of these, five have maintained an automatic

slot for all elections on the state ballot since 1994. These five, in order of formation, are the Liberal party, the Conservative party, the Right-to-Life party, the Independence party, and the Freedom party (which existed from 1994-98). Two new parties, the Green party and the Working Families party, were established after the 1998 elections.

The oldest of these, the Liberal party, was an offshoot of the American Labor party (ALP). The ALP was formed in 1936 by a group of socialists and trade unionists seeking a way to support President Franklin Roosevelt and other liberal-leftist candidates without working through the corrupt state Democratic party, then dominated by Tammany Hall.³ The success of the Labor party in bargaining with the major parties was such that it attracted more radical elements, and in 1943 many of the original founders, including labor leader Alex Rose, broke away and formed the Liberal party. The ALP lapsed from existence in 1954, but the power of the Liberal party grew. Dominated by Rose until his death in 1976, the Liberal party has generally sided with liberal Democratic candidates, although it has occasionally supported moderate Republicans. Over the years, it has sought to promote such causes as full employment, consumer rights, rent control, progressive taxation, equal rights, and expanded social welfare programs.⁴ The party's primary power base traditionally rested with urban Jewish voters. In the 1980s and 1990s, however, it sought to expand its base by trying to win black and Hispanic support.

The Conservative party was also founded as a result of dissatisfaction with a major party. After his election as governor in 1958, Nelson Rockefeller dominated New York's Republican party until 1974, when he resigned to become vice-president. But Rockefeller's brand of liberal Republicanism was distasteful to many traditional conservative Republicans, especially in the business and professional class, and a group of them combined in 1961 to offer a conservative alternative to Rockefeller Republicanism. They also hoped to pressure the Republicans to move to the right.⁵ The Conservatives have generally identified with conservative Republicans, especially after Rockefeller's departure, although they too periodically support conservative Democrats. In the 1980s, the conservative perspective received a boost because of the election of Ronald Reagan as president. This national ideological swing has helped the party maintain its position as the state's third largest party through 1998.

Unlike the Conservative and Liberal parties, which were founded by political and business elites, The Right-to-Life party (RTLTP) began inauspiciously among a book discussion group in the home of a Merrick, Long Island, housewife. The party's grassroots beginning was prompted by attempts in the state legislature to liberalize the state's abortion law. Those attempts succeeded in 1970, and the concerns of these formerly apolitical

individuals with antiabortion sentiments accelerated when the Supreme Court ruled in 1973 (*Roe v. Wade*) that women had the right to a safe, legal abortion.⁶ Unlike New York's other minor parties, the RTLP is predicated on a single issue—that of opposition to abortion. The salience of this issue for some New York voters was evidenced when, in 1978, the RTLP succeeded in establishing its own line on the New York ballot after a brief attempt to work within the major parties (notably, party founder Ellen McCormack sought the Democratic party nomination in 1976). Aside from fielding candidates in state races, the RTLP has also run minor-party candidates for president.

Four of these state parties were founded in recent years. In the 1994 gubernatorial election, millionaire businessman Thomas Golisano ran for governor on what was initially called the Independence Fusion party. Emulating the presidential campaign of Ross Perot, Golisano spent his own money on an extensive media advertising campaign and gained over 217,000 votes in the general election—enough for his party, renamed the Independence party after the election, to win the fourth spot on New York ballots (below the Democrats, Republicans, and Conservatives). Based in Rochester, the Independence party has endorsed many candidates, including Republicans and Democrats as well as independents, for local and state office. In 1995 alone, it endorsed about a thousand candidates. In 1996, Ross Perot used this line for his presidential bid. In 1998, Tom Golisano again ran for governor, this time garnering 364,000 votes, making him the third leading vote getter for governor. According to the party's state chair, its primary goal is to link up with other, similar third parties in other states (including the Perot movement) in order to create a coherent national third party. Its issue concerns include ballot initiative and referendum options, the reduction of government spending and taxing, stemming the influence of political action committees, and other government reform proposals.⁷

The other party emerging from the 1994 elections was the Freedom party. While other state minor parties have found alliance with a major party, the Freedom party went beyond this in that it was expressly created by state Republican leaders to boost the candidacy of gubernatorial candidate George Pataki. Initially called the Tax Cut Now party, Pataki received 54,000 votes on this line, qualifying it as an established party. The Freedom party was run out of Albany by state party leaders and was available only to Republican candidates.⁸ As a direct creature of the state Republican party, it represented the clearest expression yet of the value attached to multiple endorsements. In the 1998 election, this party fielded no candidate for governor, so it ceased to exist.

In the 1998 elections, two new parties emerged. Unlike the state's other minor parties, efforts to form a state Green party were preceded by an already-established national and international Green party. While known primarily for

its devotion to stronger environmental and consumer protection, as reflected in its nomination of consumer activist Ralph Nader for President in 1996, the Greens advocate a series of liberal positions. They support increasing the minimum wage, universal health care, opposition to the death penalty, repeal of the tough Rockefeller drug laws, and cracking down on corporate misdeeds. Despite limited resources, the state Greens received considerable attention in the 1998 election by nominating for governor actor and political activist Al Lewis (known as “Grandpa Munster” for playing that role in the 1960s television show *The Munsters*). He received 52,533 votes in the election.

The other party to emerge from the 1998 election was the Working Families party. Propelled by labor unions and others who felt that neither the state Democratic nor Liberal parties were sufficiently responsive to the needs and concerns of workers and their families, this state party, also preceded by a national effort to form a union-centered party, nominated Democratic gubernatorial candidate Peter Vallone. He received 51,325 votes on this line. The method by which these minor parties established themselves and extended their influence over the state’s electoral landscape reveals both the potency of electoral structures and the fragility of pure two-party politics.

New York’s Electoral Structure

To understand how electoral structures encourage parties in New York, one must begin with the initial establishment of a party. According to state election law, a political party may establish an automatic ballot line for all New York elections by fielding a candidate for governor who receives at least 50,000 votes on that party line in the general election.⁹ If this threshold is reached, the party is guaranteed a ballot position in all New York elections for the next four years (until the next gubernatorial election). If no existing party line is available for a candidate, an individual seeking statewide office must obtain at least 20,000 petition signatures (signature requirements are less for nonstatewide offices). Any registered voter may sign an independent candidate’s petition, regardless of the voter’s party affiliation, unless the voter has already signed a competing candidate’s petition.

In comparison with ballot access requirements in other states, New York’s is one of the more demanding. Despite this fact, however, determined and organized third parties can endure in New York where they cannot in other states by virtue of another characteristic of state law—the *cross-endorsement* rule. This key provision of New York election law says simply that parties may nominate candidates already endorsed by other parties. The votes a candidate receives on all his/her lines are then added together in the final count to determine the winner. This practice dates back to the post-Civil War

era, when political opponents of New York City's powerful Tammany Hall political machine would join together in what were called "fusion" movements. Fusion candidacies incorporated multiple endorsements, and were common in the United States in the nineteenth century, but they declined by the start of the twentieth century when most states banned multiple-party endorsements.¹⁰ Nine other states permit candidates to be endorsed by more than one party.¹¹ But the ability to cross-endorse does not alone explain New York's vigorous third-party activity, as New York's history of multi-parties is also a vital factor.

Cross-endorsement is a regular feature in New York elections. Not surprisingly, the Conservative party usually sides with the Republicans, and the Liberal party with the Democrats. Since 1974, for example, every Democratic candidate for governor has also been endorsed by the Liberal party, and every Republican gubernatorial candidate has won the endorsement of the Conservative party, except for the 1990 Republican gubernatorial nominee, Pierre Rinfret (who will be discussed later).

Table 4.1 summarizes the endorsement patterns of New York's then four minor parties for the 211 state legislative races in 1998 (150 Assembly seats and 61 State Senate seats). Over 60 percent of Conservative party endorsements went to Republican candidates, but only 3 percent of their endorsements went to Democratic candidates. Similarly, in about about 30 percent of the races the Liberal party endorsed Democratic candidates but in only 2 to 7 percent of the cases did Republicans receive endorsement. The RTLP, on the other hand, largely endorsed other than major-party candidates. The Independence party endorsed more Republicans in state Senate races but more Democrats in the state Assembly, reflecting its middle position between the two major parties.

The cross-endorsement system has a number of consequences for the New York party system, the sum total of which causes New York to resemble, in certain respects, European multiparty systems. *First*, this provision removes a major impediment to voters casting votes for minor parties—that is, the "wasted vote" syndrome. Voters frequently have preferences for third-party candidates, but refrain from voting for them because of the feeling that they are throwing away their vote on a candidate or party that cannot win. But according to the cross-endorsement rule, votes cast for a candidate anywhere on the ballot are added to the candidate's total.

Second, one can easily calculate how many votes a party contributes to a candidate by observing the vote count on each line. Many quickly point out that a candidate would probably receive about the same total number of votes whether he or she appeared on one line or several, but candidates perceive that every line helps, especially in this politically competitive state. In addition, some voters do feel more comfortable supporting a candidate with an

TABLE 4.1.
 Minor-party endorsements of major-party candidates for
 New York State legislative races, 1998.

Minor-party endorsements	Major-party candidates			
	Democratic	Republican	Other	None
<i>Senate (61 seats)</i>				
Conservative	3% (2)	67% (41)	16% (10)	11% (7)
Liberal	28% (17)	7% (4)	11% (7)	52% (32)
Right-to-Life	2% (1)	5% (3)	28% (17)	66% (40)
Independence	16% (10)	23% (14)	7% (4)	52% (32)
<i>Assembly (150 seats)</i>				
Conservative	6% (9)	61% (91)	17% (25)	17% (25)
Liberal	35% (52)	2% (3)	9% (14)	54% (81)
Right-to-Life	1% (2)	11% (17)	23% (34)	65% (97)
Independence	29% (43)	19% (28)	6% (9)	47% (70)

Based on count of state legislature seats in each house: 150 in the State Assembly, and 61 in the State Senate. In some districts, the minor party did not endorse anyone, and those are classified as None. Tabulations include major party candidates receiving more than one minor party endorsement. Percents are rounded to nearest whole percent. If the minor party endorsed a candidate who was not a Republican or a Democrat, the endorsement is listed under Other.

alternate-party label. In 1994, for example, Republican gubernatorial nominee George Pataki sought the Conservative party nomination, only clinching the nod when party leaders agreed to give Conservative gubernatorial candidate Herbert London the Republican party nomination for state comptroller. In addition, Republicans created the Freedom party line, so that Pataki's name appeared on the ballot three times. These efforts were considered necessary if Pataki were to have any chance of unseating popular three-term Democratic Governor Mario Cuomo. Pataki picked up 328,000 votes on the

Conservative line, and 54,000 votes on the Freedom line. In all, he defeated Cuomo by 173,798 votes. As one state Republican party leader noted, the added lines offered “a perception that they [the extra lines] give non-Republican voters an alternative.”¹²

Evidence of the importance candidates attach to multiple party endorsements can be seen in the frequency of cross-endorsements. In 1996, for example, of New York’s thirty-one representatives in the House, twenty-six were elected with more than one party endorsement, and the winners averaged just over two endorsements per House member. Of New York’s sixty-one state senators, fifty-two were elected with more than one endorsement, and they averaged about 2.5 endorsements per senator. Of New York’s 150 state Assembly races, 120 won election with more than one endorsement, and they averaged over 2.3 endorsements. Despite the belief that these endorsements are crucial, a study of all New York State Senate races from 1950 to 1988 demonstrated that third-party endorsements provided a winning edge for candidates in only about 3 percent of the races.¹³

Third, minor parties may go beyond merely offering an additional line by offering the only line for a candidate denied a major-party line. While not a common occurrence, there have been instances of candidates denied a major line who have gone on to win election on a minor-party line. In 1969, then incumbent Republican New York Mayor John Lindsay was defeated in the Republican primary by John Marchi. But Lindsay was nevertheless reelected by running on the Liberal party line, defeating Marchi and conservative Democrat Mario Procaccino. It was later said that, as a reward for Liberal party support, no Liberal party activist seeking a municipal job went without work. In 1970, the Conservative party succeeded in electing one of its own, James Buckley, to the U.S. Senate in a three-way race against the Democratic nominee, Richard Ottinger, and the liberal anti-Nixon Republican incumbent, Charles Goodell.

Fourth, minor parties can run their own candidates, or endorse others, to punish major-party candidates by depriving them of votes. In 1966, the Liberal party ran the popular Franklin D. Roosevelt, Jr., for governor, instead of endorsing the Democratic candidate, Frank O’Connor. Incumbent Republican Nelson Rockefeller was viewed as being vulnerable to defeat that year, and the over half-million votes garnered by Roosevelt deprived O’Connor of the election (O’Connor lost by 392,000 votes). Alex Rose, then the leader of the Liberal party, commented later that the move to nominate someone other than the Democratic nominee was sparked at least partly by a desire for retribution against Democratic leaders who were so sure of victory with or without Liberal support that they brushed aside attempts by Rose to have influence in the process of nominating the Democratic candidate.¹⁴ Indeed, influence over major party nomination decisions is often a key objective of minor party leaders.

Fifth, minor parties can nominate candidates before the major parties to try and influence the choices of the major parties. Recent New York politics is replete with examples. In 1982, the Liberal party moved early to nominate Lieutenant Governor Mario Cuomo for Governor. This early endorsement, coming before the Democratic primary, gave a critical boost to Cuomo's campaign against the front-running candidate, Ed Koch. It also meant that Cuomo would appear on the general election ballot even if he lost the Democratic primary to Koch. If that happened, Democratic-Liberal votes would be split as in 1966, allowing Republican Lewis Lehrman to be elected. Thanks in part to the Liberal endorsement, Cuomo upset Koch in the Democratic primary and went on to be elected governor. In 1980, an unknown town supervisor from Hempstead, Long Island, Alfonse D'Amato, received a critical early boost in his campaign for the U.S. Senate by receiving the nomination of the Conservative party. He then went on to defeat incumbent Jacob Javits in the Republican primary and win election in November.

Major party anxiety over this "tail wags dog" syndrome in the 1980s encouraged leaders of both major parties to propose that the cross-endorsement provision be wiped from the books.¹⁵ In 1997, *the New York Times* scornfully referred to the Liberal party as "a moribund shell."¹⁶ Despite this uneasiness with third-party influence, the major parties have lived with insurgent parties and factions for many decades, in part because these insurgent party movements served to vent public displeasure arising from disclosures of corrupt and autocratic major-party practices in the first half of the twentieth century. Those minor parties that survived, such as the Liberals, soon made their peace with the major parties. If major party bosses had succeeded in suppressing dissident reformist parties, enhanced public outrage might have cost the bosses control of their own party machines. This possibility caused party leaders to at least tolerate the existence of these dissident elements.

These five factors outline a significant degree of electoral potency for New York's minor parties, and it is evident that the major parties are often uncomfortable with the extent of minor-party influence. Successful moves to change the system have been blocked in recent years, however, by a state legislature populated with representatives who have benefited from the system.

Minor-Party Leverage

New York's third parties are interested in maximizing their influence, but their primary goal is not supplanting one of the major parties, since New York's system allows them to acquire rewards and influence without actually winning elections on their own. *First*, minor parties can trade their lines and their support for patronage, usually in the form of jobs, as the Liberals received

after Lindsay's reelection. Liberals reaped similar patronage rewards after the party's endorsement of Republican New York City mayoral candidate Rudolph Giuliani, who won a close race in 1993 over Democrat incumbent David Dinkins. Republicans found themselves in competition for patronage positions with Liberal party members throughout the city. Most notably, the two sons of the Liberal party's leader received high-ranking jobs with the city, and the party leader's law firm lobbying business boomed.¹⁷

Second, minor parties may exchange their ballot lines for ideological/policy support. The RTLP in particular is motivated by the desire to impel state lawmakers to curtail liberalized abortion practices. As party leaders have made clear, they are less interested in running their own candidates, and much more interested in endorsing major party candidates who can be persuaded to advance the right-to-life position in government in exchange for the RTLP line. The party's stated goal is to end abortions, not elect candidates.¹⁸

The Conservative party has also pressed ideological concerns. In 1993, for example, the state head of the Conservative party threatened Republicans in the state legislature with the withdrawal of Conservative endorsement support if they voted for a civil rights bill aimed at protecting gays and lesbians. Support for the bill would have been "close to a fatal issue" as far party leader Michael Long was concerned.¹⁹ The measure was defeated that year.

The Continued Potency of Minor Parties

Gubernatorial and mayoral elections continued to demonstrate the attractiveness of New York's electoral system to minor parties (see accompanying state ballot in Figure 4.1).

The 1990 governor race elevated the minor party role to an even greater degree, nearly precipitating a crisis for the Republican party. The near-certain reelection of Mario Cuomo deterred prominent state Republicans from challenging him. After numerous unsuccessful appeals to over twenty potential candidates, the party settled on an unknown but affluent economist, Pierre Rinfret. The Rinfret endorsement enraged the state's conservatives, who objected to his support for abortion rights and lack of conservative credentials. The Conservative party turned instead to New York University Dean Herbert London; the Right-to-Life party endorsed a Staten Island consultant and Republican, Louis Wein.

Rinfret proved to be an inept candidate who seemed uninformed about and uninterested in state issues. London, on the other hand, campaigned hard, and preelection polls showed the two running neck and neck for second place. A third-place showing for Rinfret would have been disastrous for the Republicans, as it would have reduced the party to the status of a third party, making

FIGURE 4.1.
Sample ballot of voting machine.

DIRECTIONS FOR VOTING
("SAMPLE" BALLOT OF VOTING MACHINE)
GENERAL ELECTION NOVEMBER 3, 1998

1. Move the Red Handle to the Right.
2. Turn the Lever over the name of each candidate you wish to vote for from this position **DOWN** to this position **UP**, and leave the voting lever **DOWN**.
3. Turn the Lever over the name of each candidate you wish to vote for from this position **DOWN** to this position **UP**, and leave the voting lever **DOWN**.
4. Move the Red Handle to the Left.

No one will know how you have voted because the machines in your county have already been voting with the candidate whom you have chosen before the election begins to open.

If you need help with the machine:
To vote for a Candidate whose name does not appear on the machine, check the program book at the top of the machine near the top of the slot, and follow the instructions on the card for that Candidate's voting lever. A number on above the name, a "1" through "9" will be on the lever, and the number above the name is a code to punch on the voter's ballot and the number above the name is a code to punch on the voter's ballot.

The machine is designed that you can turn down the proper voting lever only once. If you turn down the proper voting lever more than once, the machine will not count your vote. If you turn down the proper voting lever more than once, the machine will not count your vote. If you turn down the proper voting lever more than once, the machine will not count your vote.

Please Read the **RED DIRECTIONS**
The machine is designed that you can turn down the proper voting lever only once. If you turn down the proper voting lever more than once, the machine will not count your vote. If you turn down the proper voting lever more than once, the machine will not count your vote. If you turn down the proper voting lever more than once, the machine will not count your vote.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
OFFICES	1 1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
DEMOCRATIC	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
REPUBLICAN	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
CONSERVATIVE	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
INDEPENDENCE	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
LIBERAL	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
RIGHT TO LIFE	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
MARIJUANA REFORM	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
LIBERTARIAN	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
UNITY	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
WORKING FAMILIES	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
GREEN	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1
SOCIALIST WORKERS	1 1	2 1	3 1	4 1	5 1	6 1	7 1	8 1	9 1	10 1	11 1	12 1	13 1	14 1	15 1	16 1	17 1

the Conservatives the state's other major party. The Republicans would lose control over appointed patronage positions in every county in the state and suffer a nearly incalculable loss of prestige. In the election, party loyalty prevailed, but just barely; Rinfret received 22 percent of the vote to London's 21 percent. Cuomo swept the election with 53 percent of the vote; but had Cuomo faced a single strong opponent, the race would have appeared far closer. Four years later, unknown state Senator George Pataki scored the upset victory over Mario Cuomo with the help of three party endorsements (Cuomo had two endorsements, the Democratic and Liberal lines). Indeed, Cuomo actually received more votes on the Democratic line than Pataki did on the Republican.

The 1989 New York City mayoral contest illustrated how minor-party fortunes could revive. After its successful endorsement of Mario Cuomo in

1982, the Liberal party succumbed to a fierce intraparty power struggle during a time when liberalism seemed out of favor. Teetering on the edge of extinction, the Liberals came back by patching up their differences and emerging as an important force in the mayoral race. Early in 1989, Liberal party leader Raymond Harding openly courted Republican U.S. Attorney Rudolph Giuliani, who had expressed interest in running for mayor.

The incumbent, Ed Koch, had been no friend to liberal causes, and Harding believed that none of the other Democratic challengers, including Borough President David Dinkins and city Comptroller Harrison Goldin, could mount a strong enough challenge to defeat Koch. The link between Giuliani and the Liberals raised some eyebrows, as Giuliani's liberal credentials were less than impeccable. Although a liberal supporter of Democrat George McGovern in 1972, Giuliani had switched parties and was appointed to his position as federal prosecutor by President Reagan. In addition, Giuliani opposed abortion and supported the death penalty. Despite the ideological compromise, the subsequent Liberal endorsement immediately made the Liberals a major player in what promised to be a close election in a crowded field. Giuliani later won the Republican nomination, making him an even more formidable challenger. And in a concession to his newfound liberal supporters, Giuliani backtracked on some of his conservative positions, including a disavowal of his opposition to abortion. To the surprise of many, Koch was defeated in the Democratic primary by Dinkins, who went on to win the election by a 3 percent vote margin over Giuliani.

Liberal party leader Harding had gambled on Giuliani and lost. Nevertheless, the early endorsement signaled Democratic leaders that the Liberals could not be ignored or taken for granted and that they continued to exercise influence. Even Governor Cuomo's threat to shun the Liberal designation in his next race for governor if they endorsed Giuliani did not deter them. Echoing the words of party founder Alex Rose, Harding said that his party's purpose was to "keep Democrats liberal and Republicans honest."²⁰

Four years later, the Liberal party enraged Democrats and African Americans by again endorsing Giuliani, against Mayor Dinkins (the city's first black mayor). This time, however, Giuliani won a narrow victory. As *The New York Times* noted, the race turned on "slivers of Liberal vote."²¹ In the process, the Liberals had renewed their party, won substantial patronage, and moved a Republican closer to the liberal camp. In 1997, the Liberals again endorsed Giuliani, ignoring other mayoral candidates with stronger liberal credentials than the mayor.²²

Party Revival or the French Fourth Republic?

As these examples reveal, predictions of the demise of New York's minor parties are at the least premature, and at the most inaccurate. By surviving the turbulent 1980s, New York's minor parties demonstrated their staying power,

as well as their political flexibility. Minor and major party leaders cooperate when it is in their interest to do so. But ideological differences, personal disputes, and attempts to enhance power often turn cooperation into conflict. In examples like John Lindsay's 1969 reelection, or the 1990 gubernatorial race, the minor parties were the tail that wagged the dog.²³ But more often in state politics, the dog wags the tail, as in the case of the Republican-controlled Freedom party. Indeed, it would be a mistake to attribute too much influence to the minor parties. That holds true in particular for the Right-to-Life party, which has found itself in a position where major-party candidates sympathetic to their point of view frequently turn down invitations to accept the RTLP endorsement because of its reputation for inflexible extremism.²⁴ The RTLP also illustrates most vividly the importance of electoral structures in shaping electoral behavior. Without question, New York's cross-endorsement and party recognition rules explain the otherwise anomalous fact that one of the most strongly pro-choice states in the union is also the home of the nation's only anti-abortion political party.

Finally, what does this near-multiparty system offer for the voters of New York? As previously mentioned, many major party leaders and others have come to vilify the current system,²⁵ fearing, in the extreme, political paralysis characterized by institutionalized factionalism brought about by too many parties—as occurred, for example, during the French Fourth Republic after World War II. These fears have been heightened by the spread of single-issue politics since the 1970s, of which the RTLP is an obvious example, and the generalized “decline of parties.”²⁶ On the other hand, the New York system may offer, apart from the virtues or vices of particular parties, a feasible avenue to reinvigorate party politics²⁷ by providing voters with a greater variety of party and, therefore, policy options. A vote for a candidate on the RTLP line, for example, is clearly an “issue vote,” single-issue or no. Moreover, the presence of more parties can only help diversify an electoral landscape considered by most voters to be uninteresting at best. Few could deny that the multiparty system sparks greater interest in the electoral process.

E. E. Schattschneider observed many years ago that competition was the hallmark of a vigorous party system, and that democracy was unthinkable without vigorous parties.²⁸ The current national electoral malaise leans clearly toward the side of decay and disinterest. The New York example offers a good reason to believe that party competitiveness, considered a hallmark of effective and responsive party politics, is enhanced by the presence of minor parties.²⁹ Those who complain about the woeful state of political parties in America might be well-advised to give the New York system a closer look.

Notes

1. See, for example, Daniel Mazmanian, *Third Parties in Presidential Elections* (Washington, DC: Brookings, 1974); Frank Smallwood, *The Other Candidates* (Hanover, NH: University Press of New England, 1983); D. Stephen Rockwood et al., *American Third Parties Since the Civil War* (New York: Garland, 1985); Steven J. Rosenstone, Roy L. Behr, and Edward H. Lazarus, *Third Parties in America* (Princeton, NJ: Princeton University Press, 1996).

2. New York minor parties and their years of official ballot status include: Prohibition (1892–1922), Socialist Labor (1896–1904), Socialist (1900–1938), Independent League (1906–1916), Progressive (1912–1916), American (1914–1916), Farmer Labor (1920–1922), Law Preservation (1930–1934), American Labor (1936–1954), Liberal (1946–), Conservative (1962–), Right to Life (1978–), Independence (1994), Freedom (1994–1998), Green (1998–), and Working Families (1998–).

3. Robert Karen, “The Politics of Pressure,” *The Nation*, September 20, 1975, pp. 236–37.

4. For more on the history of the Liberal party, see Warren Moscow, *Politics in the Empire State* (New York: Knopf, 1948).

5. Robert A. Schoenberger, “Conservatism, Personality and Political Extremism,” *American Political Science Review*, September 1968, p. 869.

6. Robert J. Spitzer, “A Political Party Is Born: Single-Issue Advocacy and the New York State Election Law,” *National Civic Review*, July/August, 1984, pp. 323–24.

7. “New York Party To Work for Perot,” *Syracuse Post-Standard*, September 27, 1995, p. A8; Erik Kriss, “State GOP Controls Third Party,” *Syracuse Herald American*, September 17, 1995, p. G7; Maureen Nolan, “State’s Party Policy Complicates Elections,” *Syracuse Post-Standard*, November 6, 1995, p. C3.

8. Erik Kriss, “State GOP Controls Third Party”; Maureen Nolan, “State’s Party Policy Complicates Elections.” *Syracuse Post-Standard*, November 6, 1995, p. C3.

9. Ballot position is determined by gubernatorial vote. The party whose gubernatorial candidate receives the largest vote appears first on all New York ballots, followed by the other parties, according to their gubernatorial vote. If a party does not field a gubernatorial candidate, it forfeits the line.

10. “Fusion Party in New York City,” *Political Parties and Elections in the United States*, vol. 1, (New York: Garland, 1991), p. 417. The first known instance of fusion was a New York gubernatorial election in 1854; at the presidential level, the first instance of fusion was in 1856, when the Whigs and Know-Nothings both endorsed Millard Fillmore for president. Howard Scarrow, “Duverger’s Law, Fusion, and the Decline of American ‘Third’ Parties,” *Western Political Quarterly* 39 (December): 634–47, 1986.

11. The other states are Arkansas, Connecticut, Delaware, Idaho, Mississippi, South Carolina, South Dakota, Utah, and Vermont. Linda Greenhouse, “Law Barring Multiparty Ballot Listing of a Single Candidate Is Challenged,” *New York Times*, May 29, 1996, p. A14.

12. Ian Fisher, “Minor Parties File Petitions for Pataki and Rosenbaum,” *New York Times*, August 24, 1994, B4.

13. Chao-Chi Shan, "The Decline of Electoral Competition in New York State Senate Elections, 1950-1988," Ph.D. dissertation, Syracuse University, 1991, p. 45.

14. Karen, "The Politics of Pressure," p. 236.

15. A Democratic party resolution considered briefly by state party leaders denounced cross-endorsements in saying: "The process has led to many cases where the people able to dispense such cross-endorsements obtain influence out of all proportion to the people they represent." See Maurice Carroll, "State Democrats Attack Cross-Endorsement Policy," *New York Times*, January 29, 1982, p. B2. See also Milton Hoffman, "Major Parties Might Lose Top Ballot Positions," *Ithaca Journal*, August 26, 1982, p. 10. The Republicans considered a similar resolution. See Frank Lynn, "Conservatives and a Political Gamble in New York," *New York Times*, January 26, 1982, p. B7; Maurice Carroll, "Minor Party Once Again Has a Major Effect on Politics," *New York Times*, March 14, 1982, p. E7.

16. "A Party for Hire," *New York Times*, February 24, 1997, p. A14.

17. Alison Mitchell, "Liberals and Republicans Scrambling for Giuliani Jobs," *New York Times*, December 20, 1993, p. B1; Kevin Sack, "A Liberal's Patronage Dividend," *New York Times*, February 15, 1994, p. B3; "A Party for Hire."

18. Robert J. Spitzer, *The Right to Life Movement and Third Party Politics* (Westport, CT: Greenwood Press, 1987), chap. 2.

19. David Bauder, "Supporters of Gay Rights Criticize Fear of Conservatives," *Cortland Standard*, June 3, 1993, p. 11.

20. Sam Roberts, "Tiny Liberal Party Set to Wag Some Big Dogs," *New York Times*, March 13, 1989, p. B1.

21. Todd S. Purdum, "Mayoral Race May Turn on Slivers of Liberal Vote," *New York Times*, August 12, 1993, p. 1.

22. For a history of the Liberal party, see Mark D. Brewer and Jeffrey M. Stonecash, "The Liberal Party of New York," in Immanuel Ness and Ron Hayduk, eds., *The Encyclopedia of Third Parties* (Armonk, NY: M. E. Sharpe, 2000).

23. In Cayuga County in upstate New York, local Republicans say that "the lack of a Conservative endorsement . . . is the kiss of death to a campaign." This is true even though the local Conservative party is considered poorly organized and has a small enrollment. Charley Hannagan, "Small Conservative Party Still Powerful in Cayuga County," *Syracuse Post Standard*, June 6, 1989, p. B2.

24. Jacqueline Arnold, "Party Lines Tug Executive Candidate," *Syracuse Post-Standard*, June 16, 1995, p. C3; Irving Long, "Weighing Effects of Cross Endorsements," *Newsday*, April 17, 1997, p. A35.

25. Howard Scarrow, *Parties, Elections, and Representation in the State of New York* (New York: New York University Press, 1983), chap. 2.

26. William Crotty, *American Parties in Decline* (Boston: Little, Brown, 1984).

27. For more on this argument, see Spitzer, *The Right to Live Movement and Third Party Politics*, chap. 4. See also Mazmanian, *Third Parties in Presidential Elections*, chap. 5; Theodore J. Lowi, "The Party Crasher," *New York Times Magazine*, August 23, 1992, p. 28.

28. E. E. Schattschneider, *Party Government* (New York: Holt, Rinehart and Winston, 1942), p. 208.

29. Spitzer, *The Right to Life Movement and Third Party Politics*, chap. 4.

5

The Influence of Interest Groups

David Louis Cingranelli

Interest groups are an essential part of a properly functioning democratic system. Individuals should be free to form groups and to bring the concerns of their group to the attention of policymakers. When a group forms to present one side of an issue, other groups can form on other sides to create a healthy balance of interests providing information and opinions to policymakers. Legislators need to receive information and opinions from groups representing their constituents, so they can make effective policy for the state and can properly represent constituent views. In New York, however, some groups have much greater access to policymakers than others do. This has happened because some groups have greater incentives to form and to develop effective lobbying organizations and because some groups have more money to spend to affect the course of public policy. Reforms are needed to reduce the rapidly growing use of money by interest groups in the political process. Such reforms will restore a more healthy balance in the presentation of interests and opinions to policymakers.

Interest groups in New York State have long been influential in shaping the state's public policies. In 1948, Moscow wrote that the public would protest if it were known that a lobbyist had helped draft a bill in Washington, but in Albany it happens all the time and no one gets excited about it.¹ Similarly, in 1981, Zimmerman wrote that the role of interest groups in shaping public policy "cannot be overestimated."² And, in 1984, Paul Smith argued that interest groups operated "at every level of politics," and that they served "to structure and limit power in the state."³ What is new and disturbing is the recent rapid increase in money spent by lobbyists in their attempt to influence policy outcomes, and the tremendous disparities of resources available to different interest groups. If there is a rough correspondence between money spent by a group and its influence over policy outcomes, as many believe,

then a few interest groups have disproportionate influence over policymaking in New York.

Following Thomas and Hrebnar, an interest group is defined here as “any association of individuals, whether formally organized or not, which attempts to influence public policy.”⁴ Every branch of government is fair game. A battle lost by an interest group in the legislature may be waged in the courts or in the bureaucracy. A lobby refers to an interest group having a relatively permanent presence in the capital, usually in the form of an office with staff. Sometimes, the term lobby is used to refer to a coalition of lobby organizations, all concerned with the same area of public policy but not necessarily agreeing on specific issues. Thus, we can refer to the education lobby or to the health care lobby. Recently, conflict within the education lobby has occurred over such issues as child abuse legislation, tenure rights of teachers, banning the sale of candy and soda in the schools, and school bus safety requirements, but groups within the education lobby also usually work together to get a larger share of the state’s resources devoted to education. A lobbyist is an individual who represents an interest group in the policy making process on a part-time or full-time basis.

This chapter will describe the growth of lobbying activity and spending in Albany and the legislative and electoral strategies organized interest groups use to affect the course of public policy in New York. The most powerful groups have strong lobbies in Albany and contribute large amounts of money to the election campaigns of powerful incumbent legislators and to the incumbent governor. One of the reasons organized interests are so influential in the policymaking process in New York, I will argue, is that New York’s rules governing lobbying activities and political action committee (PAC) contributions are among the weakest in the nation. Since some organized interests have much more influence over public policy than others do, I will provide a rough “power ranking” of lobby groups in the state.⁵

Lots of Lobbyist Spending Lots of Money

Both the structure of a state’s interest group system and the kinds of lobbying activities pursued are affected by the particular economic, social, political, and cultural environment of the polity within which groups form and conduct their activities. As described elsewhere in this book, some main features of the political environment in New York are its cultural diversity, its big budget, the New York City-upstate cleavage, and the intense competition between the political parties. That environment, coupled with weak state regulation of lobbying activities, produces an interest group system where groups are nu-

merous and diverse in the interests they represent and visible, vigorous, and pervasive in the policy process.

The number of lobbies in Albany and the amount of money spent on lobbying activities are growing rapidly. During 1996, there were 2,121 lobbyists registered with the commission representing 1,207 clients, more than double the number of lobbyists and clients in 1978.⁶ The increase in spending by lobbies has been even more dramatic, perhaps the most dramatic in the nation. Between 1984 and 1994, the increase in spending by state lobbyists was 19 percent in Iowa, 17 percent in Kansas, 29 percent in Pennsylvania, 91 percent in Virginia, and 33 percent in Washington. The increase in New York was nearly 300 percent—going from \$10.9 million in 1984 to \$38.5 million in 1994.⁷

The large number of lobbies active in the state, their large expenditures on lobby activities, and as discussed later, their large contributions to state election campaigns suggests that, overall, the influence of organized interest groups on state public policies is strong. However, the relative influence of different organized groups varies. A particular interest group's influence is determined by two factors: its lobbying strategies and tactics and the amount of money it can spend on election campaigns. The most effective groups in the legislative process have focused and reasonable agendas, have large numbers of activist, participatory members, employ full-time lobbyists who are able to develop trust among legislators and legislative staff, and have a reputation for providing expertise in a particular area of legislation. They participate effectively in electoral politics by forming PACs, by making campaign workers available, and by contributing money both to a state political party organization and to individual candidates.

Lobbying Strategy and Tactics

David Truman, in what is probably the most important and influential book on interest groups, *The Governmental Process* (1951), argued that well-organized groups with more focused agendas have an advantage in the policymaking process. Policymakers pay most attention to the best organized groups, Truman explained, because formal organization indicated that the group had attained a certain level of internal cohesion and had achieved a certain level of permanence. In addition, a well-organized group employs lobbyists who become acknowledged specialists about a particular type of policy, thereby making effective action in the policy process more likely. Effective action consists mainly in getting the group's message to the appropriate policymakers and in convincing them that the members of the group are committed to the achievement of the group's goals. Good organization and a focused agenda combine

to concentrate power, and concentrated power can dominate when it encounters power which is diffuse and, therefore, weaker. Policymakers depend upon lobbyists to be well-informed on the group's issues and to tell the truth. Lobbyists who lie lose their credibility, their access, and their influence.

There are three ways an interest group can be represented in the legislative process. First, an interest group may be represented in the legislative process by a permanent organization with an office at the state capital, employing a lobbyist or group of lobbyists who represent only the interests of that group. An organization of this kind requires money to establish and maintain—enough money to set up a permanent, full-time office at the state capital and some mechanism for frequent communication between group leaders and members. A second way an interest group can be represented in the legislative process is through an organization of amateurs who represent the interests of their group, but who do not receive a salary and who have relatively little money to spend on their efforts. Amateur groups usually form around a particular highly emotional policy issue, and then disappear or at least sharply reduce their level of activity when that issue has been resolved. The main way amateur groups get their message across and demonstrate the commitment of their memberships is through grassroots activities, a tactic also employed occasionally by professional lobby organizations. Amateur organizations usually lose in the policy process, but under the right circumstances, they can win, as discussed later. Both professional and amateur lobbyists representing a single group strive for visibility in the legislative process. Most of the time their leaders work quietly to provide information and the opinions of their members to legislators, bureaucrats, and the courts. From time to time, however, they remind legislators that, because they represent many citizens who are highly committed to the group's policy agenda, they are a force to be reckoned with in electoral politics. The third way an interest group can be represented in the legislative process is through a contract lobbyist. Law firms that represent several clients in the legislative process usually employ contract lobbyists. The clients are almost exclusively corporations who usually prefer to maintain a low profile in Albany. Corporations do not have large numbers of members, so it is difficult for them to mobilize votes directly. They try to affect the outcomes of legislative elections through the strategic distribution of campaign funds to legislators.

Professional Lobbyists Representing One Group

In New York, the most influential professional lobby organizations that only represent one group orchestrate at least one and often several large-scale membership visits to the state capital each legislative session. These visits

typically include a reception, breakfast, luncheon, or dinner, which group members and state policymakers attend, and appointments for group members to speak with their own legislative representatives about the group's concerns. Schmalz described the Roman Catholic Church grassroots day in 1987 as follows:

Two thousand Roman Catholics—led by all eight bishops of New York State, including John Cardinal O'Connor—swept through the halls of state government today. They lobbied for the Catholic view on legislation, calling for greater aid to the poor. . . . Throughout the day, nuns, priests and lay people, carrying a list of legislators by diocese, moved from office to office and detailed the more than two dozen items on the church agenda.⁸

During two fairly typical recent legislative session days, members of the following state groups descended on the capital complex in Albany to demonstrate grassroots support for their groups' policy proposals: the International Ladies Garment Workers Union, the Cable Television Association, the Builders Association, the Commission on Independent Colleges and Universities, the Energy Association, the Association of Public Broadcasting Stations, the Farm Bureau, the Coalition on Smoking and Health, the Association of Realtors, the Telephone Association, the Conference for the Aging, and the Council of Family and Child Caring Agencies. The presence of these groups in Albany affected the schedules of nearly every state legislator with whom I talked during those two days. Even though such grassroots visits consume a great deal of the time available to legislators during session days, legislators welcomed them. Visits by group members present an opportunity to gather important information about the impact of existing or contemplated policies on specific constituencies. Lobby leaders try to match legislators with group members from each legislator's own district. Visits from constituents are especially valuable to legislators because they provide excellent opportunities to win votes needed in the next election.

Professional groups like these that have a modest budget to influence public policy can be effective in the policy process. However, sometimes less professional interest groups with fewer members and less money also can be effective. This is because legislators are mainly interested in their own reelection. If interest group leaders can convince elected officials that their members will vote on the basis of the representative's treatment of the group's policy agenda, the group will have some success. While each interest group claims the maximum number of voters as group members, elected officials are well aware of citizen apathy and issue cross-pressures. Thus, a group led

by amateurs with only a temporary presence in Albany but having members who feel deeply about the importance of the group's policy goals can be persuasive.

Amateur Lobbyists Representing One Group

Amateur group leaders have fewer tactics available, since they do not have a permanent office and staff in Albany. In the early 1990s, amateur groups held well-publicized regional meetings organized around two major issues—preventing the state from: (1) locating a low-level nuclear waste site in their “backyards” and (2) accepting the preservationist recommendations of the Commission on the Adirondacks in the Twenty-First Century. Both efforts succeeded.

In the controversy over the location of a low-level nuclear waste site, groups organized in each of the prospective sites recommended by a site location commission, to make sure that theirs would not be chosen. The leaders of the different groups around the state occasionally communicated with one another, but the statewide lobby effort was not well-coordinated. The controversy was unlike most battles over state policies because there was no lobbying campaign in favor of locating the waste site in any particular place. Almost everyone agreed that the state needed to establish a place for the disposal of nuclear waste, because exporting the wastes is expensive, but no one wanted the disposal to be near where they lived or worked. This was a classic not-in-my-backyard policy problem. Thus, it was not surprising that the state legislature could not agree on a particular disposal site.

However, the controversy over the recommendations of the Adirondack Park Commission was more typical of conflicts over state policies. Groups formed on both sides. Several professional lobby groups supported the recommendations of the Adirondack Park Commission. Amateur groups opposed them. Thus, a closer look at this conflict and its outcome shows how amateur groups can be successful even when they have fewer members and less money than a more professional opposition. The Adirondack Park is unique because it is the only park in the nation that is a mixture of public and private lands. Private citizens own approximately 60 percent of the land with the state owning the rest. The preservationist lobby consisted of groups who wanted to keep the entire park as pristine as possible. The home rule lobby preferred that the residents of the park be given greater autonomy. It was clear that the residents would use that autonomy to oppose further restrictions on the use of private lands within the park. Table 5.1 describes the groups involved in this debate and the resources commanded by each in 1991. As Table 5.1 shows, nine out of the ten groups opposing the commission's work were amateur groups formed in reaction to the creation of the commission itself in 1989.

The older and established preservationist groups had a more professional organization, many more members, and much more money at their disposal.

The outcome of this conflict shows that group membership numbers by themselves are not very convincing to legislators. The preservationist lobby had approximately 500,000 members of the National Audubon Society on their side, but the debate over the future of the Adirondack Park was just one

TABLE 5.1.
Interest groups taking a stand on the future of
the Adirondack Park, 1991 to 1992.

	Year established	1991 Membership	Budget
Preservationist Groups			
Adirondack Council	1975	18,000	1,200,000
Adirondack Mountain Club	1922	20,000	1,600,000
Association for the Protection of the Adirondacks	1901	1,500	80,000
Residents' Committee to Protect the Adirondacks	1990	1,300	50,000
National Audubon Society	1886	500,000	420,000
Sierra Club, Adirondack Chapter	1950	500	2,400
North Adirondack Greens	1990	50	200
Earth First, Adirondack Chapter	1988	12-15	None
The Nature Conservancy/Adirondack Land Trust	1988	4,500	>500,000
Home Rule Groups			
Adirondack Planning Commission	1990	12*	11,200
Adirondack Blue Line Conference	1990	290	<4,000
Adirondack Park Local Government Review Board	1973	12*	60,000
Citizens Council of the Adirondacks	1989	4,300	1,700
Adirondack Landowners' Association	1990	30	N.A.

* Represents elected representatives of twelve county governments in the region.
Source: *The Press Republican*, Plattsburgh, N.Y., October 6, 1991, Section C.

of many issues the Audubon Society was concerned about. Moreover, many members of the Audubon Society do not live in New York State and, therefore, cannot vote in state elections. In contrast, all of the home rule group members are residents of the state, and for them, the future of the park is a salient issue—perhaps the most salient state public policy issue. Though there were fewer home rule group members, policymakers knew that a larger proportion of them would vote on the basis of the outcome of this issue.

The outcome of this controversy also shows how useful it can be to have just one well-placed advocate in the majority party of only one chamber of the legislature. Had the home rule group lost, at least one senior Republican senator, who represented most of the residents of the Adirondack Park, Senator Stafford, would have had a hard time winning the subsequent election in his district. All Republicans in the Senate had a vested interest in maintaining a Republican majority, so they were willing to support Stafford and the home rule position in the absence of an intense preservationist constituency interest in their own districts. Most voters around the state favored accepting the commission's report, which would have kept the park more pristine for future generations of New Yorkers, but except for the residents of the park itself, few voters viewed this issue as a litmus test for their legislators. Thus, there were no serious electoral consequences for any member of the New York State legislature when the preservationists lost on this issue. If a Democrat in the New York Senate with the same home rule position had represented the Adirondack region, the outcome may have been different.

Contract Lobbyists Representing Several Groups

Most corporations prefer to keep an especially low profile when lobbying. For representation in Albany, they usually employ low-keyed, professional, contract lobbyists. In order to gain access and be influential, these “hired guns” must have expertise in a particular area of public policy, knowledge of the policymaking process, and personal contacts within the government, roughly in that order of importance. Most of the successful contract lobbyists are lawyers, as are most of the state's legislators. In 1996, NYNEX-NY was represented by ten contract lobbyists in Albany, American International by six,⁹ the Life Insurance Council of New York by five, and Trump Taj Mahal by five.

Many of the most successful contract lobbyists formerly served as high-level public officials, though this is not a necessary requirement for success. The DeGraff, Foy, Conway law firm was started by the late George Foy, a former legislator. Joseph Carlino was speaker of the Assembly in the early 1960s and then became a successful lobbyist. Samuel Roman first served in the State Assembly, then as deputy commissioner of the State Harness Racing

Association, and later as a lobbyist representing clients from the horse racing industry. In 1975, Steve Kroft profiled Victor Condello, a well-connected Albany insider, who in 1974 ranked fourth in the state in earnings from lobbying activities.¹⁰ His law firm then represented nine clients and earned approximately \$82,000 in lobbying fees that year. In 1986, his firm represented forty-one clients and reported receiving over a million dollars in lobbying fees, probably making him the top lobbyist in the state.¹¹ In 1996, the firm of Davidoff and Mailito represented sixty-nine clients and reported receiving over \$2.25 million in lobbying fees. No other firm had more clients that year, but one earned over 2.5 million.¹²

Condello had all of the qualities of an effective contract lobbyist. He had a good understanding of the labyrinth of rules and customs that govern the legislative process. This is particularly important in New York, since a large proportion of all state laws are passed in the final weeks of each legislative session. He was one of the foremost authorities on railroad law in the United States, certainly tops in New York State. Because of his expertise, other lobbyists and even legislators often sought his advice on parliamentary issues and on railroad policy. His success in Albany was based largely on his integrity and the value of his know-how in the policy process.

His access was enhanced by his good personal connections to elected officials. His political connections began in 1947, when he got a political job as law assistant in the New York City Corporation Counsel's office. By 1950, Condello had become the city's legislative representative in Albany. By 1957, he carried the title of assistant to the mayor. Before long he left city hall to go into business for himself.¹³ As a contract lobbyist, he was on friendly terms with leaders of both parties. He was almost invisible, working behind the scenes, dealing almost exclusively with leaders rather than with rank-and-file members of the legislature, never throwing parties, and almost never issuing press releases.

Working through the state bureaucracy helped to keep Condello's profile low and also helped to ensure good results, since state agencies are allowed wide discretion in implementing the policy once enacted. He was able to work this way because of his extensive contacts and expertise. He told Kroft, "If there is a railroad bill I want, I'll take it to the Department of Transportation and try to sell them on it. If I can convince them to introduce it, the chances of it passing are greatly enhanced."¹⁴ State agencies promulgate hundreds of rules, regulations, rates, and rate changes each year. Many of the policy decisions they make are very important, so state agencies are prime targets for lobbying activities. For example, the Adirondack Park Agency, created in 1973, is charged with the responsibility for implementing all legislation on land use in the Adirondack Park. It is a prime target for lobbying activities for both preservationist and home rule groups.

Electoral Strategies

Yet another way pressure groups can demonstrate the active commitment of the membership to the group's policy agenda is through campaign contributions. The cost of financing a state legislative campaign in New York is high and has grown at a rate of about 10 percent per election campaign since 1984. In 1992, New York State Senate incumbents spent an average of \$96,278 on their reelection campaigns.¹⁵ Members of the majority party in both chambers tend to spend more than minority party members do, because they are better able to attract contributions from political action committees (PACs). PACs raise funds from their memberships to provide financial support for candidates. Under New York State law, a PAC is an "unauthorized committee," not working with the knowledge or permission of a candidate. PACs, unlike candidate committees, are not restricted in the amount of money they can receive from any single donor. Dependence on PAC support is growing, largely because of the increased costs of purchasing media time. To some this is a disturbing trend because they believe PAC contributions are payments for services rendered or expected.

The number of PACs and the amounts of their campaign contributions are growing. A March 1986 list of PACs included just under 400 political action committees formed to support candidates for public office in New York.¹⁶ In 1996, there were 516 PACs registered in New York State.¹⁷ They spent over \$13 million that year.

A team of researchers from Common Cause, the League of Women Voters, and NYPIRG (New York Public Interest Research Group) analyzed campaign contributions to state legislators from January 1993 to July 1995. They found that:

1. Corporations and corporate PACs contributed nearly half of the money.
2. Majority party legislators received three times as much money as minority party legislators.
3. A disproportionate share of PAC contributions was given to committee chairs and majority party legislative leaders.
4. PAC contributions are given mainly to incumbents and to legislative party committees.

Some PACs control very large amounts of money. During 1996, an election year in New York, the top sixteen spending PACs accounted for over 28 percent of all spending by 516 PACs in the state. Because of the large amounts of money contributed by these sixteen PACs, many believe that they have disproportionate influence over public policy in New York State. In 1996, the top giver was VOTE/COPE PAC, which makes contributions on behalf of

public school teachers and public university professors (\$973,627). The second ranked spender was the Medical Society of the State of New York PAC, which represents the state's physicians (\$444,055). The next five top spenders were the Lawyers Political Action Committee representing New York's trial lawyers (\$273,325), the Neighborhood Preservation PAC representing New York City's landlords (\$201,400), and the Civil Service Employees PAC representing the state's largest public employees union.¹⁸ These dollar figures reflect cash contributions but do not reflect the value of nonmonetary assistance, such as campaign services or other in-kind labor. Thus, the campaign contributions of unions are understated when expressed only in dollars, since unions, more than the other types of interest groups, can and do supply campaign workers at election time.

Much of the money contributed by PACs is given to majority party incumbents, because over 90 percent of New York State's legislators who run for reelection are reelected. Thus, there is little point in supporting challengers. There is also little payoff from supporting members of the minority party in either legislative chamber because legislative rules so strongly favor the majority party in each chamber. Since the Assembly is controlled by the Democratic party and the Senate by the Republican party, almost every PAC contributes significant amounts to candidates from both political parties. This is a good thing for large membership interest groups, because the membership is ideologically heterogeneous. For example, the Empire Dental PAC represents more than 3,000 dentists who have a wide range of political preferences. According to Roy Lasky, the executive director of the Dental Society of the State of New York, the pattern of contributions of this PAC "almost has to be bi-partisan, and it has to be as diverse as its membership."¹⁹

PACs also give large shares of their funds to campaign committees run by the Republican and Democrat leaders of the Senate and Assembly. In 1996, the top sixteen PAC spenders gave more than half of their funds to these party committees, giving the lion's share to the majority party committees of the two houses (the Assembly Democrats and the Senate Republicans).²⁰ Dwyre and Stonecash have argued that the emergence of these legislative party campaign committees as major actors in campaign financing reduces the hold particular PACs have on particular members of the legislature.²¹ However, New York's public interest groups have argued that these large contributions to campaign chests controlled by the majority party leaders in the legislature present a serious problem. They cause individual legislators who want to stay in office to be dependent upon resources controlled by a few party leaders. This reinforces the already undemocratic, leader-dominated legislative process in New York State.²²

Besides the majority party leaders in the two chambers, the other big recipients are the chairs of important committees. Interest groups still target lawmakers who control key committees with jurisdiction over matters of

particular interest to each of them. For example, the chairman of the Assembly Health Committee collects large amounts from drug manufacturers, doctors' groups, and hospital associations each year. Similarly, the insurance industry contributes a great deal to the campaign coffers of the chairman of the Senate Insurance Committee. The big losers in this game are the rank-and-file members of the majority parties in the legislatures who receive less, the minority party members who receive much less, and challengers of legislative incumbents who receive little or nothing.

As noted above, the PAC representing the teachers' unions was the biggest spender in 1996. Mainly Democrats support the policy positions of the teachers in New York in the two chambers in the legislature. Despite this fact, the VOTE/COPE PAC representing the teachers' unions gave no money directly to Democratic challengers in the 1996 legislative elections. Instead, they gave about two-thirds of their funds to party committees, allocating the largest amounts to the Senate Republicans and the Assembly Democrats. The remaining third of their funds were given directly to powerful incumbents in the legislature. Again, most of these direct gifts were provided to Senate Republicans and Assembly Democrats.²³

One of the most unseemly practices in Albany is the holding of campaign fund-raisers by legislators. A particular legislator at the state capitol hosts each of these social events. Lobbyists, not constituents, are invited and requested to make a specified minimum contribution to the lawmaker's campaign fund. In 1995, New York's lawmakers held 112 such fund-raisers. A lobbyist attending all of them and contributing just the "minimum" requested would have had to contribute more than \$26,000 to state election campaign funds.²⁴ In 1996, they held 172 such events, with minimum contributions totaling \$57,890.²⁵ During the first five months of 1997, state lawmakers held 190 fund-raisers, and the minimum contribution cost for a lobbyist attending all of the events was \$45,699.²⁶ There is probably no vote selling going on, but nearly everyone agrees that contributions lead to access, and access leads to influence.

Regulating Interest Group Activities

In 1977, New York took a major step towards public disclosure of lobbying activities when it passed the New York State Lobbying Act. The most important result of the new law was the creation of the Temporary State commission on Lobbying. The Commission maintains a public clearinghouse of the identities, activities, and expenditures of those attempting to influence state government decision-makers. The Lobbying Act establishing the commission replaced a much weaker, almost unenforceable, set of regulations, and it provided for the first comprehensive lobbyist disclosure reform in over seventy years. A bipar-

tisan, six-member commission is empowered to conduct investigations, to issue subpoenas, and to impose civil penalties of up to \$5,000 on dilatory lobbyists, clients and public corporations for violations of the Lobbying Act.

Though lobby expenditures and campaign contributions must be *disclosed*, the Act places few other limits on either lobby activities or PAC contributions. The Act applies to lobbyists and clients or employers of lobbyists who in any calendar year anticipate or actually expend, incur or receive more than \$2,000 of combined reportable compensation and expenses for lobbying activities. As defined in the New York State Lobbying Act,²⁷ lobbying refers to “any attempt to influence the passage or defeat of any legislation by either house of the legislature, or the approval or disapproval of any legislation by the governor, or the adoption or rejection of any rule or regulation having the force and effect of law or the outcome of any rate-making proceeding by a state agency.” This definition affects who must register as a lobbyist with the commission and what lobbying expenses must be reported. In essence the Act requires lobbyists to make periodic reports of how much they earn, from whom, how much they spend, and on what.

Disclosure is an important element in regulating lobbying and campaign contributions, but it is not enough. There is convincing evidence that New York’s rules governing lobbying activities and PAC contributions are among the weakest in the nation. In 1995, several public interest lobby groups in New York issued a joint report on the lobbying policies and practices of the fifty states and the District of Columbia. The report compares state policies designed to encourage accurate reporting of lobbying activities, to restrict unethical lobby practices such as giving gifts to lawmakers, and to limit the ability of lobbyists to contribute campaign dollars to state lawmakers. Based on this information, they graded the states from A+ (Kentucky) to F- (Louisiana, North Dakota, Wyoming, Alabama, and Oregon). New York State got a grade of D+. Thirty states and the District of Columbia received higher scores.²⁸

Despite the fact that New York’s rules governing campaign contributions and lobbying are among the weakest in the nation, the legislature refuses to make them stronger. Public interest lobby groups such as Common Cause, the League of Women Voters, and United We Stand America want to strengthen regulations on lobby activities and special interest campaign contributions by:

1. Making the Temporary Commission permanent.
2. Expanding the powers of the commission to allow it to randomly investigate and audit lobbyists’ activities.
3. Dramatically restricting the ability of lobbyists to be involved in fundraising for political campaigns.
4. And banning all gift-giving by lobbyists to policymakers.²⁹

Though the existing rules are weak, they are followed. During my interviews at the capital, I asked whether most lobbyists really registered with the commission and practiced full disclosure, because noncompliance was an alleged problem with the earlier regulations. One legislative staff member's response was typical: "The smart ones do," he said, "and I won't deal with those who don't."

The Most Powerful Interest Groups

There is considerable circumstantial evidence that lobbying activities and PAC contributions influence New York State's public policies. The Take Back Democracy Project, a public interest group illustrates this point. In 1995, New York State's beer and soda industry hired well-connected lobbyists, made substantial PAC contributions to incumbent legislators, and wined and dined lawmakers. The result was a \$42 million tax cut in the 1995 budget. This tax cut was especially impressive, since it occurred in a year when the state faced a \$5 billion deficit, when the budgets of many state programs were being cut, and when this particular tax cut was neither targeted as a priority by the Pataki administration or by the Business Council.³⁰ An official of the beer and soda industry estimated that this particular lobbying effort cost no more than \$4 million over a four-year period. In addition to these lobbying costs, the beer and soda PACs funneled roughly \$300,000 in campaign contributions into the 1994 state elections.³¹ Thus, for an investment of less than \$5 million, the beer and soda lobby received an \$42 million dollar payoff—not a bad return on investment.

While legislators consistently deny that PAC contributions affect their decisions on public policy issues, lobbyists almost always tell the members of the groups they represent that the opposite is true. A 1992 letter from the Association of Commercial Property Owners to their membership provides a good example of the lobbyist's perspective:

As you know the Loft Law expires this June. Based upon the recommendation of the Mayor's office and the Tenants' Organization, the State Assembly will more than likely attempt to renew the law without ANY changes.

Our only hope for non-renewal or for substantive change lies with the Republican Senate. With this in mind it is imperative that we make substantial contributions to their re-election campaigns. . . .

We must have an impact before the renewal comes to the legislative floor. Your contribution is our only weapon. This is your *LAST CHANCE*. Do you want to be stuck with these tenants for another 20 years or more?³²

Measuring the relative power of interest groups is difficult, and any particular ranking will be controversial. According to the policymakers who returned my questionnaires or who granted me an interview, the strongest groups are those which often influence: (1) the passage, defeat, or delay of legislation in the legislature; (2) the approval, disapproval, or delay of legislation by the governor; (3) the adoption, rejection, or delay of any rule or regulation by a state agency having the effect of law; and (4) the outcome of any rate-making proceeding by a state agency. Groups that can exercise influence in these ways over a broad range of public policies are the most powerful. All of New York's most powerful groups maintain a lobby office and staff in Albany throughout the year, or like Trump Taj Mahal, they arrange for contract lobbyists to represent their interests at the capital.

On the basis of these criteria, most of those whom I interviewed ranked the (1) teachers, (2) business, (3) public employee, and (4) health care lobbies as the four strongest in the state, roughly in that order. Within the teachers lobby, United Teachers and the United Federation of Teachers are the two dominant interest groups. Within the business lobby, the State Business Council, Change New York, and the Chamber of Commerce and Industry are the three strongest groups representing diverse business interests. The defeat of Mario Cuomo and the election of a more probusiness governor, George Pataki, enhanced the influence of the business lobby. Within the public employee lobby, the Civil Service Employees Association and the Public Employees Federation probably are the two most powerful groups. Both were ranked among the top ten spenders on lobbying activities and among the top eleven PAC contributors in 1996. Within the health care lobby, the top spending groups are the Greater New York Hospital Association and the Healthcare Association of New York State.

Teachers are ranked first because they were almost always mentioned as being one of the most powerful groups in the state. No other group was mentioned as consistently in that category. Teachers have several advantages besides spending a lot of money on lobbying and on legislative elections. They have nearly 400,000 members who are geographically distributed throughout the state, are articulate, have enough leisure time to devote to lobby activities, and are capable of generating grassroots support through their contacts with parents and students.³³ Their leaders in Albany are highly professional and have a keenly focused policy agenda. As noted above, in 1996, their VOTE/COPE PAC was the biggest giver and their lobby expenses were among the highest in the state. Thus, they are very influential during legislative sessions and during elections.

When the teachers mobilize to achieve a specific electoral or policy outcome, they are a formidable force. In 1992, teachers' unions spent \$1 million on ads in a successful campaign to block the reelection of former New York City Mayor, David Dinkins.³⁴ In 1998 they mobilized against New York's U.S.

senator, Alfonse D'Amato. In December of 1997, the senator announced his support for policies that would link teachers' pay more closely to merit rather than seniority, would require teacher competency tests, and would limit teachers' tenure rights. These positions enraged most teachers.

Teachers responded by increasing their already large contributions to their political action committee. They launched a massive letter-writing campaign to Senator D'Amato. They distributed fliers criticizing him, including one in the form of a report card giving him a grade of F for his votes on education issues in the U.S. Senate. Teachers distributed these report cards to friends, family members, and neighbors in communities all over the state and got excellent local newspaper coverage of their efforts.³⁵ The purpose of this campaign was to make D'Amato pay for his teacher bashing, to convince him to abandon his antiteacher positions, and to persuade Governor Pataki and the Republican members of the New York State legislature not to support D'Amato on his antiteacher issues. During the 1998 election campaign, D'Amato publicly complained that he could not get support for these good policy proposals from Governor Pataki and the Republican members of the New York State Senate. He claimed that others would not join him because "the teachers unions have a great and powerful influence and probably are the most powerful, or among the most powerful (interest groups), in the state."³⁶ Alfonse D'Amato lost his reelection bid to Charles Schumer by about 400,000 votes, approximately the membership of NYSUT.

Even the governor has hesitated to challenge New York State's teachers. In a 1997 press conference, Governor Pataki called charter schools "an opportunity to break the mold" in education and urged their approval in New York.³⁷ However, Pataki quickly dropped the idea when the teachers' union expressed its opposition, and the legislature never seriously considered it. Charter schools are funded by tax money but operate independently of state regulations and union contracts. Such schools could require school uniforms, establish longer school days, or change the state-mandated curriculum to emphasize specific areas of study such as the fine arts or science. They already operate in twenty-seven states.³⁸ New York's teachers' lobby opposed the creation of charter schools in their state, mainly because the new schools would have been able to hire noncertified teachers. Greg Nash, president of NEA-NY, one of the two major statewide teachers' unions, said the proposal amounted to union-busting disguised as educational reform. On December 18, 1998, the governor finally got the legislature to pass a bill allowing a modest experiment with charter schools, but only by linking it to a 38 percent pay increase for state legislators.

Business associations and public employee unions were also mentioned frequently as being among the most powerful groups in the state, but opinions varied about which of these two lobbies was relatively more powerful than

the other. The results of previous research are not clear on this point either. Zeller, who studied the role of interest groups in New York State politics in the 1930s, argued that business interests were, by far, the most powerful groups in the state.³⁹ In 1948, Moscow presented a much different picture, identifying a wider array of powerful groups including the Roman Catholic Church, the teachers' lobby, the Conference of Mayors, the Association of Towns, public utility companies, railroads, newspapers, the New York State Federation of Labor, and the Associated Industries of New York.⁴⁰ Zimmerman, writing in 1981, agreed that the power of business interests was not what it used to be, mainly because of the increased clout of unions, the rise of public interest groups, and the consumer movement.⁴¹ Zimmerman's position is buttressed by a rating of New York's "business climate" (based on tax levels, services commonly offered to businesses, and union regulations) ranking it as worst among the fifty states.⁴² If the business lobby has been as strong as some think, why has it not been more effective?

Still, especially in the past few years, the business lobby has been particularly successful as an agent of public policy change in the state, so it deserves to be ranked among the most powerful lobbies in the state today. The major recent achievement of the business lobby was the passage of the long-sought corporate tax cut bill in 1987. Indeed, some would argue that 1987 was the one of the best years business lobbyists have ever had in the state. In addition to the corporate tax bill, the state approved a \$4.5 billion cut in personal income taxes, a new Department of Economic Development, \$160.7 million in economic development programs, liability protection for corporate directors, and several other probusiness bills.⁴³

With the rise in power of business groups, private-sector labor groups have suffered, but public-sector unions have prospered. The clout of public sector unions was increased greatly by the 1977 act that authorized unions representing state employees to collect an agency shop fee from the paychecks of nonunion members in the bargaining unit. This act made all state employee unions major actors in the lobbying process almost overnight. In fact, every legislator who responded to my mail survey ranked organized public sector labor among the top-five interest groups. The groups mentioned most often were the teachers' unions; the Civil Service Employees Association; the Public Employees Federation; the American Federation of State, County, and Municipal Employees; and police and firefighters associations.

Generally, legislators thought public-sector unions were the most effective interest groups as elections approached, while business groups like the Business Council were often listed among the five most effective groups during legislative sessions. This may indicate that at election time candidates value campaign workers and votes (which unions may be able to supply) even more than PAC contributions. One of the reasons why business groups are per-

ceived as legislatively powerful is that, having fewer members, they usually are more cohesive, consistent, and focused in their demands.

In the next category of groups, ranking below the teachers, business, health care, and public employee lobbies, in descending order, are (1) the public utilities, (2) the local government lobby (New York City, NYS Conference of Mayors and Municipal Officials, NYS Association of Counties, and the School Boards Association), (3) the American Association of Retired People, (4) the public authorities, (5) major statewide private-sector labor unions (e.g., the AFL-CIO and the Teamsters), and (6) the gambling lobby (especially Trump Taj Mahal).

Senior citizen groups are making their positions known on a wide range of policy proposals, and are increasing in power. The STAR program implemented in 1998 is an example of the kinds of policy concessions senior citizens have been able to win from state government. This program gives homeowners who are 65 or older an exemption of up to \$50,000 from the full value of their property for school tax purposes. The income cutoff for the plan is \$60,000.

As the baby boom generation ages and as advances in technology allow people to live longer, an increased voice for senior citizens in public policy formation is virtually guaranteed. New York also has several important quasi-public agencies called public authorities. Among the most active public authorities on the lobbying scene at the state capital are the Port Authority, the Power Authority, and the Off-Track Betting Corporation.

Groups having still less power, but which are still important in the state, are the farm lobby (especially the Farm Bureau), the banking lobby, the insurance lobby, consumers' groups such as NYPIRG, the landlord lobby, and the realtor lobby. While still substantial, the power of the farm lobby is limited by the fact that farms are only located in upstate New York. Democrats from New York City, who have great influence in the Assembly, often oppose the bills that would help farmers. During most of 1998, New York Assembly Speaker Sheldon Silver, who represents a district in New York City, prevented the dairy compact bill (that would have provided higher prices for milk) from being debated in the Assembly. If this bill had not been passed, more small farms would have gone out of business. The number of small dairy farms in New York has declined each year for the past decade. Although the state now has fewer than nine thousand dairy farms geographically concentrated in upstate New York, farmers have far more clout than their small numbers and geographic concentration would suggest. According to Jay Gallagher, this clout is due to the fact that farms are important to the prosperity of many upstate rural communities, pumping approximately \$1.6 billion a year into rural economies. The Farm Bureau also benefits from the image of the farmer as hard-working, wholesome, and family-oriented.⁴⁴ Thus,

it was not surprising that the same late-night deal on December 18, 1998 that led to the creation of charter schools also included legislation moving the state closer to price supports for dairy farmers.

Summary

The number of interest groups in New York is large and growing rapidly. The most influential groups maintain a presence in Albany year round and contribute large sums of money to election campaigns through PACs that represent them. Since 1977 New York State has charged a Temporary State Commission on Lobbying with the responsibility for documenting lobbying activities and PAC contributions, but New York's regulations of lobbying and campaign contributions are among the weakest in the nation. New York's teachers are probably the most powerful lobby in the state, but it is difficult to measure the impact of lobbying. This is partly because one very important way interest groups affect the course of public policy is through electioneering—aiding candidates financially, urging candidates to adopt favorable positions, and getting their members out to work and vote for candidates in elections. Much of this kind of activity is difficult to distinguish from general constituency pressures.

The interest groups that are most likely to be successful in producing changes in public policy are those having policy proposals that escape media attention and public scrutiny. The tax cut secured by the state's beer and soda industry in the 1995 budget is a good example of the kind of low-visibility group and issue that is most likely to be successful. Few members of the general public pay much attention to the effect of a very complicated tax law on any particular industry. The owners of a few private corporations enjoyed the benefits of the policy change, so it was worthwhile for them to invest \$5 million. The costs of the \$42 million tax cut on the industry were spread out among all taxpayers in the state who each had to pay a little more. Since the costs were so diffused, no interest group mobilized against the change. Proposals for small changes in tax laws like this one rarely receive much media attention. Private corporations who seek these kinds of policy changes usually employ low-profile contract lobbyists. When the public is not watching, legislators are also likely to be more responsive to groups whose PACs provide them with campaign contributions.

Interest groups and even lobbies are essential to a democratic political system. They help legislators decide what new policies are needed and how existing policies can be fine-tuned to serve the needs of citizens better. The problem in New York is that unorganized citizens and the legislators who represent them have too little voice. There are so many lobby groups in the

state throwing around so much money that citizens without lobbies to represent them do not have much of a chance to be heard. Another problem is that some lobbies and the PACs that represent them are too large. This gives their members disproportionate power over public policy. It also creates the impression that votes are being sold. Finally, the close, mutually beneficial working relationships among majority party legislative leaders, incumbents of both parties, and lobby leaders reinforces an already undemocratic state policymaking process. Reforms should be enacted to reduce the power of majority party legislative leaders and party caucuses, to increase the power of rank-and-file members of both parties and of legislative committees, to stop legislators from hosting fund-raisers in Albany, and to more effectively limit the campaign contributions of PACs.

Notes

1. Warren Moscow, *Politics in the Empire State* (New York, A. A. Knopf, 1948), p. 200.

2. Joseph F. Zimmerman, *Government and Politics of New York State* (New York: New York University Press, 1981), p. 97.

3. Paul A. Smith, "E Pluribus Unum," in Alan Rosenthal and Maureen Moakley, eds., *The Political Life of the American States* (New York: Praeger, 1984), p. 263.

4. Clive S. Thomas and Ronald J. Hrebnar, "Interest Groups in the States," in Virginia Gray, Herbert Jacob, and Robert Albritton, eds., *Politics in the American States*, 5th edition (Glenview, IL: Scott, Foresman/Little, Brown, 1990).

5. In order to get information about lobbying in New York, I mailed a questionnaire to all members of the New York State legislature and to a sample of lobbyists in 1987. Among other things, respondents were asked: (1) to list the five most effective interest groups in the state *at election times* and the five most effective interest groups in the state *during the legislative session*, (2) to rate the influence of interest groups in the state over public policy from "crucial" to "insignificant," (3) to give their opinion about whether the role of interest groups was growing or declining, and (4) to predict which groups were likely to become more prominent in the next twenty years. Though the response rate was too low to permit statistical analysis, there was much agreement among the respondents about the answers to my questions. To supplement this information, I interviewed a sample of legislators from both houses and both parties, members of legislative staffs, professional and amateur lobbyists, executive branch officials, and the executive director of the New York State Temporary Commission on Lobbying. I also observed several interest group meetings between group leaders and members. My conclusions about the role of interest groups in state policy-making, therefore, represent a synthesis of information gathered from many sources and in many ways.

6. New York Temporary Commission on Lobbying, *1996 Annual Report* (Albany).

7. Susan Craine, Russ Haven, and Blair Horner, *Taming the Fat Cats: A National Survey of State Lobbying Laws*, August, 1995, p. 4.

8. Jeffrey Schmalz, "2,000 Catholics Lobby Leaders in Albany Visit," *New York Times*, March 10, 1987, p. A1.
9. New York Temporary Commission on Lobbying, *1996 Annual Report*, appendix H.
10. Steve Kroft, "The Magic and Myth," p. 120.
11. New York State Temporary Commission on Lobbying, *1986 Annual Report* (Albany), p. 5.
12. *Ibid.*, appendix B.
13. See Steve Kroft, "The Magic and Myth," p. 119.
14. *Ibid.*, p. 121.
15. Blair Horner, Jocelyn McGuinness-Hickey, and Andrew Greenblatt, *PACing it in: A Study of political action committee spending during the 1996 New York State elections*, March, 1997.
16. *Ibid.*
17. *Ibid.*
18. *Ibid.*
19. *Press and Sun Bulletin*, Binghamton, NY, April 29, 1997, p. 5B.
20. Blair Horner et al., *PACing it in*, p. 3.
21. Diana Dwyre and Jeffrey M. Stonecash, "Where's the Party? Changing State Party Organizations," *American Politics Quarterly* 20 (3): 326-44.
22. Blair Horner et al., *PACing it in*, p. 3.
23. Blair Horner et al., *PACing it in*, appendix.
24. Susan Craine, et al., *Taming the Fat Cats*, p. 1.
25. Kyle Hughes, "Lawmakers' Fund-Raising Sets Record," *Press and Sun Bulletin*, May 5, 1997, p.A1. The minimum amount a lobbyist would have to spend was based on the cost of the cheapest tickets to the first 172 events. A story the following year, again written by Kyle Hughes, an Albany Bureau Writer, reports the final count of 190 fund-raisers for the year. See "Albany Fund-Raising at Record-Setting Pace, NYPIRG says," *Press and Sun Bulletin*, March 6, 1988, p. A1.
26. Jennifer Maurici, "Good Government Groups Cite 'Fund-Raiser' Session," *The Legislative Gazette*, May 27, 1997, p. 10.
27. The statute is available at: <http://www.nylobby.state.ny.us/lobbying.html>.
28. Susan Craine et al., *Taming the Fat Cats*, p. 7. For a similar assessment, see Jay Gallagher, "Pataki Speech Overlooked a Few Realities," *Press and Sun Bulletin*, January 12, 1998, p. A4.
29. Susan Craine, et al., *Taming the Fat Cats*, p. 8.
30. "How Albany Works, *New York Times*, Lesson No. 1: Lobbying," June 12, 1995, p. B1.
31. *Ibid.*
32. Quoted in Take Back Democracy Project, *Capital Investment\$: Campaign Contributions to the New York State Legislature*, May 1996, p. 12.
33. This estimate of the number of NYSUT members was given by Linda Rosenblatt, a NYSUT spokesperson. It was reported by Michael Hill and Marg Humbert, "Donors Give \$53M to Pols," *Press and Sun Bulletin*, Binghamton, NY, March 1, 1998, p. A6.
34. *Press and Sun-Bulletin*, Binghamton, NY, February 12, 1998, p. A5.
35. *Ibid.*

36. *Press and Sun Bulletin*, Binghamton, NY, December, 18, 1997, p. B1.
37. George Basler, "Charter Schools Spread across U.S.," *Press and Sun Bulletin*, p. A1.
38. *Ibid.*, p. A3.
39. Belle Zeller, *Pressure Politics in New York: A Study of Group Representation Before the Legislature* (New York: Prentice-Hall, 1937), especially chap. 3.
40. Warren Moscow, *Politics in the Empire State* (New York: Alfred A. Knopf, 1948), pp. 200–204.
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42. Philip L. Rones, "Moving to the Sun: Regional Job Growth, 1968–1978," *Monthly Labor Review* 101 (3): 15, 1980.
43. Jon Sorensen, "A Banner Year For Business," *Empire State Report* 13 (9): 12, 1987.
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6

Media Coverage of State Politics

Jeffrey M. Stonecash

The Media: An Overview

The media play a crucial role in state politics. For most citizens news of state politics comes to them from the media. Newspapers are perhaps the most important sources of state news. Television tends to cover national or local news, which leaves newspapers with the task of providing the bulk of state coverage. The important questions are how much do they cover state politics, what do they decide to cover, and how are issues presented.

Two conclusions emerge from prior studies of the media. State politics generally does not receive as much coverage as national and local concerns. Much as with television, newspapers cover what they think will help them most within their market area. The general presumption appears to be that readers are most interested in international, national, and local news coverage.¹ Second, there is ongoing tension between journalists and politicians about what to cover and how to cover issues. Politicians continually complain they do not get the right kind of coverage and that issues do not get enough attention, while journalists are always wary of being used by politicians to provide free publicity for a politician's views. Many also feel that the public is not interested in complex issues.² Regardless, the consequence is that newspapers generally do not provide detailed analyses of policy issues, and they do not tend to closely monitor and report how issues are being negotiated. Much of the political negotiations in Albany proceed without extensive public coverage.

While there are numerous commentaries on the performance of the press, the perspectives of the press get little attention. To obtain their perspectives, this chapter is devoted to the comments of four journalists at a forum in Albany on "The Media and State Politics." The forum was sponsored by the

Assembly Intern Program for Interns and took place in Albany in 1992. While issues and public officials have changed, the perspectives of journalists have probably not changed much.

The panel was moderated by Jeffrey M. Stonecash, and the participants were:

Kevin Sack, *New York Times* (NYT)
 Nicholas Goldberg, *Newsday* (N)
 Erik Kriss, *Syracuse Herald-Journal* (SHJ)
 Dan Janison, *Albany Times-Union* (TU)

QUESTION: *In covering state politics, a newspaper faces the decision of how many reporters to assign to the state capital. How many people does your paper assign to covering state politics?*

KEVIN SACK: *The Times* has a three-person bureau in Albany. It's usually staffed fully year round. Sometimes we'll have two, three people during the session, two people after the session.

NICHOLAS GOLDBERG: We have two full-time people in the Albany bureau and then we send reporters up on a rotating basis to cover the session each year, which is a confusing system.

ERIK KRISS: We have one person here in Albany, and you're looking at him.

DAN JANISON: I have been here since January of 1988. I have a bureau chief, and there's one other reporter in the bureau.

QUESTION: *How would you respond to the criticism that state politics does not get enough coverage? How do your editors feel about this?*

KEVIN SACK: First of all, I think it really varies by paper. And I think you can make the case that some papers have enough coverage but may have the wrong kinds of coverage. I would argue that the underlying problem in covering state politics is that a lot of what goes on here is very dry issue-oriented legislation. It's not always very sexy stuff. It's not always the kind of stuff that can capture the front page of a newspaper or the fascination of its readers. A lot of the issues that come through here are extremely complex. When you look at the issues we're talking about this year with the budget—Medicaid reform, welfare reform, sentencing reform, and criminal justice issues—it's difficult sometimes to personalize that news to make the average reader understand the effects on them, and I think that's something that editors take into account. So it's our challenge, and sometimes we succeed and sometimes we don't to try to make these kinds of stories have meaning for the average reader, in my case, for someone on the upper west side of Manhattan to relate to a story about Medicaid. It's not always easy to do. Medicaid may not be an issue that person comes into contact with either in their daily life or ever.

I'm not sure that I agree with the sentiment that we don't devote a great deal of space to state politics. I think most of the New York papers in particular do.

NICHOLAS GOLDBERG: I think a problem for downstate papers like the one I work for is that what goes on in Albany tends to be overshadowed to some extent by what goes on in New York City. In this state Albany political news is competing with the political news that comes out of a major metropolis that people have been studying and reading about for years and where all the politicians are celebrities. People in New York City and around New York City and on Long Island and in Westchester downstate in general don't know who the players are in Albany, and they don't know who Ralph Marino [Senate majority leader at the time] or who Saul Weprin [Assembly speaker at the time] is. They're much more familiar with David Dinkins [NYC mayor] and Liz Holtzman [prominent NYC politician] and other people in New York City. So I think that becomes a problem, and we often find that when we turn in state stories to our city desk, a story of comparable significance in New York City will get better play. This is part of the reason that people downstate don't really understand the significance of Albany in New York City. They don't understand the constant and inevitable relationship between state government and city government, and it's a very complicated relationship to try to explain in stories, and too often that just doesn't come through.

ERIK KRISS: I'm the flip side of what Kevin and Nick have been talking about because I do work for an upstate paper, and in fact, state government often does overshadow what goes on in Syracuse and Onondaga county. We have pretty small governments there and pretty small-time players, and you have someone like Cuomo [governor at the time] who's national news, international news, so there's a lot of interest there in what goes on there in Albany. Since I've been here, which is about when the fiscal crisis started, there's been a lot more interest from the editors at my paper in state coverage since things have been going awry here. And there's been a lot more focus on, you know, sexy stories that you can tie into the budget crisis, such as legislators continuing to drive cars paid for by the taxpayers and so forth. There is, however, the same kind of problem for us as Kevin was mentioning. There are a lot of very complicated issues being dealt with here in the legislature and a lot of important ones too, but they just don't grab you by the lapels and make you want to read about them. And it is a challenge trying and explain not only Medicaid and so forth but a lot of other issues that are going on that don't really get the kind of attention because there's not the same kind of dollars involved. So there's a challenge of bringing home some of the less visible issues in a way that will make people read about them. Before me someone came up only when the legislature was in session. Other than that our paper didn't even have a presence in Albany. There's a growing interest in what goes on here. How much coverage depends on who the characters are here and, you know, what kind of shape the state is in.

DAN JANISON: We're kind of a special situation. Our readers are the people who work for the agencies, people who work for the legislatures, some of the decision-makers, and a lot of the university population, so we tend to get into more elaborate coverage of state politics and government. Some of it to the point of, you might even say, we are parochial. We have to deal with concerns of our Albany audience. For example, I do a column now on Mondays, which is pretty much restricted to issues of the state workforce. And it's kind of a guaranteed readership. We get into dry stuff like workmen's compensation and job titles, all those things about government that are not going to make a splash in New York City. It's always a quandary as to what to cover. If you say that you want to cover government to an editor, usually the connotation is pretty dull. But since these are dollars-and-cents issues here in the town, we tend to focus on it.

QUESTION: *How do you decide what to cover and the perspective to take?*

KEVIN SACK: It's a daily exercise in triage, especially when you've got a reasonably small bureau covering a massive state government with a quarter of a million state workers or something like that and 211 legislators and a large executive branch headed by a significant national politician. There's always going to be too much to cover for your resources. So we make these decisions every day, and sometimes you get it right and sometimes you don't. We try to take a sort of balanced approach to covering the news. There are obviously daily stories that compel coverage, whether it's a major budget development or some sort of legislative scandal or a proposal by the governor or a legislative leader of some kind or a significant development in an agency. For instance, last week when the Office of Mental Health proposed closing four psychiatric hospitals around the state and scaling back seven others, that was a big story for us that led the metropolitan section. So every day there is going to be stories like that you have to cover. But what we also try to do is find the time to explore some of these issues in greater depth, and there's often so much going on here that it's hard to find that time but we don't want to simply dismiss the whole Medicaid dispute right now with a 900-word story saying there's this proposal and that proposal and that they're trying to work it out. Instead, you want to try to find the time and the space in the paper to do a major treatment of exactly what all these proposals are and what the impact would be both on recipients and on the health care providers who are going to be affected by various cuts. We've always got some project like that going. That's the part of our coverage that is driven by reader interest. *The Times* is something of a special case in that it does have you know, a rather upscale, highly educated readership that we assume wants to read more depth about some of these pressing issues.

NICHOLAS GOLDBERG: If you want to get a sense of how different the news decisions can be about what stories should get good play in the newspaper and what stories should be ignored and what stories are of medium importance, you just have to look at today's paper. Yesterday three legislators gave a press conference in which they talked about a bill they were proposing that would begin the process that would allow the borough of Queens to secede from New York City, which requires approval on many levels including the state level. The *Daily News* today put that story on page 1. It was the top story of the day of everything that they could find that happened in New York City in their opinion. The *New York Times* only mentioned it at the bottom of another story, and *Newsday* took the story and put it right in the middle of the paper where dedicated readers would find it but others would not. The process of getting stories into the paper involves a whole bunch of different decisions and battles that involves the reporters here in Albany trying to determine on their own what the value of the story is and whether the story is significant in the sense that this is something that's going to become law. I think virtually everyone agrees that Queens is not going to secede in the very near future from the city of New York, so the story is insignificant in the sense that it's probably never going to take place. The *Daily News* decided that, despite that, it was either a funny story or an interesting story or it said something about tensions within the city, so the first step is to decide how important you think the story is. The second step is to fight it out with your desk, and I think all of us have problems with our editors back in New York or in Syracuse or on Long Island, or wherever they are. It's our job to convince them that what we think is important, is what they should think is important and that's a constant process of trying to show them how a story will relate to their readers, how much their readers will care about this story, how important the story is, if it has great significance or if it's funny. Often we disagree with our editors. Very often I'll write a story that I think deserves to be on page 1 or page 2 or page 3, and it will end up on page 118, and other days I'll be surprised with a story that I think is relatively insignificant that they want to give a big photo and great display to.

ERIK KRISS: I think a lot of what you cover and how much time you spend on it depends on the newspaper you work for and how big a newshole it has. Our paper sometimes is very tight, and I'll have maybe two or three stories I think are worth reporting, and my editors will say we're just not going to have any room for anything tomorrow. If they're daily stories that are going to be outdated by the next day, you write a brief or you don't write anything at all. As a one-person bureau I rely quite a bit on the Associated Press, which has a four-person bureau here that does a lot of stories every day. A lot of the major stories of the day, which may involve the governor and the legislative

leaders and so forth, are covered adequately by the AP. Our philosophy is, why duplicate. It's important for the bureau person here to keep up on all the issues and not to ignore those stories. But it isn't always important for us to write them. In deciding what to write we have probably a somewhat parochial interest in our delegation from back in central New York. The state senators and the Assembly members from Syracuse and the surrounding counties really have a higher public profile there than Assembly members and senators do in New York City. There are so many of them in New York City that they have a hard time getting coverage. People don't really know them as well as people know the legislators in Syracuse as media figures. We try to pay a little more attention to what they do and what their positions are on major issues and so forth. A lot of times it comes down to trying to get some element of the story that will make it sexy and jazzy because newspapers are a business. If you continue to put out a dry product that doesn't grab the reader, the reader's not going to continue to buy your paper when you've got television and *The Star* and *National Enquirer* and so forth to entertain you.

Let me make another point. Kevin was talking about the Medicaid issue and how *The Times* wanted to approach it in a variety of ways. I never really detected that much interest from my desk on Medicaid. The word is *boring*. The word makes you want to put your newspaper down and do something else, but at the same time it was becoming clearer to me and everybody else in the press corps here that this was going to be a major political battleground. So last year I decided to look at it from the point of view of why is this program so expensive and why is it getting more expensive to the taxpayer and try to write a story that does not have any indictments in it and does not have any sex scandals in it but does try to point out to readers what's happening to their tax dollar through medicaid and just do it in the simplest form you can. One of the challenges is to simplify what's going on here. When you can connect with readers to show them that it is their tax dollar that's paying for what you're writing about, you can maybe get them a little more interested.

DAN JANISON: Can I just touch on that subject? One of the problems that newspapers have is trying to figure out how to do stories in a way that interests the reader. When it's a political or governmental story it always tends to come back to how does it affect the taxpayer, and one of the problems with that is if you view every story in the context of how it's going to affect the taxpayer you miss the whole point of the story. Many government programs are bad for the average taxpayer and only beneficial to a small group of people. If we constantly write stories that only answer the question of what does the average taxpayer think, they miss that small group perspective. Medicaid is a good example. That's a program targeted at specific groups, and it does have a lot of advocates and its incumbent upon newspapers to try

to write about a program intelligently and from all perspectives and to try to show readers why this is or is not an important program in addition to showing how it effects the taxpayer.

ERIK KRISS: Part of what determines what you cover is where your editors are and what the people in that region care about. I live full-time in Albany. A lot of times I'll get a reminder from my editors that's sort of like a cold dose of reality, and although we complain a lot about our editors, I think sometimes it's helpful for them to remind us that the inner workings of Albany aren't always of particular interest to the readers.

DAN JANISON: At the risk of oversimplification, during the first six months of the year when the legislature's in town, the politicians might set the agenda more. During the latter part of the year is usually when journalists are focusing on long-range subjects and doing more in-depth stories. It's just part of the cycle around here. Another point: the press does not act but is acted on. We often just sit around reporting the Medicaid negotiations and the budget. One of our failings as an institution is that we don't independently say it's the story about old people in nursing homes or it's the story about poor people in city emergency rooms or it's a story about massive fraud to the taxpayer. We in the mainstream press have to take all sides into consideration, and sometimes advocacy journalism is more interesting if not as complete simply because it can take a point of view and maybe dramatize it within the context of what's going on around here, what's going on in politics.

QUESTION: *One of the fundamental tensions between politicians and the press is that politicians feel that the press is always negative about the decision process, and that the press does not do a good job reporting the differences which are being fought over in the budget process. People complain there is too much coverage of the leadership and not enough of the bases of conflict and the alternatives being debated.*

KEVIN SACK: I think it's virtually impossible to pay too much attention to the speaker or the governor and the Senate majority leader in this town. It's one of the real defining elements of Albany politics, and it's intriguing. I don't know another state where those three guys play as large a role and where the average legislator typically plays as insignificant a role as in New York. It is the big three and their staffs, which are an extension of them, which do a lot of the serious negotiation on issues. The majority conferences play something of a supporting role. Clearly they're vital in letting the leadership know how far they can go on a bill and what their position should be on a bill, and whether they've got the votes they need to make something happen. With few exceptions, you do not see the individual legislator playing such an important or leading role that they really become the voice of the legislature on a given issue. There are some exceptions, but I find that, in

most cases, what really matters is what happens when these three guys get together in a room.

NICHOLAS GOLDBERG: I don't have much to add to that. That is the way the press has always covered Albany. It's been very effective. Kevin is absolutely right about the big three here. That's the way we have tended to cover Albany for a long time.

DAN JANISON: There's a fundamental rationale for that, and that's the system. The governor is elected by the entire state, and therefore, under the system he wields popular power. The leaders secondarily are elected by the legislators from all over the state. That doesn't make them less accountable, but it does make them popular powers to contend with, and that's a fundamental factor that doesn't often get discussed when we get into why we tend to focus on these particular individuals. It's the way the system is set up. The legislative leaders do keep a very tight grip on their houses. This isn't a decentralized legislature.

Erik Kriss: Some legislators have a lot more influence in their conference than others. On certain parochial issues individual legislators do have a lot of power. I would disagree a little bit on the power of the big three. Obviously the governor of any state has absolute power in the executive branch, but there's a continuing joke about Ralph Marino that he won't do or say anything until he runs it by his conference. That shows that the members of the conference do have some influence over what position the Senate is going to take on a given issue, on the budget or what have you. As far as reporting political positions, it is true that we tend to ignore the Senate Republicans or the Assembly Democrats when they announce positions on a certain issue because it's just posturing. There's an element of crying wolf. In recent years there's been so much finger-pointing and blame being tossed around by the majority parties in each house and the governor that the press has tired of it, of dutifully reporting the positions of each house. Under other circumstances, we probably would do a better job of that because there are in many cases some underlying fundamental differences in how the parties approach things. We've been burned by the fact that one will come out with a plan, and then another will come out with a plan, and then there will be a third plan, and then the whole thing will be trashed to start over again.

QUESTION: *The governor has an easier time getting press coverage, but in the last decade there's been a lot of suggestion that the governor as an institution is simply not as powerful as in prior years or decades because the legislature has more career legislators, bigger staffs, and their own campaign committees. What's your perception of the clout of the governor?*

Kevin Sack: The legislature clearly has become more of a politically self-contained institution. The campaign and fund-raising committees clearly make

a big difference and give them a lot of power. They're not as dependent as they once were on outside sources of influence. And to a large extent, they've become incumbency machines. Regarding the governor, it's largely a matter of his personality. This is a very forceful guy; this is a guy who knows how, to a certain extent, to use the press with extreme skill, although at other times he shows a remarkable lack of adroitness in manipulating the media. But he has chosen for whatever reason, whether it's personality or some sort of political strategy that I don't quite get, he has chosen not to exert as much influence as most people think he could with the legislature. This guy is not a horse trader; he's not a deal maker. It's very rare that you find a story of Mario Cuomo swapping a favor for a vote on a bill. He prefers to take his case to the public. There was a time, certainly in his first term and the early part of his second term when it was a very effective strategy. In recent years in particular, as the economy's gone bad, his influence with the public has waned. His poll numbers are at rock bottom right now. But he hasn't changed his strategy with the legislature. It's the same. He does the same thing; he still holds virtually a press conference a day during the legislative session making the same points over and over again hoping against hope that some newspaper somewhere will cover what he's saying. And that's how he tries to influence what is going on in the Senate and the Assembly. It's a strategy that doesn't work particularly well. Given what's happened with his popularity, the legislature's not intimidated anymore. You saw that particularly vividly in the last session when Cuomo from the very start of the session was saying he would absolutely not consider an increase in personal income tax rates, and Mel Miller, the speaker of the Assembly, basically with an in-your-face kind of political move proposed one. In the end Cuomo came around. There was a compromise on a relatively modest income tax increase.

ERIK KRISS: I'd like to add a comment about his unwillingness to take on the legislature. You can see that this year by the governor renewing his call that he began last year for docking legislator's pay for every day that the budget is late. He again appealed to the public during the state of the state message, and as everybody probably knows by now, at least one legislator took exception to that. But what was pointed out in the wake of that was that, if he really wanted to, he could withhold the pay of elected officials beyond the start of the budget year. He has that power just in being governor because any emergency spending bills that are appropriated after the first of April need a message of necessity from the governor to be acted upon. The legislature can't do it without the governor's approval, and all he would have to do is send them a bill that didn't include their pay for that period, and he could effect that, but yet he doesn't do that sort of thing. Other governors threaten not to pass any emergency spending bills unless they get a budget in place, and they take more drastic measures than Cuomo does. He gets a lion's share of the

press just because of his personal and political stature as an always potential presidential candidate and as somebody who does really have the gift of the gab. I think that if he were gone and you had somebody like Lundine [Lieutenant governor at the time] as governor, you would probably see a lot more coverage of the legislature vis-à-vis the governor than you do now.

DAN JANISON: I disagree. All this is institutionalized. Cuomo has a dual role. He is not only the governor, but he's also consolidated his party's power and his influence over elections. He keeps it very discreet publicly, which is important. In the 1989 election I gathered he played a role. In the 1990 comptroller's race, there was a role and also in the Senate elections, which he can choose. It's a level of support he can choose. He controls the spigot of the party machinery. That's not something that often gets talked about around here, but it's an underlying factor, and I think an underrated one.

ERIK KRISS: The legislature is a lot more institutionally powerful now than it was even under Carey but much more so under Rockefeller. Under Rockefeller the legislature, which was all Republican, was, to a large measure, a rubber stamp of what Rocky wanted to do. If you have a weaker governor, you would probably tend to get more coverage of what the legislature's doing.

Notes

1. David Morgan, *The Capitol Press Corps* (Westport: Greenwood, 1978).
2. Phil Brooks and Bob M. Gassaway, "Improving News Coverage," *State Legislatures*, March 1985, 29–31; and Martin Linsky, "Legislatures and the Press: The Problems of Image and Attitude," *Journal of State Government*, spring 1986, pp. 40–45.

Part II

Political Institutions and Decision-Making

Introduction to Part II: State Government Institutions

Gerald Benjamin

New York State's government, like that of the nation and other states, is one of separate institutions sharing governmental powers. The system provides for executive, legislative, and judicial institutions that are distinct and politically independent of each other, while using each, in some measure, to check the power of the others in their primary spheres of action.

This approach contrasts with the distribution of power in parliamentary democracies and most American local governments. There, the executive is chosen by and/or from a directly elected legislature and is responsible to it. There is no legal or national constitutional barrier to the adoption of parliamentary institutions in an American state, but no state has ever adopted a parliamentary system. The persistent adherence of state governments to the separation of powers model over several centuries is a powerful testimonial to the centrality on the American political culture of the idea, expressed by James Madison in *Federalist* No. 51, that “[T]o control the abuses of government . . . , ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.”¹

Separate Institutions

The “legislative power” in New York is located in the Senate and Assembly (Article III), and the “executive power” in the governor (Article IV). The state constitution, though it deals in great detail with the court system, nowhere specifically vests the “judicial power” in it. A change in language accomplishing this was offered in the draft constitution of 1967 (rejected in toto at the polls). Separation is further achieved, and the powers of the branches of government defined, by the assignment to each of specific functions.

Separation of the branches is assured by the constitutional prohibition against a sitting state legislator accepting a “civil appointment” to a state or

city office created during his or her term or for which the “emoluments” were increased as he or she served, and by the requirement, with narrow exceptions, that a legislator resign his or her seat upon acceptance of an elected or appointed post in national, state, or city government (Article III, Section 7). The provision in New York’s constitutionally defined budget process that the governor transmit the legislative and judicial budgets along with his executive budget “without revisions” is additional acknowledgment of the separate status of the three major branches of state government (Article VII, Section 1). Judges too are constitutionally barred from other public office, and from political party office, while serving on the bench (Article VI, Section 20.1b and 3).

The constitutional distinctions between the executive and legislative branches are consequential. In 1987, for example, the Court of Appeals found that sweeping state health Department regulations barring smoking in public places went beyond the powers delegated in law to the department. They were judged unconstitutional as the exercise of legislative power by the executive branch on separation of powers grounds.

Sharing Powers

Separation, however, is not absolute. The clearest example is the power of the executive to veto legislation. The Senate, for its part, must confirm most important gubernatorial appointments. The Assembly has the power of impeachment, with trial before a court that includes members of the Senate. The Court of Appeals is the final arbiter of the constitutionality of state legislation. These are all, of course, purposefully crafted and familiar techniques to limit government that are, as noted, endemic to American systems.

A number of other New York constitutional provisions do not conform to the separation of powers principle. The gap between the executive and legislative branches is partially bridged by the lieutenant governor, who is elected with the governor but presides over the state Senate and has a casting vote (Article IV, Section 6). The governor submits appropriation bills to the legislature as part of the budget process; on all other matters the submission of the legislation is a prerogative of elected members (Article VII, Section 3). As noted below, the legislature appoints the head of the education department, the Board of Regents, though appointing department heads is generally regarded as an executive function (Article V, Section 4). The majority leader of the Senate and the speaker of the Assembly, though legislative branch leaders, are in the line of executive succession, if both the governorship and lieutenant governorship simultaneously become vacant (Article IV, Section 6).

The Electorate: Additional Checks on Government

As a further check on the governor and legislature, the electorate in New York selects the comptroller and attorney general by direct statewide election. This method of filling these offices, instituted in 1846, is designed to assure independence for each official in the execution of their duties.

Additionally, the electors of the state, voting within cities, towns, counties, and judicial districts, select most judges. This remains a highly debated process and has been the source of frequent proposals for constitutional change. Until 1977, judges on New York's highest court, the Court of Appeals, were also elected. In that year a constitutional amendment was adopted that provided that Court of Appeals judges be appointed by the governor from a group recommended by a panel appointed by him or her, the chief judge, and the legislature leaders.

The statewide electorate must be asked once every twenty years if they wish a constitutional convention to be held. Additionally, the electorate must ratify constitutional amendments before they are effected, and approve any pledge of full faith and credit of the state. Unlike constitutions in twenty-one other states, however, that of New York does not give citizens the powers of initiative (the right to petition to put policy questions or constitutional amendments on the ballots) or referendum (the right to a popular vote on these questions). A variety of constitutional amendments adding initiative and referendum to the New York Constitution have been proposed in recent years, but none has been approved.

Qualifications and Election of State Officers

State legislators, the governor, and lieutenant governor must be American citizens and five-year residents in New York State. Legislators have an additional district residence requirement. All are required to swear or affirm support for the United States Constitution and the New York Constitution. Salaries of offices named in the constitution may not be increased or reduced during a term of office.

The governor and lieutenant governor must be thirty years old. They are elected in tandem, statewide in even-number nonpresidential years at the general election for a four-year term by a plurality winner system. There is no age requirement for senators and assembly members. They are also chosen at the general election, though the date of their election may be altered by the legislative action.

The members of both legislative houses are selected within single member districts for two-year terms, also on a plurality winner basis. Legislative

districts are reapportioned decennially by the legislature itself in accord with national constitutional and statutory standards and detailed state constitutional provisions. However, many of these state constitutional provisions have been found by federal courts to be in conflict with national standards and therefore void. The 1967 draft constitution (not adopted) provided for legislative districting commission. There are no term limitations for any office, though constitutional amendments creating them have recently been proposed.

Legislature

The New York State legislature is bicameral, as are those of all states except Nebraska. The legislature assembles annually on the first Wednesday after the first Monday in January. The number of Assembly members is fixed at 150 while the number of senators, at least 50 and currently 61, is variable.

The power of the legislature is plenary, except insofar as it is limited in the constitution. The most important of the legislature's powers is the power of the purse, the authority to both raise and spend funds. It is separately treated in great detail in two articles of the constitution and further constrained and defined in Articles III, VII, and XVI. Additionally, the legislature is explicitly given the power to regulate "practice and procedure" in the courts, and to remove Court of Appeals and Supreme Court judges for cause by concurrent resolution upon two-thirds vote of both houses (Articles VI, Sections 23 and 30).

The legislature is also empowered to provide for filling vacancies in the offices of comptroller and attorney general (Article V, Section 1). The recent use of election by the legislative houses meeting jointly to fill a vacancy in the comptroller's office led to proposals for amendment of the constitution to alter this procedure and demonstrated how breaking political events may bring attention to otherwise obscure constitutional provisions.

For bills to become laws they must be passed by a majority of the members elected to each house, following the form of the enacting clause prescribed in the constitution. In the event of a gubernatorial veto, the legislature may override by a two-thirds vote of those elected to each house. Proposed constitutional amendments that pass the legislature are not subject to gubernatorial veto, nor are its actions on executive budget bills.

Bills may originate in either house and be freely amended in either house with a majority required for a quorum to do business, except that many fiscal actions require a quorum of three-fifths. Each house adopts its own rules, is the judge of the qualifications of its own members, and selects its own leaders. By a constitutional change adopted in 1975, two-thirds of the elected members to each house may petition to call the legislature into special session for the specified purposes. Neither house may adjourn for more than two days without the consent of the other.

Both the Senate and Assembly must keep and publish a journal and meet in open session, though secrecy is permitted if deemed by the legislature to be in the interest of the “public welfare.” (Article III, Section 10). To assure free debate on controversial matters, members may not be “questioned in any other place” for remarks made in the legislature (Article III, Section II).

The Senate must give its advice upon and consent to the appointments by the governor of heads of departments and members of boards and commissions, but it has no role in their removal (Article V, Section 5). Upon recommendations of the governor, the Senate can remove judges of the Court of Claims, the County Court, the Surrogate’s Court, and the New York City Courts by two-thirds vote (Article VI, Section 23). Additionally, its members sit as a part of the court in a trial of impeachment, if charges are brought by a majority of elected Assembly members against the governor, lieutenant governor, or a state judge.

The legislature is restricted in numerous procedural and substantive ways by the state constitution. Process requirements, often stimulated by past abuses in New York and elsewhere, seek to assure that there is an opportunity for members to familiarize themselves with proposed legislation prior to voting. Thus, bills may not be amended following their final reading nor made applicable by reference. Private bills must be limited to one subject, identified in the title. Similarly, tax laws must clearly identify the nature and object of taxation. Absent a special message of necessity from the governor, bills must be printed and sit on members’ desks in final form for three calendar days before passage. Two-thirds of each house must support any appropriation of public money or property for private or local purposes. In budgeting, other appropriations may not be considered until after those offered by the governor are taken up, and then must be made by separate bills, for a single purpose (Article VII, Section 5 and 6).

Substantially, the legislature is barred from passing private or local bills on fourteen different subjects, for example, changing of names of persons, incorporating villages, or granting a person, corporation, or association “any exclusive privilege, immunity or franchise whatever” (Article III, Section 17). The gift or loan of state money or credit for private purposes is prohibited (Article VII, Section 8). A number of key articles or provisions of the constitution, for example, those establishing the “merit and fitness” principal for civil service employment (Article V, Section 6); restricting borrowing authority (Article VII, Section 11); granting powers of home rule to local government (Article IX); establishing a general process of incorporation (Article X); and keeping the forest preserve “forever wild” (Article XIV), are major limits on the legislature’s sphere of action.

The substantive limits were adopted for a number of reasons. Constraints on special legislation at once removed opportunities for patronage and corruption and focused the legislature on general matters, making it more efficient.

Guarantees of home rule would, it was thought, both advance local democracy and also enhance legislative efficiency. (In fact, home rule, or the power of local governments to act independently of state authority, has been greatly weakened by court interpretation.) And the inclusion of broad policy commitments in the constitution put these beyond the sphere of ordinary politics, making them more enduring.

The constitution also contains numerous policy directives that the legislature act to give constitutional provisions force and effect, while in other areas it indicates that the legislature may act if it wishes to do so. Thus, for example, the legislature *must* provide for “the maintenance and support of a system of free common schools” (Article XI) but may provide low-rent housing and nursing home accommodations (Article XVIII). Requirements that the legislature act in an area in some degree limiting on its discretion, though they are not, of course, defining of the action it takes.

Governor

The governor must “take care that the laws be faithfully executed.” He or she reports to the legislature annually on the condition of the state and makes policy recommendations to it that comprise a legislative agenda (Article IV, Section 3). The governor may expedite legislation or allow special legislation applicable to local governments other than New York City, with a message of special necessity (Article II, Section 14; Article IX, Section 2). After the legislature has acted, the governor is presented with legislation for approval or veto. On appropriation bills not originally submitted by him or her, the governor may exercise an item veto, striking one or more items without invalidating the entire bill. The definition of an item has been the subject of litigation.

If the legislature is in session, a veto must be exercised within ten days of receipt of a measure and may be overridden by a two-thirds vote of the members elected to each house. During the session there is no pocket veto; if the governor fails to sign a bill within ten days, it still becomes law. If the legislature has adjourned, the veto period is thirty days and a bill may not become law without the governor’s signature (Article IV, Section 7). Since the mid-1970s the legislature has adopted the practice of recessing rather than adjourning, which keeps the legislature in session, and this practice has mitigated the effect of this provision.

The governor’s key priorities are often encompassed in the executive budget, produced through a process defined in detail in a separate constitutional provision (Article VII). It requires that annually, by February 1 in gubernatorial election years or by the second Tuesday following the first day of annual meeting of the legislature, the governor submit the executive budget to the legislature, including a “complete plan of expenditures,” revenue esti-

mates, the basis of these, and recommendations for additional revenues, if needed. The budget must be accompanied by appropriation bills and proposed implementing legislation. The form of the budget, and the inclusiveness of the appropriation bills, have been subjects of dispute between the branches settled in the Court of Appeals.

The governor is the commander in chief of the state's military and naval forces. He or she may call the entire legislature or Senate alone, into special session, and set the agenda for that session, though the legislature is not required to act upon the matters brought to it. The governor may grant reprieves, commutations, or pardons for all offenses except treason and those subject to impeachment, and may suspend execution of a sentence for treason until the legislature has had time to consider and act upon it. With certain exceptions specified in the constitution and noted below, he or she appoints department heads and, subject to processes prescribed in law, may remove these officials. Following constitutionally prescribed procedures, the governor may also remove elected sheriffs, county clerks, or district attorneys for cause (Article XIII, Section 13 a and b).

Regarding the judiciary, the governor has considerable appointing authority. He or she appoints judges of the Court of Appeals and the Court of Claims, appoints to fill vacancies in the Supreme Court, appoints four members of the Commission on Judicial Conduct, and designates justices of the Appellate Divisions of Supreme Court (Article VI, Sections, 4c, 9, 21, 22). Additionally, the governor may appoint an extraordinary term of the Supreme Court, designate the presiding justice at such a term, and replace that justice as he or she sees fit (Article VI, Section 27). The governor may recommend to the Senate removal of judges of the Court of Claims, the County Court, the Family Court, the Surrogate's Court, and the New York City Courts (Article VI, Section 23).

Lieutenant Governor

The lieutenant governor presides over the Senate and has a casting vote. He or she *becomes* governor and serves out the term if the governor dies, resigns, or is removed; or *acts* as governor if the governor is impeached, is absent from the state, or is unable to discharge his or her duties, until the inability shall cease (Article IV, Section 5).

Comptroller

The comptroller is the head of the Department of Audit and Control. He or she is charged in the constitution with the pre-audit of all vouchers, the audit of the state's accounts, and the audit of the accrual and collection of revenues.

The comptroller also prescribes state accounting methods. Absent an audit by the comptroller, state monies may not be paid out. As provided for by the legislature, he or she also supervises the accounts of the state's local governments and oversees some limited aspects of real estate taxation. In aggregate these powers are sources of considerable influence over the management of the governmental system.

The constitution specifies that the comptroller may not be assigned additional administrative duties by the legislature, presumably to keep the audit function distinct from daily state government operations (Article V, Section 1). The comptroller is also charged with the management of sinking funds for the retirement of certain local debt, and may be required by the legislature to certify local debt that may be incurred outside of ordinary limits (Article 8, Sections 2a, 4, 5, 7).

Interestingly, the constitution is silent on the comptroller's very considerable powers in the management of the state retirement system, and his or her role in the incurring of state debt. These are entirely based in statute.

Attorney General

The attorney general is the head of the Department of Law. The constitution is almost entirely silent on the powers of this office. When a constitutional amendment is proposed, he or she must within twenty days report to the legislature on its effect on other portions on the constitution.

Court System

The court system is created in detail in the constitution to include at the state level: the Court of Appeals, the Appellate Divisions, the Supreme Court, the Court of Claims, the County Court, the Surrogate's Court, and the Family Court. Court of Appeals and Supreme Court judges serve for fourteen years. Surrogates, County Court judges, and Family Court judges have ten-year terms, and the term of Court of Claims judges is nine years. Whether judges are elected or appointed, long terms are regarded as a necessary condition for judicial independence. All judges on these courts have a mandatory retirement age of seventy. Court of Appeals and Supreme Court judges may be certified to continue to perform the duties of a Supreme Court justice for an additional six years, in two-year increments.

The highest court, the Court of Appeals, has a chief judge and six associate judges. Its quorum is five, with four in agreement required for a decision. Upon the Court of Appeals' request, the governor may temporarily appoint up to four Supreme Court judges to serve upon this court and assist

with its work, their services to cease upon certification by the court that the need for help has passed. Among the duties of Court of Appeals judges is to sit on courts of impeachment, together with members of the state Senate.

Local courts with constitutional status include a separately defined New York City Court system and district, town, city, and village courts outside New York City. In New York City, civil court judges are elected to ten-year terms, and criminal judges are appointed by the mayor to terms of the same length. District court judges outside New York City serve six-year terms in districts within counties created by the legislature upon local request and after acceptance at local referendum. City and village courts may be discontinued by the legislature upon its own decision, but discontinuance of town courts must be approved at referendum in the affected jurisdiction. In towns, justices of peace are elected for four years.

The four judicial departments, for Appellate Division purposes, and eleven judicial districts, for Supreme Court purposes, are also constitutionally defined. For all courts, jurisdiction is specified in the constitution. Processes for appeal and possible actions on appeal are also specified.

Administrative supervision of the court system is given to a chief judge of the Court of Appeals who, with the advice and consent of an administrative board of courts comprised of him or herself and the presiding judges of the appellate division of each department, appoints a chief administrator of the courts. Judges may be assigned outside of their immediate jurisdiction under the constitution, and may perform duties of more than one court outside the city of New York if required to do so by legislation. The constitution creates an eleven-person Commission on Judicial Conduct, with multiple appointing authorities, to hear complaints concerning judges, initiate investigations, and make independent determinations of their fitness. Upon review of the commission's findings, the Court of Appeals may sanction judges in a range of ways, including removal.

The detailed specification of the state and local court systems in the constitution contrasts substantially with the broader provision concerning the judiciary in the national constitution and that of some other states. There are continuing efforts, described below to simplify these provisions, further unifying the courts and reorganizing them by constitutional amendment. Another regular object of amendment, also described below, concerns the creation of a fifth Judicial Department.

Departments and Agencies

The constitution limits departments to twenty in number. This limitation, designed to constrain the size of government, is in practice overcome by the location of many units in an omnibus "Executive Department." Unlike in many other states, the governor is limited in his or her power to reorganize

the executive branch. It is the legislature that is constitutionally empowered to reduce the number of departments; create temporary commissions or executive offices of the governor; or enhance, diminish, or alter the powers and functions of departments, officers, boards commissions, or executive offices. Enhanced authority in this area has been sought by the governor through constitutional amendment (Article V, Sections 2 and 3).

As noted previously, with the exception of departments headed by elected officials and the Department of Education, headed by legislatively appointed regents who, in turn, select a commissioner to serve as the chief administrative officer, department heads are appointed by the governor with the advice and consent of the Senate. The Senate, however, does not share the removal power (Article V, Section 4). The governor's authority over departments is further solidified by the constitutional requirement that department heads provide him or her with the budgetary information he may require, as part of the executive budget process (Article VII, Section 1).

No department rule or regulation, except those entirely for internal management, may be effective until filed with the Department of State.

Public Authorities

Public Authorities emerged in New York during the post World War I period but were first constitutionally regulated by amendments adopted in 1938. Authorities are autonomous entities delivering service largely outside the departmental structure of state government and are therefore not subject to many of the rules and regulations that govern the operations of ordinary state departments and agencies. Under the constitution, authorities must be created by special act of the legislature. They are authorized to contract debt and to collect rentals, charges, rates, or fees to pay for the facilities they build and operate (Article X, Section 5).

The state is not liable for the obligations of public authorities nor can it be made liable for these by legislative act, though the legislature may act to acquire the property of these corporations and assume the indebtedness on this property (Article X, Section 5). The accounts of public authorities are subject to review by the comptroller. Specific exceptions allow state guarantees for authority debt to construct thruways, purchase railroad cars, finance certain economic development activities, and finance housing and nursing home accommodations for low-income persons (Article VII, Section 8.3; Article X, Sections 6–8; Article XVIII, Section 2).

Techniques developed by the state over time to bypass the prohibition of state guarantees of authority debt, including “moral obligation” borrowing, and lease purchase arrangements, have made this an area of continuing po-

litical and constitutional controversy. State courts have permitted these practices. Numerous constitutional amendments have been proposed as a result, some to strengthen limits on authority borrowing and the use of *de facto* state guarantees and others to remove existing limits as ineffectual, leaving regulation to the financial market.

7

New York's Governorship: Back to the Future?

Gerald Benjamin and Robert C. Lawton

On February 1, 1995, George E. Pataki became New York's first governor in fifty-two years to propose an Executive Budget that reduced general fund spending from the previous year. Thomas E. Dewey, Pataki's last predecessor to reduce state spending, did so in the midst of World War II. The wartime economy of 1943 boosted state revenues while it absorbed goods, services, and personnel on which those funds would otherwise have been spent. George Pataki, however, was governing under dramatically different circumstances.

Two months earlier, Pataki had risen from relative obscurity after brief service in the State Senate, eight years in the Assembly minority, and a stint as mayor of the Hudson Valley city of Peekskill. Running on a platform of lower taxes, reduced state spending, and the return of capital punishment, he defeated New York's nationally prominent three-term incumbent governor, Mario Cuomo. This made Pataki the state's first Republican governor in twenty years and the first since the early twentieth century elected from a base outside New York City.

While New York's fiscal condition had been the centerpiece of Pataki's campaign, neither he nor the public learned until after the election that New York's budget deficit had reached \$5 billion. Many observers felt that this news would force the newly elected governor to renege on his pledges to simultaneously reduce taxes and spending. The 1994 election, they argued, produced no mandate. Cuomo's total vote on the Democratic line had exceeded Pataki's on the Republican; votes from minor party cross-endorsements made up Pataki's margin of victory. The Republican's victory, they contended, sprang from the public's weariness with Cuomo, and not from enthusiasm for Pataki or his program. Further, the 1994 election did nothing to alter the decades-long divided partisan control of the New York State

legislature. Pataki could therefore count on strenuous opposition from the entrenched Democrat-dominated State Assembly to most spending reductions he might advance.

The new governor, however, surprised many—some of his allies among them—not only by proposing a budget that would do all that he had promised but for the tenacious manner in which he sought its enactment. New York had long suffered late budgets. Pataki threatened draconian consequences if the legislature failed to adopt a budget by the April 1 outset of the state fiscal year and was embarrassed when this deadline passed and compelling timely action proved beyond his power. But when push came to shove, he sacrificed process for substance, as had other governors before him. And after waging what was then the second-longest budget battle in state history, Pataki won on each essential point. As finally adopted, the budget reduced state taxes and general fund spending and eliminated 10,000 positions from the state payroll.

In this, as in his campaign for governor, Pataki demonstrated his strongest characteristic: a capacity to establish priorities, keep focused, and “stay on message” until he got results. During the campaign, and for months after, the new governor suffered in comparison with Mario Cuomo in his ability to articulate a vision. As time passed, however, he impressed, as it became evident that he would and could bend the divided legislature to his will on the things that mattered to him the most.

During the past ten years, Republican governors such as Thomas Thompson of Wisconsin and John Engler of Michigan successfully pursued tax cutting, government downsizing, economic development-oriented agendas similar to that defined in New York by George Pataki for his first term. Thompson and Engler have been rewarded with consistent reelection, flattered by other states’ emulation of their policies and entered into the presidential sweepstakes by the national media. By early 1998, Pataki was traveling in the South and West, raising money for reelection and testing the national political waters. Historically, New York’s governorship has been a springboard for presidential aspirants. Eight New York governors became the presidential nominees of their party between the Civil War and 1948. Of these eight, three won the presidency: Grover Cleveland, Theodore Roosevelt, and Franklin Delano Roosevelt. The five remaining governors—Horatio Seymour, Samuel J. Tilden, Charles Evans Hughes, and Thomas E. Dewey—failed of election.

Since the Dewey candidacy of 1948, no New York governor has appeared on a national ticket. In the 1950s and 1960s, governors Averill Harriman and Nelson Rockefeller unsuccessfully sought their parties’ presidential nominations. Governor Rockefeller, however, was a significant force in presidential politics throughout his fifteen years in office, ultimately serving as vice president. More recently, Mario Cuomo’s declarations of noncandidacy took on the air of a quadrennial ritual.

To those with a more than casual interest in government and politics, New York's governors are better measured by their performance in the office than by their presidential ambitions. In an essay published in 1982 about the "ten outstanding governors of the twentieth century," George Weeks, former chief of staff to Governor William G. Milliken of Michigan, commented: "Based alone on the caliber of its governors, [New York] could have accounted for half the top ten if there had not been some attempt to recognize different times and circumstances."¹ Indeed, even after adjusting his analysis to avoid overemphasizing New York, Weeks included three of the state's governors—Smith, Dewey, and Rockefeller—on his final list of the ten greatest.

If for no other reason, the level of distinction achieved by the office's incumbents makes the New York governorship worthy of study. What is it about this office that has attracted people of such quality, and what about New York's political system has allowed them to rise? In order to find answers to these questions, we need to understand a complex of factors: the presence in New York of social diversity and political economy that demands and supports strong leadership, a constitutional design that provides the framework for such leadership, and a history of the use of executive power which creates the expectation that the governor will be the center of energy in the state political system.

The Framework

Commenting before New York's 1967 Constitutional Convention Committee on the Executive Branch, Governor Nelson Rockefeller observed that, "Great men are not drawn to small office." Rockefeller noted further that the governor's powers "comprise a substantial grant of authority. And because our governors possess this authority, we have enjoyed leadership that has established New York as a pioneering, innovating, and eminently successful state."²

Rockefeller's somewhat self-serving hyperbole notwithstanding, it is indeed true that over its history New York has been less chary of a strong executive than most states. During the Revolution, a one-year term, limited succession, and legislative selection of the governor were the norm. New York's constitution, drafted later and in a more conservative political milieu than prevalent in the other original states, provided for a three-year term, unlimited succession, and popular election. At a time when the veto power was anathema, identified as it was with royal authority, New York nevertheless allowed its governor first to share such a negative with a Council of Revision and then, in 1821, made it his alone. In that same year, the authority to make state appointments was taken from a Council of Appointment and given to the governor, subject to State Senate approval.

Despite its early inclination to empower the executive, New York in the first half of the nineteenth century was subject to the same tides of Jacksonian democracy that swept the rest of the nation. In 1821, the governor's term was shortened to two years, and in 1846, the number of statewide elected officials was increased to thirteen, with an impact on the power of the chief executive that one authority has called "devastating."³ During the rest of the century, incremental advances of gubernatorial power—the addition of the item veto and a slight reduction in the number of statewide elected boards, for example—still failed to leave New York's governor in control of the administrative establishment.

Progressive reform reached its zenith in New York at the Constitutional Convention of 1915. At that convention, Elihu Root and others sought to re-empower the governorship by consolidating administrative agencies (there were 169, including 108 boards and commissions), by adopting a "short ballot" system to minimize the number of statewide elected officials and by giving budgeting authority to the executive. Ironically, the state constitution that emerged from this convention, one that became a model for action in other states, failed of adoption by the people in New York when offered to them in a comprehensive package. It remained for Governor Al Smith, a Democrat and product of Tammany Hall, to push through piecemeal the progressive reforms implementing the short ballot (1925) and the executive budget (1927).

With the adoption of a four-year term (1938), the parameters of the modern governorship were in place. Comparative analysis of tenure, appointive, veto, and budget powers shows it to be one of the strongest in the nation.⁴ Only in his or her authority to independently reorganize state government is New York's governor significantly less strong than the governors of many other states. Here, despite efforts at constitutional revision in 1967 and 1968, the legislature has remained, at least in form, predominant.⁵

Interestingly, this did not prevent Governor Pataki from using reorganization to put his stamp on state government. As further detailed below, economic development activities were concentrated in the hands of a single individual, Charles Gargano. At the same time, this centralization of authority took place, the functions of the old Department of Social Services were dispersed among the Departments of Health and Labor, and newly created Offices of Children and Family Services and Temporary and Disability Assistance within a newly constituted Department of Family Assistance, signaling a major policy redirection in response to sweeping national welfare reform. Construction-oriented public authorities were consolidated into the Dormitory Authority, reducing costs and, incidentally, demonstrating the degree to which their independence from gubernatorial control was a political fiction.⁶

Though this summary demonstrates that the New York governorship cannot be understood without a review of its formal powers and duties, nor can it be known only by reading the state constitution and statutes. Regardless of the actual locus of authority, the governor is praised if things go well and blamed if they go wrong. Constitutionally required to “communicate by message to the legislature at every session the condition of the state, and recommend such matters to it as he shall judge expedient,”⁷ he or she is expected by the people and principal political actors of the state, even those elected statewide, to provide leadership.

Regular independent public opinion polling measures the degree to which the state’s chief executive is meeting this expectation. Strong poll numbers are themselves a source of power, suggesting to legislators and others the peril of resisting the governor’s political priorities. George Pataki’s approval ratings were persistently low during his early months in office. His budget cuts were painful to many constituencies, his leadership was untested, and his style was unfamiliar. But as reelection approached, the state economy improved, revenues flowed, the wraps were taken off spending, and Pataki’s popularity soared. At 47 percent only sixteen months before, the governor’s approval in the respected Marist College poll exceeded 60 percent in February of 1998.

The expectation that the governor lead is most evident during crises. In 1975, the New York State Urban Development Corporation (UDC) defaulted on its bonds, and New York City and state tottered on the brink of fiscal chaos. Though only in office a few months, Governor Hugh Carey responded. His ability to organize public and private resources to avoid the fiscal collapse of the state, its public authorities, and its local governments won him wide praise; it proved to be his finest hour.

The power-enhancing qualities of crisis are well-known to governors, and at times lead them to cultivate a crisis atmosphere. Governors Harriman, Rockefeller, Carey, and Cuomo each emphasized in his first budget message the severe, even unique, fiscal crisis he claimed to have found upon assuming office. Similarly, George Pataki’s first budget message, in 1995, referred to New York’s “5 billion dollar crisis, a budget gap larger than the total annual budgets of 31 other states.” The rhetoric bolstered Pataki’s justifications for spending cuts to reduce the deficit. Unlike his predecessors, however, he asked not for tax increases but for tax cuts to boost economic growth and therefore revenues.

A major wildfire on Long Island early in his tenure and a crippling ice storm in the North Country in 1998 provided opportunities for George Pataki to visibly provide on-the-scene leadership and follow up with enhanced state assistance for regions of the state struck by tragedy or crisis. Crisis, however, presents leaders not only with opportunity but with peril. Nelson Rockefeller’s

handling of the 1971 Attica prison uprising, in which forty-three persons died, subjected him to the most severe criticism of his tenure. The resolution of a prison uprising at Ossining during Governor Cuomo's first month in office in 1983 without death or any major concessions by the state, especially with Attica still vivid in the memories of key New York state decision-makers, illustrates another point about gubernatorial power. Success for a governor, however obtained, breeds later success by creating a political environment in which others not only expect him to lead, but to prevail. Expectations may, however, be unrealistic, especially when they result from extraordinary circumstances. During his second term, Governor Carey was quoted as responding to his critics, "What am I supposed to do, save New York City twice?"⁸

William Ronan, secretary to the governor during the Rockefeller years, remarked, "New York is a big, dynamic, high-powered state, and it wants a big, dynamic, high-powered man for its governor."⁹ Indeed, formal gubernatorial powers do tend to be enhanced in those American states, such as New York, that are large in size with heterogeneous populations and great social and economic diversity. It is as if a center of substantial political power is needed to offset, balance, and broker the diversity of interests and concerns within these states.¹⁰

It is not insignificant, too, for gubernatorial power in New York that the state's principal city is a national and international media center. In all states, as in the nation, the chief executive—a single person, representative of and known to a broad constituency—tends to be to focal point of media attention, and therefore is advantaged over others in the political arena.¹¹ The situation in New York is complicated by the fact that the state is home to the nation's largest and greatest city, a world financial capital, and the fourth largest government in the United States. New York City's mayor is a world-class political figure and, therefore, a natural rival to the governor for media attention. But both share an advantage over other state and local leaders because New York politics is the "local story" for media enterprises of national and international importance.

During the 1994 gubernatorial campaign, New York City Mayor Rudolph Giuliani, a Republican, endorsed Governor Cuomo over Pataki. After Pataki took office, he and Giuliani cohosted the national NBC television show *Saturday Night Live* in a skit intended to show that the political hatchet had indeed been buried. Many local political figures engage in feuds, both personal and professional. Rare, however, is the local dispute that finds its way into the national popular culture.

New York's importance in the nation and the world attracts to it an array of enormously talented people, providing for the governor a source of informal assistance and advice that is unsurpassed in range and depth. Given the success previous governors have had in attracting the paid and unpaid ser-

vices of such advisors as Henry Kissinger and Felix Rohatyn, a criticism that may be made of the Pataki administration in its early years was that it failed to take advantage of such resources.

Gubernatorial power is also subtly served by the ambitions of staffers who wish to hitch their wagons to a political star, riding to a desk at the White House. While Mario Cuomo became the beneficiary of such motivations relatively early in his tenure, George Pataki has not yet achieved the national stature Cuomo enjoyed at the same stage of his governorship.

When the demands of service chafe too greatly, senior aides move to the private sector, leveraging their experience into top positions with investment banks, national law firms, national media networks, and multinational corporations. There, they grow affluent and are still available to the governor for advice and counsel. The Pataki administration's first counsel to the governor was the governor's close friend and long-time political associate, Michael Finnegan. Finnegan, agent and architect of many Pataki environmental policy successes, left the administration after three years to become a managing director at J. P. Morgan Securities on Wall Street. A few months later, Budget Director Patricia Woodworth, recruited from Michigan in the first days of the administration to craft a series of downsizing budgets, accepted a position with the University of Chicago. Service with the governor remains a magnet for those with talent and ability, and a stepping stone to great opportunity.

The governor also serves as "chief of state," a ceremonial role that puts him or her in touch with the many worlds of New York, providing contacts across the lines that usually separate these worlds. The governor's presence adds status and luster to events. Far more invitations are offered than can be accepted. Each opportunity chosen to cut a ribbon, give a speech, or greet a visiting notable creates an opportunity to do a favor, provide recognition, and develop a wellspring of later support.

Incumbent governors have traditionally held sway within their party at the state level and have used that influence in varying ways. Like Hugh Carey, Mario Cuomo came to office without the support of the Democratic party organization. During his twelve years in office, Cuomo exercised party leadership largely to advance his own interests and ambitions, often at the expense of other Democratic officeholders and aspirants, and certainly not for the benefit of his party as an organization.

George Pataki's election, however, owed much to a striking resurgence of the Republican party as a statewide institution in New York. Captive under Rockefeller and moribund during much of the Cuomo administration, New York's Republican party was reincarnated following the electoral debacle of 1990 in which its gubernatorial candidate Pierre Rinfret came within a handful of votes of placing third.

Leadership was provided by the state's Republican U.S. Senator Al D'Amato and his close associate, state party chairman William Powers. D'Amato entered into a power vacuum to fill a purely partisan role unknown for a U.S. senator in New York since the time early in the twentieth century when holders of this office were still elected by state legislatures. With Powers, D'Amato ramrodded George Pataki's gubernatorial nomination through the state convention and assured that there would be no primary challenge.

Thus hand-picked by his party's leaders, Governor Pataki responded by cooperating with the state party in fund-raising and patronage appointments. That the cooperation has been mutual can be seen in the transfer of millions of dollars from the National Republican Senatorial Committee into Pataki's war chest during his first term. Reflecting the national preoccupation with campaign finance reform, the financing of the 1994 campaign and inauguration, and fund-raising for 1998 were persistent issues during the first Pataki term. Clearly, during the early years of the Pataki administration, the state Republican party organization remained a political force independent of gubernatorial control to a degree rare in the history of modern New York politics.

The Institutional Governorship

The governor is assisted in the exercise of his powers, both formal and informal, by a substantial staff. In recent years, New York's executive chamber offices have been budgeted at over \$12 million per year, and more than two hundred people, about a third of them professional, have been employed in the chief executive's service. In addition, a number of "control agencies" in the executive office of the governor are used by him for key policymaking and implementation tasks, the most important of which is the Division of the Budget. Staffed primarily by career professionals, the division, one of the most powerful agencies of its kind, is responsible for both the development of the governor's financial plan and its implementation throughout the year.

In modern New York government, the three top aides to the governor have traditionally been the counsel, the secretary, and the budget director. Recent years have seen the director of State Operations and Policy Management, and the governor's communications director, join these three aides as key members of the governor's staff. The importance of other staff members fluctuates in response to specific concerns, and none have had the staying power of the five key positions.

Any discussion of the roles of top staff on New York government is necessarily artificial; it tends to obscure the degree to which the responsibilities of the governor's key aides overlap and thus understate the extent to which, as Governor Dewey liked to observe, theirs is a team effort.¹² Nevertheless,

it is fair to say that the counsel to the governor and his assistants serve as architects of the legislative program and as advisors on state legal matters; the budget director oversees preparation and administration of the budget and fiscal plan; the secretary to the governor is the governor's chief of staff, prime negotiator with the legislature, and liaison to local governments; and the director of Operations and Policy Management is charged with policy development and day-to-day coordination of state bureaucracy.

Upon taking office, most governors have expressed concern about concentrating too much power in the hands of one staff member. Over time, however, one aide has always seemed to emerge as a pivotal figure. Indeed, William Ronan, secretary to Governor Rockefeller, and Robert Morgado, secretary to Governor Carey, wielded such power in state government that they were widely thought of as surrogate governors. In retrospect, Ronan described his role thus:

The Secretary acts on behalf of the Governor and, in his name, deals with the department and agencies of state government in liaison, also with the legislature in many matter, and . . . with various individuals and public groups who have business with the chief executive of the state.¹³

And of working with his secretary, Governor Rockefeller commented:

I know him. I trust his judgment. I know his background. We have worked together. I get the feel of the thing and I can make that decision very fast if he feels that he should ask me about it. Or he will inform me of decisions he has made. I just have not the time to hear these people. If a department feels very strongly that they have been short-changed on a decision and it was wrong they will come to me and I will listen to them. But he is a fair-minded man and they have confidence in him.¹⁴

Governor Pataki brought to office an open, consensus-driven management style, according to long-time friend, and Secretary to the Governor Bradford Race. "He is the antithesis of someone who likes to closet himself with one or two or three close advisors," said Race.¹⁵ Two years later, Pataki would still say of himself, "I always prefer cooperation to confrontation."¹⁶

Such a style, however, does not preclude certain staff members from attaining the status of *primus inter pares*, as previous governors learned, despite their own early intentions. In the Pataki administration, Bradford Race, the aforementioned secretary to the governor, and Zenia Mucha, director of communications, are regarded as particularly enjoying the Governor's

confidence. Pataki has known Race for more than a quarter of a century. The two met while working on Nelson Rockefeller's 1970 reelection campaign and have remained friends over the years. Mucha, former press secretary to Senator Alfonse D'Amato, joined Pataki's campaign in that role and remained with him after the election. The two play differing, but equally important, roles in the administration. Race is viewed as the governor's top policymaker, while Mucha is Pataki's very public, very zealous image-meister.

Because Governor Pataki took office after his party had been out of control of the executive branch for a generation, much of his top staff was recruited from among long-time personal associates; Republican legislative staffers, especially from the Assembly minority; state party activists; and interestingly, political leaders and professionals in local government. Early accounts suggested the presence of intrastaff tensions between more moderate, pragmatic personal loyalists and government professionals and more ideologically conservative party activists and others recruited from outside state government. Governor Pataki was captured by neither camp, though his public policy priorities clearly became more centrist as the time for reelection approached.

As his interest in a policy area is aroused, a governor may get intensely involved with it, only to move on to another area after establishing a tone or direction. National surveys of state commissioners have systematically shown that the New York governorship is one of the nation's strongest in directing administration. Those few departments that are not headed by gubernatorial appointees still feel his influence via the executive budget process. For example, members of the Board of Regents are elected by a joint session of the State Assembly and Senate, in which legislative Democrats hold a sizable majority. The Regents, in turn, select the commissioner of Education. Presumably insulated from executive influence by this process, the commissioner must still submit his department's spending request for review and approval by the governor's Division of the Budget before its inclusion in the annual Executive Budget.

As on the national level, cabinet meetings in New York are rarely the locus of policymaking. Commissioners enjoy relative autonomy within each administration's policy parameters, looking to the governor and his staff for support or direction as appropriate. Some commissioners gain responsibilities beyond their titles as a consequence of their performance, their personal relationship with the governor, or the importance to him of the function they head. Such was the case with Bob King, appointed director of the governor's Office of Regulatory Reform upon its creation by Governor Pataki in 1995. King, formerly Monroe County Executive and a State Assemblyman, spearheaded the deregulation effort central to Pataki's goal of making New York State government more business-friendly.¹⁷ In February, 1998, Pataki moved King to oversee another area of special concern, appointing him budget director upon Patricia Woodworth's resignation.

King was also mentioned as a possible 1998 running mate for Pataki, replacing Lieutenant Governor Betsy McCaughey-Ross. Lieutenant governors have little formal power and must enjoy the confidence of the governor to be effective. Especially recruited from outside electoral politics to balance the Republican statewide ticket in 1994, McCaughey-Ross's relationship with the governor was troubled from the start. She bolted from the Republican party in 1997 and positioned herself as a Democratic challenger to Pataki.

Sharing King's concern for economic development, Charles Gargano, ambassador to Trinidad and Tobago during the Reagan administration, emerged as a key player in the Pataki government. As chairman/commissioner of Empire State Development, Gargano leads both the state department and the major public authority responsible for economic development in New York. The Pataki administration has given the highest priority to accelerating economic development in New York; Gargano's official position places him at the center of that effort. Gargano's place in the Governor's political family is significant as well, for he has long been known as a highly effective political fund-raiser on behalf of Senator D'Amato and the state Republican party.

However extensive the governor's administrative powers, they are vulnerable to significant restraint by court action. In 1975, the Willowbrook Consent Decree was signed by Governor Carey after scandalous conditions at a state mental hospital led to federal litigation. Negotiated between the state and civil liberties and mental health groups and carried out under judicial supervision, the decree established detailed criteria and a timetable to improve the delivery of a state service that once was entirely within the governor's control.¹⁸ More recent court actions have mandated changes in State Police hiring practices and prison conditions.

In another limitation on executive discretion, the state's highest court, the Court of Appeals, ruled that local assistance funds (virtually 60 percent of the state budget) could not be impounded by the governor once appropriated by the legislature.¹⁹ Also, in an area that has been little remarked upon, rules on the standing of a taxpayer to sue state officials on constitutional grounds were eased considerably by the courts and the legislature in the mid-1970s, opening a wide range of official gubernatorial actions to challenge in the courts.²⁰ One such suit, brought in 1990 against the use of state funds to publicize the proposed Twenty-First Century Environmental Quality Bond Act (which ultimately failed at the polls), resulted in the issuance, by a state judge, of a gag order temporarily preventing the governor and other state officials from offering any public comment on the issue.²¹

Dependence on federal funds and the policy requirements attached to their appropriation, often characterized with considerable hostility as "mandates," has historically constrained the governor's autonomy in the administrative sphere. However, recent changes in federal law, most notably the 1996 Personal

Responsibility and Work Opportunity Reconciliation Act (welfare reform), have increased the state's latitude in administering and establishing social services programs. The extent to which New York will avail itself of that opportunity is attenuated by both the power of the state Assembly's Democratic majority and a unique state constitutional provision giving New York's poor an affirmative right to assistance from the state. Mindful of these constraints, Governor Pataki has sought programmatic and managerial change through departmental reorganization.

Though the ground rules have changed, the federal government continues to play an enormous fiscal role in New York. New York's governor, acting individually and in concert with his colleagues in the northeast and the National Governors Association, must be a lobbyist for the state in Washington. Through an office in the nation's capitol, the governor seeks to organize New York's congressional delegation on a bipartisan basis in support of maximizing the resources made available for the state. With a majority of governors in the northeast and the nation Republican, and the Congress held by Republicans, a new dynamic is forming. Since the 1994 elections, Governor Pataki has sought more state discretion in how those dollars are spent.

Relations with the Legislature

Nowhere are the demands upon the governor for leadership as prominently on display as in the annual legislative process. Each year the governor systematically canvasses the state bureaucracy and his advisors, both within and outside government, and then sets the policy agenda in his state of the state and budget messages. Department chiefs and interest groups alike struggle to have their priorities included in these messages, to marshal behind them the clout of the chief executive. Often, the governor's messages are leaked piecemeal to the press over a week's time, to maximize their political impact.

As the counsel's office puts programs in bill form, lines up key committee chairmen and other leaders in both houses (and parties) for sponsorship and support, and tracks the progress of "program bills," the governor may reinforce his priorities with special messages. In addition, there is the authority of the governor to veto bills or items of appropriation (within ten days if the legislature is in session or thirty days if it has adjourned), subject to override by two-thirds of the membership of both houses, and to call the legislature into special sessions for a specific purpose, if he or she feels the need to do so.

There are three key dimensions to the governor's relationship with the legislature: the institutional, the partisan, and the personal. Institutional tensions arising from the division of executive and legislative authority are the necessary and desired result of the system of separation of powers. Partisan-

ship distributes power within political institutions, providing a framework for their organization and ensuring a debate over alternative goals for state government. Personality is an inevitable element in any organization where strong, independent people must cooperate to get things done.

Traditionally, New York has had a highly disciplined legislature, organized along partisan lines. In fact, both Charles Breitel, when he was counsel to Governor Dewey, and William Ronan likened executive-legislative relationships in the state during the 1940s, 1950s and early 1960s to those in a parliamentary system.²² During those less complex times, the governor bargained with the speaker of the Assembly and the majority leader of the Senate, and when a deal was struck the leaders delivered the necessary legislative majorities. Things went most smoothly when the governor's party controlled both houses, but with some modifications, the system still operated when the legislature was of a different partisan stripe than the governor, or even when control was divided. In control of all the resources of the executive and on the job full-time, the governor dominated the part-time, amateur legislature.

Things began to change in the mid-1960s, however, as service in the legislature became a full-time occupation. Reapportionment increased the legislature's representation of urban and suburban areas, and weakened party organizations diminished the ability of the governor to discipline those legislators through home-county party chairs. During the same period, the legislature significantly increased its professional staff, giving the institution and its members sources of information and expertise to rival those of the governor.

The task of gubernatorial leadership was further complicated by the elections of 1974, when the Democratic party gained control of the State Assembly, while the State Senate remained under Republican leadership. This partisan division of legislative power has persisted since then, creating enormous incentives for each house to independently develop independent analytic and fiscal capacity. Where once the executive possessed sole leadership of the policy development apparatus, he now holds but one corner in a triad of power.

During the Carey administration, institutional tensions between the governor and the legislature grew as legislators continued to assert themselves. The state constitution was amended to allow special sessions without gubernatorial initiative, and the leaders took to recessing rather than adjourning their bodies, so that they could be called back at any time. In the context of recurring fiscal austerity, in part dictated by economic circumstances and in part the result of conscious policy choices, state politicians became less distributive and more redistributive. With less to go around, executive-legislative confrontation became more and more common.

During the Carey administration, institutional differences were exacerbated by bad chemistry between the governor and legislative leaders—Warren

Anderson in the Senate and Stanley Steingut and Stanley Fink in the Assembly—and by Carey’s ill-disguised dislike for the legislature, which he once publicly characterized as a zoo. The results were constantly missed budget deadlines, precedent-setting Senate rejection of gubernatorial appointees for major posts, a lawsuit that, for the first time, gave the legislature a role in distributing federal funds in New York and renewed use by the governor of the long-dormant item veto as he fought to retain fiscal control.²³ Personal dislike between the governor and Democratic Assembly Speaker Sheldon Silver was also a feature of the Pataki administration. Perhaps not surprisingly, the tone of executive-legislative relations was similar by the late-1990s to that of a decade-and-a-half earlier.

Succeeding Carey in 1983, Mario Cuomo initially pursued a conciliatory course with the legislature. The turning point, however, came in 1987, as headlines carried news of a scandal over the use of public resources to support political campaign activities. Fresh from his landslide reelection in 1986, Cuomo gained passage of an ethics-in-government law over stiff legislative opposition. In achieving this victory, Cuomo portrayed himself as a people’s tribune, battling a faceless, obstructionist legislature.

Legislators took exception to this characterization, and Cuomo’s legislative effectiveness diminished greatly during his third term, as measured by both opinion polls and legislative approval for his initiatives. Gubernatorial relations with the legislature may have reached a historic nadir during the 1992 state of the state address when Anthony Seminerio, an Assembly member of the governor’s own party from Cuomo’s home borough of Queens, interrupted and heckled Cuomo during the speech. Moreover, a 1993 decision of the Court of Appeals further constraining the legislature’s leeway in altering budget bills added to interinstitutional tensions and exacerbated delays in fiscal decision-making.

Like Cuomo in 1983, Pataki in 1995 sought at first to calm the legislative waters. George Pataki was New York’s first elected governor since Franklin D. Roosevelt to have served in the state legislature, and the first since Alfred E. Smith to be elected directly from the legislature. Indeed, Pataki referred to his legislative roots in the opening paragraphs of his first state of the state message, telling the assembled legislators that, “because, for me, friends always stay friends—the door to this governor’s office is always open to each of you.”

Despite these claims, Pataki was willing to play a role in changing leadership in the Senate. A coup on Thanksgiving Day, 1994, engineered by a group of senators allied with Pataki deposed Marino as Republican Senate majority leader and installed Senator Joseph Bruno in Marino’s place. During Pataki’s term in the Senate, both he and his political patrons chafed at Marino’s low-key legislative style and his accommodationist relationship with Governor Cuomo. Marino’s greatest heresy, however, may have been his late and lukewarm endorsement of Pataki’s candidacy for governor.

Having had to “play defense” for twenty years in response to initiatives from Democratic governors, the Republican-led Senate embraced the opportunity to support a governor of their own party. As majority leader, Senator Bruno is a skilled, telegenic partisan. He has also, however, been willing to confront the governor with those assets to protect the institutional stakes of his house where there were clear philosophical differences between his majority and the governor. A notable example, from 1997, was Bruno’s lengthy and public effort to eliminate rent-control laws benefiting mostly New York City tenants. (Most of the Republican majority in the Senate is from upstate and suburban districts, where rent control does not apply.) The controversy delayed the extension’s enactment until long after the law’s expiration date and caused Governor Pataki extreme political discomfort. Speaker Silver’s artful exploitation of the issue led to such substantial concessions from the governor that his credentials as a conservative were questioned on the editorial pages of the *Wall Street Journal*. This is another compelling example of how New York executives are drawn to the center. New York City is a bastion of Democratic strength, and George Pataki simply could not afford to alienate millions of middle-class voters living in rent-controlled apartments and still hope to win reelection.

Although State Comptroller H. Carl McCall is the sole Democrat to hold statewide office, and might be expected to be his party’s leading spokesman on matters of state government, it is Assembly Speaker Silver who has fought the governor on virtually every significant issue. With the election of a Republican governor, the Democratic Assembly came to be the locus of the “loyal opposition” in New York state government. Speaker Silver, from the Manhattan district once represented by Al Smith, won his post in 1994. Formerly almost entirely from New York City, the Assembly’s Democratic majority now is comprised of members from all regions of the state with a wide range of views on issues, some of whom face close contests for reelection. Identification with Silver’s program of opposition to a popular governor places many more conservative members at political risk. Early in the Pataki years, the state Republican party mounted televised political attacks in some upstate districts, emphasizing links between local Democratic legislators and “liberal” New York City and illustrating a centuries long theme in New York politics—the upstate-downstate split. These attacks failed and, in fact, may have strengthened the speaker. Nevertheless, political tensions within the Assembly Democratic Conference may constrain Silver’s tactics in the future, especially if the governor is reelected by a wide margin.

The string of late state budgets, which Pataki as candidate vowed to halt, continued under the Pataki administration, with the budgets for the next several years enacted well beyond the April 1 deadline. Part of the problem may be that each house of the legislature is led by an individual whose temperament

seems better suited for the role played by their opposite number. Senate Majority Leader Bruno, for twelve years on the Senate floor an effective “designated objector” to Cuomo administration initiatives, is now faced with the task of consensus-building in support of an increasingly popular governor of his own party. Speaker Silver won his post before Mario Cuomo’s defeat and in large part because of his reputation as a consummate practitioner of internal legislative politics; he was not expected to be the leading voice of the Democratic party, defining and defending its position on statewide issues.

Over the last half-century, New York governors have regularly vetoed between a fifth and a quarter of the bills passed by the legislature, a far larger percentage than in most states.²⁴ This practice, and the fact that no veto had been overridden since 1870, made the mere threat of a veto a powerful tool in negotiations, and led to regular legislative cooperation in the recall of measures from the governor’s desk for changes to avoid the veto. A Court of Appeals decision in 1993 found this practice unconstitutional, reducing gubernatorial flexibility and adding to the likelihood that there would be greater resort to formal constitutional powers.²⁵

The politics of the veto can be complex. Sometimes, as Governor Rockefeller once explained, legislators “went along” with bills to please individual members as a “courtesy” on purely local matters, only because they were confident that there would be a gubernatorial veto. “I’ll be the guy who vetoes the bill,” Rockefeller said. “This is all part of the act.”²⁶

Despite the fact that Governor Carey used his veto far less than his predecessors, during his tenure the gubernatorial negative was overridden for the first time in a century in 1976. With this psychological barrier smashed, such actions became relatively common during the Carey years.²⁷ Governor Cuomo was regularly able to sustain his vetoes. Despite differences with Mayor Giuliani, Governor Pataki has consistently used his veto to protect New York City’s fiscal interests and governmental authority. In 1996, however, the legislature overrode Governor Pataki’s veto of a bill that allowed arbitration of police salaries by a state agency.

Death penalty vetoes, and nearly successful override attempts, were annual events during the administrations of Governors Carey and Cuomo. Ironically, Cuomo’s success in this regard may have played a role in his loss to George Pataki, who honored a campaign pledge by pushing through and signing a death penalty bill early in his first year in office.

Back to the Future

The governor of New York is powerful, but not all-powerful. He can succeed in pursuit of his vision for the state and its people only by marshaling the full array of authority and resources that are temporarily at his disposal. During

the past twenty-five years, New York's governors frequently operated in a corrosive political environment of resource scarcity. The distributive politics made possible by the early postwar era's robust economy had given way, by the late 1980s, to redistributive politics, in which vocal, well-organized interest groups competed for larger slices of a shrinking pie.

As New York approached the turn of the century, however, it benefited from a sustained sea change in the nation's economy, with record activity on Wall Street helping boost New York's income and transfer tax receipts. Under Governor Pataki, New York's revenues far outpaced projections while expenditures were strictly controlled. This turned what was a trend of billion-dollar deficits into a string of billion-dollar surpluses. Fiscal watchdog groups, however, warned that the full impact of multiyear tax cuts would create future budget gaps. While many of New York's geographic regions and economic sectors had yet to share substantially in the national economic revival as the close of the first Pataki term approached, the administration's job creation and retention initiatives were enjoying at least a modest degree of success.

Historian Donald Roper has written that New York's most successful governors in this century were guided by a philosophy of "positive liberalism," a belief that the state could be an affirmative force in meeting the needs of its people.²⁸ In contrast, in the 1970s (well before the Reagan presidency), after a frightening fiscal crisis and in response to the cumulative effect of decisions taken in the Rockefeller years, state government came to be regarded not as an engine for progress but as a source of mischief. It was seen, in short, as a danger against which New Yorkers had to be protected.²⁹

George Pataki revived that theme in his successful campaign against Mario Cuomo, carrying it through to his first state of the state message, when he announced that, "in order to preserve and protect personal freedom, and restore individual responsibility," he would "reduce the costs, the burdens and the intrusions of government." Pataki's predecessors attributed to strained fiscal conditions a need to "do more with less." Seeking to "do less with less," during a time of relative prosperity, placed Governor Pataki at odds with many competitors for power: a professionalized legislature, well-organized interest groups, and an elite corps of lobbyists. Their hand, ironically, is strengthened by virtue of Pataki's own fiscal success, which seemingly makes possible a return to distributive politics.

During his four years in office, Governor Pataki has begun to place his mark on state government in New York, although many of his proposals have yet to be enacted. He has noted, learned from, and has drafted and pushed through two enactment programs based on the experiences of his Republican colleagues with similar agendas in other states. Pataki enjoys the political advantage of "moving with the flow" on issues important to the electorate. In contrast, Mario Cuomo spent much of his time swimming upstream against national trends in policy and opinion. Why, then, does Pataki not yet enjoy

the national reputation held by other Republican governors, or of Mario Cuomo during his own first term in office? Two years after his first election, Cuomo was the keynote speaker at his party's national convention; by contrast, George Pataki was confined to a marginal role at the 1996 Republican National Convention.

The answer may be found, in part, in the larger task Pataki faced when he came to power. He did not seek incremental change in government. He and his staff have been immersed not only in the accumulation of political and administrative power but in a fundamentally changing premise and direction of state government in New York.

The pressures of state politics in New York inexorably draw incumbent governors to the political center. Cuomo eschewed the label *liberal* and, indeed, many to his left were critical of his policies, for example, in the area of criminal justice. The challenge for New York's governor at the turn of the century is whether or not to allow distributive politics and positive liberalism to again become the norm in New York. State government has been moved toward a sound fiscal footing by a combination of conservative public policy initiatives and the nation's overall economic growth and prosperity. Undoing the former would place the state's financial stability at the mercy of the latter, which surely will not last indefinitely.

Notes

1. George Weeks, "A Statehouse Hall of Fame," *State Government* 55 (3): 69, 1982.
2. Nelson Rockefeller, *Public Papers of the Governor* (Albany: Office of the Governor, 1967), p. 209.
3. Thomas Schick, *The New York State Constitutional Convention of 1915 and the Modern State Government* (New York: National Municipal League, 1978), p. 8.
4. Joseph A. Schlesinger, "The Politics of the Executive," in Herbert Jacob and Kenneth Vines, *Politics in the American States*, 2nd ed. (Boston: Little, Brown, 1971), p. 232.
5. Thad Beyles, "The Governor's Power of Organization," in *SG*, 1982, pp. 79–87.
6. Pataki's early efforts to reshape public authorities were boosted by Mario Cuomo's practice of allowing trustees with expired terms to remain as interim appointments, making them vulnerable to swift replacement by his successor. Pataki will surely be aided in filling future openings as he likes because, unlike Cuomo, his nominations are subject to confirmation by a State Senate controlled by his own party.
7. New York State Constitution, Article IV, Section 3.
8. *New Yorker*, February 22, 1982, p. 105.
9. Robert Connery and Gerald Benjamin, *Rockefeller of New York: Executive Power in the Statehouse* (Ithaca: Cornell University Press, 1979), p. 418.

10. See Schlesinger, p. 233.
11. Larry Sabato. *Goodbye to Goodtime Charley*, revised ed. (Washington: CQ Press, 1982), p. 8
12. Richard Norton Smith, *Thomas E. Dewey and His Times* (New York: Simon and Schuster, 1982), chap. 11.
13. Connery and Benjamin, p. 117.
14. James E. Underwood and William Daniels, *Governor Rockefeller in New York: The Apex of Pragmatic Liberalism in the United States* (Westport, CT: Greenwood Press), 1982, p. 110.
15. Tom Precious, "The New Governor," *Albany Times Union*, January 1, 1995, p. T2.
16. Adam Nagourney, "The Stealth Governor Gets His Way," *New York Times Magazine*, March 16, 1997, p. 32.
17. Interview with Robert L. King, "The Governor's Chief Bureaucracy Buster," *Rockefeller Institute Bulletin* (1998), pp. 104–109
18. Barbara Grumet, "Willowbrook Reforms: A Pandora's Box?" *Empire State Report*, December 1975, pp. 469–63.
19. *County of Oneida v. Berle* 49 N.Y. 2nd 515 (1980).
20. *Boryszewski v. Bridges* 37 N.Y. 2nd 361 (1975).
21. *New York Times*, October 4, 1990, p. B9.
22. Connery and Benjamin, p. 91; and Gerald Benjamin and T. Norman Hurd, eds., *Rockefeller in Retrospect: The Governor's New York Legacy* (Albany: Nelson A. Rockefeller Institute of Government, 1984).
23. Janice Prindle, "Assessing the Legislature's Saratoga Session," *Empire State Report*, September 1976, pp. 296–302; *Anderson v. Regan* 53 N.Y. 2nd 367 (1982); and Joseph F. Zimmerman, "Rebirth of the Item Veto in New York State," *State Government*, vol. 54 (1981), pp. 51–52.
24. On the veto, see generally Frank Prescott and Joseph F. Zimmerman, *The Politics of the Veto of Legislation in New York*, 2 vols. (Baltimore: University Press of America, 1980).
25. *King v. Cuomo* 81 N.Y. 2nd 247 (1993).
26. *New York Times*, December 3, 1972, p. 41.
27. Humphrey Tyler, "The Legislature, Profile in Rancor," *Empire State Report*, May 1976, p. 131ff.
28. "The Governorship in History," in Robert Connery and Gerald Benjamin, eds., *Governing the Empire State* (New York: Academy of Political Science, 1974), p. 16. Underwood and Daniels, *Governor Rockefeller in New York*, strike a similar theme, using the term "pragmatic liberalism."
29. See, for example, Peter D. McClelland and Alan L. Magdovitz, *Crisis in the Making* (New York: Cambridge University Press, 1981).

8

The Legislature, Parties, and Resolving Conflict

R. Eric Petersen and Jeffrey M. Stonecash

The legislature is the primary political institution for representing the diversity of public concerns within the state, and within New York there is considerable diversity to represent. Legislative districts vary from an average income of \$17,000 to over \$125,000. The percent nonwhite within districts varies from 1 percent to over 99 percent. Some districts are completely rural and others are densely urban. These differences create conflicts among legislators about what policies should be pursued, what taxes should be imposed, and how benefits should be distributed. The continual challenge facing the legislature is how to reconcile the conflicting policy needs emerging from these districts and reach some policy agreements.

For the last twenty-five years, the struggle for policy agreements has been shaped by parties and divided control of the legislature. Since 1974, the Democrats have held the majority in the Assembly, and Republicans have held the majority in the Senate. The majority parties in each house have very different constituency bases, which leads to very different policy preferences between the two parties. Figures 3.2 and 3.3 indicate how different these electoral bases are. Democrats in the Assembly do better in districts that are urban, lower income, and with greater racial diversity. Republicans in the Senate do better in districts that are suburban and rural, higher income, and largely white.

While the majority parties differ significantly in their primary constituencies, there are tensions within each party. Each majority party may have, on average, a typical constituency, but, as noted in chapter 3, *each party also needs, to retain power, the seats it has in areas less receptive to its core approach to government.*¹ Assembly Democrats hold almost all the seats in New York City. The party has a strong Black and Puerto Rican Caucus with

twenty-five members.² Members from both these groups express strong concerns about the need to get more resources for New York City and for minorities. Most of these members lobby for the party to be liberal and address urban problems. The key to retaining the majority in the Assembly, however, lies in the roughly forty-five Democratic seats held *outside* New York City, which are generally not as liberal as the areas within New York City. These members argue that they cannot run for reelection as a part of a party that consistently endorses liberal positions of higher taxes and more redistribution to urban and minority populations. Before the Democratic party approaches bargaining with the Senate and the governor, the party must first reconcile the needs of these diverse and contending perspectives.

In the Senate, the areas of Republican dominance are the upstate rural areas and Long Island. Following the 1998 elections they held almost all of the seats in these areas. But Republicans could not hold the Senate without the five seats they held in New York City and the three seats they held in upstate urban areas. The New York City Republicans are generally more liberal (particularly on civil liberties issues) than their upstate colleagues, and they act as advocates for more consideration for New York City's problems. Much as with the Democrats, the Republicans control their house by being able to win seats in areas that are not inclined to elect Republicans. The Republican party, as we shall see later with the rent control issue in 1997, cannot ask the New York City members to vote against New York City. The Senate must reconcile the needs of these diverse constituencies before it can bargain with the Assembly and the governor. For both parties, the process of reconciling within party differences as a part of reaching decisions is crucial and continuous.

The Enduring Importance of Leadership

Bringing legislators together to reach policy agreements is not an easy task. The New York legislature has resolved this problem for some time by relying on strong leadership.³ The leadership of each house allocates resources among members, presides over the party conferences, plays a major, if not dominant, role in setting party strategy, and represents the party in most policy negotiations. This leadership is not, however, unrestrained. It is ultimately based in the wishes of the members. The leadership has considerable power, but it does not "control" members. It is granted this power because the members generally support a significant leadership role in shaping behavior within the legislature.

The practice of granting the leadership such authority exists for several reasons. The formal rules of both houses grant the leadership considerable

discretion in allocating resources and positions. Leadership positions and committee chairs do not have to be appointed on the basis of seniority, and these positions are designated at the discretion of the leadership. Each member is guaranteed a minimal staff budget of somewhat more than \$40,000, but that is a very small amount of money for funding staff. Much larger staff budgets are awarded at the discretion of the leadership.

But these rules exist because the majority of the members find that strong leadership suits their needs. David Rhode provides a succinct summary of what creates strong leadership.⁴

- The key to understanding legislative leadership lies in the membership, not in the leaders.
- If a party has sufficient consensus on issues, it may create strong leaders to act as its agents in pursuing the party's legislative agenda.
- The members sacrifice a *limited* amount of their independence to the leaders, because the commonality of preferences ensures that most members would only rarely be pressured to take an action they do not prefer.
- Instead of party leadership being the cause of high party cohesion, cohesive parties are the main precondition for strong leadership.
- Strong leaders are still possible in an era of individualistic members, but the collective membership becomes "the Boss."

In the New York Legislature, understanding the dominance of parties and leaders within parties begins with recognizing the different constituencies within the parties. They recognize that they must find a way to reconcile their conflicting interests. They want leadership that works toward a consensus, while using their interests as the basis for that consensus. To most members, strong leadership is a self-inflicted necessary evil to achieve agreement. As long as the leadership is responsive to member needs, the members are likely to continue to support a strong leadership system.

The Emergence of Professional Legislators

While strong leadership has been a long tradition in the New York legislature, that tradition faces continuing challenges. The legislature has changed, and those changes have created even greater needs for leadership, but they have also made the task of providing leadership even more difficult. Perhaps the most significant change has been the emergence of full-time legislators who seek to be reelected, who stay in office for numerous terms, and who devote

full-time to the position. These legislators are more independent and less inclined to neglect their constituency just to comply with the need of a leader for their vote. It is harder to form a consensus among these new legislators.

Across the country there has been a gradual increase in the desire of legislators to remain in legislatures.⁵ New York has been no different. Several major changes have occurred in legislative careers in New York.⁶ First, as shown in Figure 8.1, in the latter part of the 1800s and the early part of the 1900s, there was a gradual and steady increase in the percentage of legislators seeking reelection—rising from about 40 to 90 percent during that period. It has stayed at around that level since then. For reasons we do not understand, the legislature became a very attractive place to return to by the 1930s. This occurred even though the real value of legislative salaries was gradually eroding due to inflation.

The rate at which incumbents seeking reelection succeed, as shown in Figure 8.2, has been very stable in New York since 1900. The percent of incumbents (among those seeking reelection) winning reelection has remained in the 80 to 90 percent range since about 1900. The major change has been in the interest in returning to the legislature. As this has increased, the proportion of new legislators has declined steadily.

The consequence of increased pursuit of office and a steady rate of success in retaining it has been a steady rise in the average number of years legislators remain in the legislature. More and more of these legislators have turned

FIGURE 8.1.
Percent of Assembly members and Senators
seeking and winning reelection, 1870s to 1990s.

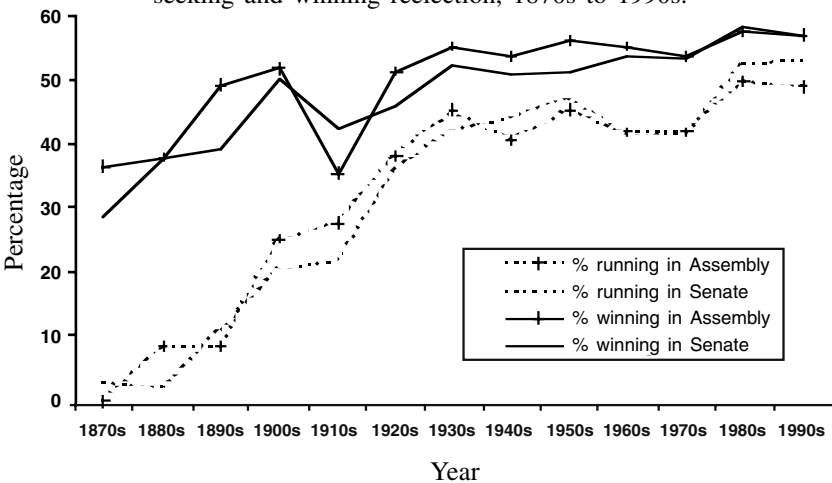


FIGURE 8.2.
Percent of freshmen and percent of all members with ten years or more of experience, 1900 to 1997.

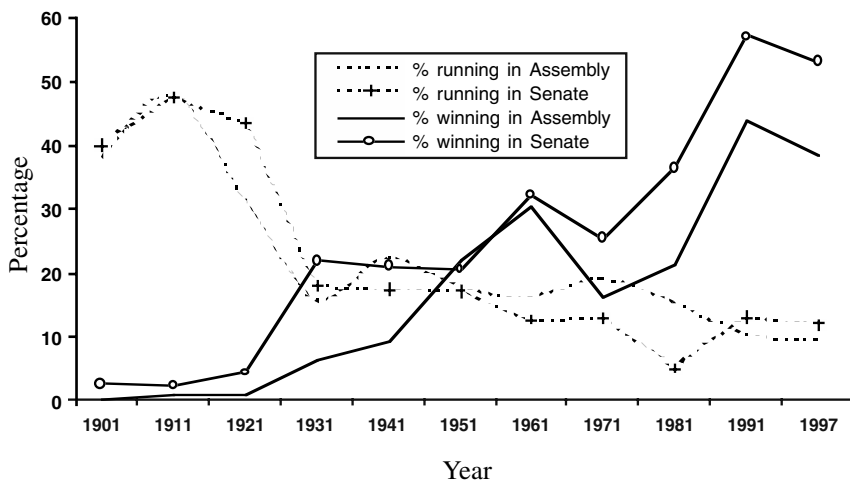
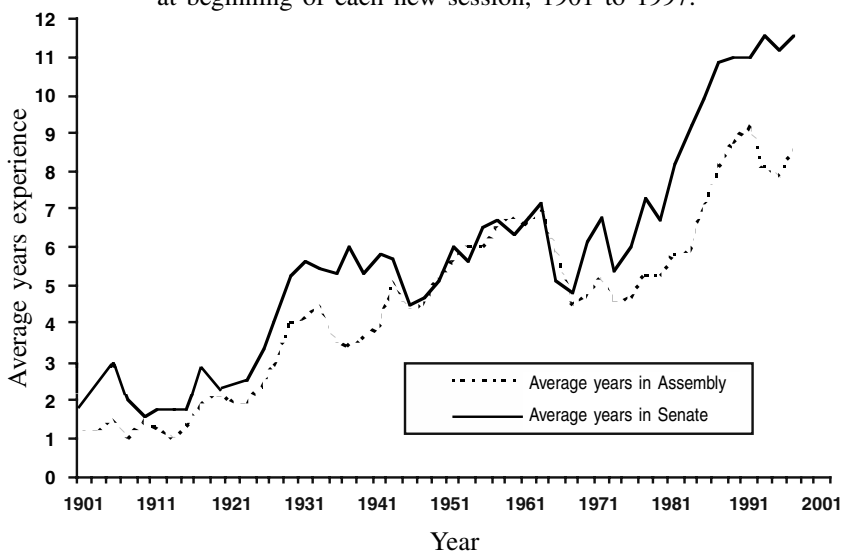


FIGURE 8.3.
Average years of prior legislative experience at beginning of each new session, 1901 to 1997.



it into a career and devote full-time to the position.⁷ Figure 8.3 indicates the steady rise in the average length of time legislators stay in office. The figure presents, for the first year of each new legislative session, the average number of years those legislators have been in office. There has been a steady rise in this average since the late 1800s.

The emergence of professional legislators has had two significant consequences. The legislature is now comprised of politicians who are very concerned about having an impact and have a long-run focus on trying to affect policies. When legislators served part-time for one or two terms, this focus on having an impact was surely less. There is a greater collective desire to have the legislature play an equal role with the governor in making decisions.

It is also, however, probably more difficult to get these career legislators to form a policy consensus.⁸ Almost all of them want to be reelected, they are concerned with forming policy that is good for their districts, and they are less inclined to comply with leaders just to reach an agreement. They are more likely to hold out for budget and policy agreements that serve the needs of their constituents. These motives lead to a legislature that seeks to have an impact, but one in which the process of reaching agreements is not easy. In this situation—internally diverse parties, with members who are less docile and more interested in the decisions made—the role of leadership in forging a consensus becomes crucial. The members may not *want* strong leadership, but they continue to find it very *valuable*.

Leadership: Responding to Member Needs

The task of the leadership is to pull together the diverse members within their parties, and then negotiate with the other house and the governor. The task requires some delicacy and relentless hard work. If leaders are to succeed, they must listen to members, respond to their needs, but push them to compromise when necessary. Leaders fulfill this role through several practices. First, leaders explicitly derive their ongoing policy positions from the members by consistently relying on party conferences to hear what the members are willing to accept as policy positions. Party conferences are closed-door sessions held off the floor on a regular basis for legislators only. In those sessions, members are free to make arguments about policy directions. It is within these conferences that the limits of what the members can accept are determined. The leadership is then generally free within those limits to negotiate with the other house and the governor over policy. This reliance on member opinions is crucial for leadership legitimacy. While the news media continually underplay this interaction between members and the leadership, it is essential to maintaining the system.

The channeling of member opinions at the leadership focuses the negotiating process on the leaders. Although negotiations are delegated to the leaders, that serves a purpose for the members. Legislators want to have some impact on policy, and they want to get reelected. Conference and informal discussions with the leadership give members opportunities to try to influence policy. Turning negotiations about specifics over to the leadership frees the members to spend more time focusing on and dealing with district concerns that will enhance their reelection chances. With this arrangement, legislators do not need to be in the state capitol on a full-time basis because the leadership assumes responsibility for negotiations and the management of day-to-day legislative business. This allows the practice regularly witnessed every January and February, in which members devote as little time as possible to remaining in Albany.

Members also find the strong leadership system valuable because it “organizes” the concerns of legislators and constrains legislators from becoming fragmented as each seeks to pursue individual concerns. As Jim Tallon, the former majority leader of the Assembly, put it, the party recognizes it must ultimately govern and make decisions. A strong leadership system allows members to speak, but it imposes discipline without which decisions might not get made. Many members look with dismay upon practices in Congress where decision-making is decentralized and members must spend all their time in Washington negotiating fine points of the law. Not all members of the New York legislature are equally happy with strong leadership, but enough are satisfied to continue the practice.

The strong leadership also uses its power to distribute resources to each member “according to need.” More senior members, who understand the legislative process better, and who may want to play a greater role in shaping policy, are allocated more leadership and committee chair positions. They also pass more bills.⁹ This allows senior members to have more influence on legislation, and it allows them to build records of passing and claiming credit for ‘legislation.’ Regardless of whether members wish to actually change social conditions or just claim credit for legislation, this satisfies more senior members.

Newer members often have other concerns. Some are concerned with establishing some record of legislative accomplishments. These members receive help from the leadership in terms of staff assistance with bills.¹⁰ Others are more concerned with their next election. They may have faced a close election in their initial run for office, or they may want to build up their name recognition in the district. Their concern is likely to focus on receiving assistance in campaigns and obtaining aid from the legislative party campaign committees.¹¹ To be able to allocate campaign resources to these new and “marginal” members, the party leadership has to have enough discipline to deny resources to members who do not face close races.¹²

The party leadership continually faces the task of responding to the varying needs of the members. It must convince younger members and members with small electoral margins that the party will respond to their needs and try to enhance their reelection chances. It must also convince newer members that their policy views will be heard and their concerns accommodated. At the same time, the leadership must satisfy more senior members who have “waited their turn” and now want to have a greater role in the process. Thus far, leaders appear to have done this well.

The inclination of members to grant the leadership power is increased because of the importance of majority control. The majority party controls the bulk of legislative resources. It determines which bills pass, and it is able to raise more money than the minority in its house because of that power. These advantages provide a powerful incentive to remain in the majority. Majority members are inclined to work together as a party to retain this majority power. The members are willing to make the leader the individual responsible for marshaling and distributing party resources to keep the party in power and maintain their control over legislative resources.

There are, on the other hand, political trends that may push legislators to be wary of being too amenable to leadership influence. Ticketsplitting by voters has increased, negative ads can have a quick and devastating effect, and legislators always want to stress their independence. They know that it is important to fight for the needs of their district when decisions are made. All this makes them less amenable to leadership domination.

Faced with the political needs of individual legislators, the leadership must act with some skill. Leaders must listen and respond while pushing for consensus and party cohesion. In recent decades, exerting influence over legislators has been harder to wield because of the independence of legislators. As recent leaders have argued in public interviews, it is now necessary to work very hard to listen to make sure district needs are accommodated while seeking to form a consensus.

In 1998, the leaders of both houses responded to media criticism of the dominance of leaders in negotiating budgets, and the grumbling of some members, and created conference committees joining members from both houses to negotiate parts of the budget. The leadership of the two houses first agreed on a total budget amount, and then had committees that focused on specific policy areas negotiate budget agreements within their area, within the confines of the overall budget agreement.¹³ This was a way to get more members involved.

This experiment, however, does not indicate the demise of strong leadership. It was clear that even with this new approach, leaders played a significant role in setting the broader parameters of the committee negotiations. In addition, in 1998, it may have been easier to use this approach, since there were

no major policy issues to resolve, and the state was running an enormous surplus, making it easier to reach agreement. Finally, and perhaps most important, as discussed above, the system of strong leadership, as it works now, provides many benefits to members. The members are unlikely to be willing to abandon the system.¹⁴

The continuation of strong leadership may also be helped along by the fact that most legislators in New York do not have close elections. In 1996, for example, the average margin of victory in the Senate and Assembly—the difference between winners and losers—was over 50 percentage points. Few legislators face close elections, and that may give legislators more room to grant discretion in policy negotiations. There are also a limited number of new legislators entering the system every two years. This may make it easier to socialize new members into accepting this practice. For all these reasons, strong leadership persists.

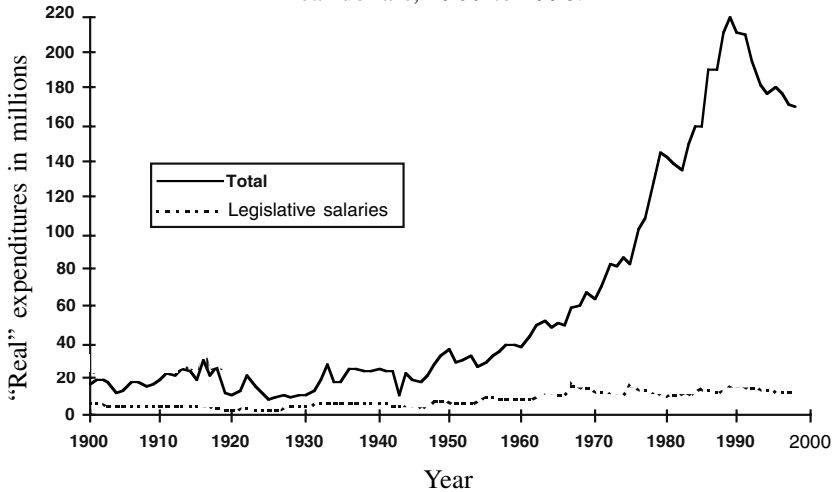
The durability of this approach is indicated by the abrupt but smooth transition in the Assembly in 1991 from Mel Miller to Saul Weprin, and then to Sheldon Silver in 1994 when Weprin became incapacitated by illness. The dominant question was who would become speaker, not whether there would be some sort of change in the system. When Joe Bruno replaced Ralph Marino as president of the Senate in a leadership battle, the strong leadership pattern persisted.

The Rise of Professional Staff

The emergence of legislators desiring to have an impact has also led to a significant increase in the capacity of the legislature to play a role in policy debates. There has been a tremendous increase in legislative staff during the last several decades. During the Nelson Rockefeller era (governor from 1959 to 1973) the legislature was widely perceived as subordinate to the governor and as incapable of making policy initiatives in most areas. It was generally in a position of responding to gubernatorial initiatives.¹⁵ This dependence was recognized by both legislative parties, and both parties have supported a significant increase in legislative resources in response to that situation. Support for these changes also came from various groups outside the legislature, such as the New York Bar Association and academics.¹⁶

To increase the capability of the legislature, there has been a significant increase in the number of staff, the amount of office space, and in the use of computers to handle information. These changes were intended to give the legislature the ability to conduct its own research and analyses and formulate its own policy positions.¹⁷ During the early 1970s the legislature also created district offices so legislators could independently receive and respond to constituent concerns.

FIGURE 8.4.
New York legislative budget,
in real dollars, 1900 to 1998.



The legislature now also meets longer. During the 1950s it met approximately 100 days a year. Sessions usually ended sometime in March or April. During the 1960s the number of session days began to increase. By the end of the 1970s the legislature was regularly in session until July 1. Eventually, the legislature decided to not adjourn at all so it could reconvene at its own discretion. Otherwise the legislators could meet only when the governor called them into session. This reduces the ability of the governor to act without the involvement of the legislature.

To do all these things, the legislature has allocated itself more money. There has been a remarkable increase in the staff budget over time. The most significant increases have occurred during the last several decades. The increase has gone almost entirely into general legislative resources—staff, equipment, telephones, etc.—and not into the salaries of legislators. Figure 8.4 indicates the growth of the legislative budget, expressed in real dollars—adjusted for inflation—since the early 1900s. The total budget is presented, along with the portion going to legislator salaries. The difference between the two provides a crude indicator of the growth of staff resources, including office space and equipment. The significant growth in general staff resources began in the 1960s.

The legislature now has the staff to conduct its own analyses, and to form its own proposals. There are now staff members who have been through

numerous budget negotiations and who are able to quickly determine the governor's position. They have "institutional memory" and are not ignorant of past debates and decisions. There are staff who conduct long range studies on policy development and oversight. Staff of the Assembly Ways and Means Committee and the Senate Finance Committee either conduct or contract for economic forecasts for the state to help guide them in conducting analyses of anticipated revenues. Legislative staff members still rely on executive branch agencies for information, but the era when the legislature had to rely on executive branch personnel for interpreting that information is over. All these changes have made the legislature a more active participant in the decision process. The legislature is less passive and reactive than twenty years ago.

The experiment with conference budget committees in 1998 illustrates how much concern there is among legislators with the power of the institution of the legislature. The two branches, while controlled by opposing parties, were willing to join forces and negotiate a budget which they would then deliver to the governor. The Republicans, in particular, were willing to establish an independent position from Governor George Pataki, even though they were of the same party, and in agreement on many issues. Establishing their own positions, before turning to negotiate with the governor, indicates how important institutional independence was to the two houses. This approach also has some clear problems for the leaders in their relationship with the governor. Because the governor was not part of deliberations through this process, he did not feel bound by them, and he vetoed almost 1400 specific budget items. During the 1999 session, both houses, but particularly the Assembly, were reluctant to repeat the same process without gubernatorial involvement because they did not want to create another opportunity for vetoes by a nonengaged governor.

The Legislature in the Decision-Making Process

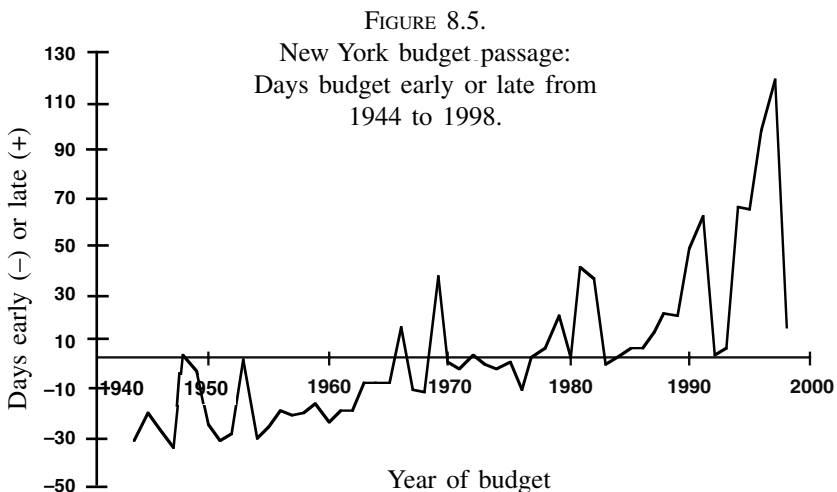
All these changes have changed the decision-making process in Albany. The legislature has evolved from playing a minor role to a major role.

In the early 1950s when Thomas E. Dewey was governor, the legislative leaders were called to the governor's office after the budget was virtually settled. The leaders were told there was some discretionary money in the budget for small legislator projects. The leadership was expected to take the budget back to the members and pass it as it stood. They usually did so.¹⁸

In 1983 Mario Cuomo was the new Democratic governor. He presided over a budget negotiated among him, the President of the Republican held Senate, and Speaker of the Democratic held Assembly. After he claimed most of the credit for passing the budget. The legislative leaders, angered by his credit claiming, negotiated the next budget between the two houses, and then presented it to the governor with instructions to sign it. The process had changed.¹⁹

The combination of a more professional legislature and divided control of the legislature has reshaped the decision-making process. There are now ongoing institutional battles between the houses and between the legislature and the governor. Each house of the legislature first establishes its own positions internally and then begins negotiations with the other house and the governor. There is less willingness to make quick accommodations.

The combination of political parties with clearly different constituencies and policy concerns, divided house control, strong leadership, and professional legislators makes decision-making more difficult and more lengthy. In recent years most budgets have not passed by the April 1 deadline. The last decade has seen some significant delays past the April 1 deadline. While much has been made of these delays, they are really part of a long-term trend of longer decision-making processes in Albany. Figure 8.5 indicates how many budgets have been passed before the deadline (points below the horizontal line representing the April 1 date) or after the deadline (points above the horizontal line) since the April 1 deadline date was adopted in 1944. The



present divided control of the legislature has surely accentuated the problems of delay, but the primary change has been in the ability of the legislature to formulate its own proposals, pursue them, and hold out until they get some of what they want. Delays are likely to persist, and they reflect serious substantive disagreements that take time to resolve.

Case Studies: Constituencies, Members, Leaders, and Public Policy

Legislative leaders in New York clearly lead, but to do so effectively, they must listen to members of their caucus. When leaders advocate policy positions, and the majority conferences are lined up behind their leaders, the leaders enjoy considerable influence in negotiations with the other house or the governor. When leaders fall out of sync with their legislative constituencies by advocating policies that do not benefit members, they lose support and bargaining power. The following policy negotiations provide examples of the dynamics of decision-making and power of legislative leaders when they have strong conference support and what happens when that backing does not exist. The policy areas are welfare reform, rent control, and the linked issues of local property tax relief and school aid.

Leaders and Members in Agreement: Welfare Reform

In the wake of the national welfare reform of 1996, Governor George Pataki proposed a series of reforms designed to change the way New York's 1.2 million welfare recipients were treated. Two-thirds of welfare recipients live in New York City and are overwhelmingly represented by Democratic senators and assembly members. In an effort to "replace welfare checks with paychecks," Pataki's recommendations included an immediate across-the-board 25 percent cut in benefits from existing levels and a further gradual reduction in benefits over two years, a five-year lifetime limit on eligibility for benefits, and measures requiring retraining, drug testing of recipients, and denial of benefits to immigrants and people convicted of crimes. Instead of cash grants to recipients, Pataki's plan called for a voucher program which would provide specific assistance for housing and basic necessities.²⁰

Pataki's plan came under immediate fire from Democrats in the Assembly and county-level Republicans. Democrats were opposed on several grounds. Because many of their members represent urban poor areas, the planned cuts were liable to disproportionately affect people in their districts. This was particularly unacceptable because the new federal welfare legislation gave states more funds than necessary to support the existing welfare case loads of

1997. Democrats saw no need to cut support. Democrats were also resistant to the vouchers approach because Pataki did not specify how the program would be implemented. Finally, the combination of the proposed elimination of rent control coupled with welfare benefit reductions would create an intolerable and untenable political situation. In response, Assembly Democrats proposed changes that would move the state into compliance with national regulations but without the substantial cuts proposed by the Governor. Republican County executives across the state resisted the idea of drug testing as expensive and unnecessary for most welfare clients. Because individual senators represent small portions of the state, Senate President Joseph Bruno of Rensselaer County suggested that the county positions would likely effect how the Senate considered any reform legislation.

With organized opposition from the Democrats, led by Assembly Speaker Sheldon Silver, of Manhattan, and no particular clamor of support for Pataki's plan from rural and suburban voters, Pataki's plan was repeatedly defeated throughout 1996 and 1997. In the end, faced with a federal deadline to comply with new regulations and little interest in Pataki's proposed changes in the public or among members of the Republican Senate Conference, Bruno and the governor agreed to the Assembly Democrat's two main points of reform regarding the continuation of cash benefits and an upward adjustment of the level of earnings welfare recipients could receive while maintaining eligibility. The provisions the legislature passed included a small shift toward vouchers while maintaining overall benefit levels.²¹ Assembly Democrats, adamant in their opposition and more unified than the Republican governor and Senate, won the day. A leader with a unified party conference and little public attention to the issue prevailed.

Rent Control: A Leader Who Outran His Conference

Originally established as temporary measures in 1947, laws governing the costs of rental housing were politically popular and staunchly defended by the citizens who enjoyed the benefits of fixed rental costs in some of the most expensive real estate markets in the state. More than 1.1 million units of rental housing are covered under these regulations in New York City and the downstate counties of Nassau, Rockland, and Westchester. Rent control laws were up for renewal in June 1997, and elected officials in these areas were loathe to go against the tide of local opinion.

In December 1996, President of the Senate, Joseph Bruno launched a major initiative to dismantle rent control laws. Bruno, who represents an upstate district, proposed eliminating all rent controls by 1999 or letting existing laws expire if a new plan could not be developed. While extremely popular in and around New York City, Republicans generally disliked rent

regulation because they favor a less intrusive government and more reliance on market forces to govern private transactions such as housing. On its face, it would seem that Bruno's proposal would have no problem sailing through the Republican-controlled Senate. The proposal, however, was highly controversial in downstate districts held by Republican senators and was met with a firestorm, not just from angry tenants and the Democratic opposition seeing a Republican attack in areas it overwhelmingly represented, but from within his own party.

Bruno's proposal had the most significant implications for Republican senators from areas where rent control laws existed. The proposal offered them the choice between fulfilling the obligations of party loyalty in Albany or the obligations of supporting a program that was overwhelmingly popular in their home districts. As a fierce political and public relations battle raged among renters, landlords, the Assembly, and Senate, it became apparent that the costs of successfully getting a bill through the Senate would likely irreparably damage several downstate Republicans, which could endanger the Republican five-seat majority in the Senate. Confronted by the needs of New York City conference members who found Bruno's proposals dangerous to their reelection, Bruno had to agree to a Pataki-backed compromise that made incremental changes to rent control, but left the program essentially intact through 2003.²² For a review of the dynamics of these negotiations, see Table 8.1 on rent control.

While the welfare reform process demonstrated the power of a party conference united behind their leader, the rent control controversy demonstrates what happens when a leader gets too far out in front of his conference. Without close communication and attention to the preferences and political imperatives of his followers, a legislative leader can chart a path that is potentially destructive to maintaining the majority which allows the leader a role in the policy process.

Different Houses, Different Agendas: Property Tax Relief and Urban School Aid

Sometimes party leaders are caught coping with how to counter a very popular gubernatorial proposal that does not do much for their party's constituencies. Their challenge is bargaining for something for their party while accepting the popular program. Property tax relief was a major issue in Governor Pataki's election campaign and played well among the suburban and rural constituents of Republican senators. The primary source of revenue for local government and school districts, New York's property taxes are among the highest in the nation. The basic complaints were that property taxes were too high and that reliance on them created inequality across districts. In urban areas, property

TABLE 8.1.
Rent control: A leader simply can't ask members
to vote against their districts.

The process of negotiating compromise on legislative initiatives can involve many actors within the legislature and beyond and can be quite time consuming. Among the more dramatic episodes of public negotiation, Senate President Joseph Bruno's attempt to eliminate rent control played out over several months. In the end, each of the participants in this process had some piece of what they wanted, but no one got everything they wished.

December, 1996: With little advance warning, Senator Bruno reveals intentions to radically reform rent control laws or allow existing laws to expire in June 1997.

April, 1997: Rent control supporters in New York City pressure six Republican Senators from areas affected by rent control laws. Two senators, Guy Velella and Nicholas Spano, announce support for extension of existing laws instead of Bruno's proposed reforms. Four other senators, including a deputy majority leader picked by Bruno, remained undecided. Party discipline narrowly holds in a procedural vote after the first debate regarding the Bruno plan on the Senate floor. Bruno, who controls participation of his party members, is the only Republican to speak. Following the close vote, Bruno signals a willingness to compromise on the timetable for rent decontrol.

May, 1997: After a long silence on the matter, Governor George Pataki proposes eliminating rent control subsidies for high-income tenants and a system of "vacancy decontrol"—ending rent subsidies when the current tenant moves out. Assembly Speaker Sheldon Silver announces strenuous opposition to vacancy decontrol.

June, 1997: With days to go before existing rent control laws expire, a series of meetings between Bruno and downstate senators is held. Polls show over 70 percent of New York City residents wanting to retain some form of rent control and 80 percent opposed to the simple expiration of existing protections. Downstate Republican senators argue that even a vote of opposition to rent control would be politically damaging. Opposition within the Republican party would likely lead to a one-vote majority for Bruno with several important Republican defections. This would be seen as a sign of weakness in the leadership.

With several Republican senators in open revolt, Governor Pataki offers public cover to Bruno to allow him to back away from his plan. Acknowledging Bruno's philosophical opposition to

(continued on next page)

TABLE 8.1. (*continued*)
 Rent control: A leader simply can't ask members
 to vote against their districts.

July, 1997:	<p>rent control, Pataki suggests that rent control "is a very important practical question for millions of people in New York City and other areas . . . that rely on rent control and . . . you simply can't insist on a philosophical position."</p> <p>Although opposed to such governmental interventions, Bruno is left with little choice but to back the plan his majority conference supports. A few days after existing laws expire, Bruno and Assembly Speaker Silver reach a compromise which eliminates rent subsidies for high-income tenants, limits the ability to pass apartments to relatives, allows limited rent increases when vacancies occur, but leaves most of the existing program of rent control subsidies in place through June 2003. The legislation makes no provision for further decontrol.²³</p>
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taxes do not generate as large a percentage of school operating revenues as in suburban and rural areas. Some of the shortfall is made up by the state, but it was a source of perennial resentment that little effort is made to equalize educational spending levels among the cities and suburbs (matters of local education and its funding are more fully discussed in chapter 12).

Governor George Pataki ignored the inequality issue and chose to focus on cutting local property taxes. Under the State Tax Reduction (STAR) plan, property taxes would be reduced by 40 percent by 2002. A certain amount of the property value of each homeowner would be exempt from local property taxes, and the lost local revenue would be made up from state funds. Pataki's program put the Democrats in a dilemma. Opposing a plan sold as general tax relief for everyone and providing the first relief to low-income senior citizen property owners was political poison. As a practical matter, no political party can be opposed to a proposal that looks like a tax cut. In fact, some have argued that STAR provides larger dollar cuts to Republican constituencies in the relatively more affluent suburban areas (downstate suburbs receive exemptions of \$70,000 while others receive \$30,000) than the Democrats' primarily urban constituency.²⁴ This awkward political position did not exclude Democrats from taking political advantage of the situation. While the Democrats were boxed in to supporting Pataki's property tax initiative, Pataki was faced with moving the plan through the Assembly. Any property tax reform benefiting the constituencies of the governor and the Republican Senate majority would have to be coupled some sort of stable and plentiful funding formula for city schools.

A compromise was reached that resulted in the creation of two programs tailored to the two different constituencies represented by the majorities of

both houses. While STAR would primarily benefit property owners in the Republican's suburban and rural constituency, the Learning, Achieving, and Developing by Directing Education Resources (LADDER) program would transfer greater state resources to primarily Democrat-represented urban districts. Property tax reform easily passed through the Assembly with the assurance that the LADDER program, featuring dedicated, annual state funding to urban school districts to assist with building maintenance and transportation costs, as well as funding to increase computer-based educational activities and to reduce class sizes soon followed.²⁵ With both programs in place, urban legislators got additional funding that was intended to provide some relief to urban districts, and Governor Pataki and the Senate Republican conference got funds for lower taxes for their electoral constituency.

Legislative Leadership: Some Conclusions

Welfare reform was characterized by low public interest and uneven partisan interest in the legislature. Because of this, Republican agreement with the Democratic plan suggested no obvious political costs to members of the Republican-controlled Senate. This left the leadership of both houses able to force an agreement that was acceptable to both houses, leaving the governor with little choice but to accept. In the case of rent control, President Bruno got out in front of an issue that was political dynamite for members of his conference. Rent control reform represented a significant threat to the district interests of several Republican senators and had profound implications for the continuance of the Republicans as the Senate majority party. Faced with a tremendous gap between the preferences of leadership and the practical needs of the conference, Bruno had little choice but to accept the compromise plan negotiated by Pataki and the Assembly. Finally, the STAR and LADDER example demonstrates how chamber leadership and its members can negotiate programs appealing to their different constituencies.

In each case, the policy process is carried out through a process of bargaining over time between the house leadership and its conferees, between each house and between the legislature and the governor. In the legislature, this bargaining power is a function of the majority leader in each house accurately reflecting the will and intentions of his membership. As long as that relationship is effective, party discipline is maintained and policy is routed through a relatively simple process of negotiation and execution.

The legislature now is an equal partner with the governor in policy debates. The party conferences within the legislature serve as vehicles to form policy positions. The legislative staff generates information and studies to

support party positions. At the same time, the legislators have sufficient staff to explore policy issues in new areas to try and anticipate future situations. All this has allowed the legislative parties to participate in and structure policy debates within the state. There is now an ongoing dialogue between the houses and the political parties about what positions should be taken. The tradition of strong leadership allows them to create collective positions that allow a more focused debate. The legislature has developed both as a professional political institution and as a body fully capable of playing a major role in affecting policy choices.

Notes

1. Also see Gerald Benjamin, "The Political Relationship," in Gerald Benjamin and Charles Brecher, eds., *The Two New Yorks* (New York: Russell Sage Foundation, 1989).

2. For a discussion of the limits of the impact of the Black and Puerto Rican Caucus, see Ester R. Fuchs and J. Phillip Thompson, "Racial Politics in New York State," in Jeffrey M. Stonecash, John K. White, Peter W. Colby, eds., *Governing New York State*, 3rd ed. (Albany: SUNY Press, 1994), pp. 34–41.

3. Robert P. Weber, "The Speaker of the Assembly: Party Leadership in New York," unpublished dissertation, University of Rochester, 1975; Alan G. Hevesi, *Legislative Politics in New York* (New York: Praeger, 1975); and John J. Pitney, Jr. "Leaders and Rules in the New York State Senate," *Legislative Studies Quarterly* 7 (4): 491–506, 1982.

4. These ideas are a summary of the argument made in: David W. Rhode, *Parties and Leaders in the Postreform House* (Chicago: University of Chicago Press, 1991), pp. 35–37.

5. Kwang S. Shin, and John S. Jackson III, "Membership Turnover in U.S. State Legislatures: 1931–1976," *Legislative Studies Quarterly* 4 (1): 95–104, 1979.

6. Jeffrey M. Stonecash, "The Pursuit and Retention of Legislative Office in New York, 1870–1990: Reconsidering Sources of Change," *Polity* 27 (1): 25–47, 1994. This file was updated January 1998.

7. An indicator of this is the proportion of legislators listing their occupation as legislator in the *Legislative Manual*. This proportion has increased dramatically in the last two decades. Informal discussions with legislators also suggest that relatively few of them have full-time occupations outside the legislature.

8. Interview with Warren Anderson, Temporary President of the Senate, 1972–1988, p. 69, and Interview with Stanley Fink, Speaker of the Assembly, 1979–1986, p. 119, in Gerald Benjamin and Robert T. Nakamura, eds., *The Modern New York Legislature: Redressing the Balance* (Albany: Nelson A. Rockefeller Institute, 1991).

9. Jeffrey M. Stonecash, *The Proposal and Disposal of Legislation in the New York Legislature* (Albany: Assembly Intern Program, 1989).

10. Based on discussions of author with staff members and assemblymembers.

11. Jeffrey M. Stonecash, "Working at the Margins: Campaign Finance and Party Strategy in New York Assembly Elections," *Legislative Studies Quarterly* 13 (4): 477–93,

1988; Jeffrey M. Stonecash, "Campaign Finance in New York Senate Elections," *Legislative Studies Quarterly* (15) 2: 247–62, 1990; and Jeffrey M. Stonecash, "Where's the Party: Changing State Party Organizations," *American Politics Quarterly* 20 (3): 326–44.

12. Jeffrey M. Stonecash and Sara E. Keith, "Maintaining a Political Party: Providing and Withdrawing Campaign Funds," *Party Politics* 2 (3): 313–28, 1996.

13. Abby Goodnough, "Albany Legislative Leaders Quickly Agree on Most of Budget," *New York Times*, April 3, 1998, p. B1. Members reported being excited by the involvement, but they pointed out that it involved much more work on their part. Whether they desire an increase in this workload remains to be seen.

14. Not all members, to be sure, are equally happy with the tradition of strong leadership. But enough have been placated so that the tradition of strong leadership continues.

15. Interview with Warren Anderson, Temporary President of the Senate, 1972–1988, p. 60; interview with Perry Duryea, Speaker of the Assembly, 1969–1974; and interview with Stanley Fink, Speaker of the Assembly, 1979–1986, pp. 115–18, in Gerald Benjamin and Robert T. Nakamura, eds., *The Modern New York Legislature: Redressing the Balance* (Albany: Nelson A. Rockefeller Institute, 1991).

16. Perry Duryea, "Toward a More Effective Legislature" Message to Members of the New York State Assembly, December 14, 1973; and New York State Bar Association. *Toward a More Effective Legislature* (Albany: New York State Bar Association, 1975).

17. For studies of the development of the legislature and its conflicts with the governor, see: Alan P. Balutis, "Legislative Staffing A View from the States," in James J. Heaphy and Alan P. Balutis, eds., *Legislative Staffing* (New York: Wiley, 1975), pp. 106–37; Alan P. Balutis, "The Budgetary Process in New York State: The Role of the Legislative Staff," in *The Political Pursestrings: The Role of the Legislature in the Budgetary Process* (Beverly Hills, CA: Sage, 1975), pp. 139–72; Arthur J. Kremer, "The Resurgent Legislature in New York," *National Civic Review*, April, 1978; and Alan G. Hevesi, "The Renewed Legislature," in John K. White and Peter Colby, *New York State Today*, 2nd ed. (Albany: SUNY Press, 1989), p. 168; Interview with Warren Anderson, member of the Senate, 1952–1988, and Temporary President of the Senate, 1972–1988, in Benjamin and Nakamura, *Modern New York Legislature* (Albany: Nelson A. Rockefeller Institute, 1991), p. 60; Gerald Benjamin, "Budget Battles Between the Governor and Legislature: A Perennial New York Conflict," *Comparative State Politics Newsletter* 7 (4) 13–16; Diana Dwyre, Mark O'Gorman, Jeffrey M. Stonecash, and Rosalie Young, "Disorganized Politics and the Have-Nots: Politics and Taxes in New York and California," *Polity* 27 (1): 25–47, 1994; Roman Hedges, "Legislative Staff as Institutional Partisans: The Case of Tax Reform in New York," *Journal of Management Science and Policy Analysis* 7 (1) 34–52, 1989; and Jeffrey M. Stonecash, "The Rise of the Legislature," in Sarah F. Liebschutz, ed., *New York Politics and Government* (Lincoln: University of Nebraska Press, 1998), pp. 80–92.

18. Interview with Robert Herman, in Benjamin and Nakamura, *Modern New York Legislature*, pp. 239–44.

19. Based on discussion with legislators at the time and stories in *the New York Times*.

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23. See stories cited in note 22.

24. William Duncombe and John Yinger, "The Star Program," Maxwell School, Syracuse University, 1997, and subsequent revisions of analysis in 1998. The Republicans, however, note that the percentage cuts are the same across the state. They argue (see exchange between Duncombe and Yinger and Senator Cook in the *Syracuse Herald-American*, Sunday, March 28, 1998, opinion section, p. 1, that downstate suburban homes are worth more, so a \$70,000 exemption results in the same percentage cut in affluent areas as a \$30,000 cut does in less affluent areas. Duncombe and Yinger respond that, while this may be true, the amount of dollars of tax relief are much more to affluent downstate suburbs.

25. New York State Assembly, *Learning Achieving Developing by Directing Education Resources: A Report from the New York State Assembly*, (Albany, 1997).

9

New York's Courts

Thomas W. Church and Brian J. Nickerson

New York's state courts accept more than four million new case filings every year.¹ This substantial caseload makes it one of the busiest court systems in the nation. The cases range in importance from petty misdemeanors and small claims actions in village justice courts to appellate cases having vast implications for economic and social life in the state. Despite the political significance of many of these judicial decisions, courts and judges are frequently omitted from discussions of the state's political system; indeed, courts are often seen as apolitical, with judges' decisions considered to flow from legal standards that are nondiscretionary and somehow above politics. Yet courts are incontrovertibly an essential component of *any* political system. Furthermore, American courts are undeniably political in at least three additional senses:

First, courts make decisions that can have dramatic impact on the allocation of power and resources in society—the essence of politics. For example, New York courts regularly resolve election disputes and, in so doing, have a substantial impact on who governs.² They have assessed everything from the winner of the America's Cup yachting race in 1990 to the legality of hospitals' plans to destroy frozen human embryos and the constitutionality of the "Son of Sam" law that prevents convicted criminals from profiting from their illegal acts through book and movie contracts. Even when courts resolve private disputes over personal injuries or contractual obligations, they set down legal standards that guide the vast system of individual and business behavior, with enormous social, economic, and political implications.

Second, judges have considerable discretion in reaching many of their most important decisions. Judicial rulings might be of limited interest to students of politics if the decisions themselves were dictated by an autonomous, value-free entity called the Law. Political scientists and legal scholars

have long regarded this characterization of legal decision-making, at least in American courts, as inadequate. Decisions of judges must be justified in legal terms, to be sure. And some provisions of statutes or constitutions are very clear and specific, leaving little room for judicial interpretation. But many legal enactments, from city ordinances to state constitutions, are deliberately vague, inviting judges to inject their own political values into the process of legal interpretation. For example, state courts have had to determine whether the constitutional protection of freedom of speech in the New York State Constitution is violated by a ban on political solicitation in privately owned shopping malls, or whether a long-term homosexual relationship constitutes a family within the meaning of New York City rent-control regulations, or whether the constitutional prohibition of unreasonable searches and seizures is violated by police seizure of a gun in plain view during a routine stop of a vehicle for a traffic infraction or by a school official's search of a student bookbag. The words of ordinances, statutes, or constitutions may seem clear enough in the abstract; but when judges must apply those general words to the ambiguities of real-life situations such as those described above, they have considerable leeway in interpretation. In such circumstances, judges are necessarily exercising discretion and making policy.³

Finally, American courts at all levels are intimately connected to the political system through the ways in which judges and other court officials are selected. As will be discussed in this chapter, most New York State judges are popularly elected; those that are not elected are appointed by the governor or by city mayors. Virtually all New York's elected judges are nominated by local political parties, through a highly political process that frequently rewards the party faithful with judicial nominations. Similarly, politics is seldom very far in the background when judges are selected by governors and mayors, even when, as is the case with the state's highest judges, they must be first nominated by a nonpartisan⁴ selection committee. Political considerations also pervade appointment of other court-system officials, from selection of judges to serve on the appellate division of the supreme court,⁵ to the administrative judges who supervise the state's judicial districts, to administrative officials in the court system, to the law clerks, assistants, and the legally trained "secretaries" that serve with trial court and appellate judges throughout the state.

This chapter first summarizes the organization of New York's state court system. This is not a simple task, for the court system has an arcane, highly complicated structure. The next section sets out how the court system is governed and administered. We then discuss three current issues regarding court reform in New York: proposals for simplification of the state's court structure, creation of a new geographical department to handle the growing caseload in Long Island, and reform of the system of judicial selection.

Structure of the Courts

Historical Development

The present structure of the state's judicial branch is the result of a succession of patchwork responses to the dramatic social, political, and economic changes that have occurred in New York from its colonial origins to the present.⁶ New York State has been governed under four different constitutions. The state constitution of 1846 (the state's third) laid the foundation for the current court system. Key judicial provisions of that document included popular election of judges, establishment of the court of appeals as the state's highest appellate court, a statewide trial court of unlimited jurisdiction named—peculiarly—the supreme court, and eight subdivisions (or “terms”) of the supreme court to serve as intermediate courts of appeal. The organizational structure of the courts closely paralleled the political boundaries of local governments. County, city, town, and village courts were important parts of the judicial system, but they operated largely independently of the state-wide court system. A new judicial article in 1869 redivided the state into the current four geographical departments, each with one general term of the supreme court to hear appeals.

The current state constitution (adopted in 1894) ratified the existing structure of the courts, although twentieth-century reforms have altered the system at the margins. Since the mid-1960s, the office of court administration has operated as the statewide administrative office for the courts, with the chief judge of the court of appeals as titular head of the court system. A change from popular election to gubernatorial selection was initiated for court of appeals judges; a commission on judicial conduct was established, and the state government assumed responsibility for funding most courts in the state.

The Current “Unified” Court System

Article VI of the New York State Constitution, as amended in 1962, defines the powers and structure of the judiciary and provides that all courts located in the geographical jurisdiction of the state (except the federal courts) are part of a “unified court system.” This term, however, is something of a misnomer as applied to the courts of New York State. The 1962 amendment unified the financing of state courts, taking responsibility for support of most aspects of most courts from local government and vesting it in the state treasury. But “unified court system” is a term of art in judicial administration circles: it implies that all state courts are consolidated—not only financially, but operationally and organizationally—into one hierarchical, streamlined system. States that have adopted this structural reform have eliminated special purpose courts (such as New York's present court of claims, family, and surrogate courts),

consolidated the organization and financing of the courts at the state level, and established a powerful administrative organization to manage all the courts in the state.

New York's unified court system, despite its name, still evidences its seventeenth- and eighteenth-century origins. It bears scant resemblance to the unified court systems in other states. Indeed, no less a figure than the chief administrative judge of New York, testifying before a joint legislative hearing, called the structure, "the most antiquated, cumbersome, complex court structure in the country."⁷ Figure 9.1 graphically illustrates this complexity, showing a schematic overview of the structure and the routes of appeal within the system.

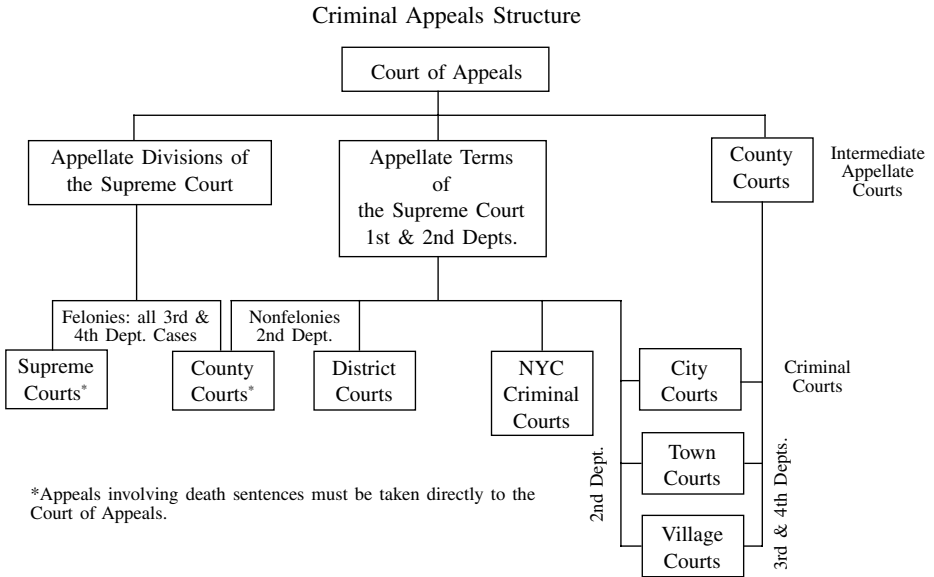
Courts can be divided into trial and appellate courts. Trial courts hear disputes, take evidence from witnesses, determine facts, and apply the law to those facts. They conduct the proceedings embodying the popular image of courts: determinations of guilt or innocence in criminal cases, for example, or imposition of damages and compensation in personal injury actions. Decisions in trial courts can be made by either judges or juries. Appellate courts generally do not decide questions of fact (and thus do not hear witnesses, take evidence, or utilize juries) but rather correct errors of law made by lower courts that heard cases previously. Appellate courts usually employ several judges, sitting as a panel, and make decisions after reading written briefs and oral argument by lawyers for the parties in a case.

New York's state trial courts are made up of courts of superior jurisdiction and courts of lesser jurisdiction. The courts of superior jurisdiction are the workhorses of the system; they include the supreme court and county courts, the multipurpose courts that hear most of the serious civil and criminal matters, but in New York they also include specialized courts—family court, surrogate's court, and the court of claims.⁸ Courts of lesser jurisdiction hear less serious civil and criminal matters. They include the criminal court and civil courts in New York City and a seemingly endless variety of city courts, district courts, and town and village justice courts outside New York City.

When a party is unhappy with the result in a trial court and believes a legal mistake was made in some aspect of the proceedings, an appeal can be lodged in an intermediate appellate court. The structure of the intermediate appellate courts is especially confusing in New York since appeals can progress from the trial court to a variety of appellate courts, with different names and composition, depending on geographic location and type of case. Appeals from trial courts can be heard by the appellate divisions of the supreme court, the appellate terms of the supreme court, and the county courts acting as appellate courts. In another deviation in court nomenclature, the court of last resort (analogous to the United States Supreme Court in the federal system) is the New York State Court of Appeals.

Geographically, the New York courts are divided into four judicial departments, and each department is further subdivided into judicial districts con-

FIGURE 9.1.
New York State court system and routes of appeal.



*Appeals involving death sentences must be taken directly to the Court of Appeals.

*Appeals from judgments of courts of record of original instance that finally determine actions where the only question involved is the validity of a statutory provision under the New York States Constitution may be taken directly to the Court of Appeals.
Source: 21st Annual Report of the Chief Administrator of the Courts for Calendar Year 1998 (New York: Office of Court Administration, 1999), p. 2.

sisting of one or more counties. Supreme court judges are elected by the voters in these judicial districts.

The courts of New York State are a patchwork quilt in which courts performing virtually identical functions across the state have different names, legal jurisdictions, judicial selection methods, and avenues for appeal. This confusing situation can be attributed to historical accident, but its continuation is directly related to political imperatives. As discussed later in this chapter, the major roadblock to reorganization and rationalization of court structure has been the issue of how the various judicial officials are selected. While many of the relevant actors profess an interest in simplifying the system, none seem willing to give up their role in choosing the various judicial officers who populate the current system. A brief description of the distinguishing features of each court in the New York system is provided in Table 9.1; the courts are described briefly in the sections that follow.

TABLE 9.1.
New York State court system characteristics.

Court	No. of authorized judges*	How selected	Term
Court of Appeals	7	Gubernatorial appointment with advice and consent of Senate.	14 years.
Appellate Division	24 permanent; no. of temporary justices varies.	Gubernatorial designation from among duly elected Supreme Court justices.	Presiding justice: 14 years, or balance of term as Supreme Court justice. Associate justice: 5 years, or balance of terms as Supreme Court justice.
Appellate Term	Varies	Designation by Chief Administrator of Courts, with approval of presiding justice of the Department, from among duly elected Supreme Court justices.	Varies.

(continued on next page)

TABLE 9.1 (continued)
New York State court system characteristics.

Court	No. of authorized Judges*	How selected	Term
Supreme Court	288	Elected	14 years.
Court of Claims	64	Gubernatorial appointment with advice and consent.	9 years or, if appointed to fill that term.
Surrogate's Court	62	Elected	14 years in New York City. 10 years outside the City.
County Court	124**	Elected	10 years.
Family Court	124	Mayoral appointment in New York City.	10 years or, if appointed to fill a that term.
Civil Court of New York City	120	Elected	10 years.
Criminal Court of New York City	107	Mayoral appointment.	10 years, or, if appointed to fill a vacancy, the period remaining in that term.
District Court	50	Elected	6 years.
City Court	158	Most elected; some acting judges appointed by Mayor or Common Council.	Varies.
Town Court	Approx. 2,000	Elected	4 years.
Village Court	Approx. 570	Elected	Varies.

Mandatory retirement age of 70 for all judges except Town and Village Courts.

*Numbers accurate as of December 31, 1994.

**Includes one, two, and three-hatted judges (see County Courts).

Source: *21st Annual Report of the Chief Administrator of the Courts 1998*. (New York: Office of Court Administration, 1999), p. 3.

TRIAL COURTS OF LESSER JURISDICTION

Trial courts of lesser jurisdiction process misdemeanors, violations (such as traffic), and minor civil matters. These courts also preside over arraignments and other preliminary proceedings in felony cases. The lesser jurisdiction courts in New York City are called the civil court and the criminal court. The former handles civil cases involving up to \$25,000 and landlord-tenant disputes.⁹ Civil court judges are elected for ten-year terms. The criminal court handles misdemeanors and the early stages of even the most serious criminal cases. Criminal court judges are appointed by New York City's mayor for ten-year terms.

Outside of New York City, city courts have limited jurisdiction in both civil and criminal cases. City court judges are either elected or appointed by mayors or city councils; they serve ten-year terms and have jurisdiction in misdemeanors and in civil cases up to \$15,000. In two downstate jurisdictions the lower courts are called district courts; judges in these courts are elected for six-year terms. Finally, most towns and villages in the state have justice courts, usually staffed by a part-time judicial officer referred to as the town or village justice (or justice of the peace). Justices in these courts are elected to four-year terms and need not be attorneys.¹⁰ These courts have criminal jurisdiction over minor criminal cases and civil jurisdiction up to \$3,000; unlike courts in the rest of the court system, they are funded by local government.

TRIAL COURTS OF SUPERIOR JURISDICTION

Supreme Court. Unlike the federal court system and that of most states, where *supreme court* is the name given to the highest court in the system, New York's supreme court is the general jurisdiction trial court, the court that hears (or could hear¹¹) nearly all civil and criminal cases. In practice, however, the supreme court hears serious civil and criminal matters, and all cases involving divorce, annulment, and separation. It rarely hears cases that could be handled by specialized courts, the county courts, or by the other courts of lesser jurisdiction. Justices of this court are elected to fourteen-year terms by the voters of the judicial district within which the court is located.

County Courts. There is a county court in each of the state's counties except those making up New York City. The court has criminal jurisdiction over offenses committed within the county, including felonies, although minor offenses are usually handled in the lower courts. It also has civil jurisdiction for claims up to \$25,000. Judges are elected on a county-wide basis to serve ten-year terms.¹² Most appeals from the county court go to the appellate division of the Supreme Court.¹³

Family Courts. The family courts were established in the 1962 constitutional reorganization to deal with families and children in distress. There is a family

court in each county of the state and in New York City. The family court decides matters relating to adoption, guardianship, foster care, juvenile delinquency, paternity and child support, custody, visitation, termination of parental rights, family offenses and child protective services. Ironically, the issues most commonly associated with family cases—divorce, annulment, and separation—are not part of the family court's jurisdiction but are rather in the exclusive domain of the supreme court. Jurisdiction over adoption proceedings is shared with the surrogate's courts.

The term of office for family court judges is ten years. Outside New York City family court judges are elected; as indicated previously, New York City family court judges are appointed by the mayor.

Surrogate's Court. The surrogate's court has colonial origins and today exists in every county in New York. The court's jurisdiction generally involves the affairs of decedents, including the probate of wills and administration of estates and trusts. The court shares with family court jurisdiction over adoption of minors. Surrogates are elected to ten-year terms except—in another example of the patchwork quality of New York courts—in New York City, where they serve fourteen-year terms.¹⁴

Court of Claims. The court of claims is a special trial court that hears cases against the state of New York. Court of claims judges are appointed by the governor with the advice and consent of the state senate for terms of nine years.

INTERMEDIATE APPELLATE COURTS

Litigants are generally entitled to at least one appeal from a trial court decision. Depending on which department a case originated in, this appeal may go to either the appellate division of the supreme court, or the appellate term of the supreme court.

Appellate Division of the Supreme Court. The first appeal in a case is most often heard by one of the appellate divisions of the supreme court. Each of the state's four judicial departments has an appellate division. Justices of the appellate division are designated by the governor from sitting members of the supreme court. The governor also designates presiding and associate justices in each division. These appointments do not require legislative confirmation.

Appellate Term of the Supreme Court. The New York State Constitution authorizes the appellate division in each department to establish an appellate term to ease the division's case load. Currently, only two downstate departments have established appellate terms. These courts sit in panels of three supreme court justices, designated by the chief administrator of the courts. The appellate terms hear appeals from certain lower courts including the New

York City civil and criminal courts and, in the second department, the district, city, town, and village courts in all civil cases and from the county courts in all civil and nonfelony criminal cases.¹⁵

THE COURT OF APPEALS

The New York Court of Appeals is the state's court of last resort. It consists of a chief judge and six associate judges. The current chief judge is Judith S. Kaye. All judges of this court are appointed by the governor for fourteen-year terms.¹⁶ The governor's appointments must come from a list of persons found "well-qualified" by a bipartisan state commission on judicial nomination and must be confirmed by the state senate. Cases coming before the court of appeals have almost always been reviewed and acted upon by an intermediate appellate court—in most cases the appellate division of the supreme court—and the court has considerable discretion in the cases it decides to review.¹⁷

The New York Court of Appeals has traditionally been considered one of the most prestigious courts in the United States, with such justices as Benjamin Cardozo, Rufus Peckman, Jr., and Ward Hunt going on to serve on the U.S. Supreme Court. The court's decisions have been especially influential in the development of American common law, particularly in the areas of tort and contract law.

The reputation of the New York Court of Appeals was founded on craftsmanship and originality in areas of the law that have traditionally been the creation of judges: the area of "private law" that governs contracts, the allocation of responsibility for accidental injuries, and the like. While the court continues to enjoy a high position among analogous courts in other states, most observers would agree that the present court does not have the prominence of the court in the Cardozo era. Scholars attribute this situation to several factors: a decline in the relative importance of private law decisions in such areas as torts and contracts—traditionally the forte of the court of appeals—in favor of public law litigation involving constitutional and statutory interpretation, an emphasis in the court of appeals on correcting errors rather than developing new law, strong norms on the court that encourage collegial decision making and consensual opinions rather than grand exposition of legal principles frequently seen in more activist courts. Unlike the state supreme courts (such as those of New Jersey and California) that have been generally regarded as the most influential in the recent past, the court of appeals has tended to adopt a nonideological, pragmatic approach to legal issues.

The court of appeals has maintained an activist stance in several key constitutional areas, particularly in freedom of expression and privacy cases, and criminal cases involving search and seizure and right to counsel. But in the words of one legal observer, "this is not a court with an agenda. It doesn't

see itself as the avatar of a proper society, while the [U.S.] Supreme Court seems to be willing to remake the social structure."¹⁸ There are suggestions by some legal scholars that under the chief judgeship of Judith Kaye, the court of appeals may be emerging from a period of relative obscurity to take a more prominent role in American jurisprudence.

Court Administration, Finances, and Regulation of Judicial Conduct

Administration

New York's courts have a lengthy history of administrative fragmentation and inefficiency. Prior to 1962, most of the state trial courts operated as independent entities, with almost no central management or direction. Constitutional reforms in 1962 and 1978 moved toward a less fragmented system, but as already indicated, the state judiciary is still a long way from the unified court system of its title. Since 1978 the chief judge of the court of appeals has been the designated chief judge of the state and its chief judicial officer. The chief judge appoints a chief administrator of the courts¹⁹ with the advice and consent of the administrative board of the courts—a body consisting of the presiding justices of the four appellate divisions of the supreme court and the chief judge of the state (who serves as chair). Interestingly, because the governor appoints the presiding justices of the appellate divisions, the governor has primary appointment power over this governing body of the judiciary.

The chief judge is responsible for establishing state-wide administrative standards, in consultation with the chief administrator and the administrative board; important administrative policies must be approved by the court of appeals. The chief administrator, on behalf of the chief judge, is responsible for supervision, administration and operation of the state's trial courts. The court of appeals and the appellate divisions are responsible for their own administration.

The chief administrator also directs the Office of Court Administration (OCA), the administrative office responsible for management functions for the courts. Through the OCA, the chief administrator has several key functions including: preparation of the judiciary budget, assignment of judges, conducting labor negotiations, and recommending legal changes to improve administration of justice and court operations. OCA is also responsible for overall financial management in the courts, as well as legislative liaison, personnel, data processing, maintenance of court libraries, judicial and non-judicial education, and general technical assistance to the courts.

Finances

Historically, funding the courts in New York has been as chaotic as their administration. In 1976, however, the Unified Court Budget Act merged 120 separate court budgets into a single state judicial budget. By 1980, the state had assumed the noncapital costs of all state courts except those involving the town and village courts (which are funded by the municipal governments) and the repair and maintenance of court houses (which is funded primarily by the municipalities in which they are located).

While the amount of state funds going to operate the court system is small in comparison with governmental expenditures on big-ticket items such as education and criminal justice, the size and content of the judiciary budget is a perennial source of conflict between the courts and the executive and legislative branches of government. The courts are, of course, an independent branch of government, and there is always a judicially expressed fear that the independence of the judiciary is compromised when governors and legislators have ultimate authority over court funding. But the legislature and governor are just as zealous in maintaining their established role in controlling governmental expenditures. The size and overall content of the courts' budget is usually established through informal negotiation between court officials, staff at the governor's office of management and budget, and legislative staff. However, this system of informal accommodation does not always function effectively. The most recent example of this tension occurred in 1991, when former Chief Judge Sol Wachtler sued then-Governor Mario Cuomo and the legislature for improper cuts to the judiciary's budget.²⁰

The recurring debate concerning the appropriate size of the courts' budget in New York is grounded in different views regarding the necessary number of judges in the system, and the efficiency and productivity of those judges. Chief judges and chief administrative judges routinely make dire predictions at budget time concerning the impact of legislative failure to authorize new judgeships to deal with the state's allegedly "crushing" caseload. Budget officials in the governor's office and the legislature question whether the existing complement of judges is as hard-working and productive as it might be, and whether the addition of more judges would dramatically affect the problems of delay and overcrowding that have bedeviled many of the state's courts for decades. Unfortunately, there is little reliable data that would allow officials to resolve these conflicting views. National studies conducted in the 1970s and 1980s examined the operation of the supreme court in two boroughs of New York City—Brooklyn and Bronx County—comparing them to big city courts elsewhere in the United States in terms of delay and judicial workload. The studies portrayed these courts as among the country's most congested and delayed; but the data did not suggest that the judges on those

courts were necessarily overworked, at least not in terms of their judicial brethren in other major cities.²¹

Judicial Conduct

After questions of funding, perhaps the most potentially contentious issue between the courts and the more explicitly political branches of government involves judicial conduct and how to address legitimate complaints of improper behavior of judges without compromising judicial independence. New York's constitution authorizes removal of judges by legislative impeachment or by a concurrent resolution of the Senate and Assembly. These are cumbersome devices, however, that are rarely used. The Commission on Judicial Conduct was established through constitutional amendment as part of the 1978 reforms to court organization and financing. Its functions include receiving and reviewing written complaints against judges, initiating complaints, obtaining witnesses and documents, and conducting formal hearings. Ultimately, the commission can dismiss, admonish, censure, or retire any state judge.

In the federal courts, and in many state court systems, judicial conduct commissions or committees are primarily judicial bodies, with most or all members appointed from within the courts. New York's commission, as another indication of the close linkage between politics and the operation of the judiciary, consists of eleven members, only three of which are appointed from within the judiciary (by the chief judge); four members are appointed by the governor, and one each by the Democratic and Republican leaders in each house of the legislature. Members serve four-year staggered terms. As a further nod toward independence from the judiciary, the commission is funded directly by the legislature, without gubernatorial or court control over budgetary requests or allocations.

Politics, Reform, and the Courts

Politics and Staffing the Courts

American politics in the nineteenth and early twentieth centuries was grounded on what was termed the "spoils system," a reference to the old political adage, "to the victor belongs the spoils."²² The spoils of electoral victory included a variety of forms of largesse to political friends and supporters: lucrative governmental contracts, selective law enforcement, influence over government land acquisition and public works projects. Perhaps the most important element of the spoils system, however, was government jobs for

political friends and party workers. Starting in the early days of the nineteenth century, it was more or less expected that the party which controlled the executive branch of a city or state (or even the nation), would use government jobs to reward the party faithful. Changes in party control in state capitals (as well as the nation's cities) were inevitably accompanied by almost complete turnover in government employees—from high-level policy-makers to janitors and clerks.

This system of political selection of government employees brought about a chorus of complaints charging inefficiency, incompetence, and corruption. The system was cut back substantially at all levels of government with civil service reforms initiated in most states beginning around the turn of the century. So-called merit systems were put into effect and a growing proportion of government jobs were awarded on the basis of scores on competitive examinations and objective indicators of experience and competence, rather than political affiliations and connections. The judiciary is perhaps the last vestige of the patronage system in many states—including New York. Indeed, as late as the mid-1970s, prior to the creation of the Office of Court Administration in 1978, patronage was reportedly “a way of life” in New York courts at all levels.²³ While much diminished, political patronage in one form or another continues to play a significant role in staffing New York's courts.

The most common and direct route to a New York judgeship remains activity in either the Democratic or Republican party. With few exceptions, judicial officers at all levels have been active in party politics and have “done their time” in party clubhouses; frequently judges have previously served as an elected official at some level of state or local government. For appointive judicial positions, such as judgeships in the criminal court and family court in New York City, the court of claims, or the appellate division, political connections to the appointing authority (whether the mayor or governor) are critical to the appointment; success in gaining one of the elected judgeships (as in the supreme and county courts, and family court outside of New York City) almost always requires nomination by one of the two major political parties, a nomination that is tightly controlled by party leaders.

Judicial nominations at the county level are usually dispensed by each party's county leader, whose control of judicial nominations is a major political resource. Nominations for supreme court justice, where electoral districts usually span more than one county, are often worked out through negotiations and “deals” among the party leaders of the relevant counties. The parties frequently engage in “cross-endorsement” in these districts, a practice by which party leaders agree not to field candidates for judgeships being vacated by incumbents of the other party (and to endorse those nominees).²⁴ These arrangements are informal and break down on occasion, to the inevitable accompaniment of heated political recriminations.

The conservative *Albany Times-Union*, surveying several such cross-endorsement clashes in 1990, urged the end of the practice of electing judges in an editorial entitled “Judges, Thick Smoke and Pork.”²⁵ Four years later, after another interparty dispute over cross-endorsements, the editorial staff came to the same indignant conclusion:

Supposedly, justices of New York’s trial level court are selected by the voters. But that is a myth, and everyone knows it. In reality, judicial candidates are frequently handpicked by political leaders and cross-endorsed as part of a multiyear package deal that usually precludes even the possibility of a competitive election. Often, the only time voters have any say in the matter is when backstabbing politicians renege on a deal—as occurred this year . . . —and the cross-endorsement pact is temporarily abandoned.²⁶

Reappointment or reelection decisions are similarly subject to political control. While it is generally assumed that sitting judges will receive renomination from their party and (in light of the power of incumbency) reelection, parties have sometimes denied nomination to sitting judges.²⁷

Surrogate’s Court, a low-visibility court that deals primarily with wills and estates, is also a major source of political patronage. Surrogate judges are responsible for appointing lawyers to act as guardians or conservators of estates. According to a 1986 study by the Fund for Modern Courts, these lucrative assignments are frequently given to politically connected attorneys who have contributed to judges’ election campaigns or to the party.²⁸

Political patronage in the courts is not only important in selection of judges. While New York’s office of court administration uses a merit-based civil service system for many court employees, the courts remain an important repository of nonjudicial, party-related jobs. Supreme court and most county judges, for example, are provided with a small staff including a court clerk, a legally trained “secretary” (or law clerk), and an administrative assistant. These positions are reasonably well-paid and are not subject to civil service restrictions. In many of these courts, occupants of these positions are chosen by local party officials, not by the judge the positions serve. Indeed, a frequent route to a judgeship is through the position of law clerk or legal secretary. There have even been allegations that the office of court administration has its share of political appointees. A 1988 investigative article in an Albany area newspaper (entitled “Disorder in the Courts Agency Potential Patronage Haven”) revealed that 65 percent of OCA central staff personnel were listed as “indefinites,” an unusual civil service classification that is exempt from civil service requirements.²⁹

In light of the limited number of patronage positions available in executive agencies in state and local government, courts remain important repositories

of jobs to reward the party faithful. It is therefore unsurprising that virtually all efforts at court reorganization and reform are carefully assessed in terms of their impact on the number of political appointments lost or gained, by which party, and which appointing official. More than one court reform proposal has foundered on these shoals.³⁰

A number of states have adopted reforms in judicial appointment procedures in order to promote selection of the most qualified judicial officers. Both elective and appointive systems have produced excellent judges, in New York State and elsewhere. But reformers argue that the close relationship of the judicial selection process to state and local party organizations discourages qualified individuals from seeking judicial office, and sometimes results in selection of unqualified, or at least underqualified, judges. The so-called merit plan for judicial selection is a common response to this criticism. Under the typical merit selection plan, a nonpartisan committee of judges, attorneys, and other luminaries sifts through applications for judicial office and presents the governor with a short list of applicants deemed to be most meritorious. The governor then appoints one of the individuals on the list. The appointee usually serves a first term without election, and then stands for a "retention" election, where there is no opposing candidate, and the electorate is asked simply whether the judge should be reelected to another term.

A variant of the merit selection plan operates for court of appeals judges in New York. This selection process differs from the typical merit plan in the requirement of senate confirmation of gubernatorial selections and elimination of the retention election. Gubernatorial appointments must be approved by the Republican-dominated Senate, a fact which may in part explain why former Governor Mario Cuomo, a Democrat, appointed several Republicans to the court of appeals. An additional difference lies in the composition of the nominating commission. In New York, this body is explicitly bipartisan rather than nonpartisan, since its configuration virtually guarantees an equal number of Democratic and Republican members.³¹

The governor also appoints judges to the appellate division of the supreme court and to the court of claims. Recent governors have made these appointments from lists of candidates proposed by judicial screening committees. Governor George Pataki established a committee within each of the four departments for appellate division appointments, and a state-wide committee for court of claims appointments. These committees, however, exist through executive order and have no constitutional standing. A dispute arose in 1997 when Governor Pataki announced that he would not be restricted by a department's judicial screening committee's list of acceptable candidates in making his appointment but would look to the lists of other departments as well. It was widely assumed that this change would enable the Republican governor to fill vacancies on appellate divisions in strongly Democratic con-

stituencies with Republican appointments, a development that the organized bar criticized as being an “interference” with the evaluation process that was “of questionable merit.”³² Whatever the merits of this particular change, it is reasonably clear the governors have had, and will continue to have, substantial flexibility in appointing judges at all levels on the basis of their political, as well as their legal, qualifications.

Organizational Reform

The perennial targets for court reformers in New York have been the byzantine structure and organization of New York's court system, the asserted need for a new fifth department to respond to growing caseloads in Long Island, and the system of judicial selection. These issues will be discussed in turn.

TRIAL COURT MERGER

Trial court merger is a key element in the national movement for unified court systems. Merger of the trial courts in New York State would mean a substantial reduction in the number of superior jurisdiction courts, since most proposals involve merging county courts, family court, surrogates court, and the court of claims into the supreme court. A plan proposed by Chief Judge Judith Kaye in 1997 would also merge the limited jurisdiction courts throughout the state into one district court. Proponents of court merger argue that despite the constitutional declaration of a unified court system, the New York's courts are in fact highly fragmented, with unnecessarily complex and overlapping jurisdictions that cause public confusion and increased costs for both litigants and the court system.

Opponents of court merger typically argue that the current system allows for local administrative autonomy and responsiveness to local conditions and values, but merger plans also threaten political power relationships and the perquisites of existing supreme court justices. In the past, opposition to court merger has come from supreme court justices, who are often displeased with the prospect of having their ranks swollen by a large number of new judges from less prestigious courts, and who fear that they may find themselves sitting on less interesting and “important” cases (such as family court matters or less significant civil and criminal cases) that are currently relegated to county court or the specialized courts.

The major stumbling block to reform, however, concerns how the judges on the new court would be selected. As indicated above, the courts to be merged into the supreme court have a variety of selection methods—from county-wide election to mayoral appointment to gubernatorial appointment. Most previous plans for court merger provided that after the existing terms of the “merged” judges expired, seats on the supreme court would be filled

through the traditional district-wide election. But changes in judicial selection methods necessarily results in political winners and political losers. Potential losers fought hard to maintain the status quo.

Chief Judge Judith Kaye proposed a court merger plan in 1997 that has seemingly finessed this difficulty. The proposal—while unifying all the superior jurisdiction trial courts into one supreme court—retains the selection system, including the terms of office, for all judgeships that existed when the merger took place. This nominally merged and unified court would thus be populated by judges who earn the same salary, and have the same formal status and jurisdiction, but while existing supreme court judges and their successors would continue to be elected by judicial district for fourteen-year terms, the successors to former court of claims judges on this new court would be appointed by the governor for nine-year terms; those succeeding former New York City family court judges would be appointed by the mayor for ten-year terms; successors of former surrogate court judges would be elected to ten-year terms (except those from New York City, where the term would be fourteen years), etc. At this writing, the fate of the plan is yet to be determined, though it has garnered support from legislative leaders in both houses of the legislature and from the governor. While these concessions to politics makes the reform more likely to be enacted, one wonders whether this bizarre court will be unified in more than name, or whether this reform will simply add yet another patch to the complex quilt of New York's court system.

THE EPHEMERAL FIFTH DEPARTMENT

The creation of a fifth judicial department has been a longstanding goal of bar association leaders in the tenth district on Long Island (Nassau and Suffolk counties) and state legislators representing that area. The second judicial department currently encompasses Long Island, as well as Queens, Brooklyn, Staten Island, and Westchester, Putnam, Dutchess, Rockland, and Orange counties. Proponents of a new department argue that it would reduce the heavy caseload of the second department and increase efficiency. However, creation of a new department would almost certainly favor Republicans. At present, supreme court judges in Long Island are elected in a judicial district that also includes large parts of Democratic New York City; by splitting off the heavily Republican counties in Long Island into a separate electoral district, it would be substantially easier for local Republicans to be elected to supreme court judgeships. This result would probably not be welcomed by Democrats.

A new judicial department was part of Chief Judge Kaye's 1997 reform proposals but—in another concession to political reality—the plan leaves actual boundaries of the department to be determined by the legislature. A

similar plan, proposed by then-Governor Mario Cuomo, met defeat in 1988 at the hands of Senate Republican leaders. Here Kaye's proposal has not yet been accepted.

JUDICIAL SELECTION

The intensely political system of interparty deals, patronage, and clubhouse politics is a favorite target of governmental and legal reform groups. The most frequently proposed reform is to take judicial selection "out of politics" by establishing a nonpartisan merit selection process in which competence rather than political connections will presumably be paramount. A move to such a system would necessarily reduce the resources available to reward party stalwarts. It is unsurprising that in an era of limited patronage positions, a major reduction in the already diminished supply of such jobs would be met with strong resistance from party leaders. It was undoubtedly no accident that the most recent reform proposals of Chief Judge Kaye included no changes in existing judicial selection methods.

As the foregoing suggests, even the most innocuous court reform proposals carry political implications, particularly in a state like New York, where the judicial system is so closely tied to the political system. This explains why a dry, seemingly apolitical discussion of court merger, new judicial departments, and judicial selection can raise the anxiety levels of political actors. It also explains why superficially bland administrative reforms are so difficult to put into place.

Courts in the American system of government—at both the state and national levels—are inevitably tied to politics and to the political system. Courts are staffed through a process in which politics is ever-present. Court systems must compete for resources in that most elemental of political battles, the budgetary process. And judges in all American courthouses are called upon to make decisions that vitally affect the political process and the allocation of values in society. Recognizing the central role of courts in the governmental and political system, the challenge is to maintain at the same time the separation of law and politics necessary to insulate judicial decisions from the political pressures of the day.

Notes

1. Report of the Chief Administrative Judge of the Courts, New York, Albany: State of New York, 1995, p. 7. This chapter will be concerned with New York's *state* courts, the courts operated by state government. A parallel system of federal courts, operated by the national government exists in New York, as in every other part of the United States.

2. For example, New York courts ruled on a lawsuit challenging the validity of complex Democratic primary rules that have the effect of keeping nonmainstream candidates off presidential primary ballots; they have upheld the legality of term limits legislation and have examined the legality of district boundaries for a variety of offices.

3. Ironically, one area of judicial activity in which discretion is most accepted, that of sentencing individuals convicted of criminal offenses, has been increasingly circumscribed in recent years. Mandatory minimum sentences for particular types of crimes and criminals have been enacted in both the federal system and in many states—including New York. These enactments were intended to confine judicial sentencing discretion, and they have had their desired effect. However, they have not resulted in an elimination of sentencing discretion altogether, only a shift from the judge (who has little or no choice as to sentence in a growing number of cases) to the district attorney (who, through plea bargains concerning the offense charged, can still have a substantial effect on the sentence). For an excellent summary discussion of the impact of various sentencing reforms, see Alfred Blumstein, Jacqueline Cohen, Susan Martin, and Michael Tonry, eds., *Research on Sentencing: The Search for Reform* (Washington, DC: National Academy Press, 1983).

4. The commission might be more accurately termed bipartisan. See the discussion of the court of appeals and judicial selection, later in this chapter.

5. The appellate division is the state's intermediate appellate court, discussed later.

6. For a comprehensive summary of the constitutional and legislative reform efforts concerning the New York courts since 1846, see Frederick Miller, "New York State's Judicial Article: A Work in Progress," in Gerald Benjamin and Henrik N. Dullea, eds., *Decision 1997: Constitutional Change in New York* (Albany: Rockefeller Institute Press, 1997), pp. 127–46. See also Henrik Dullea, *Charter Revision in the Empire State: The Politics of New York's Constitutional Convention*, Maxwell School, Syracuse University, Ph.D. dissertation, 1982. For constitutional reform history in New York prior to the twentieth century, see Charles Lincoln, *The Constitutional History of New York* (New York: Lawyers Cooperative Publishing, 1906).

7. John Caher, "Court System Needs Reform, Proponents Say," *Albany Times-Union*, January 22, 1998, p. B2.

8. There is some confusion in terminology regarding whether county and specialized courts fall into the category of courts of superior jurisdiction. Some would suggest that all trial courts but the New York Supreme Court are limited jurisdiction courts.

9. A separate division of the civil court, the housing court, handles these cases.

10. The existence of nonlawyer judicial officers has been a recurrent target of judicial reformers. Since the justice courts are located almost exclusively in Republican areas in upstate New York, even this seemingly nonpartisan effort to "professionalize" the courts takes on the political coloration of a Democratic attack on Republican strongholds.

11. The supreme court lacks jurisdiction where exclusive power has been given to the federal courts for certain types of cases, to the court of claims for actions against the state, and to those cases where the appellate division exercises original jurisdiction. The family, surrogate's, and other specialized courts were established primarily

to lessen the caseload of the supreme court, which still retains primary jurisdiction over cases in those courts.

12. The county court also possesses limited appellate jurisdiction in several parts of the state, through which it hears civil and criminal appeals from city courts and town and village courts.

13. An exception is in the first and second departments, where all nonfelony and civil appeals go to the appellate terms.

14. Appeals from the surrogate's courts goes to the appellate division.

15. Appeals in civil cases from the appellate term are taken to the appellate division, while criminal appeals go directly to the court of appeals.

16. Judges on the court of appeals were elected until reforms in the 1960s.

17. The court of appeals hears appeals of death penalty sentences direct from the trial court and appeals from determinations made by the Commission on Judicial Conduct. The court also appoints and oversees the Board of Law Examiners and promulgates rules for attorney admissions to practice.

18. David Lewis (president of the New York Association of Criminal Defense Lawyers), quoted in John Caher, "Taking a Conservative Swing?" *Albany Times-Union*, February 17, 1992, p. A1.

19. This official is called the chief administrative judge of the courts if the appointee is a judge; occupants of the position have—with few exceptions—been judges.

20. Chief Judge Wachtler requested a court order mandating the governor and legislature to provide the court system with an additional \$77 million beyond the amount allocated in the budget passed by the legislature, and signed by the governor. The \$77 million figure represented the difference between the amount requested by the courts and the amount allocated in the final state budget. The issue was eventually resolved in the legislature.

21. A national study of trial court delay conducted by the National Center for State Courts in 1978 assessed the Supreme Court in Bronx County as one of the slowest, but also one of the least overworked, felony trial courts among the twenty-one urban courts examined. See Thomas Church et al., *Justice Delayed* (Williamsburg, VA: National Center for State Courts, 1978). A follow up study published in 1991 suggests that while disposition time in both Bronx County and Brooklyn had improved substantially by 1987, the supreme court operating in those jurisdictions still had one of the lightest workloads (in terms of felony filings per judge) of any of the thirty-nine courts surveyed. See John Goerdts, *Reexamining the Pace of Litigation in Thirty-Nine Urban Trial Courts* (Williamsburg, VA: National Center for State Courts, 1991), p. 14.

22. This phrase, sometimes mistakenly attributed to President Andrew Jackson, was actually uttered by Senator William Marcy, in remarks to the U.S. Senate in 1832; Suzy Platt (ed.), *Respectfully Quoted* (Washington, DC: Congressional Quarterly, 1992), p. 249.

23. New York City judges used to have "confidential attendants," which one court observer noted were usually "a district leader or district leader's nephew." The four appellate divisions each controlled its own hiring for all court jobs in the division, unconstrained by civil service regulations. Greg Smith and Dan Janison, "Disorder in the Courts Agency Potential Patronage Haven," *Albany Times-Union*, October 9, 1988, p. A1.

24. This system of cross-endorsement sometimes involves agreements with the minor political parties in the district and is frequently part of a much larger set of agreements covering a variety of political offices.

25. *Albany Times-Union*, November 3, 1990, p. A10. Responding to criticism of the party control of judicial elections, Albany County Democratic Leader J. Leo O'Brien perhaps said more than he intended when he told the press, "I don't think I've ever put anybody in, mentioned anyone for a judgeship, that wasn't more than qualified. . . . Why should we change?" John Caher, "Political Squabble Fuels Judge Selection Debate," *Albany Times-Union*, September 30, 1990, p. C1. A variety of reform commissions—most notably the 1988 Commission on Government Integrity—have similarly advocated removal of judicial selection from partisan electoral politics.

26. "End Judicial Elections," *Albany Times-Union*, December 24, 1994, p. A8.

27. A particularly noteworthy example occurred in 1983, when two sitting judges of the Bronx County Supreme Court (including William Kapelman, the presiding judge) were denied renomination by the Bronx County Democratic Party. The reason given by Stanley Friedman, Bronx County Democratic leader, was a desire to foster more ethnic diversity on the court, but it was widely assumed that the two judges had lost favor in the party. They attempted to run for reelection on the Liberal party line, without the Democratic nomination, but failed to gain reelection. This affair raised the ire of the legal community, who argued that it was a direct assault on judicial independence.

28. Fund for Modern Courts, quoted in "Surrogate Politics," *Albany Times-Union*, December 20, 1986.

29. Greg Smith and Dan Janison, "Disorder in the Courts Agency Potential Patronage Haven," *Albany Times-Union*, October 9, 1988, p. A1.

30. See the discussion of court reform later.

31. The commission is made up of appointees of the governor (who selects four of the twelve members), the party leaders in the legislature (another four members), with four selected by the chief judge of the court of appeals. The appointments by the governor and chief judge are constrained in that no more than two of their four appointments can be members of the same political party, and both are required to appoint two practicing lawyers and two nonlawyers. Assuming the legislative party leaders appoint members of their own political party, the commission is likely to have an equal number of members of the two major parties.

32. Gary Spencer, "Judicial Screening Panel Rule Changes 'Troubling' to City Bar," *New York Law Journal*, December 5, 1997.

10

Other Governments: The Public Authorities

Keith M. Henderson

The Port Authority of New York and New Jersey, the New York State Thruway Authority, the State Power Authority, the Dormitory Authority, and the Metropolitan Transportation Authority are among the most important public agencies in New York State, yet their structure and financing is little understood by the public. Only when a crisis is imminent (such as the threatened bankruptcy of New York City in the 1970s or the purchase for \$1 of the \$5.3 billion Shoreham nuclear plant by an authority) does widespread attention befall this unusual form of government. There are numerous major state-level public authorities (technically, public benefit corporations) in New York State with billions of dollars worth of assets and debt. In the fiscal year ending March 31, 1997, authorities had over \$41 billion in bonds payable and short-term debt outstanding.¹

Throughout the United States these entities serve as government or quasi-government functions which can not easily be carried out by traditional government departments. Public authorities are sometimes used for those functions, particularly when long-term financing is required or business-like activities are conducted.

There are many tasks that government officials wish to do without going through general-purpose governments. They may wish to establish an entity that provides only one service (building a bridge), collects fees for that service, and maintains a clear connection between benefits and costs. They may wish to establish an entity that provides a long-term benefit (the Thruway) and can borrow money for a lengthy period of time and charge fees over time that repay the debt. They may also wish to establish an entity (the Port Authority) that will be more removed from political interference than a state agency would be. There may also be a desire to use an authority to resolve

a complicated financial problem, such as how to decommission the Shoreham Nuclear Plant on Long Island. As discussed in more detail later, the need to pay off the debt from constructing, but not using, the plant led to a search for mechanisms to provide state assistance and, finally in 1998, to the largest municipal bond issue ever undertaken anywhere.

Public authorities play an important—though often hidden—role in reconciling political conflicts in New York State. Their generous streams of revenue make them attractive targets for elected officials, and their ability to operate outside normal governmental restrictions places them under pressure to accommodate political demands, particularly those related to balancing the state budget.

The existence of these authorities is also a source of controversy. There are arguments that their accountability to the public and elected officials is too limited, and that they can pursue agendas not in keeping with the public. There are also arguments that they control huge resources that should be used for general purposes. The New York career of Robert Moses, as detailed in *The Power Broker*, best embodies the advantages and the problems with these authorities.

The Characteristics of Public Authorities

Each authority is created by a special act of the legislature. Generally, most share certain common characteristics in their legal structure, their broad administrative autonomy, and their concern with financing, constructing, or operating revenue-producing facilities or providing public services outside the normal limitations of state government. Often, their activities span several local government jurisdictions enabling them to deliver area-wide services on an area-wide basis without recourse to the other jurisdictions. Since they have no authorization to levy taxes, they must finance themselves through user charges, fees, tolls, and revenue bonds. Additional funding may be provided by general-purpose governments. Revenue bonds—unlike general obligation bonds, which are legally enforceable obligations of the state—are repaid from project revenues. Like general obligation bonds and New York's unique "moral obligation" bonds, they are tax-free securities sold to investors in the worldwide municipal bond market but of particular interest to those who otherwise pay New York State taxes on corporate bonds. The lower interest rates on "municipals" makes them competitive with other bonds and costs the issuing jurisdiction less.

Most authorities have the following features:

1. They are administered by boards or commissions most of whose members are appointed by the governor with State Senate confirmation.

2. They borrow outside governmental debt limits.
3. They are exempt from taxation for both bonds and property, although in the latter instance, payments may be made in lieu of taxes.
4. They have the power of eminent domain.
5. They have discretion in establishing charges.
6. Their employees are independent of the civil service system.
7. They can pay higher salaries to their employees (some top executives make more than the governor).
8. Their decision-making is isolated from the normal political process.

Although New York may use (and some would say abuse) the authority form more than other states, the device is quite common. In the United States, there are more than 6000 public authorities equaling about 7 percent of all governmental units.

As in other jurisdictions, there are compelling political, financial, and administrative reasons in New York for creating and sustaining authorities. However, in New York there are additional constitutional factors: the state constitution limits the number of state departments to twenty; requires “full faith and credit” backing for state debt; and—very importantly—requires cumbersome statewide referenda for increases in state debt. The authorities escape these restrictions since they are separate, largely autonomous corporations and are not operating departments of the state.

To better understand authorities in New York, it is helpful to look at them as three functional groups. The Transportation group includes the Thruway Authority and the Metropolitan Transportation Authority and subsidiaries together with other authorities that provide transportation services, including mass transit, highway, bridge, and port services. The Commerce and Development group includes the Power Authority, the Job Development Authority, and other organizations whose principal function is the development and promotion of New York’s commercial environment. The Finance group includes the Empire State Development Corporation (formerly, the Urban Development Corporation), Housing Finance Agency, Dormitory Authority, and other entities engaged in providing low-cost financing and other services to both public and private concerns.

The Transportation Group

The Thruway Authority is well-known to all motorists in New York State and the Metropolitan Transportation Authority to commuters in the New York City area.

Although created by an Interstate Compact as a bistate agency and, hence, operating under different legal authorization, the Port Authority of New York and New Jersey (originally called the Port of New York Authority) is among the largest such agencies in the world. It operates LaGuardia, Kennedy, and Newark airports, as well as Teterboro Airport in New Jersey and heliports; the Port Authority Bus Terminal in New York City; six bridges and tunnels in the New York City area; the World Trade Center (the world's largest office complex), several other trade and industrial enterprises; the Trans-Hudson (PATH) system; and as its name suggests, various marine terminals. By any standard—even the scale we are used to in New York State and New York City—it is a gargantuan operation. (It is sufficiently affluent that other governments—such as the City of New York—occasionally seek ways to tap its revenues, and it recently has been sued by the City of New York for allegedly failing to pay the city \$500 to \$600 million in back rent from Kennedy and LaGuardia airports.)² After the terrorist bombing of the World Trade Center, the authority skillfully and cooperatively rebuilt the facility. However, it has remained under attack by New York City mayors and New York State governors for a number of reasons. Mayor Giuliani has gone as far as proposing that the city create its own airport authority.³ Generally, the Port Authority has gone its own way, occasionally using differences between New York and New Jersey—whose governors each appoint half its Board of Commissioners—to its advantage. It has been criticized frequently for avoiding risky projects, subsidizing some commuters and not others, and failing to make enough of a contribution to the region's economy.

In recent years, the Port Authority's role as the foremost U.S. seaport has declined because of competition from other East Coast ports and trade with Asia through the ports of Los Angeles, Long Beach, and others on the West Coast. It claims to have adjusted to the times by investing in marine infrastructure as well as in modernization of its airports, tunnels, bridges, and bus terminals. Newark Airport, for example, has a new \$120 million terminal. Also, light rail linkages are projected between the MTA subway station at Howard Beach and the JFK Central Terminal Area, between the Long Island Railroad at Jamaica and JFK (through Howard Beach), and—ultimately—from Manhattan to LaGuardia International Airport.

Just as the Port Authority has branched out from its original mandate into a variety of economic development projects, so has the Thruway Authority in its assumption of responsibility for the Erie Canal. Part of the official explanation for this unusual arrangement was that since the Thruway Authority had almost forty years of toll-collecting experience, it would be the logical agency to implement a canal toll collection plan. A more plausible explanation is that pressure from the legislature was applied to the authority to help balance the state budget by relieving the Department of Transportation of the costs of

maintaining the canal. Aggressive efforts have since been underway to promote the canal as a recreational and tourist attraction. Federal funds have been sought and attained for the previously neglected 524-mile canal with both the Federal Department of Housing and Urban Development and U.S. Department of Agriculture—as well as other Federal agencies—infusing significant funds. Designation as a National Heritage Area was sought by western New York Congressman John LaFalce in late 1997.⁴

A third important transportation authority is the Metropolitan Transportation Authority (MTA), which operates the New York City subways (through the Transit Authority) and the Long Island Railroad, among other activities.

One interesting subsidiary of the MTA—with a long and colorful history—is the Triborough Bridge and Tunnel Authority. It operates the Triborough, Bronx-Whitestone, Throgs Neck, Henry Hudson, Marine Parkway, Cross Bay Veterans Memorial, and Verrazano-Narrows bridges; and the Queens Midtown and Brooklyn-Battery tunnels.

The spectacular Triborough Bridge, originally planned by New York City in 1929 with municipal bond financing, could not be built when the stock market collapse rendered municipal credit useless. Robert Moses, whose name recurs again and again when authorities are discussed, was able to arrange for the financing and construction of the bridge by establishing a public authority. The legendary Moses, whose career spans over forty years, had been effective in New York State government as an aid to Governor Al Smith and had already established a popular base of support by the time he began to spearhead the Triborough to completion. The obstacles he faced were considerable, including a personal grudge against him by President Franklin D. Roosevelt, who—through his Secretary of the Interior and Administrator of the Public Works Administration (PWA), Harold Ickes—vowed to withhold Federal PWA funding unless Moses was removed from the Triborough Board. The measure of Moses' aggressive political skill was that he outmaneuvered the president with carefully timed press releases that made it appear FDR was “playing politics,” ultimately forcing the president to relent.⁵ When completed—FDR reluctantly participated in the opening ceremonies—the Triborough Bridge began almost immediately to generate more traffic and revenue than even Moses had anticipated and became a model PWA project.

In later years, the authority was expanded, also under Moses' vigorous manipulating, to include other bridges and tunnels. In a revealing statement Robert Moses described the significant governmental role public authorities play:

The nearest thing to business in government is the public authority, which is business with private capital under public auspices, established only when both private enterprise and routine government have failed

to meet an urgent need, and this device is often attacked because it is too independent of daily pressures, too unreachable by the boys and therefore essentially undemocratic.⁶

In virtually every corner of the state there are bridge authorities, port authorities, or other transportation authorities. A partial listing includes: Niagara Frontier Transportation Authority, Rochester-Genesee Regional Transportation Authority, Capital District Transportation Authority, Central New York Regional Transportation Authority, New York State Bridge Authority, Ogdensburg Bridge and Port Authority, Buffalo and Fort Erie Public Bridge Authority, and Port of Oswego Authority.

The Commerce and Development Group

Some public authorities have been primarily concerned with commerce and development rather than transportation or finance. For example, the Job Development Authority was established in 1961 for the primary purpose of providing assistance to businesses which would then create jobs in New York State. Its early record of success was followed by a number of failures among its targeted businesses and subsequent job creation programs that superceded it.

In a very different field of activity, the New York State Energy Research and Development Authority was created in 1975 as a response to the energy crisis. The former Atomic and Space Development Authority was transformed into the new agency and given a mandate to accelerate the development and use of energy technologies consistent with the state's economic growth and protection of its environmental values. "Energy Research and Development" now includes everything from demonstration projects in industrial energy conservation and energy-efficient sewage treatment to site management of the former nuclear fuel reprocessing plant at West Valley, Cattaragus County.

By far the largest authority concerned with commerce and development is the Power Authority of the State of New York, which generates and transmits electric power at wholesale rates through its various facilities including nuclear power plants. Under the leadership of Robert Moses, who served as chairman from 1954 until 1962, the authority expanded its role, completing the Saint Lawrence Power Project and the Niagara Power Project. The final generating unit of the latter was placed on line on November 11, 1962. It is now part of an impressive complex that tourists on the Niagara frontier may visit. The Power Vista, a public observation building, crowns the south buttress, some 350 feet above the river, and provides a view of the 1,840-foot plant that houses thirteen hydrogenerators. In the background are the twelve units of the Lewiston Pump Generating Plant. In order to meet power demands of the

twenty-first century, upgrading of facilities is occurring, and in order to adjust to the new competitive, deregulated environment for utilities, the authority has attempted to come to terms with private utilities.

The Power Authority has also participated in the dismantling of an expensive (\$5.3 billion) nuclear facility, which was constructed by the privately owned Long Island Lighting Company (LILCO) but never allowed to operate. After much controversy and protracted negotiations, the Shoreham plant was “sold” to an authority created for this purpose—the Long Island Power Authority—for \$1.00 and decommissioned under contract with the Power Authority of the State of New York. Shoreham was built by LILCO in the 1960s when nuclear power looked promising, but with increasing threats of nuclear accidents, it was never allowed to operate. Several years of effort by the Long Island Power Authority (LIPA) to take over or break up LILCO and refinance Shoreham-related debt with tax-exempt state bonds led to the state legislature’s requirement that LIPA assume some of LILCO’s assets as well as debt. Meanwhile, George Pataki—campaigning for governor in 1994—promised to shake up the unloved electrical and gas utility (LILCO), which supplied over one million customers on Long Island.

An opportunity developed several years later when the Brooklyn Union Gas Company agreed to merge with LILCO and acquire its operations in electricity generation and natural gas, while LIPA bought its electric-transmission and distribution business plus the debts that LILCO still owed for Shoreham. Clearances were required from the State Public Utilities Commission, the Federal Nuclear Regulatory Agency, and the Internal Revenue Service and all were eventually obtained. Not until 1998 was the deal completed with the floating of the largest authority bond issue ever (dwarfing the second biggest, a New Jersey Turnpike Authority \$2 billion issue). “Muni Market Faces Turmoil from Megadeal,” was the heading in the *Wall Street Journal*.⁷

Finance Group

One of the most controversial of the finance authorities was the Urban Development Corporation (UDC)—now doing business as the Empire State Development Authority—which not only was allowed to raise its own funds but also to override local building and zoning codes. One expert has maintained that the UDC was created in order to build at top speed and, “was rammed through the legislature (by Governor Rockefeller) on a ‘message of necessity’ following the assassination of Martin Luther King.”⁸

Officially, the UDC was created to “provide or obtain the capital resources necessary to acquire, construct, rehabilitate or improve industrial, manufacturing, commercial, public, educational, recreational and cultural facilities,

and housing accommodations for persons and families of low income, and to carry out the clearance, replanning, reconstruction, and rehabilitation of substandard and unsanitary areas.”⁹ Its original focus was to provide financial aid for construction of low-income housing, industrial parks, shopping malls, sports facilities, schools, hotels, and new communities (Audubon, near Buffalo; Radisson, near Syracuse; and Roosevelt Island, in New York City). The UDC has been involved in various ways, from partial funding to lending of technical help, in the Javits Convention Center (New York City), the forty-second Street redevelopment (New York City), the Carrier Dome Stadium in Syracuse, the Grand Hyatt Hotel (New York City), the Albee Square shopping mall in Brooklyn, the Sheraton Motor Inn in Utica, and other projects.

A growing fiscal crisis compounded by curtailment of Federal housing subsidies caused an overextended UDC to default on \$100 million of bond-anticipation notes in 1975. Although this was less dramatic than some media accounts suggested (the default only lasted two months), when combined with the larger fiscal problems of New York City, it precipitated a frantic search for new financial guarantees from the state that would satisfy the bond market. The state legislature agreed to pay contractors and suppliers during the default period and then came up with a plan to bring UDC reserves up to an adequate level. As of 1977, a completed reorganization for the agency found its focus shifted from housing to economic development, a reduction in its staff, and a new state corporation, the Project Finance Agency, to purchase and refinance some UDC mortgages. Although no longer involved significantly in housing, UDC funded numerous research, cultural, recreational, and other civic facilities and—following legislation enacted in 1983—issued special obligations to finance correctional facilities and has entered into lease-purchase arrangement with the state for such facilities. In 1991, it “purchased” Attica prison from the state in a paper transaction designed to ease the state’s budget problems.

Interestingly, a controversial constitutional amendment to rein in such financing—supported by both the governor and the state comptroller—was defeated by the voters in 1995. Again, in 1997, voters rejected a constitutional convention, which might have addressed such issues. Apparently, suspicion of any Albany-controlled reform measures accounts for both defeats.

The Urban Development Corporation remains as the “parent agency” in the new Empire State Development Corporation (ESDC), which resulted from an effort by the governor—with the cooperation of the legislature—to integrate the state’s economic development agencies and “allow one-stop shopping for businesses needing assistance.”¹⁰ A 1997–98 budget proposal would complete the merger begun in 1995–96 of the State Department of Economic Development and the Science and Technology Foundation with ESDC.

Another agency heavily involved in complex financing through lease/purchase and other financing arrangements, is the Dormitory Authority. The

Dormitory Authority—as its name suggests—provides financing and construction services for student dormitories (public and private), but it also provides for many other college and university buildings, court buildings, hospitals, nursing homes, and medical research centers. Projects range from low-cost renovations of single buildings to multimillion-dollar capital expansion programs. The authority has quietly grown into one of the nation's largest public financing agencies; under Governor Pataki, it has absorbed the former Facilities Development Corporation and the Medical Care Facilities Finance Agency. It is now “tending \$21 billion in construction and finance projects, largely in health care and education.”¹¹

Another important finance authority is the Environmental Facilities Corporation, which until 1989–90 was relatively inactive. Its newer role is to run the Clean Water State Revolving Loan Fund which makes loans to municipalities at low rates of interest for construction of water pollution control facilities. As of 1996, a similar program—the Safe Drinking Water State Revolving Loan Fund—also provides low-interest loans to community water systems to finance safe drinking water projects. Municipal governments—required to meet strict environmental standards—no longer have access to direct federal grants and, hence, welcome the state funding opportunity. The federal grants are given to state entities and require state matching funds of approximately 20 percent.

Other significant authorities include the New York State Housing Finance Agency and State of New York Mortgage Agency. The latter makes low-interest rate mortgages to lower income first-time homebuyers through the issuance of mortgage revenue bonds and also provides insurance on mortgage loans.

In 1975, when New York City could not pay its debt obligations, the Municipal Assistance Corporation for the City of New York (quickly nicknamed Big Mac) was created, in conjunction with the New York State Financial Control Board for the City of New York, to rescue the finances of the city. A public benefit corporation was the instrument for aiding the nation's largest city, and although its financing mission on behalf of New York City has been completed, it continues to manage its existing debt. A similar arrangement was made for Yonkers. More recently, the Municipal Assistance Corporation for the City of Troy (Mini Mac) was created to oversee Troy's fiscal affairs.

Responding to the criticisms of finance authorities, the state legislature has taken steps to reassure the public as well as bondholders. “Capping legislation,” for example, has been enacted that limits the amount of “moral obligation” bonds that certain corporations may issue. As of 1998, this affects the Municipal Assistance Corporation, Dormitory Authority, Housing Finance Agency, and U.N. Development Corporation. The latter has issued since 1968 some \$260 million in debt to finance One, Two, and Three United Nations Plaza as well as other office space in the vicinity of the United Nations.

Local Authorities and Other Public Corporations

In addition to the three groups of state-level authorities discussed above, there are literally hundreds of housing authorities, urban renewal agencies, parking authorities, sewer authorities, water authorities, industrial development agencies, and other organizations associated with general-purpose local governments. In the larger cities—particularly New York City—a dizzying array of organizations with the legal status of public benefit corporation can be found. New York City has its unique agencies, such as the New York City Health and Hospitals Corporation, which took over operation of city hospitals in 1969, and the 1988 New York City School Construction Authority, which has built new schools and repaired and renovated existing school buildings. The Battery Park City Authority is another New York City organization intended—originally—to provide moderately priced housing through private development contracts on land leased from the city but afterward involved in commercial real estate ventures (and—at one point—an elaborate topiary garden proposal), which yielded substantial income, some of which has been returned to the city government.

Local authorities are affiliated with either cities, counties, towns, or villages and generally are similar in their functioning to state-level authorities. The oldest are the housing authorities—some of them go back to the 1920s and early 1930s—which receive revenues from tax-exempt bonds and federal and state subsidies as well as income from rental of their housing units. Related, but less important in recent years due to reductions in federal funding, are the over one hundred Urban Renewal Agencies, which were originally intended to qualify for financing under Federal Urban Renewal programs. Another grouping with large membership is the Industrial Development Agencies, which finance commercial projects intended to be advantageous for development of their areas. They issue taxable as well as tax-exempt bonds, particularly since the 1986 Federal Tax Act severely limited use of tax-exempt financing.

Public Authorities: Problems and Prospects

From the foregoing description, the careful reader can deduce the two significant problems—distinct but related—of New York's public authorities: accountability and financial integrity. Each has received considerable attention but by rather different groups. Legislative investigations, state commissions, and watchdog organizations have been very concerned with accountability of the authorities. Moody's, Standard and Poor's, and other bonding agencies have been closely monitoring the soundness of authority notes and bonds, as has the state comptroller.

In the first instance, it is clear that authorities are not held to the same standards as general-purpose governments. As in other states, the legislative and gubernatorial intent to establish “business-like” agencies with the power to issue tax-free bonds has resulted in a profusion of authorities removed from direct accountability to the public. In one positive view, “In the United States, as well as many other countries, policymakers have sought to transform the structure of pressure on government administration by creating self-financing, quasi-independent authorities (referred to also as public enterprises or government corporations).”¹² A more critical view is that these mechanisms are used by public officials to make actual public debt appear lower than it really is.¹³

In New York, clearly some authorities have taken advantage of their position and have directly thwarted the public will, usually with the collusion of the governor. On several occasions in the 1960s, for example, voters turned down financing proposals for low-income housing and slum clearance only to find the newly created Urban Development Corporation engaged in just such activities. Similarly, in 1981, voters rejected a prison construction bond issue only to have the UDC subsequently float bonds to build prisons. The practice has not disappeared in recent years.

Even more disturbing, some have charged that authorities use law about debt to protect themselves and prolong their existence. Robert Moses was able to establish legislation that an authority could not be eliminated or interfered with as long as it had debt outstanding as a means to protect the integrity of obligations to bondholders. Authorities, aware of this provision, can continue to issue small amounts of long-term debt, and prevent any intrusion into their existence, or any requests that their funds be used for other purposes.

Proposals for reform, at least as far back as the Temporary State Commission on the Powers of Local Government (1973) and the Moreland Commission (1976), have stressed the need for greater accountability and access.¹⁴ In partial response, a Public Authorities Control Board was legislated, but it was more symbol than substance. The 1990 report of the State Commission on Governmental Integrity urged creation of another Moreland Commission and suggested a variety of reforms, including a merit system (similar to civil service) for hiring, better internal control procedures, more stringent conflict-of-interest guidelines, greater openness of records and transactions, and in general, conduct by officers and employees “with a full awareness of their obligations to the public.”¹⁵ Prospects for such reforms are not good; as Annemarie Hauck Walsh has pointed out, adding formal controls has not significantly changed the role of authorities in the past.¹⁶ The ongoing controls over authorities include regular reports to the governor, the legislature, and the state comptroller; annual, independent financial audit and budgetary reports are made.

The related problem of creditworthiness of bonds and notes issued by authorities and some of the more “creative” solutions to financial problems in New York State has been addressed frequently by state comptrollers who have cautioned against fiscal gimmickry and even attempted lawsuits to redress the excesses of the state legislature and authority managements. State Comptroller Regan, in 1991, called a sale of Thruway Authority bonds to provide money to purchase the Cross-Westchester Expressway, “the worst fiscal gimmick ever in this state.” Along with the selling of Attica prison, in effect, to itself (the UDC bought it from the state for \$200 million) and similar transactions, serious questions were raised about New York State’s approach to budgeting. While some of the gimmicks have lessened in recent years, State Comptroller McCall in 1997 remained concerned: “Despite being flush with cash, New York continues to rely too heavily on debt to finance its capital spending. Too much of the debt it issues is back-door borrowing, incurred in a way that bypasses constitutional requirements for voter approval and thus results in higher interest rates. I believe that we should use debt as a tool to help stabilize our finances, and should avoid debt—especially back-door debt—when revenue growth allows it.”¹⁷

Because of the severity of the overall state debt problems the state’s credit worthiness—one of the lowest-rated states—has been in continuous peril. In 1998, the prospect of increasing that debt by \$7 billion in one issue alone—as previously discussed—did not bode well for credit ratings, even with a vibrant economy and presumably prudent Republican leadership. Throughout the last thirty or more years, however, both general obligation, revenue bonds, and other forms of debt remained—with a few exceptions—of “investment quality” and could readily be sold in the marketplace.

Thus, in recent years, authorities have been able to accommodate the demands of the bond market, and withstand criticisms based on their lack of accountability. They have bargained and negotiated effectively with other actors in New York State politics and have developed useful alliances. They have acquiesced in efforts to improve the state’s general budget, have simultaneously maintained their autonomy, and have emerged from most political struggles without suffering any of the often suggested dismantling, privatization, or downsizing measures. Generally, they are well-regarded by the interested public who may see them as flexible, business-like, and less immersed in “politics” than other parts of State government. Authorities will continue to play an important role in New York State.

Notes

1. Comptroller, State of New York, *Comprehensive Annual Financial Report for the Fiscal Year Ending March 31*, (Albany, August) pp. 11, 61. Public benefit corporations had \$36.9 billion in bonds payable and short-term debt outstanding on March

- 31, 1997, and the Port Authority of New York and New Jersey (classified by the comptroller as a "Joint Venture") had \$4.6 billion of consolidated bonds and notes.
2. Mayor's Office (New York City), Press Release #039-97, January 22, 1997.
3. Mayor's Office (New York City), Press Release #505-97, August 21, 1997.
4. "Canal Communities Get Aid," *Buffalo News*, December 13, 1997, p. C1.
5. See Robert A. Caro, *The Power Broker, Robert Moses and the Fall of New York* (New York: Knopf, 1974), a 1,200-page study of Moses. Moses is also discussed in detail in Eugene Lewis, *Public Entrepreneurship, Toward a Theory of Bureaucratic Political Power* (Bloomington, IN: Indiana University Press, 1980), and Jeanne R. Lowe, *Cities in a Race with Time* (New York: Random House, 1967).
6. Editors of *Fortune*, *The Exploding Metropolis* (New York: Doubleday, 1958), p.81.
7. Charles Gasparino, "Muni Market Faces Turmoil From Megadeal," *Wall Street Journal*, p. C1.
8. Charles R. Morris, *The Cost of Good Intentions, New York City and the Liberal Experiment, 1960-1975* (New York: McGraw-Hill, 1980), p. 37.
9. *Manual for the use of the Legislature of the State of New York, 1990-91* (Albany: Department of State, 1990), which is also known as the Blue Book.
10. State of New York, Executive Budget 1997-98 (Albany: 1997), p. ix.
11. Peter Smith, "Authority Figures," *Empire State Report*, March 1996, p. 49.
12. Jerry Mitchell, "Accountability and the Management of Public Authorities in the United States," *International Review of Administrative Sciences* 59: 477, 1993.
13. Donald Axelrod, *Shadow Government: The Hidden World of Public Authorities and How They Control Over \$1 Trillion of Your Money* (New York: Wiley, 1992).
14. Temporary State Commission on the Powers of Local Government, *Strengthening Local Government in New York*, Part 2, Albany, 1973, pp. 83-88; Moreland Commission, *Restoring Credit and Confidence: A Reform Program for New York State and Its Public Authorities*, Albany, March 31, 1976.
15. Commission on Government Integrity, *Underground Government: Preliminary Report on Authorities and Other Public Corporations* (New York: Fordham University School of Law, April 1990), pp. 5-6.
16. Annmarie Hauck Walsh, "Public Authorities and the Shape of Decision Making," in D. Netzer and J. Bellush, eds., *Urban Politics: New York Style* (White Plains, NY: Sharpe, 1990), p. 217.
17. Comptroller, State of New York, p. 1.

Part III

Public Policy

Introduction to Part III: Public Policy

Jeffrey M. Stonecash

Public policy discussions in New York are often contentious and protracted. Negotiations about what and how much the state should do are difficult and are likely to remain so for several reasons. Costs are a central issue. New York, either directly or indirectly, provides extensive public services. As the subsequent chapters indicate, very large sums of money are involved in state public policy issues. New York is among the highest in spending per capita for Medicaid and education. The state spends a great deal on a vast system of roads, bridges, and mass transit systems. In general, government spending per capita in New York is higher than almost all other states.

The sheer magnitude of many programs means that decisions to make further policy commitments in the area can have enormous impacts in subsequent years. There is also an inevitable interdependency of various decisions. Increasing funding for local schools, or health care or welfare, generally prompts the question of what this will mean for the current and future resources of other programs. While the governor and the legislature might like to proceed by considering the need for more health care, or a better metropolitan mass transit system, on its own merits, they must continually calculate how such a commitment will limit future policy options in other areas.

The extensiveness of state policy involvements also means that, directly or indirectly, a large proportion of the public may be affected by policy decisions. Efforts to change policies can affect many different groups of constituents. In some cases, these policy impacts are clear and immediate. If the state provides more state aid for local schools, it directly affects school programs and local tax rates. If the state seeks more power to approve and control Medicaid costs, it immediately and directly affects the recipients of those services. When battles develop over how much Tuition Assistance Program (TAP) aid will be provided, or how much state support will be provided to the SUNY system, it affects students and their families all over the state. In

many cases, the impacts are largely confined to the less affluent, such as when decisions are made about welfare, college aid, and Medicaid. But middle-income and the more affluent are also affected by state government. When state government provides less aid to local schools and governments, it puts pressure on local governments to raise local property taxes. State decisions about how much to support mass transit in the New York City metropolitan area affect the performance of city subways and of commuter lines from the suburbs. If this system does not work well, it makes it difficult for more affluent commuters to get to work. It also makes it more difficult for employers to rely on employees.

The policy choices of the state affect not only individuals but local governments. State government “provides” many policies by requiring local governments to provide services, and then state government distributes local aid to support these programs. The state, for example, requires that local governments provide welfare, Medicaid services, and elementary and secondary education, and then it allocates considerable state aid to support those services. Over 60 percent of the state budget is devoted to state aid to local governments, and this level of support creates an ongoing, complicated, relationship between state government and local constituencies and officials. This intergovernmental entanglement means that not only is there extensive lobbying by groups about policy decisions but local officials are continually worried that the state will not provide enough aid to support the policy requirements imposed by the state.

Finally, all the policy decisions made in New York are constrained by the recent history of economic growth in the state. While many other states have experienced steady growth in jobs and population, growth in New York has been relatively limited in recent decades. This increases concern, as conservatives argue, that state and local taxes may be too high and that state and local governments spend too much money. There is now more concern about constraining the growth of government programs and restructuring them to try to save money and to be more effective with the use of existing funds.

All these conditions make the politics of public policy contentious. For every policy area there are strong advocates arguing that the state should make more of an effort in their area. These advocates are also aware of the need to establish the merits of their area relative to others. They realize they must anticipate the widespread argument of the need to lower taxes and ease state mandates. The inevitable result is difficult choices. To indicate the scope and nature of state policies, and the issues that are involved in each area, the following chapters cover some of the major policy concerns in New York: taxes and the economy, local and higher education, public welfare, transportation, health care, and the environment.

11

The Economy, Taxes, and Policy Constraints in New York

Mark D. Brewer and Jeffrey M. Stonecash

Many public policies require fiscal resources. The policy areas reviewed in the following chapters—local and higher education, welfare, health, transportation, and the environment—all require some state expenditures. In some cases, the public dollars involved are enormous. To fund these programs, the state must acquire revenue. That prompts questions of what tax levels are acceptable, what kinds of taxes should be imposed, what tax burdens are fair to impose on individuals of different means, and whether charges for services should be relied upon instead of taxes.

The political debate about taxes has been intense and prolonged in New York. The essential question of recent years has been whether taxes and regulation are too burdensome and hurting the state's economy. The tax issue has emerged at the state *and* the local level because taxes are high for both levels of government. The economy of the state has not grown much in recent years, particularly upstate,¹ prompting even more criticism of state taxation and regulation policies. This tax debate is important because its outcome affects the resources raised by the state to support the policy areas discussed in later chapters. This chapter reviews the evolution of tax policy in the state and the steps taken in recent years to respond to this issue.

The Economy—Tax Policy Debate in New York

State and local tax levels increased steadily and significantly starting in the 1960s, and by the 1970s, New York had developed the highest combined state and local tax burden in the nation.² Figure 11.1 in the next section presents

the growth in state and local tax effort since the 1950s. Tax effort is defined as state or local taxes divided by total personal income and represents the portion of income taken by government in taxes. The increase in both of these taxes was met with strong criticism. Critics argued that high taxes make the state less attractive to business.³ They also argued that the progressive taxes enacted by the state—a higher percent of income taken at higher levels of income—were driving out the well-educated and affluent younger population.⁴

By the mid-1970s this argument had more credibility. The state's population stopped growing, and reports of a decline in jobs emerged. Later years showed significant losses in jobs. The situation became particularly serious by the mid-1970s. By then New York City and the state were facing a fiscal crisis. The practice of filling shortfalls in budgets by borrowing large sums had to be stopped as the short-term debt obligation became too large to pay back while sustaining regular operating budgets. The consequence was that the proponents of cutting taxes began to have more influence in the ongoing dialogue about tax levels throughout the 1980s.

Not everyone, to be sure, agrees that the solution to New York's problems is to cut taxes and public programs. There are those who have consistently argued that the key to enhancing the state's attractiveness to business is to have a good infrastructure and a well-educated labor force. The advocates of investing in New York have continually pushed for allocating more money to highways, bridges, mass transit, and education on the premise that it will produce an environment more attractive to business and a better trained workforce. These advocates have supported state retention of revenue, so it can provide state aid for these activities. Peter Goldmark, former executive director of the New York Port Authority, and Stanley Fink, former speaker of the Assembly, argued that the quality of infrastructure is very important for attracting business. They argued that the state should retain revenue to make sure that the state's bridges, roads, and mass transit systems are maintained. This argument has had an effect on the debate about taxes because numerous studies have suggested the state's infrastructure is declining. Democrats, led by Assembly Speaker Silver, have argued that the state is making significant progress in lowering business taxes and want to focus on improving the state's education system and infrastructure.⁵

There are also those who argue that, if anything, the state should play a larger role and reduce the burdens on local governments and school districts by assuming responsibilities for programs or providing more state aid. As discussed by Sarah and David Liebschutz in chapter 2, the state provides large sums of aid to local governments. If the state reduces its state revenue-raising activity, then relatively more of this funding must come from local governments and there will be greater reliance on local tax bases with all the

inequities that accompany such a situation. It may also mean that state funding for public transportation and education will decline.

Despite these counterarguments, tax cut proponents became even louder and more influential as New York's economy struggled during the early 1990s. Many businesses left New York because of what they considered the state's antibusiness tax and regulation policies.⁶ From 1989 to 1993, as a national recession unfolded, New York saw approximately 600,000 jobs leave the state.⁷ Even as the nation's economy began to recover, the recession in New York continued to linger. Despite some small signs of an economic upturn, unemployment remained a serious concern and the economic recovery in New York lagged well behind that of the nation as a whole.⁸ Many business leaders blamed the economy's continued poor performance on New York's policies of high taxes, burdensome regulations, and ever-rising fees toward business.⁹

The Political Response: Tax Changes

The pressure to cut taxes then has been a central issue for the last twenty-five years. When Hugh Carey became governor in 1975, it was widely agreed that the state needed to bring down its spending and taxes. At the same time that the state was experiencing these specific problems, the general political climate in the country regarding taxes shifted. Resistance to taxes, symbolized most clearly by Proposition 13 in California, increased dramatically in the late 1970s. The election of President Reagan in 1980 was regarded as another indication of the hostility to taxes in the nation.

Governor Carey and the legislature made the first of several tax cuts. The tax that has received the most attention during this debate has been the personal income tax. Politicians believe this tax is the most visible, and critics of state tax policy tend to focus on this tax. Governor Pataki also made a reduction in the personal income tax one of the central components of his economic rejuvenation plan. As a consequence, the top rate for this tax has been reduced from about 16 percent to under 7 percent. As these changes have occurred, a persistent focus has been how much individuals with different incomes should pay.¹⁰

By 1993, even Mario Cuomo, New York's liberal Democratic governor, began to admit there was at least some validity to the claims being made by business.¹¹ Cuomo proposed a package of tax cuts and regulatory reforms aimed at helping business. Business, however, argued Cuomo's measures did not go far enough.¹² Senate Majority Leader Ralph Marino, a Republican, agreed and pushed for even greater tax cuts.¹³ By 1994, the question was not whether the tax and regulatory burdens imposed on business in New York should be eased but rather by how much.

During the 1994 gubernatorial campaign, Republican challenger George Pataki repeatedly attacked the incumbent Mario Cuomo, claiming the governor's tax and regulatory policies toward business were responsible for the severe job loss and poor economic performance that New York had suffered.¹⁴ After Pataki won the election, he claimed a mandate to improve the economic climate in New York: "On Election Day, the citizens of New York looked to the future and chose a new direction for state government—a path of less spending, lower taxes, fewer regulations."¹⁵ Pataki has attempted to act on his perceived mandate, making the rejuvenation of the state's economy through lower taxes and fewer regulations on business one of the priorities of his administration.¹⁶

Pataki acted quickly on his commitment to lower taxes. In the 1995 session he proposed and was able to win significant tax cuts. He made cutting regulations a high priority. Helped along by the national recovery from the recession, New York's economy has improved. From when he took office in January 1995 through September 1997, 225,000 new jobs were created in New York State.¹⁷ Perhaps more importantly, Pataki has been successful in shifting the focus of the debate to how much taxes and regulations in the state should be cut. Assembly Majority Leader Michael Bragman, a Democrat, has spoken often about helping business by reforming regulations and lowering energy costs.¹⁸ Speaker of the Assembly Sheldon Silver took a group of his fellow Assembly Democrats to visit the Eastman Kodak Company, one of the few remaining manufacturing giants in New York State. While there, Silver claimed credit for tax reductions and spoke of "making New York more business friendly."¹⁹ Current political rhetoric from both major parties is framed mostly in terms of helping business and improving New York's economy, and whether enough has been done to reduce taxes and regulations.

Despite improvement since Pataki took over as governor in 1995, New York's economy still lags well behind the rest of the nation as a whole. In his 1997 annual report, Democratic State Comptroller H. Carl McCall ranked New York forty-eighth out of all fifty states in terms of job creation. In a nationwide study, the nonprofit Corporation for Enterprise Development cited New York as one of the nation's "weakest performing economies."²⁰ Republicans, led by Senate Majority Leader Joseph Bruno, wanted to cut taxes even further.

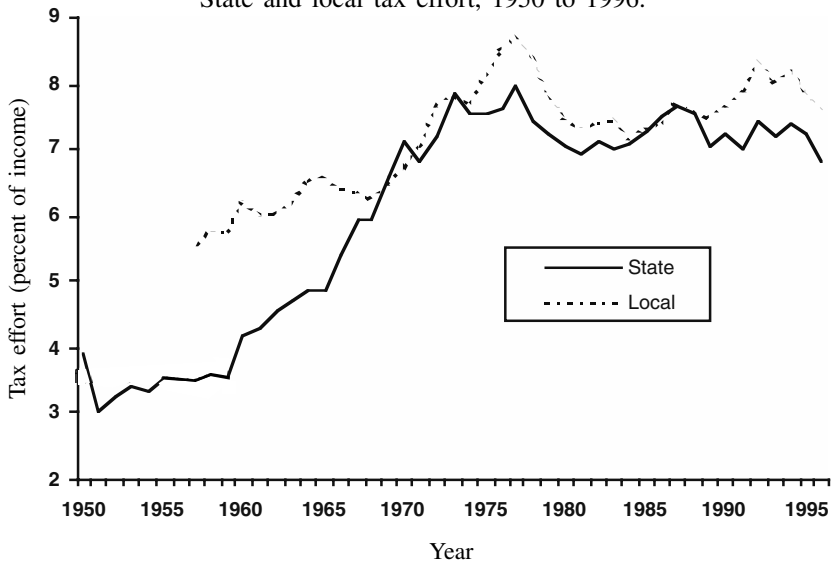
The Effects of Cuts

Despite the various cuts, state and local tax efforts have declined only modestly since they peaked during the early 1970s. Figure 11.1 indicates state and local tax effort over time.²¹ During the 1950s, state tax effort was consistently

lower than local tax effort. Most services were paid for with local tax dollars, and state aid was relatively limited. During the 1960s, state tax effort climbed significantly as the state provide more aid and assumed direct responsibility for some services. For a few years during the 1970s, the state was raising more in taxes than local governments, but since then, state taxes have declined somewhat, leaving local taxes higher than state taxes. Perhaps most important to the tax debate is that the state's high tax levels are due to the combination of state and local taxes. While much of the debate has focused on state taxes, local taxes in New York continue to be very high.²² In most states, beginning in the 1960s state taxes surpassed local taxes, and as state aid increased local taxes declined.²³ That has not occurred in New York.

Because overall tax levels have not declined, critics continue to argue that taxes in New York are too high. A 1996 report by the National Taxpayers Union stated that New York had the second highest per capita tax burden in the nation.²⁴ Critics also argue the state is too generous in its programs, and the commitments of the state are consistently beyond the revenues the state generates.²⁵ Local education is very expensive, with school personnel receiving some of the highest salaries in the nation. Critics argue that there are too many mandates on local governments, and that mandates are costly.²⁶ This mandating has been a source of complaints by local officials for some time. All these arguments lead to the conclusion that the state must cut back. The

FIGURE 11.1.
State and local tax effort, 1950 to 1996.



Senate, held by the Republicans, and the Business Council have consistently made these arguments.

There continue, however, to be strong supporters of the state playing a strong, and even greater role. As discussed in the following chapters, there are enormous inequalities among local schools in the financial resources they have. Some of Medicaid costs continue to be paid by local property taxes. Large segments of the population are struggling with obtaining jobs and becoming regular participants in the labor force with adequate health care. Advocates who work in these areas argue that the state should do more, rather than less.

A Political Response: Charges and Fees

While tax levels have been restrained in recent years, more revenues have been raised through other means. State officials have responded by increasing the role of charges as a means of raising revenue. Faced with strong resistance to general taxes, more fees have been imposed, and those already in existence have been increased. Fees for car registration and driver's license have increased. Tuition at state universities has increased. New fees have been imposed in a wide array of areas.²⁷

The consequence has been a significant increase in the role of charges and fees. In 1957, New York State and its local governments raised \$599 million in revenue from charges and miscellaneous sources. Most of that total was raised at the local level. In 1994 the state and its local governments raised \$20.9 billion in charges and miscellaneous revenue, with 60 percent of that raised at the local level. Charges and miscellaneous revenues have become a significant proportion of state and local revenues.²⁸ In 1994, 19.5 percent of state general revenue from its own sources (not including federal aid) came from this source. For local governments, the percent was 25.9.

Charges represent a nontax approach to paying for government. Rather than pay for services out of general taxes, citizens who wish some service (a health test, use of a park, education at a community college or a state university) or a right of access (driver's license, hunting or fishing license) pay directly for it. The growth of fees has drawn very mixed reactions. Advocates argue that citizens who use services should pay for them. It makes citizens who want services aware that it costs the state money to provide them. It makes users of parks and education repay some of the cost of benefits they receive. Hunters and fishers must help pay for the state activities that accompany these sports. It also serves to constrain the growth of some services beyond what people "really" want. The essential argument is that government engages in many activities that provide direct benefits to individuals, and there should be some connection between benefits and costs in these areas.

Not everyone, of course, is happy with the growth of charges. Critics think that activities of general social benefit should be paid for through general taxes. Others argue that politicians have gradually increased the role of charges because there is so much attention to tax effort indicators. Charges and fees receive much less attention. Fees in particular have drawn sharp criticism.²⁹ The Business Council has argued that they make doing business harder, and they are just another (but less obvious) way for politicians to find money to spend.³⁰

The evidence is mixed on the accusation that this is a hidden way to raise money and that the real extraction from citizens is higher when all sources of revenue are considered. If all sources of state revenue are divided by total income, overall state effort has been flat for over a decade. It has gone up at the local levels, where charges and fees have become more significant.³¹

The Ongoing Debate and Policy Limits

The ability of the state to provide more funding for programs is limited by the amount of revenue the state can generate. As of now, the dominant view among state officials is that taxes should not go higher. Indeed, a substantial proportion believes that they must be cut. The crucial point is what this has done to public policy debates. The current climate makes it difficult to respond to problems just by raising more money through taxes. Additional revenues must come primarily from economic growth.³² It also means that significant short-term responses to specific policy problems can come only from reallocating resources from other areas.

Notes

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12

The Politics of Local Education

Edward Schneier

Public elementary and secondary schools in New York State enroll more than 2.5 million students at an average cost to the taxpayers of more than \$9,000 per student.¹ One of every three dollars in state funds expended every year and nearly half the operating budgets of local governments are devoted to schools. The more than \$25 billion New Yorkers spent in 1998–99 to educate their children exceeds that spent on all nonhealth government services combined. Indeed, if we add the amounts expended to support various job training programs, programs for the mentally disabled, police training, private schools, and higher education, New Yorkers will devote nearly half of their tax dollars to education. What do they get for it?

The State of Education in New York

It can plausibly be argued that New York has the finest elementary and secondary school system in the country and perhaps the world. It can also be argued that it has one of the worst. It is certainly among the most expensive: ranking third of the fifty states in per capita expenditures. New York annually graduates about 6 percent of all high school graduates in the United States. In 1996, these 162,000 New York graduates wrote 11 percent of the nation's advanced placement exams, comprised more than 9 percent of the students commended by the National Merit Scholarship Program, and won 40 percent of the highly prestigious Westinghouse Science awards. Graduates of New York's public and private schools averaged ten points higher on combined College Board subject tests than U.S. graduates of the other fifty school systems. Consistently since 1991, almost half the graduates of New York's *public* schools have entered four-year college degree programs, and more than eight in ten have pursued some form of postsecondary education.

For all of these achievements, the state's educational system has also badly failed many of its clients. In 1996, fewer than one third-grader in three demonstrated mastery of a standard test in either reading or mathematics; one in five could not read with comprehension even the easiest paragraph. While the more advanced graduates scored above the national norm on the advanced tests, the broader pool of students taking the basic Scholastic Assessment Test did far less well: among the fifty states and the District of Columbia, New York ranked forty-second.² It ranked forty-third in terms of estimated public high school graduation rate.³ Collectively, New Yorkers were fifth in the nation and above the national average of 7.2 percent in the proportion of the state population holding advanced degrees, but also above the national average of 24.8 percent in those who are not high school graduates. (The New York figures are, respectively, 9.9 percent for advanced degrees and 25.2 percent for dropouts.)⁴

For parents and students in New York, these are—as in Dickens's famous portrayal of France on the eve of Revolution—"the best of times and the worst of times." Many of those in the best of the state's schools, public and private, have access to sophisticated learning technologies, well-stocked libraries, small classes, and many of the most-dedicated, best-educated (and best-paid) teachers in the world. At the other end of the scale, the kinds of unbelievably rundown, overcrowded, underequipped, and poorly staffed facilities so vividly described in Jonathon Kozol's *Savage Inequalities*,⁵ tend rather predictably to produce underachieving students. Inequalities such as these are not unique to New York. Indeed, it was the incredible differences between the school systems of wealthy states like New York and poor states like Mississippi that led in the 1940s and 50s to a national push for a massive restructuring of the entire system of school finance. In New York, as in the nation, arguments that are ostensibly about abstract issues of who should pay for education are fig leaves for more complicated questions of how resources should be allocated. The more localized the system of school finance, the more inequitable the outcomes. The key question in educational policy is this question of allocation. It can be stated in two ways.

The first statement of the question, raised from a more "liberal" perspective, focuses on the question of equity: how, it asks, can we justify a system of public schooling in which a child fortunate enough to live in a community with high property values receives a better education than one from a less affluent area? The problem with a system of locally funded schools, the liberal perspective suggests, is that it puts children already disadvantaged by poverty into inferior schools that reinforce their disadvantages. From a conservative perspective, the question is less one of equity than of choice: if parents in a more affluent community are willing and able to tax themselves enough to pay for quality schools, what business is it of the government to

tell them that they cannot, or that some of their school tax money must be sent somewhere else? As James Coleman once put it,

The history of education since the industrial revolution shows a continual struggle between two forces: the desire by members of society to have educational opportunity for all and the desire of each family to provide the best education it can provide for its own children. Neither of these desires is to be despised; they both lead to investment by the older generation in the younger. But they can lead to quite different concrete actions.⁶

In practice, the issue is seldom so starkly put. Complete educational equality is not a practical goal, if only because of different standards of living. A teacher salary that would be relatively high in rural, upstate Romulus would be near poverty level in an affluent downstate suburb. Bussing costs, on the other hand, while trivial in Manhattan are not at all insignificant in Romulus. Other educational issues—particularly those regarding the proper role of the schools in the teaching basic values, religion, sex, drug awareness, and so on—are not unimportant. Nonetheless, the question of equity lurks at the core of most issues associated with education. And no matter how the problem is monitored, New York, despite its liberal reputation, has one of the least equitable systems of school finance in the United States. Simply put, the children of New York's wealthiest communities attend schools that are significantly better—better funded, better equipped, better staffed, and better run—than those attended by the children of the poor.

Public Education in the United States

Free and universal public education is, for all intents and purposes, an American invention. Even before the Constitution officially created a United States, the Northwest Ordinance adopted in 1787, set aside lot number 16 of every township for the endowment of the community's schools. The Homestead Act of 1862 reinforced the program. Having put the system in place, the federal government effectively left the field, however, and for more than a century education became a quintessentially local public policy. Following the lead of neighboring Massachusetts, New York was in the forefront of the states in establishing universal public schools. By the beginning of the eighteenth century almost every community in the state had a locally supported free school.

New York was also, with an 1784 law creating a State Board of Regents, among the first to establish a strong state presence in the field. The common

school law of 1812 established a statewide system of public schools, created a common school fund to aid local school districts, and appointed a statewide superintendent of common schools to prod local officials to establish schools and submit reports. Though strongly resisted by proponents of local control, the Board of Regents gradually acquired the power to set statewide standards for education and training and—in cooperation with the legislature—to provide sufficient resources to make sure that all communities in the state would have access to at least some minimal standard of education. Although day-to-day school control remains in the hands of local governments, most states have followed New York's lead in creating some sort of centralized standards-setting organization. These tendencies toward the centralization of school governance arose in tandem with the increasingly complex nature of the labor market, population mobility, and the growing diversity of local communities that were by-products of the industrial revolution. The push for tax-supported education, though quickly dominated by middle-class reformers, had its origins among urban workers who saw the education of their children as means of rising out of poverty. Reformers saw the school system as a means toward the economic betterment of the poor, as a key tool in their socialization, and—as the proportion and diversity of immigrants grew—Americanization. By the early 1920s, for the first time, more students than not continued their education into high school, and by the end of World War II, nearly every state outside of the South, had a system of universal, free education in place.

As public education spread, so did differences between systems. Plagued by poverty and bedeviled by the issue of race, the southern states in particular lagged far behind. Among the watershed programs of Lyndon Johnson's Great Society, those embodied in the Elementary and Secondary Education Act (ESEA) of 1965 were among the most significant. Despite decades of strong public support for the concept of a federal role in financing schools, the legislative history of ESEA reads like a case study of how dedicated minorities can tangle up the process. Proponents of federal aid had to cope with a long tradition of local control. Fiscal conservatives were also opposed to any new commitments of funds. But it was neither conservatism nor federalism so much as the seemingly tangential issues of race, religion, and redistribution that led to continuing legislative failures in the 1940s and 1950s. The early push for federal aid to education came largely from southerners who saw the infusion of federal funds into the schools as a means of breaking the cycle of poverty that plagued the region. Northern liberals, though they recognized that their districts would benefit less from any needs-based federal aid formula, joined the fight as a matter of principle. By the 1950s, it appeared as if a North-South coalition had the votes to put a program in place. But then came the Supreme Court's 1954 decision integrating the schools. When northern liberals, white and black, linked their support of federal aid

to the quickening of school integration, white southern support for the bill dried up. A bill allowing funds to flow to segregated southern schools, conversely, lost the votes of the liberals. When congressmen from heavily Catholic districts were confronted by proposals that excluded the funding of parochial schools, they voted no; yet a bill that included aid to parochial schools could not have passed either. "The streams of opinion that favor Federal aid," as Robert Bendiner put it at the time, "have simply failed to merge."⁷

President Johnson's legislative skills played a major role in passage of ESEA, and prior passage of the Civil Rights Act had somewhat defused the issue of race. A compromise that allowed some indirect funding of parochial school students (as opposed to parochial schools as institutions) helped bypass that issue.⁸ With these impediments removed, and the principal of federal aid established, a growing federal role in funding education seemed certain. The shock administered to national pride when the Russian Sputnik "beat" the United States in the early stages of space race put the issue of education high on the national agenda, and by the time Richard Nixon was elected to his second term in 1972, the federal share of spending on elementary and secondary education had grown to almost 10 percent. The goal of the National Education Association—a system of school finance that was one-third federal, one-third state, and one-third local—seemed obtainable.

It was not to be. As with many Great Society programs, the core constituency of federal aid to education was essentially founded in poverty, liberalism, and the Democratic party. Proponents of federal aid wanted not simply to raise the overall amount spent on education but to redistribute both the burden of payment and the allocation of funds. Federal aid was designed to shift the tax burden away from one based largely in local property taxes to the more "progressive" federal system, which because it was founded in a progressive income tax, took more from the rich than the poor. In allocating funds, moreover, the 1965 bill targeted poor districts in particular. Title I of the 1965 bill, which remains one of the most enduring legacies of the Johnson years, specifically targets federal aid to high-poverty school districts. Even the formulas for calculating general school aid were tilted toward the poor, giving more to Mississippi than to New York and, within New York, more to the South Bronx and Romulus than to Scarsdale or Great Neck.

New York was, in purely monetary terms, a big loser in the 1965 act: as a wealthy state it sent more than its "share" of tax monies to Washington and got less in return. The bill passed because southern Democrats—freed from the race issue by passage of the 1964 Civil Rights Act—saw the economic opportunities it embodied, because urban progressives saw the bill as both good for their constituents and ideologically progressive, and because suburban liberals were more interested in establishing the principal of federal aid than in how the money was allocated. "This was," as one liberal Democrat

put it, “a battle of principle not substance, and that is the main reason I voted for it.”⁹

To the extent that the 1965 battle was less one of substance than principle, contemporary fights over educational policy have reverted to form. The so-called “devolution revolution,” returning the powers of government to states and localities, combined with sharp cutbacks in federal funding, has reduced the federal share of school finance in New York to less than 4 percent. While Title I funds continue to help the poorest of the state’s poor districts, the amounts are generally too small to have significant equalizing effects. The idea of using the leverage of federal funding to level the educational playing field has run out of steam.

Although its share of educational funds has shriveled, the federal government remains a player in the education game. Federal court rulings on school prayer, bussing, and integration remain in force. There are also a variety of unfunded mandates in effect that impose requirements, sometimes costly, on local schools without providing the concomitant funding. The most significant unfunded federal mandates derive from the 1990 Americans for Disabilities Act, which prohibits discrimination against the physically, emotionally, and mentally disabled. Sometimes backed by court orders, school districts have been required to install ramps and special restroom facilities, to provide special instruction for the blind and hearing impaired, and special education classes for those with other learning disabilities. Since many of these programs are mandated by state law as well, any attempt to estimate the costs to local schools of these federal mandates is little more than a guess, but they are clearly not insignificant. In some rural communities upstate, a single disabled student may require a school either to provide a special tutor or transport the student to an appropriate school. It is not at all uncommon in New York to bus or even fly one or two students fifty or a hundred miles a day in order to provide access to the special education programs their disabilities demand.

School Governance in New York

School governance, as in most states, is historically and rhetorically a responsibility of local governments. Except in the Big Five cities (Buffalo, New York, Rochester, Syracuse, and Yonkers), elected school boards, working with school superintendents that they appoint, prepare the annual budgets and establish the essential priorities of the state’s more than seven hundred school districts. Each year, local school boards submit their proposed budgets to the voters who can vote either yes or no. If the voters reject the board’s proposal, they must try again until they get it right. Local school boards, bounded by

their need annually to receive the approval of the voters, have the essential power to decide which schools will be allowed to spend how much on what programs. In theory, these seven hundred or so local boards have the power to hire and fire teachers, principals, crossing guards, and custodians; to buy books for the library; and to decide whether or not to finance a football team, a debating society, or a senior prom. In the Big Five cities, school boards are appointed, and their budgets are neither separate from general municipal budgets nor subject to approval by the electorate. But these municipal school boards, like their smaller town counterparts, have the theoretical power to run the schools within their jurisdiction. In practice, both these Big Five boards and local school boards in the rest of the state are subject to a number of legal and practical constraints that make the concept of local control somewhat less important than formal titles would suggest.

Foremost among the restrictions on local control are a rich variety of legislative statutes and rulings from the Board of Regents designed to guarantee minimal standards. By state law, every resident of the state under the age of seventeen must go to school, every school district must provide schools for these students. And these schools must offer a prescribed list of courses, be open a minimum number of days, and provide prescribed levels of health and counseling services, special classes for the handicapped and learning disabled, school lunches meeting both federal and state nutritional standards, and so on. Most of the basic rules governing the curriculum are set by the Board of Regents, and although local school boards hire and fire teachers and administrators, they can only hire full-time people who have been licensed by the board. Every high school student in New York, moreover, must take Regent's exams as part of their graduation requirements, and—since in 1999—they must pass the exams before they can be promoted to the next grade. Whether they like it or not, teachers and administrators—knowing that their work will be judged in part by how well their students do on these standardized tests—tend to structure their courses around the Regent's exams. Local control is further attenuated by a rich and growing variety of statutory requirements that mandate inclusion in the curriculum of such things as sex education, the Holocaust, and the Irish potato famine; that prohibit smoking or the possession of weapons on school grounds; require display of the American flag and daily recitation of the Pledge of Allegiance, and so on. However much lip service members of the legislature may give to the abstract principle of local control, they have not been at all hesitant to require schools to enforce whatever current values they judge to be politically correct.

The key institution in the centralization of education in New York is the Board of Regents of the University of the State of New York, established in 1794 and expanded and extended in nearly every subsequent draft of the State Constitution. It is a unique body. "Comparative research has found no other

state in which a single education authority has been assigned, either by constitution or by statute, the breadth of responsibilities assigned to the Board of Regents."¹⁰ It is, at once, the governing board for elementary and secondary schools, with the power to appoint and oversee the Commissioner of Education and the Education Department which he or she heads; the body with the power to set standards for public and private schools, including colleges, universities, secretarial schools, etc.; the licensing board for nearly all of the state's professions, from architects to zoologists; and the overseeing agency for libraries, museums, and public radio and television. The board is unique not only in the scope of its powers but in its independence from both executive and judicial control. Unlike the thirteen states where an appointed commissioner governs education, the sixteen in which the commissioner is elected by the people, or the twenty in which an elected or appointed board names the commissioner, New York's top educational officials are chosen by the Board of Regents, which is elected by the legislature. Because of its unique constitutional status, the Board of Regents in New York has seldom had its decisions effectively challenged in the courts. "The Court of Appeals," as Stone summarizes the controlling case,

has held that a purpose of the constitutional and legislative system for public school governance is to make all matters pertaining to the public school system within the authority and direction of the State Education Department and to remove them so far as practicable and possible from controversies in the courts.¹¹

The sixteen Regents, who are paid the munificent sum of \$24.00 a day for their labors, are elected by a joint session of the legislature from each of the state's twelve Supreme Court districts, and four at large, three of whom traditionally come from New York City. Because the Democrats have a considerably larger numerical majority in the Assembly than the Republicans have in the Senate, the Speaker of the Assembly essentially chooses the Regents in consultation with his fellow Assembly Democrats and the minority leader in the Senate. In recent years, to protest their not being consulted in the process, the Republicans have boycotted the joint sessions in which new regents are elected.

Politically, then, the commissioner of Education for the State of New York is appointed by a group selected not by the governor but by the Democrats in the legislature. A governor's ability to select his or her department heads has been cited by most students of comparative state politics as an attribute that helps define New York as a strong governor state. Although New York does have an independently elected comptroller and attorney

general, the really important exception to the strong governor model is the commissioner of education if only because he or she is the only “line” or program-oriented executive official that the governor cannot hire or fire. This independence of the Regents and of the commissioner from gubernatorial control has been a source of some frustration to most governors, but it has been particularly rankling to Republican George Pataki to have the head of one of his largest agencies headed, in effect, by a Democratic appointee. The governor’s ability to affect educational policy thus comes almost entirely through the Division of the Budget, which produces some interesting dynamics.

In broad terms, of course, the Education Department’s budget is defined by the budget adopted by the governor and legislature. But while the Education Department has the right to fill any offices authorized by the budget and to spend money on programs authorized in the budget, nobody actually gets paid until the Division of the Budget signs off on the expenditure. While the governor of New York does not, technically, have the power to impound funds authorized in the budget, practice varies. The Court of Appeals has held that the governor does not have the power to withhold funds duly earmarked for local governments, but the operations of state agencies are more ambiguous, and here the Division of the Budget has shown an increasing willingness to play hardball. The Regent’s ability to spend budgeted funds has come under increasing scrutiny, with more and more specific allocations delayed or actually blocked by the Division of the Budget.

As the Board of Regents has come to occupy a more important position politically, members of the legislature have become more attentive to the office. And as the chairman of the Assembly Education Committee recently put it, “The fact that the Board of Regents has become more noticeable, more relevant, has made the job more attractive.”¹² Historically, Assembly speakers have tended to defer to area legislators in choosing Regents from their part of the state, and the tendency was to regard the office as a minor patronage plum. With the Regents becoming more assertive, however, groups like the teachers’ unions have become increasingly active in pushing candidates of their own, and legislators have become increasingly interested in placing on the board persons who will stand up to the governor if conflicts arise.¹³

Spending More (and Enjoying It Less?)

Education, perhaps more than most public services, suffers from what some economists call the Mozart problem. When Mozart wrote his four flute quartets

in 1777 and 1778, it took a skilled shoemaker something on the order of two days to craft a pair of shoes. Today, it takes only a few person-hours of labor to make a comparable pair of shoes. Even if the capital and material costs of the modern shoemaker are higher than in the eighteenth century, the modern shoe is far more efficiently produced than it was in Mozart's day. Comparable savings have been made throughout most of the industrial sector and in many service industries as well.

But consider the Flute Quartet in D. It still takes four musicians almost fifteen minutes to play it. It might be possible to play it a little faster, maybe even eliminate the viola, but it won't be the same piece of music. While there have been some technical advances in our methods of instruction, it is almost as difficult to streamline education as it is to make Mozart more efficient. For every innovation in distance learning, in electronic classrooms, in new forms of media, moreover, the costs of new teaching tools seem to rise at an exponential rate. Computers and laboratory materials become obsolete at an astonishing and ever-faster pace. Not only are the prices of books far outstripping consumer prices more generally, but the rate at which they become obsolete continues to accelerate. A biology text from the 1940s would have served a 1960s student fairly well. More than half of the material in a textbook of the 1980s would not have been mentioned in 1960. Not surprisingly, school systems increasingly set higher standards of substantive background for teachers as well. And teachers are, by and large, staying ahead of inflation and becoming better paid.

Given all these constraints, the public is not entirely convinced that they are getting quite as good a flute concerto for their high-priced recital tickets as they used to. In public opinion polls, Americans generally give good, but not outstanding, grades to their own schools, but they are considerably less impressed with schools in general. It is not much of a stretch to attribute similar attitudes to New Yorkers. A 1997 national survey, Rose, Gallup, and Elam found the public grading the schools as follows:

TABLE 12.1.
Public grading of schools.

Grade	Schools in this community	Schools in general
A	10%	2%
B	36%	20%
C	32%	48%
D	11%	15%
Fail	6%	6%
Don't know	5%	9%

While this hardly constitutes a ringing endorsement of public education, the tendency of the overwhelming majority (78 percent) to give their own schools passing grades of C or better indicates, on the one hand, a fairly high degree of general satisfaction. “American support for public education,” on the other hand, “is fragile and porous. Although many people voice initial approval of their own local public schools, this support disintegrates at the slightest probing.”¹⁴ Educators are, in general, puzzled by these negative assessments, particularly since most of the objective indicators have been going up and the dramatic cost increases of previous decades are leveling off. The gap between attitudes toward those schools people know something about and those where they have no personal knowledge suggests that hostile media coverage of the schools may be at least partly to blame, and there is no doubt that public education has had a worse press than it deserves. And even as other agents of socialization—television in particular—have become increasingly pervasive, we still tend to blame the schools for social pathologies and to load them down with new social responsibilities from drug and alcohol training to sex education, patriotism, environmental awareness, and group relations.

Whatever the reasons, the voters have shown a growing willingness to reject measures to increase school funding. Local boards face an increasingly skeptical voting public in presenting their annual budgets, and the statewide rejection of a school construction bond issue in 1997 marked a rare time in New York State politics when the public rejected a school-related spending proposal. Although advocates for education have been notorious bears, bemoaning the lack of public support for school finance, the reality of education politics was for many years extraordinarily bullish. Allen Odden, noting that “predictions of education funding increases always seem to be pessimistic,” showed instead that for the four decades between 1950 and 1989 “funding per pupil (after adjusting for inflation) has risen by a minimum of one-third and up to two-thirds.”¹⁵ The most dramatic gains came in the 1950s and 1960s when current expenditures per capita increased, respectively, by 44 and 69 percent over each decade.¹⁶ Even when we adjust for inflation, the gains were substantial and the pattern in New York, as shown in Table 12.2, closely paralleled national trends. But although real spending per pupil continued to rise strongly in the 1970s and 1980s, real spending per pupil (adjusted for inflation) actually dropped in the early 1990s.¹⁷ Ironically, in other words, concern about school costs rose even as actual costs were leveling off.

Whether these figures on expenditures relate meaningfully to the quality of education is a subject of continuing debate. The public clearly believes that the amount of money spent on local public schools does explain why some schools are better than others. A 1997 Phi Delta Kappa survey found

TABLE 12.2.
Constant dollar expenditures per pupil in
New York and the nation, 1970 to 1995.

Year	Expenditures per pupil (United States)	Net change	Expenditures per pupil (New York State)	Percent net change
1970–71	\$3099	–	\$4,290	–
1975–76	3653	+17.8%	5,089	+24.7
1980–81	3895	+6.6	5980	+17.5
1985–86	4675	+20.0	7,200	+20.4
1990–91	5352	+14.5	8,555	+18.8
1992–93	5296	–1.0	8,359	–2.3
1993–94	NA	–	8,535	+2.1
1994–95	NA	–	8,574	+0.5

Source: National figures are taken from a report by the General Accounting Office, *School Finance: Trends in U.S. Education Spending* (Washington: Government Printing Office, 1995), p. 42. New York State figures were calculated by the author using the national Consumer Price Index in constant 1992 dollars, from information provided by the Information, Reporting, and Technology Services Team of the State Education Department.

62 percent of those surveyed agreeing that dollar amounts were “very important,” 29 percent “quite important,” and only 8 percent saying that money had little or no importance in distinguishing one school from another. Although student performance in general tends to be highly correlated with increased spending, scholars are generally reluctant to suggest that increased spending necessarily makes for better education. Students from affluent homes in supportive communities do better; they also tend to go to schools that are better funded. Sudden infusions of money, moreover, may have little immediate impact. If, for example, teacher salaries are doubled but keep the same tenured teachers, it will be a long time before market forces begin to attract better instructional personnel.

Opponents of increased spending on public elementary and secondary schools sometimes cite the better academic records of private and parochial schools in providing higher quality education at lower cost. Studies of public schools, moreover, have yielded widely discrepant findings on the connections between money and performance.¹⁸ What these studies show, if nothing else, is the complexity of the research problem. Even the data, though carefully compiled and accurately reported, are suspect. Most studies, for example, use the aggregate per pupil spending figures provided by the states to evaluate costs. What they seldom account for are the tremendous variations

between school districts in the amount of money that actually goes into instruction. While the costs of administration, transportation, and other noninstructional costs are far lower than conventional wisdom suggests—just over 20 percent in New York City and 24.4 percent statewide in 1994–95—it is not always clear what these numbers mean. New York City, for example is very low (2.3 percent) compared with non–Big Five districts (5.1 percent) in the percentage of disbursements going to debt service. While some might see these figures as illustrative of the city’s frugality, others might see it as an indicator how badly the city has let its infrastructure decline.¹⁹

Some noninstructional costs, similarly, might be indicators of high rather than low-quality schools: schools without books or computers, for example, don’t need librarians or computer technicians. Most importantly, the raw data do not show us what kind of education is being financed. Here, the major problem lies with special education, which can be enormously more expensive than ordinary classroom instruction. Whether legitimately or not, poor districts, particularly those in urban areas, tend to define higher percentages of their students as learning-disabled. In the Big Five districts in 1994–95 more than 45 percent of learning-disabled students spent more than 60 percent of their time outside of general classrooms; the average for the rest of the state was 27.2 percent.²⁰ If you add together the costs siphoned off to special education, the 20 percent that typically goes to administration, transportation, security, school lunches, counseling, fringe benefits, maintenance, debt service, and so on, the amount actually spent on regular classroom education can get quite small. One study of the New York City public schools estimated that as little as \$2,308 or 29.2 percent of the \$8,050 per pupil budgeted actually went for classroom instruction of regular education pupils.²¹

What most confounds attempts to relate levels of expenditure with student performance is the problem of what statisticians call covariance. The best single predictors of school success, it is generally recognized, are rooted in families. Highly motivated children from highly motivated families, living in home environments that encourage and facilitate learning do well even in bad schools. Children from homes that neither value education nor provide environments that permit study time tend to do poorly even in good schools. Peer pressure also has an effect. One of the best ways to increase student motivation is to put those with low ambitions in classrooms with others whose motivations are high. At the other end of the scale, as the State Education Department put it, “Inappropriate educational experiences in any one of the three domains contributing to education—school, family, and community—may result in a child being educationally disadvantaged.”²²

The problem of covariance arises because these three domains tend to vary together: as family income rises so, as a general rule, does its commitment to learning. Higher income families, moreover, tend to live in communities

where other families similarly value education and where the schools have the resources to spend more. Thus, if we were to find, as we generally do, that the more expensive school districts produce better performing students, it is not always possible to tell how much, or even whether, these better outcomes are the consequence of things that happen in the schools, at home, or in the community. Although critics of public education frequently cite the putative superiority of private and parochial schools, whatever differences there are tend to fade dramatically when we control for the socioeconomic backgrounds of the students. One recent examination of schools in New York's Capital Region (the four counties surrounding Albany), for example, showed that the academic ratings of the area's nonpublic institutions—pretty much like their public counterparts—mirrored the socioeconomic status of the students. Scores at Saint Casimer's parish school, for example, were similar to those in the Arbor Hill elementary school, which serves the same low-income area. Seven of the top-ten high schools were public, all of them in such affluent suburbs as Bethlehem, Guilderland, and North Colonie.²³ Learning problems, it seems, are cumulative. At the lower end of the scale:

When families are characterized by several indicators of educational disadvantage, their children's risk of school family multiplies. Being born to a single mother, minority parents, or undereducated parents, for example, substantially increases the likelihood that a child will live in poverty. Further, poor and minority children too often experience low levels of school and community support for educational achievement and thus are placed at risk in all three domains.²⁴

In the 1950s and 1960s, the argument in favor of federal aid to education was couched largely in terms of ending such multiple disparities. Poor children from poor communities, it was argued, should not be subjected to the triple whammy of poor schools. New Yorkers, though they knew that they would be shipping their tax dollars to poor states in the South, supported the Elementary and Secondary Education Act by an overwhelming majority. The final bill passed the House in 1965 by a vote of 263 to 153 (63 percent yeas); the New York delegation voted 35 to 6 (85 percent) in favor. New York was and is a liberal state, and this 1965 vote to use the powers of government to equalize opportunity reflected that bias. Yet the fact is that in 1965, and even more so thirty-some years later, New York state had and still has one of the least equitable systems of school finance in the United States.

Measuring degrees of inequity in school funding levels is tricky. New York's most expensive district, comprising a handful of year-round residents on the summer resort of Fire Island, devotes 15 percent of its budget to transportation and has a pupil-to-teacher ratio of four to one. Comparing it with a school in the Bronx makes no sense. The most widely accepted mea-

sure of fiscal equity eliminates these extreme cases by grouping schools by deciles, comparing the top 10 percent with the next, and so on down to the lowest 10 percent. In 1994–95, the district at the ninetieth percentile spent \$12,949 per pupil; the district at the tenth percentile, \$7,320. This gap, moreover, has been growing not lessening. In 1973–74 the spread between the spending level in the district at the tenth percentile and that of the district at the ninetieth was \$812, or 83.3 percent of the spending level at the best-funded schools. Twenty-one years later, the gap had grown to \$5,629 per pupil, putting the poorest schools at 56 percent of the funding level of the highest decile. New York ranks fifth among forty-nine states (Hawaii is excluded because it does not have separate school districts) on a scale measuring equity in per pupil funding.²⁵ In very broad terms, the schools that suffer most from these inequities are those in the Big Five cities, particularly New York, and the poorest rural areas. Even within affluent areas, however, the differences can be significant. One lawsuit filed in 1993, for example, compared two nearly adjacent districts on Long Island:

The Wyandanch school district, with a 93 percent black student population, has local property tax wealth behind each pupil valued at \$63,893 and an average annual income of \$26,431. Local resources and state aid together enable Wyandanch to spend only \$5,205 per pupil on day-to-day operating expenses per pupil. In nearby Amagansett, where the student population is 96 percent white, there is \$3,124,716 in property wealth behind each pupil, average income behind each pupil is \$305,603 and operating expenditure per pupil is \$16,094. Of course, this is an extreme case . . . but such discrepancies abound throughout the state.²⁶

It is easy for one's eyes to glaze over in reading numbers such as these, but if the reader will backtrack for just a moment and take a closer look at these numbers, they are striking indeed. If local property taxes were the sole source of school finances, and Amagansett were to levy, say, a five percent tax per pupil on each property, they would be able to spend nearly ten times what they do, that is, \$156,000 per student, with no state aid. If Wyandanch, conversely, taxed property at five percent per student, its per pupil expenditures would have been \$3,194. To spend as much per student as Amagansett, it would have had to place a tax of nearly twenty-five percent on every home.

The Politics of Inequity

It would be difficult to argue that inequities in school finance are the products of conscious choice. State law, on the contrary, is designed to equalize spending between and among local communities, to bring Wyandanch at least close

to Amangansett. To some extent the system continues to work: the state paid nearly 60 percent of the costs of operating the Wyandanch schools in 1994–95 as compared with only 5 percent of those in Amangansett. For a variety of reasons, however, New York continues to sustain “a largely segregated, dual system of education. Schools in predominantly middle-class districts offer their pupils far greater program resources and cocurricular and extracurricular enrichment than schools serving lower income children.”²⁷ Although the Board of Regents has become increasingly aggressive in its calls for reducing these funding disparities, governors, legislatures, and courts have been reluctant to take the kinds of strong moves that would be needed to bring about significant change. Absent a major political initiative, however, the inequities have and will continue to grow. There are two essential reasons for this. In the first place, income disparities in the United States are not only growing at a dramatic rate, but they are becoming more geographically based. The income differences between the Wyandanchs and Ammagansetts are extreme and growing. Secondly, some of the highest growth areas in terms of students are in the poorest areas, and state aid formulas are very slow to adjust to population growth. This problem was particularly severe in New York City where both the city and state had for many years become accustomed to declining enrollments. From 1984 through 1994, the city’s school population increased by nearly 17 percent to 1,075,000 (from 920,000), but its share state funds remained nearly constant under a school aid formula that essentially funds districts rather than students.

The growing economic polarization of the state is at the root of the problem of educational equity. Any effort to bring the worst schools up, without bringing the best schools down, would require the kind of massive commitments of state funds that—as other essays in this volume amply attest—have not been on the agenda for a long time. If there is such a thing as a sacred cow in New York State politics it is elementary and secondary education, but even here the political and fiscal realities of a slowed economy have left their mark. And as in most areas of retrenchment, the cuts tend to be most severe at the lower levels. To understand why this so, one must look less at economic, demographic, or educational variables than at politics.

New York’s system of school funding has been aptly described by Justice James D. Hopkins as “a veritable jungle of labyrinthine incongruity.”²⁸ In fact, it may be even more complicated, though the basic idea is relatively simple. In essence, each school district receives a certain basic allocation per enrolled student from the state. In order to equalize educational opportunity, this basic allocation is adjusted to give more state aid to districts with few resources, measured largely by property values. The poorer the district, in other words, the more money it gets. That’s the basic idea. Now let’s go to the Judge Hopkins jungle.

One problem derives from the budgetary process. In hard times, governors, knowing that legislators—suburban legislators in particular—will fight cuts to their local schools, have tended to low-ball their budget requests for education. There has not been a governor's request for school funding in recent memory that the legislature did not augment. By asking for less than he knows he will get, the governor can (1) balance his budget and look good to others and (2) have something to bargain with in dealing with the legislature. When it comes time to cut money from, say, parks, the governor can say to the legislative leaders, "Okay, I've given you back x dollars for schools, what are you going to give me in return." It was and is a "win-win" game that no one played more adroitly than Mario Cuomo who made what was normally an exacta into a trifecta.²⁹ In his state of the state speech, Cuomo often spoke with great passion and eloquence about the need to spend more on education. This, Cuomo would readily admit, was "poetry," and it was almost always a winner. A few weeks later when the "prose" of the executive budget appeared, the extra money for schools disappeared. The focus of the public at this time, however, is more on the bottom line than the details: so long as the budget was essentially balanced and didn't raise taxes (hopefully, perhaps lowering a few), the journalists had their story, and the governor had another winner. He won the third leg of his bet when the legislature—as everyone knew it would—put the money back into the schools. Cuomo got credit first for saying good things about education in his state-of-the-state speech, for presenting a balanced budget to the legislature, and finally—after the legislature vetoed his proposed cuts—for spending more on education.

Another problem derives from the way in which the legislature has gone about restoring these proposed cuts. Within days of the governor's submission of his or her revised budget, the Education Department distributes among the legislators and the media computer printouts that describe in excruciating detail exactly how the new numbers will affect each and every non-Big Five school district. The Big Five cities have their numbers printed in a block since, for state aid purposes, each city is one district. Roughly half of the members of the legislature thus know exactly what each of the school districts in their Assembly and Senate districts will be getting from the state next year if the governor's budget goes through. More importantly, local newspapers throughout the state put these numbers on the front page, and a headline that tells the folks that Wappingers Falls or Bedford or Armonk is likely to lose a few thousand dollars in state aid can quickly triple attendance at the Tuesday Parent Association meeting and result in literally hundreds of letters and phone calls to local legislators. To isolate themselves from these pressures, rural and suburban legislators have built a variety of protections into the aid formula. Indeed the aid formula is now in reality some fifty separate formulas. "First and foremost" among these, for those representing the wealthier districts,

are the various protections built into the formula to insure that no wealthy district loses as a result of any revisions. This includes the basic flat grant per pupil guarantee, the save-harmless total and the save-harmless, per-pupil guarantees. All three of these provisions are non-equalizing in the sense that they do not relate to fiscal relief or educational need, but solely maintain present levels of aid. All districts are entitled to choose the precise manner in which they want their aid to be computed and, of course, they choose the variation that will result in the highest amount. Without these provisions, some districts would receive much less state aid. Consequently, the more that aid is allocated for such purposes, the less there will be available for equalization.³⁰

Now if you're following these technicalities (and believe me, this only touches the surface), you may be asking yourself why the representatives of the poorer districts put up with this? Poor people, to be sure, do not vote in sufficient numbers to be as important to governors as those from more affluent areas, but the one-person-one-vote apportionment of the state legislature surely gives the poor a strong voice. Liberal Democrats from the Big Five cities, indeed, dominate the Democratic party caucus in the Assembly and would surely not put up with the outrage of shortchanging their local schools in favor of those in more affluent areas. Would they? Well, the answer actually is yes, though none of them would put it quite that way. The reality of the Democratic conference is essentially that of a world in which the tail wags the dog. The core of the party is liberal, largely urban, and—to a growing degree—black and Hispanic. About half of the ninety-plus Democrats in the Assembly are from the city. Another fifteen, typically, are from the other Big Five cities. Like their counterparts from the Big Apple, most of them have little or no trouble beating their Republican opponents in the general election. Altogether these urban Democrats dominate the Democratic conference by a margin of almost two-to-one. But with sixty to sixty-five seats, they are nowhere near controlling a majority of the 150 seats in the lower house as a whole. Their continuing ability to elect a speaker and to dominate committees—politics and policy—depends on their continuing ability to elect Democrats from outside the cities, particularly, in the suburbs.

How does a suburban Democrat get reelected? Not by cutting school aid, that's for sure. So if the party leadership wants to save the seats of its most marginal members, it must give the Democrats from affluent communities like Ammagansett and Bedford the ability to go back to their districts with the good news of a "save-harmless" deal on the education budget. And the city Democrats go along because they understand that it is the price of power and because they know that were they to lose their party majority in the Assembly, they wouldn't be able to do the many good things majority status gets

them in fields ranging from education to mass transit, housing, health, welfare, and whatever. And they go along because they also know that nobody back home has those nasty printouts: if schools deteriorate you can blame the mayor: "we gave him the money, he just didn't spend it on schools."

Meanwhile in the Senate there is a similar, though slightly more subtle political dynamic. Here the marginal seats are also largely suburban. If the Democrats were ever to regain control of the Senate, they would pretty much have to do it by winning seats in the suburbs, particularly in the areas surrounding New York City. Large numbers of people living in the bedroom communities of Long Island, Westchester, and Rockland County moved there and put up with long commutes in no small part because of the schools. Driven by the concerns of state Senators representing these areas, the Republican conference has almost always been friendly to increased spending for schools in general and to save-harmless formulas in particular. In 1988, then Majority Leader Warren Anderson made a tactical mistake that underscores the political force of this attitude. While the image of three men in a room making all key budget policies for the state has never been a wholly accurate depiction of political reality, when the governor, majority leader, and the speaker reach an agreement, it usually marks the end of the process. Not so in 1988. Hours after Speaker Fink, Governor Cuomo and Majority Leader Anderson emerged smiling from the governor's office to announce that they had reached an agreement, Ralph Marino, a state senator from Long Island and one of Anderson's key lieutenants, informed Anderson that the votes were not there to get the budget through the senate. Unless school aid was substantially increased, Marino warned, every Republican from Long Island would vote no. Anderson had no choice but to return to the governor's office with the embarrassing admission that he could not control his own conference. A few months later, Anderson announced his retirement from politics and Marino was elected to succeed him as majority leader. Although Anderson insists that the budget debacle had nothing to do with his retirement, and Marino insists that his motivation was to get more money for schools and not to challenge Anderson's leadership, many insiders remain skeptical. To challenge your own party leader, unless you are very sure you have the votes, is risky business indeed in a strong party legislature like New York's. Whatever the real story, it underscores the strong concerns of suburban Republicans when it comes to schools.

There is one last wrinkle in the funding process that sometimes leads to the underfunding of some very poor schools. In the Big Five districts, per pupil aid does not go directly to local school boards as it does in the rest of the state. Instead, each city gets a lump-sum payment into its general account. When municipal finances are shaky, it is possible for the mayors and city councils of these cities to divert increases in state aid to other uses. From time

to time, the legislature has tried to block these diversions by passing so-called maintenance of effort laws that require the Big Five to use increased funds intended for education on education. In 1996, both houses of the legislature passed such maintenance of effort bills. In an extraordinarily rare procedure, however, the bill was held on the majority leader's desk instead of being sent to the governor for his signature, and thus it never actually became law. While there was some speculation that New York City Mayor Rudolph Giuliani, faced with serious budget shortfalls, had gotten to his fellow Republicans, it seems equally likely that Democrats on the New York City Council had worked through the assembly speaker to have the bill put aside so that they could divert at least part of the state's increased aid into a threatened summer jobs program for unemployed young people. Maintenance of effort may thus have lost in 1996 not because city Democrats don't care about schools but because they have so many other competing "good programs" to fund that education just becomes part of the mix. In New York City, as among Democrats representing New York City in Albany,

members must concern themselves with a variety of non-educational state support programs for such purposes as public assistance, Medicaid, public health and public housing which usually provide less benefits to the higher income areas outside New York City. City legislators are more likely to focus on those concerns that they perceive to be of greater importance to their constituents. On the other hand, many legislators representing independent school districts focus on state aid to education.

In many cases, members from rural areas and small towns upstate are more like Democrats from the City than their suburban Republican colleagues. Faced with such poverty-related issues as Medicaid, and burdened too with enormous road maintenance bills and the unique concerns of agriculture they don't have the luxury of fixating on the issue of school funding.³¹

Education groups, such as the United Federation of Teachers and the School Boards Association are, as indicated in chapter 5, high on the list of well-financed and effective lobby groups. As such, they make an important contribution to the political dynamic. While they all support higher levels of spending on schools, none of them have an abiding interest in issues of equity since their members come from rich districts as well as poor.

Political change is not impossible. The governor and the legislature in 1997 took two almost contradictory steps that might in the long-run have significant consequences for the schools. The governor's School Tax Relief (STAR) plan was designed to reduce the property taxes of seniors and wealthy suburbanites rather than to help the schools. In a way, it is the opposite of

equalization, a “leveling-up” plan that will use state funds to replace lost property tax revenues in areas of high ownership and high property values. Some advocates of more equal funding are hopeful that the increased state role mandated by the STAR plan may fuel a future debate about taxpayer fairness that will in the long run be productive of reform. They note also that the political price of STAR was simultaneous passage of the Assembly Democrats’ Learning, Achieving, and Developing by Directing Educational Resources (LADDER) program, which sharply reduces class sizes in the earliest years of schooling.

Both plans were heavily “back-loaded”—the real costs do not kick in until 1999 through 2001—so there is no way to be sure if they will actually be covered in future budgets. If they are, however, they will mark the first substantial increases in state funds for elementary and secondary education in more than a decade. Even if they actually do little to level the playing field, they may give future reformers new tools to work with.

Few states have even attempted to equalize school spending completely. That a generally “liberal” state like New York has one of the least equitable systems of school finance is less a question of ideology than of politics. The tradition of local control, reinforced by enormous disparities of wealth between rich communities and poor combine with a unique political dynamic that makes the goal of educational equity politically unattainable. “The structure of political institutions and the political process,” as Margolis and Moses conclude, “force events into a mold that undermines attempts to reform the system in the direction of greater equality.”³²

Turning to the Courts

Michigan, in 1992, dramatically revised its system of educational funding to sharply reduce local property taxes and increase equity between school districts. Its success in doing this through the political process remains unique. Since 1989, however, more than half of the states have been involved in litigation alleging that inequitable funding formulas violate the state’s constitutional responsibility to provide for the education of all students. Some of these cases have been successful; others have not. The diverse approaches taken by state courts are attributable, in part, to the refusal of the federal courts to involve themselves in the issue. The controlling case is *San Antonio Independent School District v. Rodriguez* (1973)³³ in which the Supreme Court held that the constitutional guarantee of “equal protection” did not extend to questions of state spending. The court’s narrow holding that discriminating between school districts rather than individual citizens, and that “wealth discrimination alone” did not provide an adequate basis for questioning the obviously discriminatory effects of the Texas school funding law, was—in

reality—a way of declaring the issue a political question. It has kept the federal courts out of the loop and made it difficult to use the equal protection argument in state cases. While recognizing “significant inequalities in the availability of financial support for local school districts,” the New York Court of Appeals in 1982 specifically cited *Rodriguez* in rejecting an equal protection claim.

The Levittown decision, as described by a dissenting judge in a subsequent New York case, “cogently pointed to the ‘enormous practical and political complexity’ of deciding upon educational objectives and providing funding for them which, under our form of government, are legislative and executive prerogatives upon which courts should be especially hesitant to intrude.”³⁴ But the Court of Appeals, both in Levittown and in a 1995 case that has yet to be fully resolved, left open the door to another kind of challenge to school funding formulas that has proven successful in other states. Citing the state constitution’s promise of a “sound basic education,” the majority of a divided Court of Appeals argued that,

The State must assure that some essentials are provided. Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn. Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks. Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies by sufficient personnel adequately trained to teach these subject areas.³⁵

How this New York case will be decided is anyone’s guess, but similar cases have been won on similar grounds in a number of other states. Experience in New Jersey, where the governor and legislature have been slow to implement the decision of the court, is instructive: even if the court invalidates New York’s school aid formula, there is no immediate guarantee that significant infusions of money will go to the poorest schools. But Kentucky by dramatically restructuring its funding priorities has, in a very few years, already shown the kinds of dramatic increases in test scores that give the proponents of equity the will to keep fighting.

Privatization and Structural Reform

New York City Mayor Rudolph Giuliani probably spoke for many New Yorkers when he suggested that the best educational reform might be to blow up the schools. Although money is a problem, particularly in the state’s poorer districts, the mayor is not alone in feeling that there are fundamental structural

problems that transcend questions of finance. In recent years, the Board of Regents has moved aggressively to upgrade its minimal standards, requiring that all students be enrolled in academic curriculums and that they be able to pass a tougher series of standardized tests for promotion in third grade and at other key points. These standards have been criticized by some educators who fear that teachers may increasingly “teach to the test” instead of stimulating creativity, and by others who argue that requiring higher standards without providing more resources to the schools is like asking kids to jump higher hoops without giving them the sneakers to improve their footwork. But these are minority voices, and the new Regents’ standards have been generally applauded despite pretests that indicate that as many as one-third of the students in some schools may be held back or forced to attend summer school.

The more serious challenge to the Regents comes from those— like Mayor Giuliani— who believe, in essence, that the public school system is structurally flawed to the point where simple reform is impossible. The mayor, perhaps with an eye toward national politics and the conservative wing of the Republican party, has backed a favorite conservative program that would provide parents with vouchers. Under most voucher plans, parents are eligible to receive an amount from the state equivalent to the amount that would have been spent to provide each student with a public education. Parents are then free to decide whether to keep their children in public schools or to apply the amount of the voucher toward tuition in a public or parochial school of their choice. Backers of voucher plans argue that, as in free enterprise economic systems, healthy competition between schools will force improvements across the board. Whether a voucher plan would be constitutional in New York is considerably more problematic than in other states because the so-called Blaine Amendment to the New York State Constitution imposes a considerably more rigid standard of church-state separation than does the U.S. Constitution’s First Amendment or the separation clauses of most other states.

In part because of these constitutional problems, Governor Pataki in 1998 proposed and the legislature created an experimental program of charter schools, schools that would be chartered by the state but free of many of the regulations governing traditional public schools and designed—as with private schools in a voucher system—to compete with public schools and hopefully provide improvements in both. The governor’s plan went nowhere in the regular session of the legislature. In December, however, the legislature reconvened in a special session to pass a bill substantially increasing legislative salaries, and the governor made it clear that he would sign the pay raise bill only if he got charter schools in exchange. It is overly simplistic to suggest, as some journalists charged, that many legislators changed their positions on charter schools in order to get a raise, but it is clear that the decisional context was sufficiently different in the special session to change the outcome. Assembly Democrats were able to write in certain minimal standards of quality

that were not in the governor's proposal, and to require some guarantees for union teachers (thus neutralizing the UFT), but the final vote on the charter school bill showed surprisingly few of the legislature's usually clear patterns of ideology, party, or region. Black and Hispanic Democrats were particularly divided on the issue, with some seeing it as an attack on public education and others arguing it was a needed alternative to a dysfunctional system.

The voucher and charter school issues do not address the equity issue: the voucher or per pupil charter school allocation of a child from a poor district would likely be for a good deal less money than for a child from a more affluent community. In a fundamental sense, however, the charter school and voucher issues are cut from the same cloth as the issues surrounding equity. The traditional or "liberal" perspective that stresses the "public" nature of public education continues to evaluate the system from the perspective of its social utility. Vouchers, charter schools, and differential levels of funding all operate, from this perspective, to fragment the community, to make education a question of opportunity and rank rather than one of the public good. Those who support school choice and local control, conversely, see the role of the state as one of facilitating the ability of parents to give their children the best educational opportunities they can find and afford.

Conclusion

Whatever the Court of Appeals decides in the Fiscal Equity case, the issue of who will spend how much on what kinds of schools will continue to play a central role in New York politics. The 1996 edition of this book included an essay by Robert Berne in which he concluded that "the current logjam over the equity of state aid for education appears to be difficult to break." Even if the Court of Appeals comes down on the side of greater equity, Berne's general conclusion remains valid. Most parents care a lot about what happens to their kids, and society has an enormous, usually recognized, investment in training its next generation of workers, citizens, and leaders. But elementary and secondary schools eat up an enormous proportion of state and local tax dollars, and as an eternally anonymous politician allegedly argued, "only two things are important in politics: money and I forget the other." It probably is not education.

Notes

1. This and, unless otherwise indicated, most of the statistics offered in this chapter are taken from the annual report of the State Education Department, *New York, The State of Learning* (Albany: University of the State of New York, 1997). Aggregate statistics

for the state are reported in the volume subtitled the *Statewide Profile of the Educational System*, which also includes the Education Department's narrative account.

2. Raymond J. Keating, *New York by the Numbers* (Lanham, MD: Madison, 1997), p. 309. Since New York has more, and therefore more academically marginal, students taking the tests, this figure is not as indicative of relative failure as the raw ranking indicates. Indeed, the unusually high percentage of New Yorkers taking the SATs could be cited as a highly positive indicator of school performance.

3. *Ibid.*, p. 320.

4. Bureau of the Census, *Statistical Abstract of the United States, 1996* (Washington, DC: Government Printing Office, 1996), p. 167.

5. Jonathan Kozol, *Savage Inequalities: Children in America's Schools* (New York: Crown, 1991).

6. James S. Coleman, *Private Wealth and Public Education*, as quoted in Edwin Margolis and Stanley Moses, *The Elusive Quest: The Struggle for Equality of Educational Opportunity* (New York: Apex, 1992), p. 7.

7. Robert Bendiner, *Obstacle Course on Capitol Hill* (New York: McGraw-Hill, 1964), p. 51.

8. One of the best case studies of the legislative process in Washington—1960s style—explores these processes in depth: Eugene Eidenberg and Robert D. Morey, *An Act of Congress: The Legislative Process and the Making of Education Policy* (New York: Norton, 1969).

9. As quoted in *ibid.*, p. 93.

10. Robert D. Stone, "Education," in Gerald Benjamin, ed., *The New York State Constitution: A Briefing Book* (New York: Temporary State Commission on Constitutional Revision, 1994), pp. 179–80.

11. *Ibid.*, p. 181, citing *James v. Board of Education*, 42 NY2d 357 (1977).

12. Quoted in Richard Perez-Pena, "Regents-Seat Battle Is a Sign of Shift in Education Politics," *New York Times*, March 8, 1998, p. 41.

13. See, for example, the interesting race described in note 12.

14. Jean Johnson et al., *Assignment Incomplete: The Unfinished Business of Education Reform* (New York: Public Agenda Foundation, 1995), p. 11.

15. Allan R. Odden, "School Finance and Education Reform: An Overview," in Allan R. Odden, ed., *Rethinking School Finance: An Agenda for the 1990s* (San Francisco: Jossey-Bass, 1992), pp. 8–9.

16. *Ibid.*, p. 10.

17. The figures used to calculate the New York expenditures, it should be noted, include all expenditures per pupil, including debt service.

18. A good example of a study that finds no significant relationship between educational resources and student performance is E. A. Hanushek, "The Impact of Differential Expenditures on School Performance," *Educational Researcher* 18 (Winter): 45–51, 1989. For a similar study finding a positive relationship, see R. D. Laine, R. Greenwald, and L. V. Hedges, "Does Money Matter? A Meta-Analysis of Studies of the Effects of Differential School Inputs on Student Outcomes," *Educational Researcher* 23 (fall): 5–14, 1994.

19. See Kozol for some truly depressing accounts of rundown "learning" environments.

20. *The State of Learning*, p. 202.

21. S. T. Speakman et al., "Bringing Money to the Classroom: A Systemic Resource Allocation Model Applied to the New York Public Schools," in L. O. Picus and J. L. Wattenbarer, eds., *Where Does the Money Go? Resource Allocation in Elementary and Secondary Schools* (Thousand Oaks, CA: Corwin, 1996), pp. 106–32.

22. *The State of Learning*, p. 3.

23. Rick Karlin, "Achievement of Private Schools Varies Widely," *Albany Times Union*, March 15, 1998, p. A1.

24. *Ibid.*

25. United States General Accounting Office, *School Finance: State Efforts to Reduce Funding Gaps Between Poor and Wealthy Districts* (Washington, DC: General Accounting Office, 1997).

26. Joan Scheuer, *Options in School Finance Reform in New York State* (New York: Educational Priorities Panel, 1995), p. 3.

27. New York State Commission on Educational Structure, Policies and Practices, *Putting Children First* (Albany: Commission on Educational Structure, Policies and Practices, 1993), 1: 24.

28. Quoted in *Board of Education, Levittown Union Free School District v. Nyquist*, 453 N.Y.S. 2nd 643 at 654.

29. For those who do not follow horse racing, an exacta bet is one in which one chooses the two winning horses, that is, those which will finish first and second. It usually pays a considerably more handsome return than a simple bet on the winner. An even better payoff goes to those who hit the trifecta, in which they predict the first three horses to finish.

30. Margolis and Moses, p. 39. Much of this section is derived from this landmark study.

31. *Ibid.*, p. 56.

32. *Ibid.*, p. 66.

33. 411 U.S. 1 (1973).

34. *Campaign for Fiscal Equity v. State*, 631 N.Y.S. 2nd 565 (1995), 578.

35. *Ibid.*, 570.

13

Contested Futures: Public Policy and the State University of New York

Henry Steck

As it celebrated its fiftieth anniversary in 1998, the State University of New York (SUNY) appeared to have reason to feel good about itself.¹ “Service, Pride, Excellence”: these were the glowing words heralded in upscale *New York Times* advertisements. Since 1948, SUNY had developed a solid record of achievement, but for many in SUNY the celebrations were clouded by persistent uncertainty about the university’s future direction. Uncertainty, even crises, were not new to SUNY. Nearly twenty years of fiscal disinvestment had seen to that. But for almost fifty years nothing before had called into question SUNY’s basic mission or institutional character. With the 1994 elections, however, a new governor, Republican George Pataki, strode into office with an apparent mandate to change the direction of public policy that New Yorkers had known for generations. As the new regime of conservative policymakers set about cutting spending and taxes, SUNY became an early target of opportunity. Within days of taking office, Governor Pataki proposed budget reductions that were the deepest in SUNY’s history, and within months, he began to put the university’s leadership in the hands of trustees who brought to the board an outlook antithetical to SUNY’s traditions and even to its mission. The “Pataki trustees,” as they came to be called, quickly developed a strategic plan, *Rethinking SUNY*, that enunciated radically different values and goals for the university. Within two years, the Pataki trustees became the model for what came nationally to be called “activist trustees”—aggressive trustees determined to put a conservative stamp on the universities they controlled. SUNY faced a new era.

During the demonstrations set off by Pataki’s initial budget proposals, angry students sent up the chant, “Fight! Fight! Fight! Higher ed is our right.” But this was precisely the claim that was now at issue. Is there a right to

higher education? Who should go to college? Should public higher education be simply a “safety net” for the unfortunate? Is higher education a public good that cannot be priced by the marketplace or a private good to be purchased by individuals for their individual well-being? How much should the state spend and how much should students spend on their college education? Such questions are recurring, but now, confronted with a quite different philosophy of government, they acquired a fresh urgency.

The Pataki election initiated a paradigm shift that compelled New Yorkers to ask old questions in new ways. In the 1980s, the question on the table was how good and how large a state university did New York need and want? In the mid-1990s, that question was still relevant, but now another question was on the table: What kind of state university would SUNY be, and what values would it embody as it approached the twenty-first century? Would it follow the path laid down in 1985 in its statutory mission statement, or would it follow a different path, one shaped by the precepts of a conservative philosophy of education, of the public sector, and of society.

Higher Education in New York: A Tale of Two Sectors

New York contains the largest and most diverse higher education system in the country. No other state encompasses public and private sectors of such distinction and variety. From red brick to Ivy League, from urban streets to pastoral countryside, from plain classrooms to distance learning networks, all manner of institutions exist in educating over one million students, of whom 80 percent were undergraduates in 1996. Of all enrolled students (including community colleges and graduate and professional schools) approximately 38% percent are enrolled in SUNY; 21 percent in CUNY; and 41 percent in private schools. SUNY includes world-class research universities, liberal arts colleges, specialized colleges, health science centers, professional schools, and two-year community colleges. Few counties in the state lack a SUNY campus of one kind or another. The private or independent sector is equally diverse and is among the nation’s most distinguished university communities.

The existence of two strong sectors is a post-1948 development. Until the twentieth century, higher education was firmly in the hands of the private sector. The rapid growth of state universities in the nineteenth and early twentieth century, driven by what Allan Nevins terms the “fundamental emotion” of a passionate belief in “the cause of greater democracy,”²² left New York relatively untouched. Several normal schools for training teachers had been established in the nineteenth century, and these became the foundation stones for SUNY in 1948.

By the 1930s, New York City had established several municipal colleges to meet the needs of the city, and these achieved notable distinction. But none of these scattered institutions constituted a *system* of higher education, much less a *state* system. Nor could they meet the massive demand for entry to universities that reached crisis proportions following World War II. Growing pressures for direct public responsibility for higher education were resisted well into the twentieth century. Despite their responsibility for all education in the state, the regents resisted pressure for direct public responsibility for higher education, believing that existing private institutions provided adequate opportunities. Until after World War II, higher public education was restricted, minuscule, and with the exception of the City College of New York, undistinguished and unknown outside the boundaries of the state.

By contrast, the private sector was large and varied in terms of size, quality, financial strength, and prestige. It was deeply rooted in the academic and social life of the state. Above all, it was powerful—a fact reflected in the historical partiality to private education by the state Board of Regents and by the extent to which its alumni-dominated politics, the professions, and commerce. The religious and racial discrimination practiced by many, but certainly not all, private schools, especially in medical education, was as significant as the pressure of numbers for creating a political climate that pushed Governor Thomas Dewey to recommend the establishment of a state university to the legislature. Dewey's support for a state university was based on the recommendation of the Temporary Commission on the Need for a State University. Their report set forth a rationale for the state university that still resonates fifty years later. Noting that “substantial proportion of the youth of this State [were] denied the opportunities for higher education and other barriers, including discrimination on account of race, creed, color, or national origin,” the commission stated:

The increasing complexity of modern life, the rise in standards of living, and the rapid technological advances prompt youth to reach out for higher education as a means for better understanding of the problems of society, enjoyment of the better things of life, and more effective preparation for appropriate trades and professions. It is imperative to an expanding democratic society to make sure that their quest is satisfied. . . . To the extent that existing institutions are not equipped to meet the present and prospective needs, the state and local governments must stand ready to help.

SUNY's birth pains were intensely political and bitter. All New York's traditional political divisions came into play: downstate Democrats and

representatives of minority groups, concerned with equal opportunities, particularly in medicine, supported the idea of a state university. The regents, the State Education Department, private colleges, and upstate Republicans fought any but the most minimal expansion of public higher education. Private schools were interested in self-preservation; the American Medical Association opposed the establishment of state medical schools; the Board of Regents sought to preserve its power; Governor Dewey's aides worried about costs—and about the upcoming presidential election.

The question of access and opportunity was central to the struggle to establish a scheme of state-provided higher education. Young people who sought entry to a college faced a series of barriers: there were not enough places, especially given the flood of returning veterans; there was racial and religious discrimination; the price of a college education was out of reach for many families. The pressure for expansion of medical education was particularly strong. The harsh fact of discrimination was so significant in the debates that as part of the legislative package establishing the state university, the legislature also enacted a Fair Educational Practices Act, a clear signal that the legislature meant what it said about fair access and opportunity.

But even after the stormy debates and hard-fought compromises that led to the establishment of SUNY, the regents sought to control (if not cripple) the fledgling university, restrict its mission, and stifle its growth. SUNY's role was to "supplement" and to serve "as a secondary alternative, suitable mainly for the would-be teacher or those seeking vocational training, or for students unable to afford private institutions."³ Until the 1960s, its funding was sparse; its enrollment growth minimal: between 1948 and 1960 total undergraduate enrollment grew by only 12,000, while in the next ten years it would grow by nearly 100,000. Despite evidence of popular support for expanding the university, SUNY was kept under wraps for its first dozen years; the ideals of its founders was not matched by the initial reality. As one analyst noted, there was

a vacuum, an abdication of responsibility for higher education which prevented any significant policy proposals or master plans. . . . There was no system at all; there was merely a weak and undistinguished group of public institutions lumped together in a State University on the one hand, and a diverse group of private institutions on the other. . . . Higher education in the spring of 1959 lacked focus and direction and was . . . hopelessly bogged down in the face of an impending crisis.⁴

SUNY's initial development was "fitful" and, as the baby-boomers approached college age, "pitifully underdeveloped."⁵ The best that could be said was that New York had a new state university—the last in the nation—but did not know what it wished to do with it.

It fell to Nelson Rockefeller in the 1960s to give the state university the direction that characterized it into the 1990s. Expanding higher education was a major priority of Rockefeller's leadership, and developing SUNY into a major state university was at the heart of this effort. A series of special reports—the Heald Report, Keppel Report, and Bundy Report—charted the way for SUNY and for all higher education in the state. A core feature of his vision for SUNY was seeking excellence at all levels rather than identifying excellence with a single flagship institution.⁶ Rockefeller freed SUNY from the limits that had been imposed on it in 1948.

During his tenure, New York moved into the era of mass education. In addition to expanding and transforming SUNY, the state assumed 50 percent of CUNY's costs, the first step toward full state funding of CUNY. A program of student aid, the Scholar Incentive Program, followed in 1974 by the creation of the Tuition Assistance Program (TAP), was initiated, as a result of which direct aid to students increased eightfold. The expansion was, as the Bundy Commission put it, "a veritable educational revolution." In 1948, 12 percent of New York's high school graduates went to college; in 1965, 60 percent; by 1995, the number had increased to 81 percent (36 percent to SUNY). By the late 1960s, SUNY's institutional profile was fixed: It was a state-wide system, comprehensive in its offerings; it was administered by an autonomous board of trustees appointed by the governor; health care education was enlarged; graduate and professional schools were expanded; four centers for graduate and professional education and research were created; former teachers colleges were converted into colleges of arts and sciences; a vast network of community colleges was expanded; a policy of free, then very low tuition, sealed an egalitarian commitment to access. The trustees rejected a single campus for the university and they rejected the idea of a flagship campus. They believed strongly in the advantages of the geographic reach of SUNY—that "collegiate programs should be provided where students live."⁷ They believed in system-wide institutional leadership so that SUNY did not become simply a scatter of obscure units. In 1957, the trustees observed:

Over the years, State University has drawn increasing strength from the advantages of its decentralization and, as the same time, from the unity of purpose achieved by its units and central administration.

In short, State University became SUNY—a uniquely configured state system with a distinct identity and enormous potential to become one of the truly great public universities of the nation.

SUNY's expansion into a major state university transformed postsecondary education in the state and created a new political dynamic within the higher education community and between higher education and state government.

There remained one additional element in New York's policy framework. By the late 1960s, the once dominant private schools looked on the rapid growth of SUNY and CUNY with uneasiness as they found themselves forced to compete with growing public institutions in a shrinking education marketplace. As their situation worsened, they pushed aggressively for state assistance. From the start, Rockefeller's aspirations for the public sector were balanced by a commitment to aid private institutions. In 1968, Rockefeller made good on his assurances to the private sector by securing passage of a program of direct financial assistance to independent institutions—named Bundy Aid after the select committee that had recommended the policy. With Bundy Aid, the passage of TAP, and the initiation of other programs of assistance to private colleges, the state sealed its commitment to support private institutions. Today, New York remains the leading state in the nation in terms of its direct assistance to private colleges and universities. In 1996–97, nearly \$41 million of Bundy Aid was distributed to ninety-nine private institutions, while another \$36.5 million was distributed through other programs, not including TAP, which awarded \$220 million to private school students in 1996–97.

The enactment of Bundy Aid and TAP solidified the structure of higher education policy in New York State—what we can define as the “Rockefeller settlement.” Balancing the demands of the two constituencies, New York's political leaders redefined the public-private relationship from one of private school dominance to one of relative parity, even if educational leaders themselves feuded over the allocation of resources implied by this formula. The settlement provided a political framework for managing higher education issues. Since the 1960s, responsibility for higher education policy has been a shared responsibility of the legislative and executive branches. The legislature, in particular, has carefully guarded its responsibility for oversight and for providing broad direction and accountability for higher education. The geography of the systems—CUNY in the City, SUNY on Long Island and upstate, the privates throughout the state—give politicians a vested interest in the well-being of public higher education, since a campus in one's district brings opportunity for constituents and economic development for communities surrounding the state and city systems. These are considerations that politicians, whatever their ideologies or partisan commitments, do not ignore. Periodic efforts by SUNY planners to remove SUNY from New York's volatile political process, with its swirl of regional, ethnic, ideological, and partisan forces, has invariably failed. SUNY, we will see below, is also linked to the executive through the budget, the governor's appointment of the trustees, and the executive's responsibility for key policies. SUNY, indeed higher education generally, is the people's business in more ways than one.

The Dilemma of the Independent Sector

As the fiscal noose tightened in the 1980s, the legislature's "protector" role, despite limits, became more important. The privates, no less than the publics, had their share of trouble as private school lobbyists were quick to point out.⁸ The privates reacted uneasily as the shift in balance that began in the 1960s continued thereafter. Enrollments and financing were, of course, two central issues. Private school costs nationally were rising rapidly, producing sticker shock to students and families: between 1990 and 1996 overall *published* tuition rose by about 46 percent while actual *discounted* tuition (i.e., when aid is factored in) rose about 28 percent.⁹ Their expenses were escalating, not least the expense of generating financial aid for less affluent students from those able to pay. By 1999, Cornell's tuition was pushing \$23,000 a year, and while only a handful of "elite" schools charged that much, it was indicative of the dilemmas that private institutions faced. The private schools also felt keenly a decline in enrollments compared—as they saw it—to SUNY and CUNY.¹⁰ While demand might be inelastic for the best private schools, the bulk of the private sector worried about enrollments as their prices outran both the CPI and personal income, especially for lower-income students. In the mid-1990s, these concerns were deepened by studies that showed that students from affluent families were heading for public colleges in increasing numbers. For these students, the SUNY tuition increases that hurt disadvantaged students were easily absorbed. For less talented students, a second-tier public institution was assuredly a "better buy" compared to less selective private institutions and a first-rate SUNY institution was a "best buy" compared to all but the more selective well-endowed private institutions. As public colleges became more gentrified, there appeared to be a looming crisis for the privates.¹¹ In 1995, the Commission on Independent Colleges and Universities argued that 30,000 places remained open, a gap created, the commission stated, by students who were selecting taxpayer "subsidized" places in SUNY and CUNY. Reduced state spending on higher education impacted the private sector: TAP covered a declining proportion of tuition costs while Bundy Aid was cut by about two-thirds. These multiple trends raised troubling questions about access. Should taxpayers subsidize affluent college students in the public schools, or should they pay their own way? The privates argued that policymakers should link tuition to the actual cost of educating each student and to family means. With competition becoming more ruthless, price competition from SUNY could not but be felt by private schools, although the increasing cost of SUNY after 1989 reduced the gap between SUNY and second-tier private schools.

Despite these pressures, legislators did not—would not—choose between the two sectors. "Broad coalition" and "protector" are key in understanding

legislative attitudes toward higher education. For most legislators, as for Rockefeller thirty years earlier, higher education was to be supported, and there could be no uncoupling of the two sectors, whatever the political pressures and whatever the real or imagined inequities. Legislators continued to support both sectors within the budget parameters available to them rather than favor one over the other. They could not do otherwise, for many legislators had both public and private institutions in their home district: SUNY Cortland *and* Cornell, Ithaca College *and* Tompkins-Cortland Community College, SUNY Environmental Science and Forestry *and* Syracuse University. In 1982 the chair of the Assembly Higher Education Committee spoke for his colleagues when he said:

There is an idea that there is a fixed amount of money for higher education and that it is then divided up, putting public and private universities into competition. This isn't so. There is logrolling and cooperation to increase the overall amount for higher education, and any assistance to the privates does not come at the expense of the publics.

And that was just the way the politicians continue to prefer it.

The Changing Fiscal and Policy Environment: The Trials of the 1980s

New York has long enjoyed—suffered with, some would say—a reputation as having one of the most generous public sectors in the nation. In the post-1945 era, liberal Democratic and moderate Republican governors believed that activist government could improve the quality of life of New Yorkers. By the end of Rockefeller's tenure in Albany, however, budgets were tightening up. With the New York City fiscal crisis of 1975, Governor Carey ushered in a new era with a blunt warning to New Yorkers: "the days of wine and roses," he said, "are over." The zero-sum character of political choices became painfully clear as governor and legislature struggled to balance the expectations of New Yorkers with diminishing resources. The politics of scarcity became central to New York politics as first Hugh Carey, then Mario Cuomo, and finally George Pataki sought to bring New York's budget situation under control with the use of conservative fiscal policies.

The pattern of disinvestment that began in 1975 was both deliberate policy and unplanned reactions to events, particularly downturns in the economy. Whether what was seen as the continuing fiscal crisis of the state was genuine or produced by state fiscal policy, most policymakers acted as if it were the real thing, an inclination encouraged by the state's low ratings from the

wizards of Wall Street. Despite a recurring sense of crisis, the pattern of incremental budgeting was not broken. When recessions hit the state, as they did in the late 1980s and early 1990s, there were painful trade-offs and austerity, but the overall pattern of policy was not significantly changed. Confronted with conservative pressure for less spending and lower taxes and liberal pressure for increased spending and progressive restructuring of the tax system, the legislature sought to split the difference. As times grew hard and pressures severe, legislators resorted to borrowing, raising fees and nuisance taxes, refinancing debt, and utilizing an array of financial gimmicks to balance the books—or to give the appearance that, consistent with the state constitution, the books were balanced. Changing social needs caused shifts in the way the fiscal pie was sliced: with its growth spurt over, higher education was bound to receive less while spending on prisons or Medicare increased. The structure of New York politics—parties, interest groups, personal ambition, and local constituencies—promoted bipartisan activist government, but it also bred a contempt by the public for the political establishment and created an atmosphere hospitable to the message that George Pataki brought to the voters in 1994.

The genius of Albany policymakers for compromise and fiscal legerdemain permitted business to carry on almost as usual. The key here is “almost.” Despite popular impressions to the contrary, there was a new fiscal caution at work in the 1980s. From 1982, Governor Carey’s last year, to 1992, the share of state spending available for state programs (as distinct from assistance to localities) declined from 25.4 percent to 19.6 percent. Despite his liberal rhetoric, Governor Cuomo pursued a policy of fiscal conservatism. In 1987, during the Reagan boom, Cuomo and the legislature agreed on a three-year program of deep tax cuts. But when the downturn in the economy left the state unable to pay for policies it was committed to, the downside result of this conservative tax-cut brought budget deficits and severe cuts in state programs. By 1990, Cuomo was warning the public that “we’re in for a period of pain.”

Pain was not new to higher education in New York or, for that matter, to the nation. Nationally, higher education was underfunded since the mid-1970s, a reflection of “fundamental changes in government priorities.”¹² There was an unmistakable erosion of quality in terms of a shrinking faculty and staff, reduced course offerings, deferred equipment purchases, erosion of library holdings, and increased workload.¹³ Despite its widespread image as a tax-and-spend state, New York did not do well comparatively. By the end of the 1980s, it ranked thirty-ninth among the states in per student expenditures and forty-third in per capita expenditure, even while state appropriations from across the nation were at a thirty-year low in 1990–91.¹⁴ SUNY’s fiscal pain continued well into the 1990s and was then intensified by successive Pataki

budgets. Between 1985–86 and 1995–96, the percentage of state funds allocated to public higher education fell from just over 5 percent to just under 3 percent, compared with national figures of under 8 to 6 percent. Nothing was more stark than figures showing a drop in support of tax dollars to SUNY's budget from 90 percent in 1988–87 to 43.5 percent in 1995–96, with tuition income rising from 10 to 54 percent. From 1993–94 to 1998–1999, New York's average annual percentage increase in appropriations for higher education was 1 percent, compared with a national average of 5 percent, and as states began to restore spending, New York continued to lag behind the rest of the nation.¹⁵

For students the picture was quite bad. Between 1989 and 1995, the proportion of household income necessary to meet tuition costs had more than doubled (from 4.64 to 11.25 percent). Nationally, the cumulative percentage increase in tuition from 1980 to 1995 was nearly three times more than the increase in household incomes and consumer prices, with the sharpest part of the increase coming between 1990 and 1995. In three years, from 1992–93 to 1995–96, the percentage of students nationally borrowing money for a bachelor's degree jumped from 46 to 60 percent while (a sign of the decrease in public support for students) the greatest percentage increase in student borrowing occurred in public institutions, with the percentage of students borrowing money jumping from 42 to 60 percent. For many students and their parents, then, affordability was not an abstract or remote policy issue but a close-to-home concern.¹⁶

Hard though the budgets of the 1980s were, the fiscal and political storms that struck in the early 1990s were far more severe. The election of 1990 saw a particularly strong expression of tax rebellion that appeared to end the liberal framework that had characterized New York politics since the 1930s. In retrospect, of course, the 1990 election was not the fundamental break it appeared at the time, but it did drive Governor Cuomo and the legislative leadership to an understanding, more conservative in temper than before, that resolution of the long-term budget mess could not be avoided and that any solution must satisfy an unhappy electorate, an aggressive business community, and above all, Wall Street bond raters. For SUNY, this shift in outlook brought harsh new realities. Already a fifteen-year record of cuts, from the mid-1970s through the early 1990s, produced the equivalent of the elimination of the university centers at Albany and Binghamton, four four-year colleges, and one statutory college or those that specialize in an area such as agriculture, forestry, or industrial and labor relations. Faced with the prospect of still further reductions, Chancellor Bruce Johnstone prepared a set of grim options for a stunned university community. These included permanent downsizing, campus closings, and increased tuition. Ultimately, SUNY avoided implementing the Johnstone doomsday options because it did, with more

fervor perhaps, what it had learned to do so well, namely, make do with less, watch quality suffer, increase tuition, lobby hard, and finally, Micawber-like, hope that something would turn up. Like Chancellor Wharton before him, Johnstone sought to force the issue on legislative decision-makers whose talent lay as much in nondecisions as in decisions. “Muddling through”—that excellent British stratagem—was the hallmark of the political system, and, it seemed, SUNY’s last best strategy for survival. It was left, as it were, to Governor Pataki, in 1994, to break the muddle.

SUNY’S Political Environment

With the expansion of SUNY, higher education became a matter of big politics as well as big budgets. With the disinvestment of the 1980s, the SUNY community grew accustomed to fighting for survival just like any other state agency. Over the years, this necessitated deploying lobbyists and advocates, bargaining with the Division of the Budget (DOB), mobilizing a grassroots base, making deals, facing new enemies (e.g., the ultraconservative group, Change-NY) and summoning new friends into existence (e.g., the SUNY Mayors’ Coalition). Repeated firestorms of protest on campuses that spilled over into the legislature and the executive branch signaled that SUNY policy was high on the Albany agenda. We have seen in the previous section that the fiscal crunch of the 1980s and early 1990s produced a shift in public philosophy. Before exploring the changes associated with the Pataki election, it is worth surveying the political landscape so as to understand the political environment of higher education decision-making.

Governors in a Changing Environment

The governor is the key policymaker for public higher education and particularly for SUNY. Unlike many state universities elsewhere, SUNY is not constitutionally autonomous but is part of the executive branch. The governor appoints the trustees, sets budget and policy priorities, defines the policy agenda for the legislature, directs negotiations with faculty and employee unions, and articulates values and charts the direction of the state. He or she is gatekeeper to the key circles of state policymaking and to the eyes and ears, perhaps even the hearts and minds, of the public. But not all governors are alike. For the SUNY community, Governors Carey and Cuomo were not seen as altogether sympathetic supporters.¹⁷ Aside from rhetorical flourishes and occasional involvement in questions of policy, higher education was a secondary issue for Carey and Cuomo except for budgets. On the other hand, Pataki’s administration, as we shall see later, has had more impact on SUNY

than any governor since Rockefeller. As an element in his overall policy direction, Pataki engineered a paradigm shift in higher education policy, budgets, and personnel—a shift that found little acceptance on SUNY campuses. Unlike his predecessors, Pataki responded to criticism of SUNY's new directions by tightening his control over SUNY by appointing top officials from his administration to key SUNY positions, by encouraging counterattacks by SUNY officials on their critics, and by stepping up positive publicity about SUNY achievements.¹⁸ Still, the public perception was that Pataki maintained a languid disinterest in SUNY policy.

While the three governors differed in their ideological outlook, they shared at least one core policy objective in common, namely, reduce state spending. The state budget, as they saw it, was simply too big; the state's deficit, an obstacle to economic growth; and SUNY's sizeable budget, an attractive and, because spending on the university was discretionary, an easy target. Despite its anguished protests, SUNY demonstrated a capacity to make do, and politicians wondered, sometimes justifiably so, whether SUNY managers were simply crying wolf. For the governor's budget experts, SUNY's enrollment levels were proof that student demand was relatively quality-insensitive and therefore inelastic as long as the price was right. Over the long term, it was not clear that tuition increases really had a depressing effect on enrollment. That the university differed from other state agencies in that it could not contract and expand without grave damage to quality was not an argument that swayed Cuomo's DOB in the 1980s or Pataki's trustees in the 1990s. As higher education budgets nationally took a dive, DOB officials could argue that SUNY would not suffer competitively with peer institutions and that New York paralleled national trends. There were competing policy needs, and SUNY would simply have to make do. "Tell me where to take the money from," was Cuomo's mantra, while Pataki supporters simply asserted that SUNY was too fat, too inefficient, too unproductive—too many overpaid professors doing too little. The new trustees weighed in, moreover, on the governor's side in repeated budget battles. Unlike their Carey-Cuomo predecessors, they saw their task not as advocating for the university but as keeping SUNY's budget in line with the governor's priorities; they were loyal foot soldiers in the governor's fiscal army.

Budget makers were doubtlessly aware that a university had alternative sources of income (i.e., tuition) that other state agencies lacked. During the 1980s, tuition increases were the third rail of higher education politics, but once the recessions of the late 1980s hit, producing an increase in the state's deficit, policymakers turned to tuition as a source of ready cash. As long as SUNY tuition did not materially exceed the tuition levels of peer or regional institutions, tuition increases could be imposed on SUNY. The Pataki Administration was less sensitive than its predecessor to the political heat generated

by proposed tuition increases or by cuts to TAP, and it sought consistently to ratchet up the price of SUNY to students, 73 percent of whom receive financial aid. Between fall 1990 and fall 1995, SUNY undergraduate tuition more than doubled as the shift away from traditional “redistributivist liberalism” toward a “neoliberal” reduction of the public sector that began under Cuomo and continued under Pataki. In vetoing the 1989 tuition increase, Cuomo revealed a startling view of public higher education that his successor may not have shared: “Nothing,” he said “is more important to the future of this State than the availability of excellent higher education to those not fortunate enough to afford private schools.”

Players at the Table: The Legislature and the Organized Interests

For more than twenty years the legislature has shown itself as SUNY’s ultimate “board of trustees,” although its capacity to shape SUNY policy is shared with a constitutionally strong governor. By the mid-1980s, SUNY enjoyed strong bipartisan support generally, while the higher education committees, and particularly their chairmen—currently Assemblyman Ed Sullivan and Senator Ken LaValle—assumed the role of watchdogs and mentors over higher education. Both the membership and the leadership of the two houses were willing to extend a helping hand to SUNY and CUNY whenever the executive proposed deep cuts—although it was never quite clear whether executive proposals were meant seriously, were tactical moves in legislative-executive negotiations, or were calculated on the assumption that the legislature would boost higher education budgets, no matter what. From the early 1980s onward, defending SUNY while bashing successive governors for cutting SUNY was a low-risk political position that both Republicans and Democrats did not hesitate to take, as the titles of successive legislative reports indicate: *SUNY: 1975–1982: A Budgetary Battle of Access Versus Quality* (1982); *Fragile Giant: SUNY in the Age of Disinvestment* (1993); *SUNY: Rethinking, Shrinking or Sinking?* (1993); *Shifting Shares of State Support for Higher Education in New York State* (1996). Nor is the legislature’s interest purely academic or disinterested. Legislators fully appreciate SUNY’s hometown (“pork barrel”) connection, and they do not hesitate to take positions of support or to claim credit when the legislative smoke settles. Few if any legislators could be found echoing calls for a smaller, less accessible SUNY.

Inevitably, there are nuances and subtleties. More concerned about budgets and taxes, Republicans, particularly in the Senate, are inclined to acquiesce in tuition increases or to argue for tuition increases tied to the Consumer Price Index or the Higher Education Price Index. Loyal to their roots, Democrats were more likely to resist tuition increases, more likely to call for tuition rollbacks. But reaction to the “T-word” is so sensitive that an observer might

well believe that tuition and TAP was *the* higher education issue. When, for example, the governor proposed both deep cuts and a radical restructuring of TAP in his 1999–00 budget, the reaction of many legislators appeared to be that *that* item was DOA (dead on arrival).¹⁹ More than once advocates for SUNY, whether union or management, were put in the position of trying to point out, *sotto voce*, that resisting tuition increases is all well and good but only as long as state dollars for the operating budget are forthcoming.

Organized interests play a key role in the politics of higher education. Legislative responsiveness to SUNY issues has been aided, if not created by, the lobbying efforts of faculty and students who can say and do things that administrators cannot. When SUNY's administration argued for variable tuition and for detaching the hospitals from the university, it was successfully opposed by SUNY's influential faculty union—United University Professions (UUP). Over the years, UUP proved adroit in its advocacy and in developing a network of friends in the legislature. By the early 1990s, it was a player to be taken into account, aided, no doubt, by its affiliation with the New York State United Teachers (NYSUT), one of the state's most powerful and well-financed unions. As unions do, UUP and NYSUT reward friendly legislators, devote substantial resources to lobbying, and play interest group politics with sophistication and success. As the gap between SUNY administrators and trustees and the faculty widened in the late 1980s, and particularly after 1995, the union developed both policy and lobbying goals independent of the SUNY establishment. Across the board, SUNY's best advocates—students, faculty, campus administrators—tend to work *with* legislators in a common direction.

For its part, System Administration (the new name for SUNY Central in the Pataki era) is generally accorded the natural deference that agencies receive, but this is no guarantee that its spokespersons, including chancellors, will consistently find receptive interlocutors in the legislature. A SUNY official who, at key budget hearings, begins successive answers with “I don't know” or comes up with a sizeable “rainy day fund” after pleading dire poverty is not the most persuasive or credible spokesperson. Throughout the 1980s and into the 1990s, SUNY Central's relationship with the legislature was often problematic, as political clumsiness, weak leadership, a touch of arrogance, or poor policy choices undermined its authority. Whether Wharton's Independent Commission in the mid-1980s or Pataki's radical trustees in the 1990s, legislators resisted, when and where it could, efforts to change the SUNY that the legislature built, protected, and regarded as its own.

Even though SUNY got by with a little help from its legislative friends, often the operative word was “little.” The legislature did not seek to micromanage the university or intrude on academic matters. It rarely set internal SUNY priorities or meddled with issues of curriculum or academic freedom. It seemed to have a sophisticated and wise appreciation of the

proper relationship between the university and the people's representatives. The legislature pursued the classic strategy of splitting the difference between what governors habitually proposed cutting and SUNY advocates wanted restored. "We'll help," legislators would say, "times are tough—you'll have to take some hits." It was the best the university could expect. Under Pataki, however, the cuts were so severe and across the board, and Republicans were under such severe pressure to toe the party line, that legislators felt besieged, making the task of winning relief more difficult than ever before. When, in Albany as in Washington after 1994, the Democratic Assembly leadership hewed to a more "moderate" and less "liberal" line, the help grew even more "little." Once the trustees made defending Governor Pataki's fiscal policies their top priority, "Save SUNY" campaigns were carried almost exclusively by faculty and students. Inevitably, higher education could not be divorced from the general political context, and SUNY issues were inevitably swept up in the whirlpool of broader partisan and ideological warfare. In spring 1998, to take one example, hard-crafted bipartisan add-ons to SUNY's budget fell victim to Pataki's massive across-the-board veto ax.

Legislators had to weigh one set of claims against another. In New York, as across the country, welfare, Medicaid, crime, and corrections all competed for scarce dollars against a backdrop of federal reductions in state aid. The Pataki agenda further tightened the fiscal screws. Then too, the legislative process is ill-suited for deciding fundamental policy within the constitutional deadlines imposed on the budget process or through the hard-fought bitter politics that characterizes an annual budget that is universally regarded as "dysfunctional," in the words of the comptroller. Legislators need to solve today's problems today—and these are fiscal and political; on the truly big questions that require long-term, thoughtful goals, they look to others to provide answers they can work with. Thus, SUNY came under increasing pressure to address its own problems. But when the internal constituencies (e.g., UUP and SUNY Central) could not agree on, say, flexibility for the hospitals or budget priorities, the result was prolonged stalemate or simply drift. Often policy seemed to be the by-product of default or the result of measures taken as a fiscal quick fix. Comptroller McCall noted, to take one example, that TAP grant schedules were bent not to meet a policy objective but to meet immediate budgetary needs. Cuts to SUNY sometimes seemed to be driven by no greater motive than "that's where the money is." " 'Policy,' " the comptroller said, "ends up being whatever the budget dynamics produces."²⁰

There is another point to be made here. Not surprisingly, professors look on SUNY as an academic institution. If they worry about policy questions at all, they worry about teaching, staffing, money for research, libraries, and colleagues threatened by layoffs. This produces a degree of disconnect between professor and legislator. Legislators often view the state university as

a social program that meets the needs of real people. With Americans increasingly regarding a “college education” as an entitlement—as necessary to a secure personal future—legislators are concerned chiefly about opportunity: Can the sons and daughters of constituents find a place in SUNY? Is there enough TAP to go around? Is there child care for the student-mother or remedial education for those who trail behind? Can parents save for their kids’ education? These are the concerns of legislators worried about a single mom or a student who works at a 7-11 to get by. The concerns of intellectuals matter less than the Educational Opportunity Programs (EOP) student who drops out of the school due to TAP cuts, the homeowner whose taxes are squeezed because the state does not pick up its full share of community college funding or the layoff of another ten tax-paying faculty members. For legislators, the university is not an ivory tower but a human presence in their communities.

New Kids on the Political Block: The Pataki Trustees

In the past, SUNY trustees were seen as not much more than the legally constituted body responsible for the direction of SUNY—a slightly dull but worthy body, remote and anonymous, civic leaders or political notables content to defer to SUNY Central, while maintaining a relaxed hand on the reins. This picture changed radically under Governor Pataki. For starters, he appointed conservative trustees who took it upon themselves to take charge of SUNY in an aggressive activist manner and to bring it into line with Governor Pataki’s program. Like their counterparts in other states, they did not hesitate to push their agenda in the area of program issues, academic issues, and even areas defined as “academic freedom” issues. Despite the frictions that this initially created with the holdover “Cuomo Trustees,” the “Pataki Trustees” took to the Albany political stage with an activism hitherto unseen from a board of trustees.

Buoyed by their self-confidence, a clear agenda, and a sense of mission, the new trustees regarded themselves as part of a movement of conservative trustees nationally who, in one description, are “largely social and political conservatives . . . [who] believe that they must act aggressively to cure sclerotic, selfish American higher education.”²¹ In the manner of any exuberant group bent on a mission, the new trustees pursued a variety of not always compatible goals. They put into place a plan (*Rethinking SUNY*) for restructuring or deregulating the university along cost-efficient lines (discussed later), for devolving and decentralizing fiscal and managerial authority, and for compelling campuses to compete in the market for revenues and students. A new resource allocation methodology linked revenues to enrollment. At the

same time that they decentralized managerial authority in the name of efficiency, they pursued a centralizing strategy in the broad area of governance, curriculum, personnel, and standards. At least some of the trustees pursued a decidedly ideological path. Early in her tenure, for example, de Russy, the most vocal and aggressively ideological of the trustees, argued that the “challenge” included rewriting SUNY’s mission to focus on “academic excellence rather than on the unbridled interpretation of ‘access’ described in *SUNY 2000*,” raising admissions standards in order to reverse the fact that, in her view, “SUNY has contributed to the decline of public education,” reviewing the course offerings of all sixty-four campuses, eliminating programs that are provided in the private sector, reducing “taxpayer subsidies” while raising tuition, and reviewing preferential policies.²²

Some of the reforms were long overdue, e.g., fiscal flexibility and independence for local administrators. But others raised red flags: differential tuition would stratify the university, devolution would fragment the coherence of the university, a market-based approach would set campuses against each other, “basic curriculum” was an avenue for ideological direction; a pervasive cost-effective calculus would displace academic judgment. A fresh strategy on management issues—a trend throughout the country—was one thing; using such a strategy as a ramp for remaking the university and subtly redefining its mission was another. Trustee Arnold Gardner, a Carey appointee, was blunt in his assessment: “we all want standards, but not as a barrier to access. . . . These are codes for a lessened university, lessened in size, lessened in quality, lessened in terms of their ability to maintain quality programs and services.”²³ Criticisms notwithstanding, the Pataki appointees were in control of the board and its agenda by 1997. They created a new political dynamic as they increasingly took a direct and supercharged role in the university’s internal affairs.

Nothing demonstrated better, perhaps, the underlying conservative impulse that guided the trustees than the controversy that raged over a 1997 women’s studies conference at SUNY New Paltz, a controversy that extended from the columns of *the Wall Street Journal* to campuses throughout the nation. Amid stories of panels about homosexuality, sado-masochism, and how to improve sex, Trustee de Russy sought to have the campus president fired. This was an action that some regarded as a proper exercise of trustee oversight but that others saw as clearly threatening academic freedom. Given the “culture wars” raging in American intellectual-academic circles, this controversy might be seen as just another flap over postmodernist or feminist redefinition of the canon. But from the perspective of Trustee de Russy and her defenders, the “New Paltz Affair” was no small campus dust-up: the stakes were very large, namely, halting “the continuing corrosion of American culture as a whole.”²⁴

The controversy eventually subsided, but the conflict indicated the tensions in existence.

If “meddle” and “micromanage” was the common description at the outset, the adjectives grew stronger by 1999 as the new trustees showed little inclination to change course: politicizing the university, ideological take-over, litmus test for appointments of administrators, infringing academic freedom, arrogance. The new trustees and their spokespersons responded in kind, denouncing union leaders as using the faculty as “pawns” for “your purpose of self-promotion.”²⁵ By early 1999 at the latest, the university community was polarized within, and often against, itself in a quite complicated manner. On many issues the Pataki trustees were on one side while significant constituencies within the university community—faculty union and faculty senate, staff, students, and even some campus administrators who were obliged to carry out the decisions made by DOB and the trustees—was on the other. Driven by their local interests, some campus presidents supported the trustees’ efforts to implement management flexibility, campus authority regarding tuition, shedding the hospitals, and the like.²⁶ On other issues, campus administrators, apprehensive about an overbearing board, concluded that discretion, not valor, was the best strategy. Nor were the divisions caused by the new trustees confined to the SUNY community. Some of SUNY’s most ardent legislative friends plunged into open warfare against the new trustees who, at times, seemed quite determined, as it were, to storm the Winter Palace and overthrow the *ancien régime*. The board did not hesitate first to drive one chancellor (Tom Bartlett) out and then, without a full search, appoint a more cooperative and agreeable chancellor (John Ryan). In a brutally frank report, the Faculty Senate sharply criticized the “erosion of academic due process in the selection of System Administration personnel” and the tendency of the new regime to ignore “the standard practices of professional employment in higher education in the United States.”²⁷ Nor did the board hesitate to impose, or attempt to impose, its judgment on a range of areas that previous boards had left to administrators and faculty. As one holdover trustee put it, the Pataki trustees were “SUNY’s harshest critics and chief proponents of dismantling the system.”²⁸ As many of the trustees’ reforms did not require statutory approval, and as the governor continued to support his appointees, the critics lacked effective leverage to change or moderate the new policies. Some policies could be blocked: differential tuition was simply something that the legislature refused to accept; the new Resource Allocation Method was modified in 1998–99. But as many of the new directions, e.g., devolution and decentralization, the dismantling of SUNY Central, were institutionalized, and given the resounding reelection of Governor Pataki in 1998, it was clear that there would no easy return to the Rockefeller model, absent a major shift in state politics.

SUNY and the Challenge of *Rethinking SUNY*

On the eve of the 1994 Republican takeover of the governor's mansion, SUNY's basic framework was generally secure, despite the disinvestment of the 1980s and early 1990s. The university had ducked the bullet of Chancellor Johnstone's desperate options and, despite continued fiscal pressures, was breathing somewhat easier. Following the electorate's repudiation of the Cuomo administration, however, it became clear SUNY would not be permitted to muddle through with basic issues left unresolved. But few observers were fully prepared for the shift in the framework of public policy that was now executed with a take-no-prisoners ferocity and speed—a shift signaled by the scope and depth of the 1995–1996 budget proposals. Even fewer expected, moreover, the new direction for SUNY that was set out in *Rethinking SUNY*. Large institutions, like large oil tankers, cannot change directions swiftly, and over the next four years, the trustees found it more difficult than they had anticipated to realize their full vision or to carry out the more extreme ideas of some of their members. Much was attempted and much was done that was different. By 1999, certain institutional changes, as suggested above, seemed firmly in place. These included greater fiscal autonomy for individual campuses, a change that increased enrollment-based competitive pressures while accelerating centrifugal forces within the university and diminishing the overall coherence and identity of SUNY as a system. But the trustees found far more impediments in their way than they had probably anticipated. Their inability to impose differential tuition or to spin off the hospitals, mentioned above, are two examples. As their ideological kinfolk elsewhere in the nation discovered, sweeping change, not to say revolutionary change, does not come easily to American political life.

The conflicts and disputes that characterized SUNY policy from 1994 onward, it should be emphasized, were less about particular policies than they were about the overall vision and philosophy that shaped those policies. The trustees were successful in much, but not all, that they have attempted. By mid-1999 (as discussed later) the trustees' actions resulted in a major (and still unresolved) effort by the faculty to compel the removal of the Board of Trustees—or at least force a change in the governance of the university. But politics aside, there was no consensus on the key question: What kind of university was SUNY to be as it faced its second fifty years? To better understand the contested values in this continuing debate, it will be useful to refer to two broad visions or models of the university—two contesting paradigms, two embattled camps. For simplicity, call them the “Rockefeller” and the “Pataki” models as a way of conceptualizing the two visions that underlay the politics and the debate over SUNY's future.

“To Provide to the People . . .”: The Inherited Vision of SUNY

When the Pataki administration came to office in early 1995, it inherited a state university whose policy framework had been securely in place—whatever the ups and downs of budgeting, whatever the debates over mission and size—for about thirty years. That framework was expressed in the 1985 statutory mission statement and in an institutional configuration that had been largely constructed in the 1960s. The mission had been defined into law in 1985 in statutory language of striking specificity and even eloquence. As with any university, its mission encompassed “education, research and service.” But the legislature took care to define its mission in very special terms and to enunciate some very clear policy values:

The mission of the state university system shall be to provide to the people of New York educational services of the highest quality, with the broadest possible access, fully representative of all segments of the population in a complete range of academic, professional and vocational post-secondary programs. . . . These services and activities shall be offered through a geographically distributed comprehensive system of diverse campuses designed to provide a comprehensive program of higher education. . . . and to address local, regional and state needs and goals. (Chapter 522, Laws of 1985)

The legislature defined the mission in detailed terms that a brief summary cannot do justice to. Fulfilling the mission requires a “balance of . . . resources” that:

1. With respect to educational services, “recognizes the fundamental role of its responsibilities in undergraduate education and provides a full range of graduate and professional education that reflects the opportunity for individual choice and the needs of society.”
2. Recalling the political struggle over medical education in the 1940s, “strengthens its educational and research programs . . . through the provision of high quality health care.”
3. With respect to access and tuition levels, “establishes tuition which most effectively promotes the university’s access goals.”
4. And with respect to service, “shares the expertise of the state university . . . through a program of public service for the purpose of enhancing the well-being of the people of the state of New York.”

SUNY is enjoined to achieve the “broadest possible” access, a term that implied both expanded places and opportunity for socially and economically

defined populations. Tuition must promote access rather than other objectives such as supplying a fixed percentage of operating costs. Educational excellence—"the highest quality"—is the first obligation of the university. Excellence, access, affordability: these were the core values. Comprehensive offerings: this was the core programmatic commitment.

SUNY's institutional configuration is as important as its mission statement in defining the university's overall character and values. This point requires far more extended discussion than is possible here, but briefly, I would like to identify five key features of this institutional profile, noting that they are, in part, accidents of history and, in part, a product of deliberate design.

1. *A public and a state university.* SUNY is a "public" university, created by public legislation, state operated, part of the general organization of government. Its faculty and employees are state employees; its mission is to serve the public. The statute does not define SUNY as a "state-assisted" or "state-subsidized" institution, as is the case elsewhere. It is—or rather was—an organic part of the entire ensemble of public institutions, in the same way that public schools are. But in an age of "reinventing government" the line between "public" and "private" is blurry, and as we shall see below, SUNY increasingly is a state institution that is subtly becoming privatized in a number of ways.
2. *A unitary and comprehensive system.* SUNY developed as a unitary and comprehensive system rather than as a scatter of autonomous campuses tied together by administrative strings. A crucial expression of this "unitary" and "comprehensive" character has been the policy of applying a single common tuition fee for each level of instruction (e.g., baccalaureate and doctoral) rather than a variable or differential campus-based tuition. (Indeed, until 1963, tuition was free in SUNY.)
3. *No flagship campus.* As SUNY developed, a decision was made to support several advanced professional, graduate, and research centers rather than a single dominant flagship campus, a pattern found elsewhere in the country. This was consistent, as noted earlier, with the virtue that the trustees found in the geographic breadth that characterized SUNY, noting in the 1960s that "collegiate programs should be provided where students live."²⁹
4. *The role of the legislature and public accountability.* As noted earlier, SUNY was not made a constitutionally autonomous institution. Although the trustees exercise authority in directing the university, SUNY has remained linked to the political process. Without putting too fine a point on it, the legislature is the "democratic" link between SUNY and the public.

5. *A finely tuned balance—a common identity.* Finally, SUNY developed and the trustees sought to maintain a delicate balance between the advantages of decentralization and “the unity of purpose achieved by its units and central administration.” This balance, I believe, also permitted SUNY to develop a coherent and readily identifiable identity that stood all its campuses in good stead throughout the country and state. It had the potential of making SUNY one of the elements that, as one finds elsewhere across the country, link the people of the state with their university.

The Pataki Administration and the New Paradigm

Governor Pataki’s general program and the decidedly conservative outlook of his appointees to the Board of Trustees signaled that the administration would seek to remake SUNY along different lines. The new vision was drawn from the panoply of conservative political ideas: greater fiscal belt-tightening and reduced funding, attention to productivity, emphasis on conservative intellectual values, a reduced public sector and support for the private sector. For conservatives, SUNY was neither well-managed, cost-effective nor doing the academic job it should. As the new board took charge, it became evident that university life would be subject to far greater trustee direction than before and that for the first time this would be extended to academic matters. Nor could there be doubt that this effort would provoke an extended debate about SUNY. What was not anticipated was just how radical this effort would be or just how bitter and protracted the ensuing controversy would become. We turn now to a review of the strategies that defined the new regime.

Shock Treatment: The Impact of Fiscal Policy

It is not surprising that SUNY was a prime target of opportunity for Pataki’s budget officials, especially given the large budget deficit they were seeking to close. It had long been conventional wisdom that SUNY was too big, too inefficient, too costly, and poorly managed. Thus, the first strike was at SUNY’s budget, not its classrooms. In his initial budget proposals, Governor Pataki proposed—when the numbers were finally added up³⁰—a cut of nearly one dollar in three. The proposed budget also included reductions in TAP, the elimination of SUNY’s Equal Opportunity Program, a program for economically and educationally disadvantaged students, and a general tuition increase. This last package of proposals reflected a marked indifference, if not class bias, toward precisely those social constituencies that SUNY was meant to serve. Faculty, students, administrators, and even seasoned legislative supporters of SUNY were stunned by the depth of the proposed cuts. Not even

in its worst moments had the California system, which until then had taken the deepest cuts nationally, been hit as hard. Was the administration serious or was it simply laying cards on the table for the bargaining that would follow? Whatever the answer to this question, the proposals were taken seriously, very seriously. The presidents of the four university centers, sober and cautious individuals not known for excessive rhetoric, pleaded with the legislature:

This can be a wrecker budget for State University. Put simply this budget means that SUNY cannot continue to exist in its present configuration. These shifts in sources of support (i.e., from state to students) radically change the nature of SUNY. . . . This radical budget, this challenge budget, requires radical responses, not business as usual.³¹

What these “radical” measures might be was suggested by reports that the chancellor and trustees were considering the closing of eight campuses. . . A threshold had been passed. There would be no return to a fiscal *status quo*. Over the next four years, the governor proposed budgets that contained deep reductions or else held the existing budget steady, producing a *de facto* budget cut. There would be no growth. Given divided control of the legislature, negotiating budgets became protracted stalemates; SUNY lobbyists were compelled to take what they could get, namely, very partial restorations

Even when both chambers restored some funding, there always existed a possibility that they would disagree on whether additional revenue should derive from increased tuition charges or from appropriated tax dollars. Nor, after 1994, could the SUNY community of students, faculty, and campus administrators look to the trustees or, after Chancellor Ryan assumed office, SUNY’s senior administrators for help with the legislature. They were working to a different brief and were defiant in the face of criticism. “It is simply false to say that the trustees are not advocating to ensure the financial well-being of the state university,” Trustee de Russy told the press, adding “We also have a responsibility to the taxpayer. All of the state agencies have to deal with cost efficiency.” Did that comment expose a subtextual assumption of the new trustees, namely, that SUNY was an agency just like other agencies? In the rough and tumble of budget politics, rational discourse was a rare commodity, and debates were noisy and nasty. For the new administration, radical measures were necessary. If campus closings were taboo, then other measures must be found. The following four years saw turmoil sweep the university as a result of the proposed budget reductions. The impact of the instability was enormous: applications slumped; faculty flight set in as talented faculty found opportunities elsewhere or took early retirement; the faculty as a whole fell by nearly 1,600 from 1994 to 1997; the proportion of

part-time faculty rose across the system; course sections were canceled. What cannot be shown with numbers is the demoralization of staff, the uncertainty of students about their planned program, and the erosion of the reputation of an institution that, in terms of the long sweep of university history in America, was still building a reputation. The president of the American Association of State Colleges and Universities told the press that SUNY is “faltering greatly” and even insiders, the press reported, admitted that SUNY’s reputation had suffered.

When the state’s surplus grew to \$1 to \$2 billion in mid-1997, the pressure eased somewhat, although New York continued to lag behind the recovery evident elsewhere in the nation.³² Nor was austerity lessened in the proposed 1998–99 budget which, despite the provision of funding for capital improvements and the upbeat, election-year tone with which the governor delivered it, continued the downsizing which began twenty years earlier. And once the 1998 election was behind him and national ambitions apparently shaping his policy agenda, the governor returned to the hard-line fiscal and social strategies that were the hallmark of his administration. Despite a budget surplus of about \$2 billion, he proposed cuts in SUNY’s operating budget that some calculated as \$52 million and others as high as \$213 million and contained the most severe proposed cuts ever in TAP. Moreover, TAP was restructured to accomplish nonfiscal goals, e.g., shortening time-to-graduation, that fell the hardest on low-income and working students. As it faced the new century, SUNY continued to exist on short rations, in an environment marked by a budget surplus, and in fact, it faces the prospect of a worsening situation in the early 2000s as tax cuts, the STAR program, and federal welfare cuts together threatened a new state budget deficit.

“SUNY Bashing”: The Discourse of Denigration

The political storm that raged as a result of the Pataki budgets spread beyond budget politics. Conservative politicians and right-wing groups such as Change-NY initiated a campaign of denigration—“SUNY bashing”—whose political purpose seemed to be to undermine SUNY’s credibility. A series of reports by Change-NY’s the Empire Foundation for Policy Research attacked SUNY for what it saw as a core curriculum that lacked intellectual coherence and standards. Others attacked SUNY faculty as overpaid and underproductive, despite external evidence to the contrary. Such attacks conveyed the notion that there was little reason for SUNY to be anything more than a safety net for those that were neither rich enough nor bright enough to afford private education. Inevitably, the campaign of disparagement, and the polemics it occasioned, could not but contribute to the erosion of SUNY’s reputation in the academic community and of its appeal to potential students and their

families. In time, as the Pataki administration itself appeared to be moving in a more pragmatic direction, what might be called the “trashing of SUNY” eased up, but did not totally vanish.

A New Blueprint: Rethinking SUNY

Confronted with intense opposition to the first Pataki budget and frustrated at SUNY’s apparent inability to bring its budget problems to resolution or to chart a course for itself, the legislature directed the trustees to prepare a “multi-year comprehensive, system wide plan to increase cost efficiency.”³³ If legislators expected a process that would at last create a consensus on SUNY’s future, they were dealt a sharp surprise when *Rethinking SUNY* was published in late 1995. Although presented as a plan for utilizing state resources efficiently, raising academic standards, and ensuring accountability, *Rethinking SUNY* projected a quite different vision for SUNY. It was, in fact, the first shot in a policy dispute that five years later had still not been resolved.

What was the fuss about? On one level, *Rethinking SUNY* was not as novel as it appeared. Many, if not most, of the ideas in *Rethinking SUNY* were common currency among administrators in national higher education circles as a reflection of a movement to reform university management. “Restructuring” with an eye to cost-efficiency, enhanced learning productivity, eliminating tenure in order to create a more flexible labor market, performance funding, selective excellence, decentralized fiscal responsibility, outsourcing, user fees (shifting the cost-burden to students), these were managerial precepts that since the early 1980s were seen as solutions for the problems of higher education.³⁴ Fundamental to this managerial philosophy were propositions that, in effect, assumed that the university should be run along corporate lines, employing modern management practices. The notion was that students should be regarded as consumers, colleges should respond to the needs of the market place, education was about advancing individual interests, and that intercampus competition was a good thing. Higher education was a service industry, an all-important engine in the process of economic growth, individual advancement, and global competition—but a service industry, nonetheless. At a time when “virtual universities” and for-profit corporations were blurring the lines between traditional universities and what some now called education management organizations” (EMOs), *Rethinking SUNY* was in step with the new *Zeitgeist* of higher education.³⁵

In addition to its general neocorporate perspective, *Rethinking SUNY* projected a new institutional architecture. Campus autonomy and “self-sufficiency” would replace system-wide leadership and policy direction; undergraduate education would become SUNY’s highest priority, replacing the long-time balance of undergraduate, graduate, and professional education—the latter

presumably would again be the work of private institutions. The hospitals would be spun off from the health science centers and converted into public benefit corporations, thus severing their organic connection to SUNY—a prime motive for the founding of SUNY in the 1940s. Differential tuition—with all its implications of hierarchy, prestige (not to say, snobbery), and brand competition—would replace the long-standing policy of uniform tuition and introduce a prestige-based dynamic into the university. In a decisive departure, from the 1985 mission statement, “quality” and “access” were to be balanced against cost. To its critics, *Rethinking SUNY* reverberated with meanings that violated honored traditions of the university as an institution, and of SUNY itself. In the end this is what the fuss was about.

In time, some of these ideas proved nonstarters and some were fairly reasonable approaches to tidy management. But *Rethinking SUNY* was more than a technician’s manual or a handbook for SUNY managers. It sought to install the neoliberal view that a market approach to management would be more efficient than SUNY’s somewhat clumsy state agency model. A second premise, one that guided the general approach of the Pataki administration, held that the private sector was superior to the public and that a downsized and less public SUNY would be a better SUNY. SUNY could not be totally privatized, but SUNY campuses could be forced to compete—more “entrepreneurial” was the way it was put—in a market environment. The new resource allocation method, which also set off a small political firestorm when it was introduced, was one example of this.³⁶ SUNY campus presidents felt a steady pressure to manage their campuses as if they “were in the private sector.” As for campuses that could not compete successfully—well, perhaps, in time, they would need to be closed, and if so, it would be “the market” and not the political process that would administer the *coup de grâce*. In short, such approaches tended to emphasize fiscal considerations or competitive outcomes in academic decision-making. And while the trustees did not neglect quality, many in the university were led to wonder whether managerial concerns were taking precedence over academic considerations or over SUNY’s broad social mission.

Rethinking SUNY and the ensemble of managerial and ideological objectives pursued by the board of trustees and the Pataki administration set SUNY on a new, if contentious, direction. *Rethinking SUNY* and its progeny forced professors, administrators, and staff to ask hard questions as they watched their institution change around them. If the student is redefined as a consumer, rather than as an apprentice learner, does that mean that the customer is always right and that the university should simply respond to market demand in designing programs and setting standards? Is the faculty member now also defined as an entrepreneur out to advance herself or himself by a market calculus rather than a member of a community of scholars? What

traditionally distinguished SUNY from some of its sister state “systems” was the principle that the SUNY whole is greater than the sum of its campus parts: *Rethinking SUNY* would change that by encouraging the parts to the detriment of the whole. Would the more decentralized SUNY envisioned by *Rethinking SUNY* face a slide back to what it was at the outset of its life: “a secondary alternative, suitable mainly for . . . students unable to afford private institutions,” just a scatter of disconnected campuses with all but a few drifting into obscurity and even mediocrity—almost a higher education welfare safety net? By 1998, some of its more extreme ideas, e.g., differential tuition, scrapping professional training, perhaps even cutting back on access, were abandoned or defeated and, with the trustees’ decision to require a system-wide core curriculum (see next section), more serious issues were on the table. Did the trustees really understand the deeper problems facing higher education or were these cast in the sometimes simplistic terms produced by the raging “culture wars”? And what would become of the university’s reputation for learning, teaching, and scholarship if the trustees succeeded in giving SUNY a neoconservative ideological image to the university? Was SUNY destined to become the poster child for the anti-PC project of some trustees? Were the trustees correct that the curriculum was shapeless and lacked rigor? And did those trustees most concerned to limit, say, “feminist,” “deconstructionist,” or “multicultural” studies, understand that the origins of public education stressed greater access and opportunity but also, as Nevins put it, a “rejection of the tyranny of classical and theological studies,” i.e., to explore new avenues of knowledge?

Whatever the conversations in the winter of 1999, *Rethinking SUNY* still provides direction for SUNY’s managers. Its tenets are being realized as “new facts on the ground.” To see the shift in emphasis and direction, one need look no farther than the key values embedded in the text of *Rethinking SUNY*: the word *market* appears four times, the word *efficiency* seven times, and the word *democracy*, not at all.³⁷ The SUNY of 1998 is a far cry from Rockefeller’s SUNY of 1968.

From Conflict to Confrontation

Given the importance of SUNY—its budget, its structure, its mission—within the ensemble of state policies, the politicization of SUNY policy that occurred between 1995 and 1999 comes as little surprise. SUNY was born in bitter controversy and major moments in its development were also marked by intense and rancorous political dispute. For all participants—faculty and trustees, students and taxpayers, legislators and governors—the stakes were very high, whether in 1948 with the establishment of the university, in 1985

with the effort by the Independent Commission to restructure it, or in 1995 with *Rethinking SUNY*. But the depth of conflict and the degree of polarization triggered by the Pataki trustees was unusual, even for SUNY and even for New York.

Disinterested observers and friends of public higher education might well have wondered whether university norms of shared governance, democratic discourse, empowerment of university constituencies, and even civility could be restored given the tensions between the activist trustees and the community of students, faculty, and administrators for whom they have responsibility. This last question was given special urgency as the spring semester 1999 drew to a close. In a clear effort to transform SUNY intellectually as *Rethinking SUNY* had sought to do in other areas of university life, the Board of Trustees, at its December 1998 meeting, approved a uniform thirty-hour core curriculum for all SUNY campuses. Encouraged by their allies in the neoconservative National Association of Scholars and in Change-NY, the trustees, with a single vote, sought to redress what they regarded as the lack of standards, of intellectual rigor, and of proper curricular content. This effort to impose a single curriculum on thirty or so quite diverse campuses was astonishing in its ambition and audacity. But that was not the problem. Nor did the problem necessarily lay with the content of the curriculum itself—reasonable people could disagree on both the desirability of a university-wide core curriculum and on the content of that curriculum.

The difficulty lay with the nature and implications of the action itself. It was consistent with the top-down governance more common among governing boards around the country. Thus, the faculty (and campus presidents too, for that matter) had been denied any input on the curriculum that the trustees finally approved—a clear breach, it seemed, both of the traditions of shared university governance and of the trustees' own policies. Moreover, the new requirements were approved with little or no regard for the difficulties or expense involved in implementing it. The decision was an unfunded mandate imposed from above. It did not help that at the same meeting the trustees, at the direction of the governor's office, proposed a meager increase of 2.8 percent for the budget for the forthcoming year.

The firestorm of opposition and protest that followed these events resulted, as winter turned to spring, in the collaboration of the University Faculty Senate and United University Professions—the two core voices of the faculty—in crafting a formal resolution of no confidence in the trustees, a resolution addressed to the governor, the legislature, and the public. To the degree that college faculties are conservative and cautious, slow to anger and slower to act, the speed with which support grew for the resolution reflected a degree of collective determination that was as breathtaking as it was rare. As the resolution took shape, and as campus senate after campus senate and union

chapter after union chapter voted overwhelmingly to approve the resolution, a bill of particulars was articulated, indicting the trustees for what the faculty regarded as a long train of abuses and usurpations. In April, the University Senate adopted the resolution by a vote of 37 to 2. "This motion," one senator said, summing up the general faculty mood, "is long overdue."³⁸

In university politics, votes of no confidence are generally followed by the resignation of the target of the vote, usually a college president. But with lines drawn deeply in the dirt, passage of this vote of no confidence appeared to have little immediate effect on an embattled Board of Trustees that looked upon both the senate and the union with undisguised disdain. Nonetheless, votes of no confidence are sufficiently rare and sufficiently grave as to pose a major challenge to the legitimacy of the trustees.

The long term issue of how the trustees will interact with SUNY remains to be seen. Will the vote simply ignite a further extended period of ill will, with all sides carrying on business more or less as usual? Whatever the outcome, the confrontation signals more clearly than any event since 1948 the extent to which the future of SUNY continues to be a bitterly contested issue of public policy and politics.

Still Seeking the Promise of Democracy and Excellence?

As we have seen, the Pataki administration set SUNY on a wholly new course. The political turmoil that ensued demonstrated that the public and legislative support that SUNY enjoyed did not extend to the policies of the new trustees or to the budget policies that Pataki laid on SUNY. Put simply, there was no consensus over any policy direction. Three years after the new course was set, a report from Comptroller Carl McCall described the "policy vacuum" that characterized higher education policy. "At the current time," he wrote, "there is no agreed-upon strategic plan on which to base decisions, and the original broadly based social commitments behind the establishment of New York State's higher education programs have seemingly been forgotten."³⁹ His words point to the fact that, despite the bitter politics that engulfed higher education policy, that policy was simply not at the top of Albany's policy agenda. Nor was there any inclination to engage New Yorkers in a broad discussion about higher education. In the 1960s and 1980s, prestigious commissions were created to chart a course for higher education, but Governor Pataki was content to let his trustees do what they thought best. Preoccupied with taxes, partisan warfare, crime, and upstate/downstate issues, a rancorous and divided legislature was unwilling to deal with the issue. SUNY might be protected to the extent that cuts in financial aid were stopped, no colleges were closed, or efforts to detach the hospitals from SUNY were

beaten back, but on the big issue—SUNY's future—the legislature was not a player. When the governor was reelected in 1998 with an overwhelming majority, legislators busied themselves with other concerns. There would be no fresh master plan for higher education in the Empire State.

Still, the divisive, harsh, and painful politics that have swept so destructively through both SUNY and CUNY give added force to the comptroller's words. Far-reaching changes in American universities over the last generation give them urgency. If the society of the twenty-first century is to be knowledge-based and therefore to be a "learning society," then surely universities will be leading institutions of such a society.⁴⁰ And if New York's public higher education sector is to flourish and command the pride of New Yorkers and the respect of the academic community elsewhere, policymakers and the SUNY community alike must address a range of fundamental policy issues no less consequential than those faced by the Temporary Commission in 1948 or the Heald Commission in 1960. How are access and excellence to be defined in a public institution? Can both be pursued to the fullest in conditions of constrained resources? What is the appropriate model and mission of a public university in contemporary society: Is it a mere service provider, or is it an institution that serves broader democratic and academic purposes? What degree of support should be extended to private institutions, and how can the state help students meet the cost of college? To the extent that higher education represents an investment in a community's human capital, how should the consequences of New York's long-term economic decline be balanced against demographic trends that indicate an upswing in college-bound New Yorkers after 2000? What priority should be given to higher education in light of other crucial social needs? These are not new questions, but the context for addressing them is different than it was in 1945 or 1965 or even 1985. The question for the analyst is whether New York's political system—which despite real strengths is so dysfunctional—can summon the will and sense of purpose to do so.

In grappling with such questions, New Yorkers could do worse than to start with the vision of public higher education formulated by Thomas Hamilton in his 1959 installation address as SUNY's chancellor. Hamilton called on SUNY to dedicate itself to the idea that:

the goal of life in a democracy is the realization of one's capacities and aspirations; the obligation of a democracy is to see that no deserving person fails of this realization for lack of opportunity. . . . To this idea of America . . . I pledge the State University of New York: that no young citizen of this State shall be denied a collegiate educational opportunity, consistent with his [or her] talent and diligence, because of any conditions attendant upon his [or her] birth. . . . In this way the University

can best contribute to the creation and maintenance of the democracy of excellence.

Hamilton's words echo with the sentiments and passions that have been missing from recent debates about SUNY. These aspirations, this sense of democratic purpose is what is at stake in the debate over SUNY's still contested future.

Notes

The author thanks several colleagues for conversations on the issues discussed here: Janet Steck, Michael Zweig, Bruce Atkins, Craig Little, and members of United University Professions UUP's Future of SUNY Committee. A special word of appreciation to Assemblymember Martin Luster for calling the author's attention to the importance of SUNY's statutory mission statement. A particular word of appreciation to editor Jeff Stonecash for his patience and good humor.

1. The State University of New York consists of thirty-one state-operated campuses, five statutory colleges administered by private institutions, and thirty community colleges administered by local county authorities. The state-operated campuses consist of four university centers, thirteen four-year university colleges of arts and sciences, five colleges of technology, five specialized colleges, and four health science centers, two of which are associated with university centers. Unless otherwise indicated, this chapter will be concerned with the thirty-one state-operated campuses administered from Albany by SUNY System Administration, previously termed SUNY Central.

2. Allan Nevins, *The State Universities and Democracy* (Urbana: University of Illinois Press, 1962), p. 16.

3. State University of New York, *SUNY 2000: A Vision for the New Century*, a report from the Board of Trustees and the chancellor of the State University of New York (Albany, NY, 1991), p. 19.

4. Scher quoted in Robert H. Connery and Gerald Benjamin, *Rockefeller of New York: Executive Power in the Statehouse* (Ithaca, NY: Cornell University Press, 1979), pp. 298, 301.

5. *SUNY 2000*, p. 21.

6. Gerald Benjamin and Normal T. Hurd, *Making Experience Count* (Albany, NY: Rockefeller Institute, 1985), p. 106.

7. *Annual Report of the Board of Trustees, 1961-62*, p. 8. Geographic accessibility was a fairly consistent theme; see *Annual Report of the Board of Trustees, 1949*, p. 5. On SUNY's tenth anniversary, the trustees reiterated that it was their intention to locate "education facilities as close as possible to the people of the various regions" *Annual Report of the Trustees, 1957*, p. 9.

8. Patti Magill Peterson, "Current Status and Future Prospects of Independent Higher Education in the State of New York," in William C. Barba, ed., *Higher Education in Crisis: New York in National Perspective* (New York: Garland, 1995), pp. 105-20.

9. Peter Passell, "Private Colleges Juggle Aid Formulas to Fill Seats with the Top Freshmen," *New York Times*, April 22, 1997. See also, Report of the National Commission on the Cost of Higher Education, *Straight Talk About College Costs and Prices*, (January 1998).

10. It is difficult to sort through the numbers without becoming convinced that numbers must be carefully analyzed. In *The Commitment and Capacity to Serve New York State* (1995) the Coalition for Independent Colleges and Universities claims, to take one example, a full-time undergraduate enrollment figure in four-year institutions at 215,955, while state figures ("Undergraduate and Graduate Official Fall Headcount Enrollment Trends by Sector and SUNY Components, New York State," 1998) show a 1993 count of 269,782 for the privates.

11. See Peter Passell, "Affluent Turning to Public Colleges, Threatening a Squeeze for Others," *New York Times*, August 13, 1997.

12. Stephen Carroll and Eugene Bryton, *Higher Education's Fiscal Future*, report prepared for the Council for Aid to Education (Rand, 1997), p. 18.

13. See the discussion in *Sharing the Challenge*, Report of the New York State Regents Commission on Higher Education, 1993.

14. Task Force on the Future of SUNY, "*Fragile Giant: SUNY in the Age of Disinvestment*," 1993. Barba et al., p. 6.

15. *Chronicle of Higher Education*, November 27, 1998, p. A26; and William Zumeta, "Fiscal Prospects for Higher Education: 1999," *NEA 1999 Almanac of Higher Education* (Washington, DC, 1999), p. 80.

16. H. Carl McCall, "Higher Investment as an Investment: The 1997-98 Executive Budget Cuts in Context." Office of the State Comptroller, 1997; M. O'Loughlin, B. Horner, and F. Abdalah, *Opportunity Costs*. (Albany, NY: New York Public Interest Research Group, 1997); U.S. General Accounting Office. *Higher Education: Tuition Increasing Faster than Household Income and Public Colleges' Costs*, 1996; *Students Have Increased Borrowing and Working to Help Pay Higher Tuitions*, 1998; and SUNY, Office of Institutional Research, *Trends in Tuition and Other Basic Student Charges*, Report 19-97, 1997.

17. Governor Carey's involvement in CUNY, however, was significant. He presided at a time of momentous changes in CUNY, including its fiscal stabilization, the imposition of tuition, and open admissions.

18. See the article by AP reporter Joel Stashenko, "SUNY works to rebut criticism," *Legislative Gazette*, September 28, 1998.

19. It should be noted that, politically, higher education budgets are seen as covering both student aid (e.g., TAP) and SUNY-CUNY operating budgets.

20. H. Carl McCall [State Comptroller], *New York State's Higher Education Policy Vacuum* (Albany NY: 1998).

21. Catharine R. Stimpson, "Activist Trustees Wield Power Gone Awry," *Chronicle of Higher Education*, January 16, 1998, p. B4. See also Candace de Russy, "Public Universities Need Rigorous Oversight by Trustees," October 11, 1996, p. B3; and William E. Scheuerman, "'Activist' Trustees Need Public Oversight," letter to the editor, December 6, 1996, p. B10.

22. Candace de Russy, "A Personal Vision of SUNY's Future," Memorandum to Fellow Trustees and Chancellor, July 25, 1995.

23. Amy Terdiman, "Changing Courses," *Empire State Report*, August 26, 1996, p. 32.
24. Candace de Russy, "'Revolting Behavior': The Irresponsible Exercise of Academic Freedom," *Chronicle of Higher Education*, March 6, 1998. Following the conference, Governor Pataki called on the Chair of the Trustees Tom Egan to investigate. See SUNY, *Review into Women's Studies Conference at SUNY/New Paltz, November 1, 1997*.
25. "SUNY Works to Rebut Criticism," *Legislative Gazette*, September 28, 1998.
26. Letter to Speaker of the Assembly, Majority Leader of the Senate, Chairs of the Higher Education Committees from sixteen campus presidents, June 4, 1996.
27. "The Appointment of System Administration Senior Staff," *Faculty Senate Bulletin*, No. 2, 1997–98, p. 1.
28. "A Divided SUNY," *Ithaca Journal*, March 4, 1997.
29. *Annual Report, 1961–1962*, p. 8; *Annual Report, 1949*, p. 5; *Annual Report of the Trustees, 1957*, p. 9.
30. The Pataki administration proved itself adroit at masking the full extent of its budget proposals. The published budget proposals gave far less information about the budgets than had been customary; complexity in the structure of the budget proposals had the effect of obfuscating what was proposed. Thus for the FY 1995–96 budget, it appeared that the proposed cut was a modest 4.8 percent of SUNY's overall budget, or \$73.5 million on a base budget of \$918.7 million, and this is the figure that administration defenders used. But the budget contained a revenue requirement of \$215 million, bringing the loss of state support to \$289.5 million, or 31 percent. To meet the requirement, either a tuition increase of \$1,000 to \$1,200 would be required or else extremely deep spending cuts. In its 1998–99 proposal, the administration touted a budget of \$3 billion in capital expenditures, but again, disentangling the budget numbers reveals that much of the "new" money would be bonded and that operating funds would be cut.
31. Letter to Kenneth P. LaValle, Chairman, Senate Higher Education Committee from H. Patrick Swaggert (Albany), William R. Greiner (Buffalo), Lois B. DeFleur (Binghamton), and Shirley Strum Kenny (Stony Brook), March 17, 1995.
32. Over the two-year period of 1995–96 to 1997–98, New York's expenditures on higher education dropped by 4 percent (adjusted for inflation) compared with a 6 percent national increase; New York ranked forty-sixth in the nation according to *Chronicle of Higher Education*, November 14, 1997, p. A30.
33. For an important early work, see George Keller, *Academic Strategy: The Management Revolution in American Higher Education* (Baltimore: Johns Hopkins University Press, 1983). See also Commission on National Investment in Higher Education (established by the Council for Aid to Education), *Breaking the Social Contract: The Fiscal Crisis in Higher Education* (1997). For a sharply critical view, see Langdon Winner, "The Handwriting on the Wall: Resisting Technoglobalism's Assault on Education" in Marita Moll, ed., *Tech High: Globalization and the Future of Canadian Education* (Ottawa: Fernwood, 1997); see also Michael Berube and Cary Nelson, *Higher Education Under Fire* (New York: Routledge, 1995).
34. "Towers of Babbble: Whatever Happened to the University?" *Economist*, December 25, 1993, pp. 72–74. See also Henry Steck, "'Let's Pretend We're a Corporation':

Rise of the Walmart University,” presented to Conference of Alliance of Universities for Democracy, Nitra, Slovakia, 1998.

35. Thomas J. Kriger, *White Paper on RAM*, Research Department, United University Professions (Albany, NY, 1999). RAM stands for Resource Allocation Method; at the time this is being written, a new term—Budget Allocation Process—has replaced RAM.

36. I am indebted to T. J. Kriger for bringing this to my notice.

37. “Profs Make Rebellion Official,” *Albany Times-Union*, April 24, 1999, and “SUNY Profs Plan Revolt,” April 21, 1999. “SUNY Faculty Leaders Say Faith in Trustees Is Gone,” *New York Times*, April 9, 1999. See also “A Joint Statement,” State University of New York, University Faculty Senate and United University Professions, n.d., spring 1999; and John Sorensen [Associate Vice Chancellor for Public Relations], Memorandum to Editors and Reporters, “Claims by Faculty Union,” n.d., spring 1999.

38. *New York’s Higher Education Policy Vacuum*, p. 3.

39. David Robertson, “Social Equity, Flexibility and Choice—Towards a Repositioning of Higher Education,” draft for a lecture, Durham University, May 23, 1995.

14

Health Policy in New York State: Market Models and Access Issues

Alice Sardell and Harvey Catchen

States have the major responsibility within the U.S. constitutional system for assuring the health of the public. Agencies of state government participate in a wide range of planning and regulatory activities in areas such as testing the quality of air, water, and food; solid and hazardous waste management; public health education; the examination, licensing, and discipline of health care workers; and the licensing and oversight of health care facilities. States also participate in the development of health care resources, such as the financing of medical education, and agencies of state government (in New York, the State Insurance Department) regulate the private health insurance industry. State and local governments, such as cities and counties, also have had a historic role in providing health care services to those with limited ability to purchase or otherwise obtain access to health care.

In this chapter we focus on New York State's role in facilitating access to health care services for its population, a role that has greatly expanded during the 3½ decades since the enactment of Medicare and Medicaid in 1965. First, we briefly describe the structure of the U.S. health care system and the way that New York State participated in the expansion of the government role in health care financing and delivery. Then, we focus on several major developments related to the delivery of health services in New York State that have occurred since 1995, the year in which a conservative Republican governor took office and thus had the opportunity to shape the direction of health care policy in New York State. These developments include a shift to managed care within the health services industry, a political response to consumer concerns about managed care, the restructuring of the hospital reimbursement system to allow the "market" to operate, efforts to produce more primary care physicians in New York State, the movement of Medicaid beneficiaries to managed care, and expansions of the state's health insurance program for children.

The State's Role in Facilitating Access to Health Care Services

Health policy in New York State is made within the context of a federal system of shared responsibility and financing among the national, state, and local levels of government. The health care system itself is a mix of public and private funding and control. The role of government in the financing of health care has increased enormously during the last thirty-five years at both the federal and state levels. As government has assumed more of the costs of health care services, it has increased its planning and regulatory role in relation to the private sector. New York State has been a leader in this regard.

Health care costs can be paid for by an individual ("out of pocket") or by a private or public health insurance program. In every other postindustrial nation in the world, there is a public system of health insurance that covers all citizens. In the United States, in contrast, the system of paying for care is fragmented; with different kinds of insurance paying for the health care of various categories of people. By the 1950s, a system of private health insurance based on employment was the dominant form of health insurance in the United States. This is still true today. The national government provides tax benefits to employers who purchase health insurance for their employees, but not all employers choose to do this. There are therefore many people who are employed but do not have health insurance through their jobs. Nationally 80 percent of the uninsured are employed or the children of people in the workforce. (An effort by President Clinton to legislate mandatory health insurance contributions by employers to cover all workers failed in 1994).

The Medicare program, which was enacted as Title XIX of the Social Security Act in 1965, pays part of the health care costs of those over sixty-five but does not protect the elderly against very high out-of-pocket costs.¹ Medicare is a wholly federal program, it is financed by a separate federal tax and is administered by the federal government. Medicare beneficiaries receive the same benefits no matter which state they live in. Medicaid, in contrast, the other major public health insurance program for the civilian population, is financed by a combination of federal, state, and (in New York) local funding. The federal government pays half of the cost of all Medicaid recipients in New York State, the state pays one third of the cost, and the counties pay the remaining one sixth of the cost.² While the federal government mandates certain eligibility levels and service requirements for the Medicaid program, states can choose to expand eligibility and provide certain optional services. New York State has one of the most generous state Medicaid programs covering 16 percent of the population, a larger proportion of the population than forty-seven other states.³ The increased involvement of the state in the financing

of health services originated from a concern about the cost of the Medicaid program to the state.

In the late 1960s, the state legislature authorized the state health commissioner to set rates for Medicaid and Blue Cross payments to hospitals. The hospital industry and commercial insurance companies found this rate-setting problematic. In 1978, the Council on Health Care Financing was created and mandated to develop a new hospital financing system for New York State. It had representation from all of the health care “players”; voluntary hospitals, public hospitals, Blue Cross, the commercial insurance industry, a hospital workers union, and members of the New York State Senate and Assembly. The result of negotiations among members of the council was the New York Prospective Hospital Reimbursement Methodology (NYPHRM) program enacted in 1983. It established a state-administered rate setting mechanism for *all* hospital payment (from private as well as public insurance) and a bad debt/charity care pool in which a surcharge on all payers was used to reimburse hospitals for the care of uninsured patients.⁴

NYPHRM was designed to contain rising health care costs in the 1980s by establishing limits on hospital reimbursement rates and provide for the uninsured. An evaluation of the NYPHRM reimbursement methodology concluded that NYPHRM was a “policy success” because it was able to hold cost increases to a level comparable to that experienced nationally, and it succeeded in funneling revenues to hospitals that incurred fiscal losses as a result of providing care to the uninsured.⁵ In late 1987, then Governor Mario Cuomo and legislative leaders agreed that the “all payer” system of hospital reimbursement would become permanent. NYPHRM was revised and reauthorized over the next nine years. During those years, its scope was expanded to include issues other than reimbursement for inpatient hospital care.⁶ Many of these revisions reflected a growing consensus among health policymakers in New York State as well as nationally, that a central aspect of improving health and reducing the cost of health care was to shift the allocation of health care resources from inpatient hospital care to “primary care.” Dr. David Axelrod, Governor Cuomo’s appointee as the New York State Health Commissioner from 1979 to 1991, was an assertive and consistent advocate of this approach.

Shifts in the Structure of Health Care Financing and Delivery

In the 1990s, a series of dramatic changes in the structure and delivery of health care services occurred. A new reimbursement methodology for Medicare established in the mid 1980s (diagnosis related groups, or DRGs), and subsequently adopted by private insurers, changed the fiscal incentives for

hospitals. From the time that the first Blue Cross plans were created in the 1930s, hospitals were reimbursed on a per diem rate. This meant that hospitals were paid a fixed rate for every day that a patient stayed in the hospital. Such a system provided incentives to keep patients hospitalized as long as possible. The DRG system paid each hospital a fixed amount for every procedure performed and thus changed the hospital's financial incentives. Now hospitals made more money if patients were discharged more quickly. This resulted in shorter lengths of stays for most patients.

Hospitals also had to respond to the new, more competitive environment that resulted from the entry of for-profit managed care companies into New York State. Large managed care companies, unregulated by NYPHRM legislation, were demanding steep discounts in fees they paid hospitals for their clients. To compete in this environment, large hospitals began to acquire smaller hospitals, nursing homes, and other health care providers in order to become comprehensive service providers and therefore increase their ability to negotiate with managed care companies. Hospital groups began to lobby legislators to replace NYPHRM, which they viewed as highly restrictive. In 1996 the state legislature responded by passing the New York Health Care Reform Act of 1996 (NYHCRA).

NYHCRA was enacted to create opportunities for New York State's large voluntary hospitals to compete with managed care companies in the marketplace. It allows hospitals to negotiate directly with commercial carriers, managed care companies, and Blue Cross to establish reimbursement rates for inpatient hospital stays.⁷ New York State no longer sets hospital rates.

This new reimbursement has resulted in increased merger activity among hospitals in New York State. Between June 1996 and August 1997, a total of thirty-six mergers or affiliations occurred between large hospitals and smaller hospitals, nursing homes, and other health care organizations in New York State.⁸

NYHCRA also established three "public goods pools," administered by the State Department of Health, to pay for indigent care, health care initiatives, and graduate medical education.⁹ The Indigent Care Pool provides funding to hospitals to care for individuals who have no medical insurance and cannot pay for their health care (the medically indigent). All third-party payers (Blue Cross, commercial insurance companies, managed care companies and self-insured funds) except Medicare, Medicaid, and Workers Compensation/No Fault insurance are required to pay a fixed amount (currently 8.18 percent) for each person they insure into a General Hospital Indigent Care and Health Care Initiatives Pool, or face a 24 percent surcharge if they elect to pay into the pool based for every encounter with a hospital by one of their insurees. Medicaid Managed Care and Workers Compensation/No Fault Insurance pay a slightly smaller percentage of the cost per enrollee (5.98 percent).¹⁰ Roughly 57 percent of funds collected by the pool are distributed to

both public and voluntary hospitals to pay for indigent care. Funding is based upon an analysis of the losses incurred by each hospital as a result of treating medically indigent individuals.¹¹ The remaining pool funds are used for Health Care Initiatives to enable health providers to expand access to health insurance, monitor and improve the quality of care provided, and retrain health care workers to meet the changing needs of hospitals.¹²

The Graduate Medical Education Pool is used to provide funding to teaching hospitals to compensate them for training residents. Current funding levels for medical education is approximately 75 percent of the funding graduate medical education received under NYPHRM.¹³ The Department of Health had argued that NYPHRM funding provided incentives to train too many physicians. In 1993, New York State had a ratio of 80 medical residents per 100,000 population, the highest ratio of medical residents to population of any state. Half of the specialists trained in the state did not practice in New York upon completion of their residencies.¹⁴ In February 1998, Barbara Debuono, the State Department of Health Commissioner, awarded \$45 million in grants to teaching hospitals that were now training more primary care physicians and that had reduced the over all number of medical residents by at least 2 percent. Additional Graduate Medical Education funds will be allocated to provide incentives to teaching hospitals to train more underrepresented minorities. The incentives were designed to increase the number of residents trained at ambulatory care settings, the number of primary care physicians in the state and the number of physicians working in medically underserved, minority communities.¹⁵

Managed Care Bill of Rights

Approximately 70 million Americans receive their medical care from some form of managed care organization. Kuttner has distinguished two basic types of managed care organizations: socially-oriented and market-oriented. Socially-oriented managed care plans are owned by nonprofit organizations. These plans emphasize prevention and patient education as effective strategies to reduce costs.¹⁶ Since many of these plans pay their physicians salaries, there is little incentive to under or overtreat patients. Such plans monitor the practices of their physicians to encourage "best practice" medicine and coordinated case management among participating physicians.

For-profit managed care companies are owned by corporate entities and are driven by market forces to earn dividends for stock holders. Market-oriented HMOs pay physicians either a flat fee for every patient on their patient list (capitation fee) per month or a fee for each service provided to a subscriber. In either case, for-profit companies usually withhold a proportion

of the fees they owe a physician to evaluate whether the physician has kept referrals to specialists and hospital admissions to specified target levels.

In recent years the lines between these two types of HMOs have blurred as many nonprofit plans have been forced to adopt some of the strategies of the for-profit plans to maintain their fiscal viability. In general, nonprofit plans tend to score higher on consumer satisfaction surveys than for-profit plans. For example, a 1996 survey of their readers by *Consumer's Union* found that the eleven top-rated HMOs were nonprofit plans while twelve of the thirteen lowest rated HMOs were for-profit plans.¹⁷

Consumers in many states have complained to legislators about a number of practices of HMOs that have resulted in their being denied medical care or discharged from hospitals too quickly. Some of the most frequent complaints are: very short limits on maternity length-of-stays in hospitals, unwillingness of HMOs to allow women to use OB/GYN physicians as their primary care providers, gag rules that prevent doctors from discussing costly medical options with patients that HMOs are reluctant to pay for, and an unwillingness of some HMOs to pay for emergency room care. During the first six months of 1996, thirty-three states passed legislation designed to correct one or more of these "abuses" by HMOs.¹⁸

In 1997, New York State enacted the Managed Care Consumers' Bill of Rights. The New York law has been hailed as one of the most progressive in the nation. It prohibits HMOs from requiring physicians to sign contracts with gag-order provisions that inhibit discussions of medical options with their patients. The law also standardizes the process by which insurers determine if treatment is medical necessary, establishes procedures for appealing managed care plan decisions, requires managed care companies to disclose a wide variety of information to consumers, provides due process rights to physicians dismissed by a plan, and requires HMOs to maintain adequate networks of primary and specialty physicians.¹⁹ The bill is long and detailed covering a wide range of consumer issues.²⁰ The main provisions of the law can be summarized under four headings: access to care, quality of care, disclosure, and provides protections.

Access to Care

HMOs are required to have enough primary care providers on their approved list to enable subscribers to choose between a minimum of three primary care providers. Providers must be "culturally and linguistically" competent to adequately provide care to the subscribers. HMOs are required to make out-of-network referrals if they do not have a provider on their approved list that can provide the treatment a subscriber requires. HMOs must pay for emergency room treatment for subscribers who requires such care.

Quality of Care

In order to control overutilization of specialists, most HMOs require primary care physicians to obtain approval for some or all referrals to specialists. Physicians have often complained that their requests are denied because the person making this determination, usually an administrative employee, lacks appropriate training and knowledge to make such decisions. The new law established strict guidelines that utilization review companies (many HMOs contract out the review process to such organizations), or the HMOs themselves must use in making determinations of the appropriateness of a treatment plan or referral. When a request for a referral is denied, it must be reviewed by a "clinical peer" of the provider making the request and not by an administrative employee.

Disclosure

Critics of HMOs have often complained that enrollees often are not provided with adequate information about how their plans operate. HMOs must now give potential subscribers a handbook or contract with a very detailed list of important information about the plan, such as coverage provided, prior authorization requirements, enrollees copayments for services in and out of network, and a listing of all participating facilities and providers.

Provider Protections

Providers have complained that HMOs have terminated their contracts because they advocated for a patients, ordered too many tests and procedures, or have forced them to sign contracts that prohibited them from informing patients about treatment options. The new law spells out detailed procedures plans must follow if they want to terminate a contract of a provider and prohibits plans from terminating providers because they advocated for their patients in a predetermination hearing or review. The law specifically prohibits HMOs from requiring providers to sign contracts or procedures that prohibit or restrict providers from disclosing information on treatment options or the availability of therapies.

The Move to Medicaid Managed Care

During the 1980s the cost of Medicaid to the states became an important issue to governors all over the country.²¹ Policymakers in many states looked to "managed care," generally in the form of health maintenance organizations, as a model to use in restructuring outpatient health care within the

Medicaid system. Medicaid recipients who enrolled in managed care programs would have an ongoing relationship with a primary care provider who would coordinate all of the patient's health care services. Payment for care would be on a prepaid rather than a fee-for-service basis. Hospitalizations and unnecessary visits to emergency rooms would, it was hoped, be reduced.

In 1984, the New York State legislature authorized the Department of Social Services (in cooperation with the Department of Health) to develop managed care demonstration programs in which Medicaid patients could voluntarily enroll. The state encouraged the development of Prepaid Health Service Plans (PHSPs) in which existing community health centers would provide prepaid services to persons eligible for Medicaid, as well as the enrollment of Medicaid clients in existing commercial HMOs under contract with the state.²²

The early 1990s were a time of major increases in state spending on Medicaid. In 1991, for instance, Medicaid spending in New York State had increased 17 percent above 1990 spending levels.²³ A national recession was particularly severe in New York State where high unemployment as well as benefit expansions and general medical cost inflation contributed to the rapid rate of growth in Medicaid costs.²⁴ In 1991, the New York State legislature enacted a program of mandatory managed care for Medicaid recipients that began in October of that year. Each local social service district was to develop a plan for managed health care for its Medicaid population, enrolling at least one-half of all its Medicaid recipients in a managed care system within five years.²⁵ Medicaid managed care had a "double promise": containing the costs of Medicaid while at the same time offering greater access to primary care for Medicaid beneficiaries. Managed care was viewed "as a free-market panacea to the entrenched problems of the health system."²⁶ When he took office in January 1995, Governor George E. Pataki embraced Medicaid managed care as a central part of his health care agenda.²⁷ In March 1995 the state filed an application to the federal Health Care Financing Administration (HCFA) for a "waiver" of certain federal Medicaid rules, so that the state could move forward more rapidly in this area. The application proposed to expand the numbers of Medicaid beneficiaries getting their health care from managed care organizations from the 662,000 in 1995 to 945,000 in December 1998, 1.6 million in December 1999, and 2.4 million in December 2000.²⁸ The state hoped to reduce the cost of the Medicaid program (\$22 billion a year in 1997) by 10 percent while improving the quality of care. The waiver was the longest and most complicated of any submitted by a state and was not approved until July 15, 1997.²⁹

The waiver agreement provides that Medicaid beneficiaries have a choice of at least two different health care plans. Individuals must choose a plan within two months or they will be assigned to one ("auto assignment").

Patients have thirty additional days to change their plan. After that date, they must remain in the chosen plan for a year. Special plans for the enrollment of people who have HIV disease or mental illness or who are physically disabled are to be developed. Such individuals are exempt from mandatory movement into managed care until such plans are approved by HCFA.³⁰ Patients in nursing homes are also exempt, a group whose care accounts for a high proportion of the costs of Medicaid.

Questions about Medicaid Managed Care

There are several issues related to the operation of Medicaid managed care in New York State, which are part of the larger question of whether Medicaid managed care can fulfill its promise of providing access to quality care and save money at the same time. One is how low the state can reduce the rates paid to managed care organizations without having a negative effect on the quality of care. In 1996, the rates paid to managed care companies were subject to a competitive bidding system and were considerably lower than those paid the previous year. Eleven managed care companies withdrew from the program, leaving far fewer physicians available to treat patients. Later the state gave retroactive rate increases to the plans that remained,³¹ and \$117 million was included in the 1997-98 state budget to allow for higher Medicaid reimbursement rates. The question of whether spending reductions and quality of care are actually compatible also arises with regard to the creation of plans for Medicaid patients with special needs. Will a plan that allows adequate access to the specialized services required by clients with HIV and other chronic illnesses, also be less costly than the current fee-for-service system?

“Capacity,” or the ability of the system to supply adequate health care resources to meet patients’ needs is particularly problematic in rural areas of the state. Twenty-four of the thirty-seven managed care plans enrolling Medicaid recipients in New York State as of the fall 1997 were in New York City, and by April 1997, only twenty-five of the fifty-eight social service districts in the state had the two plans necessary for the mandatory managed care program to go into effect. In rural areas, transportation to physicians affiliated with particular plans may be a problem for patients.

Yet another issue is the extent to which managed care plans have provided Medicaid beneficiaries the information necessary to make informed choices about selecting and using a plan. The New York State Department of Health imposed a year-long moratorium (from August 1995 to August 1996) on direct enrollment of Medicaid patients by representatives of health care plans after finding that some plans had engaged in enrollment abuses and fraudulent

marketing in New York City. In response to these abuses, legislators enacted laws to protect the rights of Medicaid recipients enrolled in managed care. Critics argue that the city and the state are still not monitoring the marketing of these plans closely enough and that Medicaid recipients are not sufficiently educated about managed care.³² To prevent marketing abuses by managed care plans, the federal waiver requires that an “independent broker” be responsible for marketing and enrollment in New York City.³³ Some advocates are particularly concerned that efforts be made to educate Medicaid beneficiaries, (and other New Yorkers) not just about how Medicaid managed care works but also about the importance of primary and preventive health care. A survey of individuals already enrolled in Medicaid managed care done by the Community Service Society, a not-for-profit social services agency, found that a sizable minority of those surveyed had never used the plan in which they were enrolled, many had taken their children to emergency rooms for nonemergent care, and only a small proportion knew that the city had a managed care help line. The study recommends that public education about managed care and health services in general be done on an *ongoing* basis by community-based organizations, rather than simply using the mass media to advertise programs.³⁴

There has also been concern about the inadequacy of outreach efforts in communities that are not primarily English-speaking. The waiver agreement requires that New York State Department of Health have managed care companies use informational material in languages other than English in areas in which more than 10 percent of potential enrollees speak a language other than English at home.³⁵

Another very important question about Medicaid managed care is its impact on “safety net providers,” such as community health centers and public hospitals and the people these institutions serve; those who have neither public nor private insurance and cannot afford to pay for care “out of pocket.” In order to compete with other managed care companies, these providers may be forced to accept such low rates that they are not able to continue to serve uninsured patients.³⁶ Community health centers, for instance, estimate that the increased funding that they got from the states’ Bad Debt/Charity Care Pool in 1996, covered only 40 percent of the cost of treating their uninsured patients.³⁷

The vulnerability of some safety net providers was recognized in a provision of the federal/state waiver agreement called the Community Health Care Conversion Demonstration program. This is a program of grants to hospitals to help them “transition” into the Medicaid managed care system in New York. Each year, \$250 million will be available from a \$1.25 billion federal fund to hospitals with a patient population of which at least 20 percent is uninsured or covered by Medicaid. While hospitals will be encouraged to

“partner” with health departments and community health centers in developing primary care services,³⁸ community health centers themselves are not eligible to apply for these funds, even though most (80 percent) of health center patients are either Medicaid beneficiaries or are uninsured.³⁹ This provision for transition funding for hospitals was reportedly brokered by Dennis Rivera, the head of the hospital workers union local 1199, who has links to the Clinton Administration.⁴⁰

The Expansion of Health Insurance for Children

During the 1980s, as a result of the work of children’s advocates at both the national and state level, “children’s issues” got on the governmental agenda. Children were seen as a vulnerable group whose health care costs were relatively low. Providing children with preventive and primary care was viewed as a way to avoid higher social costs as they grew older.⁴¹ Medicaid was the primary source of public funding for children’s health insurance (although then as now, while children account for the majority of Medicaid recipients—40 percent in New York State in 1995–96—spending for children is a small proportion of total Medicaid spending—14 percent in New York in 1995–96).⁴² Beginning in 1984, Congress enacted a series of expansions of Medicaid that separated eligibility for Medicaid from eligibility for Aid to Families with Dependent Children (AFDC), a federal welfare category, and required states to provide Medicaid to increased numbers of pregnant woman and children.⁴³ In New York, as in other states, Medicaid was expanded to cover groups in the population that were not previously eligible, such as pregnant women and their children to age one in families with incomes below 185 percent of the federal poverty level (the federal poverty level was \$10,419 for a family of 3 in 1990),⁴⁴ and children ages 1 to 5 whose family income was below 133 percent of the poverty level. Beginning on July 1, 1991 children ages 6 to 18 (those born after September 30, 1983) in families with incomes at or below the poverty level were added to the program.

Despite of these expansions, many children in New York State remained uninsured. In 1990, New York state’s NYPHRM legislation included a series of provisions designed to increase access to primary health care. The most dramatic initiative in the 1990 hospital legislation was a health insurance program for New York State’s children, “the most ambitious in the country. The program, named Child Health Plus (CHIP) covered children who were not eligible for Medicaid and did not have health insurance. Initially Child Health Plus provided a wide range of outpatient services (routine well child doctor visits and laboratory tests as well as treatments such as hemodialysis and chemotherapy and outpatient surgery) but did not cover hospitalization or

mental health services (except for alcohol and drug abuse counseling). Because Medicaid coverage for children, varies by age and income, so does eligibility for Child Health Plus. For example, in 1997, children ages 6 to 14, whose family's income was between 100 and 120 percent of the poverty level were eligible for CHIP benefits without any premium. Parents of children of that age whose family's income was between 120 and 160 percent of the federal poverty level paid a premium of \$9 a month per child, and if their income was between 160 and 220 percent of the poverty level, they paid \$13 per month per child.⁴⁵

Child Health Plus is the largest state-funded health insurance program in the country; New York funds it from the State's Bad Debt/Charity Care Pool. It is administered by twenty-five managed care plans across the state. Eligibility was expanded to age 18, and in 1997, inpatient care was added to its benefits.⁴⁶ CHIP has been a popular program with both Republicans and Democrats in Albany. In 1996, the legislature voted to double state spending on CHIP to \$207 million in 1999.⁴⁷

Children's health insurance was also an issue on the national agenda, and so following the lead of Florida, Pennsylvania, and New York, Congress enacted legislation during the summer of 1997 that created the State Children's Health Insurance Program (SCHIP). Forty-eight billion dollars was allocated over a ten-year period to be distributed to states to provide health insurance to low-income children who are not eligible for Medicaid and are otherwise uninsured.⁴⁸ This legislation is significant, first, because it opens up a major new federal funding stream for children's health services but, secondly, because of its structure. It is not a new federal entitlement for children, as was Medicare for those over age 65, but rather is an entitlement to states. It is a block grant program in which the federal government allocates money to each state, which in turn makes decisions about *how* this money will be used to reduce the number of uninsured children within that state. This legislation reflects the devolution of decision-making in social policy from the federal government to the states, a devolution that has occurred, in part, because the Republican party has had a majority in both Houses of Congress since 1994.⁴⁹

One major decision to be made by each state that has applied for its allocation under SCHIP has been whether to use the funds to expand its Medicaid program or to establish a separate state program for children who are not eligible for Medicaid. New York (which submitted its plan in November 1997 and received federal approval in April 1998) initially opted to use its \$255 million annual allocation to lower the costs for families, by decreasing the required premiums. Later the governor amended the plan to add vision, dental, and mental health services to the CHIP benefit package. The State Assembly, controlled by Democrats and the Child Health Now! Coalition of advocacy groups led by the Children's Defense Fund, both proposed

raising the family income guidelines so that more of the state's uninsured children could be covered.⁵⁰ The Child Health Now! Coalition also argued for the consolidation of the administration of Medicaid and Child Health Plus with a single application process and a single standard of benefits.⁵¹ The outcome of negotiations between the governor and state legislative leaders in June 1998 was that all children in families up to 250 percent of the federal poverty level (approximately \$41,000 for a family of four in 1998) will be eligible for the CHIP program; families whose income is above 160 percent of the poverty level (approximately \$26,250 for a family of four) will pay premiums to participate. In addition, eligibility for Medicaid was expanded; all children up to age 18 whose family incomes are 133 percent of the poverty level or less will be now be Medicaid-eligible.

A major issue in the implementation of the CHIP program is the same as that already discussed in relation to Medicaid: many eligible children are not enrolled in these programs. Almost 70 percent of all of the uninsured children in New York State are eligible for either Medicaid or CHIP, but are not enrolled. New York State will develop *one* unified application for both Medicaid and the CHIP program and will fund community-based organizations to do outreach to eligible families.⁵² Involving community-based organizations is viewed as a particularly important strategy for enrolling children from New York's immigrant families.⁵³ Expanded outreach efforts and simplified enrollment procedures are clearly important in providing access to appropriate health care for children.

Conclusion

The above discussion of recent health policy developments in New York State has shown that the current administration is seeking to provide health care access to the uninsured and underserved at the same time that it supports the privatization of health care services. Children insured by both Medicaid and Child Health Plus are to be enrolled in managed care plans. The next several years in New York State will be an interesting test of whether the competitive market model can be successfully used to deliver health care services, to both privately and publicly insured populations.

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15

Ending Welfare As We Know It

Harvey Catchen

During his first presidential campaign, Clinton promised to “end welfare as we know it.” It was a wonderful campaign sound bite and was picked up by the media. Polls had consistently shown that most people overwhelmingly supported a change in the unpopular Aid to Families with Dependent Children (AFDC) federal entitlement program. “Ending welfare as we know it” was an ambiguous phrase that could be interpreted in a variety of ways and therefore could appeal to both liberals and conservatives. As DeParle observed, “Ending Welfare has a transformative ring. It suggests a world that, for good or ill, is profoundly altered.”¹ Liberals could see it a promise to create more educational and job training programs to enable welfare clients to gain the skills necessary to compete in the job market, while conservatives could understand it as a mandate to get malingerers and cheats off the dole. At a time when a majority of women with children were working, it had become politically unacceptable to have poor mothers stay home with their children and receive welfare. By the mid-1990s, 66 percent of women with dependent children were employed, most full-time.²

After his election, President Clinton made welfare reform his top legislative priority. The proposal he submitted to Congress in 1994, the Work and Responsibility Act, never received sustained consideration by any committee in either the House or the Senate.³ The Republican majority in the 104th Congress, sensing the missed opportunity by the Democratic congressional leadership, put welfare reform high on their legislative agenda. In 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) over the objections of many of his close advisors.⁴ The new law abolished the Aid To Families with Dependent Children (AFDC) entitlement and replaced it with the Temporary Aid to Needy Families (TANF) block grant program. This paper describes New York State’s efforts to comply with federal requirements under the TANF program. We begin with a discussion of the definition of poverty used by researchers and legislators to deter-

mine who is poor in the United States. We then describe the extent of poverty in New York State. Next, we briefly discuss the most important safety net programs provided by the federal government to aid poor people. We then summarize the history of welfare legislation, describe the main features of the TANF block grant program, and New York State's legislative efforts to bring the state into conformity with federal requirements. Finally, we will look at some early outcomes of TANF and discuss criticisms of the program.

Measuring Poverty

A 1955 Department of Agriculture survey found that poor families spent one-third of their after-tax income on food. In 1964, the Social Security Administration used this finding to develop a standard national "poverty index" to provide the government with an indicator of the number of people living in poverty. The Social Security Administration used the least expensive of four nutritionally adequate food plans, designed by the Department of Agriculture, to calculate the cost of an adequate supply of food to feed a family of three. This figure was tripled to calculate the minimum income a family of three required to maintain a "minimally acceptable living standard."⁵ The multiplier was set higher than three for two-person families and for individuals living alone to compensate for their relatively larger fixed expenses. The poverty index is increased by a fixed amount for every person in the family over three.⁶ It is referred to by Census Bureau as the "poverty threshold." The Department of Health and Human Services uses a simplified version of the poverty threshold for administrative purposes called the "poverty guideline." Although the index is somewhat crude, and most poor families spend a higher proportion of their income on rent than they did in the 1950s, it is still used by both researchers and legislators to measure the extent of poverty within the United States. In 1998 the federal poverty guideline level for a family of three was \$13,650, for a family of four, \$16,450.⁷

The gap between the rich and poor has increased dramatically in New York State in the past twenty years. Since 1970 difference in incomes between the top fifth of families and the bottom fifth has increased by 127 percent. The average income of the richest fifth of families with children rose from \$90,810 in the late 1970s to \$132,390 in the mid-1990s. During the same time period the income of the poorest fifth of families fell by \$3,800 from \$10,590 to \$6,790.⁸ Women are more likely to be poor than men. They earn, on average, only 70 cents for every dollar earned by men. Working women are almost twice as likely as men to hold a minimum-wage job. Six out of every ten poor families are headed by single women. Households headed by single women tend to be the poorest, half have incomes below 50 percent of the poverty level. Children are almost twice as likely as any other group of New Yorkers to be poor.⁹

In 1996, there were slightly more than 18 million people in New York State; 16.5 percent of the population had incomes below the federal poverty level. This was significantly higher than the national average of 13.8 percent.¹⁰ One in four children who live in New York State is poor. Almost half of all poor children live in families in which a father is present.¹¹ In 1994, 1.2 million individuals received Aid to Families with Dependent Children (AFDC), 350,000 received Home Relief, 540,000 received Supplemental Security Income (SSI), and 2 million individuals received food stamps. Most welfare recipients in New York State live in New York City: three-quarters (900,000) of the individuals receiving AFDC and 86 percent (300,000) of the individuals receiving Home Relief.¹² New York State has more than 2,200 soup kitchens and food pantries that feed two million New Yorkers annually. Each month over 800,000 people receive food from food pantries and soup kitchens. According to the Hunger Action Network of New York State, the most frequent reason given for families attending feeding programs is that the family's food stamps and public assistance has run out before the end of the month.¹³

The Safety Net

The federal government provides four types of programs for poor people that collectively constitute the country's safety net: social insurance programs (Social Security and unemployment insurance), cash assistance programs for the very poor (AFDC and SSI), noncash programs (food stamps, school lunches, and housing assistance), and the Earned Income Tax Credit (EITC). The food stamp and EITC programs are described to provide the reader with a background necessary for understanding the discussion of AFDC. Social Security and unemployment insurance are not discussed.

The food stamp program provides coupons to eligible poor families that can be used to purchase food. To be eligible for benefits, a family must have a net income below the federal poverty line. The federal government pays 100 percent of the direct costs and 50 percent of the administrative costs of state programs. Most food stamp recipients use the program as a stopgap measure to aid them during periods of economic crises. The average length of participation in the program is less than two years. Half of all recipients leave the program within six months and two-thirds leave after one year.¹⁴ All AFDC and SSI recipients are eligible to receive food stamps.

The Earned Income Tax Credit was established in 1975 to compensate poor working families for the cost of Social Security and Medicare payroll taxes. Legislative changes to the program in 1990 and 1993 increased the tax credit provided to poor families. EITC is a popular program in Congress because it rewards the working poor. In 1997 the maximum benefit a family

with two or more children could receive was \$3,656. Families were eligible for the maximum benefit if their total income was no more than \$11,930. Benefits were decreased for families with higher incomes and eliminated when a family's income reached \$29,290.¹⁵ A recent study by the Center on Budget and Policy Priorities found that the EITC program was the single most important program in lifting the income of poor families above the federal poverty level.¹⁶

Who Is on Welfare?

National welfare rolls peaked at 14 million in 1994. Between 1994 and 1997 the number of welfare recipients declined by 27 percent. The rolls fell 7 percent in 1995, 11 percent in 1996 and at an annual rate of 18 percent for the first half of 1997. A low unemployment rate, 9.6 percent in 1997, is partly responsible for this decline. There is some evidence that state-initiated work incentive programs have played a role in this decrease. For example, the number of recipients in Wisconsin, which adopted a work requirement for all able-bodied recipients, fell three times as fast as in neighboring Minnesota, which did not develop a similar program.¹⁷

During the period 1985 to 1995 the number of AFDC recipients in New York State remained relatively constant. In 1985, 1,109,610 New Yorkers received AFDC. In the second half of the 1980s, the number of AFDC recipients declined to a low of 974,103 in 1989. The first half of the 1990s saw a steady increase in the number of AFDC recipients to a peak of 1,259,750 in 1995. More recently, in the second half of the 1990s, the number of recipients has declined as a result of the booming economy and the strict federal mandates that require women with dependent children to seek employment.¹⁸

The public is ambivalent about public assistance. Among the beliefs found to be commonly held among New Yorkers by a 1994 Empire State Survey were:

- The government has a responsibility to help those who are in need of public assistance.
- Welfare should be time-limited
- Welfare is often necessary, but the government should help people get off welfare as soon as possible.¹⁹

National polls conducted during the same time period indicate that the views of New York State residents weren't very different from those of people living in other parts of the country.²⁰

Establishing Welfare as We Know It

In the nineteenth century, most large towns and cities had “female benevolent societies” that made small financial gifts to widows. The gifts were provided not as a right, but as a form of charity. One of the major conclusions of the 1909 White House Conference on Children was that children should not be removed from their parents’ care simply because of poverty. After the conference, child advocates succeeded in influencing a number of state governments to enact pension programs for widows with small children. By 1926 almost every state had enacted a widows’ or mothers’ pension program.²¹ Most state programs were paternalistic and judgmental. Investigators visited the homes of recipients to evaluate whether children were being “properly raised.” Recipients of widows’ pensions were primarily white women whose husbands were either dead or imprisoned. Women who were divorced, deserted by the father of their children, or had never been married were unlikely to receive aid.²² Only a small percentage of those eligible for such pensions ever received them.²³

The massive social dislocation caused by the Great Depression in the 1930s created a need for income supports for the aged, the poor, and the unemployed vastly beyond the scope of state governments to provide. In 1935, President Roosevelt signed the Social Security Act into law to address many of these unmet needs. The Act had three main provisions. First, it developed an unemployment insurance program to be funded by a federal payroll tax and administered by the states. Second, it established the social security program Old Age Insurance (OAI), a monthly pension program for retired workers, to be paid for by a separate payroll tax. Third, it initiated a program of matching cash grants to states to aid three groups: the aged (Old Age Assistance), the blind (Aid to the Blind), and the dependent children of widows (Aid to Dependent Children, or ADC). This provision of the law was designed to aid states that already had laws to provide financial assistance to some of these needy groups and to encourage other states to enact such laws by having the federal government pay a share of the costs of the programs.²⁴ The law was enacted at a time when most mothers stayed home to raise their children and unemployment rates were very high. Providing income support to enable widows to stay home and care for their dependent children, rather than competing with male workers for jobs, made good political and social sense. Between 1935 and 1939, most state governments enacted enabling legislation to provide benefits for these three categories of needy individuals. In 1939 Congress enacted the Survivor’s Insurance as part of the Social Security program. The program, Old Age and Survivors Insurance (OASI) provided monthly benefits to both the elderly (those over age 65) and the surviving spouses of covered employees. It was assumed that the Survivors Insurance program would eventually take over most of the ADC case load.²⁵

The benefit levels established as part of state ADC programs were very modest. They averaged about half of what workers on federal work relief projects earned.²⁶ The elderly and the blind received higher benefits levels than did families with dependent children. For the Aid to the Blind and the Old Age Assistance (OAA) programs, the federal government contributed half of the state payment, but for the Aid to Dependent Children program, the federal government contributed only one-third of the state payment.²⁷

The reformers who worked to establish the widows' program thought it would remain relatively small, providing a very modest level of support for children of widows. Beginning in the late 1940s, AFDC began to change to reflect the new social and economic conditions of urban centers. In 1950, mothers of dependent children were covered by the program for the first time. AFDC was no longer a program for widows and their dependent children, but now increasingly offered benefits to women with dependent children who had either never been married, were separated from the fathers of their children, or were divorced. By 1960, only 5 percent of children on AFDC had deceased fathers, and in 1977, only 2.6 percent of AFDC children had deceased fathers. African-American women were overrepresented among AFDC recipients.²⁸

In 1959, public assistance benefits were extended to include Aid to the Permanently and Totally Disabled (APTD). In 1962, Congress enacted amendments to the Social Security Act that changed the name of the program to Aid to Families With Dependent Children for Unemployed Parents (AFDC-UP) to reflect the changed nature of the clients the program served. Most states were not very receptive to offering AFDC benefits to two-parent families. By 1987, only twenty-seven states offered AFDC benefits to two-parent families, and such families only accounted for 6 percent of their AFDC case loads. AFDC remained a program for dependent children and their caretakers. The legislation also provided federal matching funds to states to offer social services to current and former welfare recipients for the first time.

Under the AFDC program, every dollar a state spent on caring for poor children and their adult caretakers (usually mothers) was matched by between \$1 and \$4 by the federal government (poorer states received the more generous matches). States could set eligibility criteria and benefit levels but had to match federal funds. Poorer states set eligibility and benefit levels low, while wealthier states, like New York, set higher eligibility and benefit levels. In no states were benefit levels generous enough to lift families above the federal poverty level.²⁹

During the 1950s, AFDC rolls rose by only 17 percent. Until the mid-1960s, only a small percentage of women eligible for AFDC were receiving support. The War on Poverty and the civil rights and welfare rights movements of the 1960s all raised the political consciousness of poor women and taught them that they were entitled to public assistance to help them raise

their families. From December 1960 to February 1969, over 800,000 families were added to the AFDC rolls, an increase of 107 percent. Urban areas accounted for 70 percent of the increase.³⁰ In 1950, cash payments to AFDC recipients were approximately \$50 million. By 1972, cash payments were almost \$7 billion, and by 1978, \$10.7 billion was expended on benefits to AFDC recipients.³¹ This led to a growing sense of “crisis” about AFDC and a fear that the program was getting out of control.

In 1967, Congress added work incentives and requirements to AFDC for the first time. Prior to the legislation, a recipient’s grant was reduced by a dollar for every dollar earned through work. This was a disincentive for most recipients to get jobs. The new legislation allowed recipients to deduct child care and work expenses, and to keep the first \$30 of income and one-third of all additional earnings when they worked. The program also required “employable” family heads of households to participate in work and training programs and provided them with a range of social services to strengthen and support family life. Every woman selected for the work program, called the work incentive program (WIN), was to be provided with free child care. WIN never received sufficient funding from Congress. Mildred Rein, writing in 1982, concluded that the WIN program and the \$30 and one-third incentives had little impact on the work patterns of AFDC mothers.³² The Reagan administration in the early 1980s, sharply cut WIN funding, and by the end of the 1980s, federal spending for WIN was less than one-fifth of what it was in 1980, after adjusting for inflation.³³

In 1973, the Supplemental Security Income (SSI) program was enacted. SSI combined the Aid to the Blind, Aid to the Permanently and Totally Disabled (APTD) and Old Age Assistance (OAA) programs in one federal entitlement. SSI paid, on the average, more than AFDC. Since 1975, SSI benefits have been automatically adjusted to reflect yearly increases in the cost of living while AFDC had no such cost of living adjustment. This resulted in a growing disparity between benefits paid by SSI and those paid by AFDC.³⁴ The purchasing power of the average benefit of AFDC families declined from \$665 per month in 1970 to \$370 per month in 1993 (all figures are in 1993 dollars). A major factor in the declining value of welfare benefits was inflation.³⁵

Ronald Reagan, elected in 1980, proposed a number of legislative initiatives to turn social welfare programs directly over to the states in the form of block grants. These initiatives, called The New Federalism, were based upon the assumption that state and local governments knew more about the specific social problems of their poor residents and could therefore, more wisely spend federal money than distant bureaucrats in Washington, DC. While most of his legislative initiatives were not enacted by a Democratically controlled Congress, he was able to encourage state governments to develop programs

to get welfare recipients into the job market through a system of waivers of federal regulations.³⁶

In 1988, Congress passed the Family Support Act, which established the Job Opportunities and Basic Skills (JOBS) program. JOBS required states to develop job training and educational and child care programs for welfare recipients.³⁷ The act had very modest goals, requiring that 20 percent of each state's AFDC beneficiaries be participating in job training programs by 1995. The act reflected the desire of legislators to get people off of public assistance, but they were never willing to provide adequate funding to enable states to develop programs necessary to achieve this goal. Many states were also ambivalent about the program, and they didn't even apply for all of the matching federal funds made available under the act.³⁸

Most state programs were only very modestly successful. Studies of welfare recipients conducted in the early 1990s found that, in any given year, about half of all AFDC recipients leave the welfare rolls. Pavetti, who has conducted a number of studies of former welfare recipients, has estimated that between half and two-thirds of those who leave find employment. Since the jobs they find are usually low-paying and temporary, they frequently are back on welfare again within a few years. Pavetti's data indicate that about 45 percent leave within one year, and 70 percent within five years.³⁹ She identified three patterns of welfare use by recipients. Some individuals receive public assistance for short periods of time when a life crisis occurs. When the crisis has been resolved, they leave and don't return. A second group uses welfare periodically when jobs end or a family crisis occurs. A final group receive income assistance for long periods of time. These long-term welfare recipients typically first received welfare when they were under 25 and have little or no work experience.⁴⁰

An End to Welfare as We Know It?

On August 22, 1996, President Clinton signed into law the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) that effectively "ended welfare as we know it." The most important provision of the law was the elimination of three federal entitlements: Aid to Families with Dependent Children (AFDC), Job Opportunities and Basic Skills (JOBS), and Emergency Assistance (EA) programs. All three were replaced by a block grant program, Temporary Assistance for Needy Families (TANF).

In place of these entitlement programs, each state receives a block grant that will reflect the highest amounts they received in either 1994 or 1995 or an average of their 1992 through 1994 spending level for all three programs. As a condition for receiving TANF block grants, states are required to provide

75 percent of the funds they spent in fiscal year 1994 on the terminated programs as a "maintenance of effort." The act is expected to save the federal government \$54.2 billion from 1997 to 2002.⁴¹ If a state experiences a growth in the population eligible for public assistance because unemployment levels increase, the additional funding necessary will have to be raised by the state by increasing taxes, decreasing spending on other programs, or more likely, limiting the number of individuals who will be covered by the program by making the eligibility requirements stricter or reducing the time that individuals may receive benefits.

The most important public policy change represented by the new legislation was the time limit it set on eligibility for assistance. Recipients will not be able to receive TANF funding for more than a lifetime limit of five years. States have an option to exempt 20 percent of their caseload from this requirement. The new legislation also requires recipients to work for benefits. Adults will be required to begin work within two years of becoming eligible for TANF assistance. In order to receive their full TANF block grants, states will have to have 50 percent of their TANF caseload working at least 30 hours per week by 2002. Families with children under one year of age can be exempted from this requirement. States that do not meet their targets will have their block grants reduced by 5 percent initially and 2 percent each subsequent year.

Heads of household who do not cooperate with child support enforcement agencies will have their benefits reduced by 25 percent, or a state may eliminate the benefit entirely. Individuals convicted of drug-related felonies will not be eligible for public assistance or food stamps. States were also given the option of providing benefits to adults who move from another state at the level of the state where they previously resided. The U.S. Supreme Court, however, struck down that provision in 1999, ruling that states could not provide differential benefits, and could not discriminate between "new" and "old" citizens within its borders.

PRWORA also barred most legal immigrants who have not become U.S. citizens from receiving SSI benefits. Exceptions were made for immigrants admitted on humanitarian grounds during their first five years in the United States and for lawfully admitted aliens who had lived in the United States prior to 1996 and were credited with forty quarters (ten years) of covered social security employment. All aliens who were not in any of the above categories were to be terminated from SSI as of September 1997.⁴² The bill also reduced food stamp programs by \$23.1 billion between 1997 and 2002. Most of those affected were legal aliens who had previously received food stamps.⁴³

The act also created a new block grant for child care. The funding for child care was increased by almost 50 percent over levels that would have been

spent under previous child care programs (AFDC Work-Related Child Care, Transitional Child Care, and At-Risk Child Care).⁴⁴ A particularly mean-spirited section of the law limits the number of disabled children who will be eligible for SSI benefits by creating a new, more exclusionary, definition of childhood disability.⁴⁵ Finally, to insure that individuals no longer eligible for welfare benefits will continue to receive Medicaid, PRWORA required states to continue to determine Medicaid eligibility in accordance with their AFDC eligibility standard as of July 16, 1996.⁴⁶

The Balanced Budget Act of 1997, signed into law by President Clinton on August 5, 1997, amended PRWORA in several ways. It reversed the ban on eligibility for all “qualified aliens” who were receiving SSI on August 22, 1996 (the date President Clinton signed PRWORA into law) indefinitely. Legal immigrants who are not “qualified aliens” but were receiving SSI remained eligible for benefits until September 30, 1998. Even after that date, long-term aliens recipients of SSI (those who were receiving SSI prior to January 1, 1979) will continue to remain eligible for benefits.

The Balanced Budget Act also allows aliens lawfully residing in the United States on August 22, 1996, who are blind or disabled to apply for SSI benefits. Unlike U.S. citizens, aliens will no longer be able to apply for SSI benefits based on age. The Act also provides funds to help long-term welfare recipients find work and tax credits to employers for hiring them. In addition, Congress also provided a limited amount of funding (\$1.5 billion) to create jobs for legal aliens who had been cut off from the food stamp program by PRWORA and for food stamps for those legal aliens who would “suffer severe hardship if they lost their benefits.”⁴⁷

New York State Responds to PRWORA

PRWORA requires that states enact enabling legislation to receive block grant funding. Governor Pataki’s original proposal to reform New York State law would have reduced benefits and required all single adults to receive their benefits in the form of vouchers.⁴⁸ The Welfare Reform Act of 1997, which Governor Pataki signed into law on August 20, 1997, maintained prior benefit levels and basically left the welfare system intact to the extent possible within the constraints mandated by PRWORA. The new law changes the name of the Department of Social Services, which formerly administered the AFDC program, to the Department of Family Assistance. It also creates two autonomous offices within the department: The Office of Children and Family Services, which will run most of the services programs (Foster Care, Adult Services, Child Protective Services, etc.) and the Office of Temporary and Disability Assistance, which will administer benefit programs.⁴⁹ It changed

AFDC to Family Assistance (FA) and Home Relief to the Safety Net Assistance (SNA) program. The main provisions of the new law are as follows.⁵⁰

The Family Assistance program has a five-year limit in compliance with federal TANF guidelines. Families with an adult who is unemployable because of a physical or mental impairment, or is a victim of domestic violence can receive a hardship exemption from the five-year limit. All FA families will continue to be guaranteed child care for all children under the age of 13 to allow parents or caretakers to work, engage in community service, or enable a teenage parent to attend a high school or a high school equivalency program. In addition, caretakers of dependent children who are physically or mentally incapacitated will also be eligible for childcare.⁵¹ Transitional Child Care for one year will continue to be provided for families who leave welfare as long as their income does not exceed 200 percent of the poverty level, or about \$21,000 for a family of two.⁵²

The Safety Net Assistance (SNA) program replaced Home Relief, which provided assistance for individuals and families who were judged to be in need but who did not qualify for any federal matching program such as AFDC or SSI. SNA provides both cash and noncash benefits. The noncash program, which began in December 1999, will provide direct payments to landlords and utility companies. Twenty percent of the grant will continue to be given in cash as a personal needs allowance.

Families still in need of public assistance after five years of receiving FA are rolled over into the Safety Net Assistance program and are only eligible for noncash benefits once that program begins. Single adults and minors who are not eligible for FA because they are not living with an adult, will be able to receive cash benefits for a maximum of two years. After two years, if they continue to be eligible for SNA, they will be switched over to noncash benefits program. Adults exempt from work because of physical or mental disability will always receive cash benefits.⁵³ Pregnant women are only exempt from work for one month prior to the "medically verified" date of delivery. After the birth of a baby, a caregiver is exempt from work for a maximum of three months, but this can be extended up to twelve months at the discretion of a social services official.⁵⁴ Individuals who are unable to work because of a disability exemption in both the FA and SNA programs must provide documentation of their disability and may be required to appear before an office of disability if local social service officials feel it is necessary.⁵⁵

New York State law requires periodic drug and alcohol screening for all recipients. Anyone who is unable to work because of an addiction must be referred for treatment. If they enter the treatment program, they will continue to receive SNA benefits. Those who do not undergo treatment will be ineligible for benefits for forty-five days or until they agree to enter a treatment program (whichever is longer).⁵⁶ SSI recipients, individuals who are unemployable

because of a mental or physical impairment and victims of domestic violence are excluded from time limitations.⁵⁷

Immigrants are not eligible for either FA or SNA until they have resided in New York State for one year, unless they were admitted to the United States on humanitarian grounds or were “qualified aliens who were residing in the United States prior to August 22, 1996.”⁵⁸ This includes both new arrivals to this country and immigrants who have lived in other states and have moved to New York. Immigrants who enter the United States after August 22, 1996, and who were not granted refugee or asylee status are not eligible for any benefits for their first year in the state.⁵⁹ All pre–August 22, 1996, immigrants continue to be eligible for SNA and Medicaid benefits. New York is one of a small number of states that have chosen to have a nonfederal food stamp program for legal immigrants who became ineligible for food stamps under the PRWORA legislation. The Supplemental Appropriations Act (PL 105-18) provides funds to states that wish to initiate such a program.

Problems Associated with the New Law

Burtless and Weaver identified three basic problems that result from the decision to base grant allocations on spending levels during the early 1990s. The block grant formula favors wealthy states that spent more money on welfare in the past. For example, the federal government spent \$1,800 per poor child on AFDC in Connecticut but only \$300 in Mississippi. Should poor children and their caretakers in Mississippi receive less federal aid than the poor children in Connecticut because of political decisions made by state legislators prior to the initiation of the block grant program? Second, the allocation formula ignores demographic changes in the number of low-income children within any state. Over time, states that are losing low-income residents will continue to be funded at levels based upon their spending levels for poor children in the early 1990s. States that have growing numbers of low-income children will have to reduce benefit levels, dig into their own pockets, or deny benefits to many poor children.⁶⁰ Burtless and Weaver have recommended that block grant allocations be calculated by determining the current number of poor children within a state each year.⁶¹ Finally, Burtless and Weaver argue that since block grants are based upon spending in the early 1990s, a period when the U.S. economy was performing at a high level, they may not be adequate to pay for increases in the welfare rolls if a recession occurs. To address this problem, they recommend that Congress should significantly increase the current budgeted contingency fund of \$2 billion for the period 1997 through 2001.⁶²

Another problem with TANF is that the law does not require states to use the full block grant for public assistance. States can make it harder for people to get public assistance, shorten the time that they will be eligible for TANF funding to less than five years, or move welfare recipients into viable jobs and still be eligible for full TANF funding. Several commentators have expressed the fear that many states will divert resources to other more popular programs, such as reducing taxes (always a popular measure) or paying for programs that benefit the middle and working class. As Christopher Jencks has observed “increasing the cost of altruism reduces its frequency.”⁶³

A recent study by the State Office of Temporary and Disability Assistance suggests that fewer individuals leaving the welfare rolls in New York State find jobs than previous studies would have anticipated. The study compared lists of adults whose benefits ended during each quarter of the study time period with records of wages reported to the state by employers. Two-thirds of the 480,00 recipients, in New York State, who left the welfare rolls in the past year did not find jobs that paid even \$100 in a three-month period. All employers are mandated to file wage reports to the state each quarter. In New York City only 29 percent of former welfare recipients found part or full-time work. The figures probably underestimate the number of former welfare recipients working since it does not include individuals who work for employers who do not report earnings to the state on a timely basis and those who work in underground economies.⁶⁴ A study of applicants to fast-food restaurants in Central Harlem, by a Columbia University research team in the early 1990s, is supportive of the New York State Office of Temporary and Disability Assistance findings. The researchers concluded that AFDC mothers with small children would have a difficult time finding employment in fast-food chains since they were less likely to have completed high school and to have worked in the past year than were successful job applicants.⁶⁵ According to Pavetti, the best predictors of whether an individual on welfare will get a job are recent work history and educational level.⁶⁶

Jencks has observed that PRWORA was predicated on the assumption that most women receiving AFDC did not work. In 1996, the average state gave a single-mother with two dependent children a cash grant of \$4,668 a year to live on. Even if one includes food stamps and Medicaid, recipient income is not sufficient for anyone to realistically live on in any urban center, where most AFDC recipients live.⁶⁷ A recent study by Kathryn Edin and Laura Lein, *Making Ends Meet*, provides a description of how AFDC and non-AFDC mothers earning a minimum wage paying between \$5 and \$7 per hour, manage their family lives. Edin and Lein’s interviews were conducted between 1990 and 1992. They found that both AFDC and non-AFDC mothers had great difficulty supporting their families, but that most minimum-wage mothers had greater difficulty than the AFDC mothers. A number of supports that

the AFDC mothers relied upon to make ends met were not available to the working mothers. AFDC mothers are eligible for food stamps, Medicaid benefits, and childcare when they work. In addition, Edin and Lein found that most welfare mothers in their study either worked off the books, received support from boyfriends or relatives, or used a combination of these strategies to supplement their AFDC checks.⁶⁸ Edin and Lein calculated that cash benefits accounted for 34 percent of the average recipients' income in their sample. Food stamps contributed another 25 percent, and the rest came from the hidden sources of incomes, as previously described.⁶⁹

Women employed at minimum wage jobs find it very difficult to maintain their families. They are entitled to one year of Medicaid coverage if their income is below 200 percent of the federal poverty level. Once that has been exhausted, most will find it very difficult to pay for health care coverage since the minimum-wage jobs do not normally provide health care benefits. Paying health care costs out of pocket could have a serious negative impact on the cash available within the family to provide for food, clothing, and shelter. Unless the working mothers have a relative to watch their children, they will have to pay for child care out of pocket. Once they begin earning a salary, they may also find their food stamps reduced or eliminated. Those working mothers who received a federal housing subsidy will also find the subsidy reduced or eliminated. Transportation to go to work and take their children to child care will be another expense that welfare mothers do not have. In many parts of the country this means that they have to buy and maintain a car. Faced with all of these obstacles, EITC provides only limited support to enable families to live while employed at minimum wage jobs.

Conclusion

PRWORA legislation, enacted in 1996, ended AFDC, the federal entitlement program for dependent children and their caretakers. The AFDC program was replaced by a new block grant TANF. The amount of funds states receive is based upon federal allocations to their AFDC program in the early 1990s. The most important provision of TANF is the five-year limit for federal funding. The law requires most adults in the program to work after two years. It allows states to set shorter time limits. Over twenty states have elected to take this option. In ten states the time limit has been reduced to two years.⁷⁰ The law provides incentives to the states to get recipients off their rolls quickly since they continue to receive full block grant funding even if their welfare rolls significantly decrease. Reducing the time that individuals and families can receive benefits and making assistance more difficult to obtain are simpler and less costly ways of reducing welfare rolls than helping current recipients

find jobs. New York State faces a unique constitutional problem if it attempts to deny benefits to needy individuals. It is the only state that includes in its State Constitution a mandate that the poor and needy be provided for.⁷¹ Unlike other states, New York will be forced to care for its poor even when the federal government refuses to contribute to their care. This will probably result in a number of court cases as localities and the state government attempt to deny care to specific groups if there is a downturn in the economy, unemployment increases, or state revenues decline sharply.

It is still too early to assess the effectiveness of the new law in getting recipients off the welfare rolls and into jobs. In the first year of the program, large numbers of recipients have left the welfare rolls.⁷² The first recipients to leave are those who are more employable and/or those that can utilize other sources of support. Finding jobs for long-term welfare recipients will be more challenging. Prior legislative initiatives to encourage welfare recipients to enter the workforce have achieved only limited success. Congress and state legislatures, including New York State, have never been willing to provide sufficient additional support to enable welfare recipients, who have limited educational and job skills, to become fiscally independent. The jobs most welfare recipients get are low-paying and do not provide sufficient income to enable parents to pay for child care, health coverage, and rent to make entering the job market a viable alternative to welfare. In addition, more money will have to be allocated to provide educational, social, and psychological supports if a significant number of long-term welfare recipients are to be moved into viable jobs.

Raising the minimum wage to \$6.50 or \$7.00 per hour and providing federal or state-sponsored child care and health programs for the working poor would also be necessary to “end welfare as we know it.” Models for such a system exist in a number of European countries. France for example, has state-subsidized programs such as those already described which are very popular and result in a poverty rate that is half that of the United States.⁷³ Since such federal initiatives do not seem likely, at least in the near future, the poor will continue to be with us, and a significant number of them will remain on public assistance. The economy is booming, unemployment is low, and welfare rolls are declining. They are declining partially as a result of the new federal legislative initiative but also partly as a result of the favorable economic conditions and low unemployment. The true test of the new law will come if the economy declines.

The poor, Michael Katz observes at the end of his study *The Undeserving Poor*, are “outsiders, strangers to be pitied, despised, helped or punished, ignored or studied, but rarely full citizens, members of a larger community on the same terms as the rest of us.”⁷⁴ Are poor people outsiders, or are they folks just like us who have come up against the barriers of race, gender, and

class? Is the goal of public assistance programs to edge recipients off of welfare rolls to reduce federal expenditures? Or do we want to provide opportunities for the poor to enter into the mainstream of American life and aspire to the American dream like rest of us? A comprehensive set of programs and policies to achieve this goal would be very expensive in the short run but highly cost-effective in the long run. More important, it would be the just and compassionate way to demonstrate that we truly regard the poor as our brothers and sisters instead of viewing them as different and strange.

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53. Antos, p. 24.
54. *Ibid.*
55. *Ibid.*, p. 20.
56. *Ibid.*, p. 25.
57. Longworth, p. 8.
58. PRWORA defines a qualified alien "as a permanent resident, asylee, refugee, person paroled into the U.S. for at least one year"; Don Friedman, "And Now for More of Regulating the Poor: The Welfare Reform Act of 1997," Community Food Resource Center, New York, November 1997 (mimeo.).
59. They may be eligible for cash assistance for refugees through a federal program funded under the Immigration and Nationality Act; see Friedman, p. 7.
60. Gary Burtless, and Kent Weaver, "Reinventing Welfare—Again: The Latest Version of Reform Needs a Tune-Up," *Brookings Review* 15 (1): 29, 1997.
61. *Ibid.*, p. 30. Katz, p. 236.
62. *Ibid.*, p. 30.
63. Jencks, p. 2.
64. Raymond Hernandez, "Most Dropped from Welfare Don't Get Jobs," *New York Times*, March 23, 1998, p. A1.
65. Katherine S. Newman, "What Inner-City Jobs for Welfare Mothers?" *New York Times*, May 20, 1995, p. 23.
66. LaDonna Pavetti, "Time on Welfare and Welfare Dependency," hearing before House of Representatives, Committee on Ways and Means, Subcommittee on Human Resources, 104th Congress, May 23, 1996.
67. Margaret Weir, "Is Anybody Listening? The Uncertain Future of Welfare Reform in the Cities," *Brookings Review* 15 (1): 30, 1997. The counties that contain the ten largest cities in the United States had 22 percent of all AFDC recipients in 1993, but only 14 percent of the population.
68. Jencks, pp. 35–36.
69. Deparle.
70. *Ibid.*
71. Behn, p. 3.
72. Deparle.
73. Gail Richardson, *A Welcome for Every Child: How France Protects Maternal and Child Health—A New Frame of Reference for the United States* (Arlington, VA: National Center for Education in Maternal and Child Health, 1994).
74. Katz, p. 236.

16

The Politics of Transportation

Jeffrey M. Stonecash with Mitchell H. Pally

Financing New York State's transportation systems has involved persistent political controversy. Regular battles have pitted the Metropolitan Transportation Authority (MTA), which operates the bus, subway, and commuter rail system in the metropolitan New York City region, against advocates of highways. Conflict has revolved around how resources are raised, who should pay, and how and where funding is spent. Amid all this conflict, the state must make sure its infrastructure is maintained for safety reasons, the health of the economy, and the convenience of residents. In doing so, some fundamental financial conflicts must be resolved. Should revenue come from user fees (those who use roads or mass transit) or the general treasury? How can regional balance in taxing and funding support be maintained? This chapter reviews the sources of conflicts about transportation, presents histories of specific decisions made, how legislators behaved during these decisions, and why they acted as they did.

Sources of Conflict

Conflicts in transportation policy exist because regions of the state differ in their transportation needs. Politicians are concerned with securing the best deal for their area in order to get reelected. That creates perpetual regional conflicts. Upstaters and those in the suburbs, usually represented by Republicans, want state funds appropriated to highways and bridges. NYC suburban legislators are concerned about their highway needs and rail service since many of their constituents commute into New York City. Both of these sets of legislators have little interest in pouring funds into New York City. New York City residents, usually represented by Democrats in the State Assembly

and Senate, want large sums of state money to improve subway and bus systems within the city and to hold down the fares on these systems. The funds from fares only covers 50 percent of the cost of the ride on the system. Government subsidies are necessary to hold down fares for the people who rely on the New York City mass transit system.

Differences in mass transit usage by region are shown in Table 16.1. In New York City 55.8 percent of people use mass transit to go to work. Upstate the percentage of residents utilizing mass transit to reach work is considerably lower: 17.0 percent in Buffalo, 14.6 percent in Rochester, 24.3 percent in Yonkers, 13.6 percent in Syracuse, and 19.7 percent in Albany. On Long Island, these figures are even lower. The majority of Long Island residents travel by roads either alone, or perhaps in a car pool. Their legislators want transportation funds spent primarily on roads.

There are also significant discrepancies among regions in miles of road that need to be maintained. New York City has 40 percent of the state's population, but only 6 percent of road mileage. Upstate has 34 percent of the state's population, but 73 percent of the state's roads. Table 16.2 presents these regional differences in road mileage. The contrasts among regions are clear. New York City residents rely heavily on mass transit and want fare increases restrained. Upstate relies heavily on roads, and they want more money put into maintaining that system. The suburban area relies heavily on highways but also must use a commuter rail system to get into and out of New York City.

Conflicts also emerge from how the regions differ in the revenues they generate to support transportation expenses. State revenues for transportation come primarily from motor vehicle registrations, driver licenses fees, and gasoline and petroleum taxes. New York City comprises approximately 40 percent of the population, but its vehicle registrations make up only 20 percent of

TABLE 16.1.
Public transit service by region in New York State, 1994 to 1996.

Year	Passengers in each area (in millions)		Total
	Upstate	Downstate	
1994	76	1,775	1,851
1995	74	1,839	1,913
1996	71	1,832	1,903

Note: Upstate consists of all public and private operators in New York State outside the New York City Metropolitan area. Downstate includes all public and private operators of bus, subway, commuter rail, or ferry services in New York City and Nassau, Suffolk, Westchester, Putnam, Dutchess, Rockland, and Orange Counties.
Source: 1997 *New York State Statistical Yearbook*, p. 459.

TABLE 16.2.
Distribution of population, highway miles, and
driver and vehicle registrations, by area, 1990s

Area	State population	Percentage of		
		Highway miles	Vehicle registrations	Driver's licenses
New York City	41	5	20	25
Remainder state	59	95	80	75
Long Island	15	10	20	21
Hudson Valley	11	12	15	15
Upstate	33	73	45	39

Note: Long Island consists of Nassau and Suffolk counties. Hudson Valley consists of Westchester, Rockland, Putnam, Dutchess, Columbia, Orange, and Ulster counties. Upstate consists of all remaining counties.

Source: 1997 *New York State Statistical Yearbook*, pp. 441, 444, 454.

the state total. Driver's licenses on file in New York City amount to only 25 percent of the state total. Table 16.2 shows these differences between regions.

New York City does not produce motor vehicle-related revenues comparable to its percentage of the state's population. Given this, upstate and suburban legislators oppose allocating large amounts of aid to the New York City bus and subway systems. They believe that motor vehicle-related revenues should go back into transportation improvements and that revenues should return to those areas of the state that produce the most funds, namely, their own areas of the state. NYC legislators in the Assembly want the state to play a much larger role in helping to finance the operating and capital needs of the NYC bus and subway system, no matter where the funds come from. Otherwise, mass transit fares could become too expensive for their constituents. This situation has established a continuing conflict between the Democrat-controlled Assembly, with its powerful NYC delegation, and the Republican-controlled State Senate, with its power base resting in upstate and suburban areas. These persisting conflicts have affected five major transportation funding battles during the last ten years. Their resolution indicates how the legislature deals with conflicts over transportation funding.

Mass Transit Conflicts and the 1981 Capital Improvement Plan Debate

The Metropolitan Transportation Authority, which controls the bus, subway, and commuter rail systems within the metropolitan New York City region,

was in serious financial trouble by the late 1970s. The system had experienced significant deterioration. Cars were aging and not being replaced. Tunnels and tracks were old. Fewer and fewer trains arrived on time. The amount of funds received in fares, which had been kept artificially low, were inadequate to purchase new equipment to improve the system. New York City was unable to provide sufficient resources to save the system. The serious decline in the system was widely recognized. There was concern that a declining mass transit system would harm the economy of New York City and the metropolitan area. Since two-thirds of the state's population and much of job growth was in that area, politicians recognized that something needed to be done about the MTA. The difficulty was that upstate and NYC suburban areas were hostile to any proposal that appeared to use state resources to bail out just New York City.

By 1980, there was a consensus to try and resolve the difficulties of the MTA, but no agreement on how to do so among the Democratic governor and Assembly and the Republican-controlled Senate. There was not even a consensus within the Democratic party. In March 1981, Governor Hugh Carey, called for a \$5 billion, five-year capital program to try and save the MTA. The plan was criticized by fellow Democrat, New York City Mayor Ed Koch, because the proposal was concerned only with capital improvements for the system and contained no operating assistance.¹ Koch knew that either he contributed more money from the city treasury or faced a fare increase for his constituents, which would clearly hurt him politically.

Koch responded with a proposal for a statewide tax to fund mass transit, with most of the funds coming from the upstate and suburban constituents of the Senate Republicans.² Senate Republicans were firmly opposed to this idea since it was predicated on motor vehicle-related, revenue which is paid primarily by non-NYC residents. In an attempt to prevent a fare increase, Koch placed pressure on Carey for additional state aid by threatening to press for a federal trade-in of the funds for the Westway project. This was a major highway project which was to run along the West Side of Manhattan and was strongly supported by construction unions, which supported Carey. Since under federal law either the governor or the mayor could call for the trade-in of the funds from the highway to the mass transit system, Carey was placed in a situation where he had to come up with additional funds for the New York mass transit system or face the hostility of New York City unions.

Carey responded with a plan with the MTA involving only a ten to fifteen-cent fare increase, with further fare increases tied to the Consumer Price Index.³ Surprisingly, the Democratic minority in the State Senate, consisting primarily of NYC legislators, rejected the proposal, saying that without any new state subsidies, another fare increase could be expected.⁴ None of these Democrats wanted to be tied to legislation that might result in large and

frequent future fare increases. Without the support of Senate Democratic legislators, the plan would not pass the Republican-controlled Senate. The Senate Republicans would not pass any proposal for increased state taxes without a majority of the Senate Democrats voting for the proposal. Democrat opposition would leave the Republicans in the Senate to vote for a fare increase by themselves, allowing the Democrats in the Senate to say they voted against the fare increase when it came. Since the Republicans hold the Senate only by retaining some seats in New York City, the Republicans would not allow their New York City members to vote for a fare increase while allowing the Democrats to vote against the fare increase and then use that vote in their reelection campaigns the following November. The Senate Democrats had to be part of any agreement so that none of the New York City legislators in the Senate could campaign against the others on the fare increase vote. Partisan divisions within the Senate were central to the negotiations.

Meanwhile, Koch was still facing a massive fare increase without the availability of additional state funds to stop it from happening. To lessen this possibility, he proposed regional taxes, consisting of an increase in the sales tax, payroll tax, gasoline tax, and a rise in automobile registration fees.⁵ Koch was aware that these taxes would not greatly affect a majority of his constituents since the motor vehicle-related taxes would primarily be collected in the suburbs.

Everyone could say they were protecting the interests of their constituents. The mayor and the governor, both Democrats, were arguing over the amount of state funds that would go to the city under any agreement. The Senate Democrats declared that they would only vote for a plan which would hold any fare increase to an absolute minimum by increasing local and state taxes, the majority to be paid for by non-NYC residents. The Senate Republicans, who waited for the Democrats to fashion a position, let everyone know they would not pass any plan unless a majority of Senate Democrats from New York City supported the proposal.

Finally, both Carey and Koch realized that without compromise, Senate Republicans would just sit back and let Democrats squabble and then blame Democrats for any fare increase. Carey finally agreed that the only way to finance the entire MTA problem, including the suburban commuter rails, was to use a regional tax. The only people paying for the state subsidy would be those constituents within the region of the state in which the MTA operated. Upstate legislators would accept the tax since their constituents were not being asked to subsidize transportation operations within NYC. An advisory panel was formed to determine which regional taxes would be proposed.⁶

The panel proposed two new taxes: an increase of 0.25 percent in the state sales tax within the MTA region and an increase from 2 to 3 percent on the statewide tax on the gross receipts of oil companies. The Democratic-controlled

Assembly rejected increasing the statewide sales tax.⁷ Upstate Republicans in the Assembly were opposed to the statewide tax on oil companies, which was really a gas tax increase in disguise. They saw the burden of the tax as being imposed primarily on their constituents. The revenues would only support mass transit and would be spent primarily in New York City. Given this opposition, the taxes were not passed.

The legislature chose another route. Democrats wanted a solution quickly, and they knew they would have to compromise with the Republicans. On June 23, the Assembly passed an MTA capital improvement plan, which involved borrowing \$5.6 billion over the next five years. Funds would be repaid almost exclusively by the riders of the system. This would produce immediate results and allow paying back funds over thirty years. They also drew \$100 million from the state general treasury. This allowed them to hold the fare increase to fifteen cents. In order to make the plan attractive to Senate Republicans, substantial aid was contributed to highways and bridges across the state.⁸ All three regions of the state received a benefit from the package without any region believing it was paying for any other region.

1981 Operating Aid and Deficit Debate

The issue of the MTA operating deficit and fare levels were still unresolved. Governor Carey proposed three taxes to close a two-year \$954 million deficit: a 1 percent statewide tax increase on oil company gross receipts that would be passed on to consumers, a 0.50 percent sales tax increase in the MTA area; and a thirty-five cent tax increase to \$9.30 per \$100 of assessed value on all property in the area. New York City would also have to increase its funding to the MTA by \$104 million.⁹ Mayor Koch opposed the plan because NYC residents would pay for it. He did support the statewide tax since non-NYC residents would pay most of it.¹⁰ The governor's hope was that the heavy emphasis on the regional metropolitan area would allow upstate Republicans to support the proposal. Nevertheless, the Republicans rejected the proposal. They saw the statewide gross receipts tax as a gas tax on their constituents in both the upstate and suburban regions. They also saw no benefits.

After much negotiating, a compromise was reached. It involved a statewide tax increase of 0.75 percent on the gross receipts of oil companies that would be passed on to consumers; an increase of a quarter of a cent on the sales tax in the MTA area; a 10 percent tax on the sale and transfer of industrial and commercial property exceeding one million dollars; and a "long lines" tax that would bring the New York State portion of interstate commerce under the state corporate franchise tax.¹¹ The package was a mixture of regional and statewide taxes to try and overcome the objections of upstate

Republican senators that their constituents could be paying for a New York City problem. The suburban Republican senators accepted the package because their commuter rail facilities would receive sizable benefits. Again, in a further effort to appease upstate Republicans, 45 percent of the total raised from the gross receipts tax would be appropriated to upstate highways and bridges.¹² The tax package was approved by one vote in the Assembly and three votes in the Senate.¹³ Again, regional politics dominated. The plan provided benefits to all regions of the state, even though the only major problem was the New York City transit system.

1983 New York Bond Issue

Amid all this, it was also recognized that more needed to be done about roads and bridges across the state. That concern ultimately resulted in the 1983 Rebuild New York Bond issue, which provided funding for transportation infrastructure improvements. When Governor Cuomo first proposed the bond issue, he wanted to leave the specifics of allocating funds to individual projects to the Department of Transportation (DOT) and future legislatures. However, both houses of the legislature felt that to obtain the approval of the voters at the next general election, it was necessary for them to have specific projects in their areas to sell to their constituents. The suburban and upstate Republicans in particular were worried about all the money going for the old bridges in New York City and would not consider the bond issue until regional allocations were specified.

Upstate and NYC suburban areas wanted funds distributed based upon highway mileage and vehicle registrations. New York City legislators wanted funds distributed on the basis of population. Each region had reasons why it should get more funds than other regions. Legislators and interest groups from those regions sought their “fair share” based upon criteria that favored their region.

A Memorandum of Understanding was created to accompany the authorization to ensure that all regions of the state were satisfied. The memorandum listed every project costing over \$2 million from the bond issue funds. Projects were chosen by combining proposals made by individual legislators and a complex formula used by DOT that involved lane miles and population per capita in each region. Need and politics were combined to make sure individual legislators could go home to their constituents with projects for their areas. All regions of the state got some funds allocated to them.¹⁴ The allocation of funds from the bond issue, listed in Table 16.3, was specified by site and region. A compromise between the parties based upon political need became the basis of the allocation rather than using any transportation need formula.

Despite the heavy allocation of funds outside New York City, the bond issue met resistance upstate mainly because of concerns about state debt levels. In upstate counties, however, only 48 percent supported the bond issue. Elsewhere in the state, which is traditionally more supportive of public expenditures, the issue received a warmer welcome: in New York City (72 percent for), and NYC suburb (63 percent in Westchester County, 54 percent in Rockland County). On Long Island, which received a large allocation of funds, 56 percent of voters supported the bond issue.

1986–87 Capital Improvement Plan and Operating Aid Debate

Despite all this funding, the MTA system still needed additional funds to repair its infrastructure. In 1986, the MTA proposed an \$8.6 billion, five-year capital improvement program.¹⁵ To finance this program, a panel organized by Governor Cuomo proposed an increase in gasoline taxes for the area served by the MTA and a rise in tolls for the East River bridge and tunnels.¹⁶ Mayor Koch endorsed these proposals because a large part of his constituency did not own cars and would not be heavily affected by the increased taxes and tolls. The Republican-controlled Senate, however, ruled out a gasoline tax. Upstate and suburban regions opposed it because Cuomo wanted to spend all the funds raised outside the region on the MTA.¹⁷

Suburban legislators wanted large sums put into the commuter rails and highways to better serve their constituents. In contrast, the New York City legislators, mostly Democrats, supported the gas tax because, again, it did not heavily affect their electorate. Cuomo responded by criticizing Senate Republicans. He warned their failure to pass the gasoline tax would result in an increased fare for New York City residents.¹⁸ Democratic Assembly Speaker Stanley Fink, with New York City and suburban legislators to protect, proposed converting registration fees and state sales tax on newly purchased

TABLE 16.3.
The distribution of population and rebuild New York Bond Funds.

Area	% 1980 population	% of bond funds	Total bond funds
New York City	40	24	\$303,000,000
Long Island	15	14	172,100,000
Hudson Valley	11	9	122,600,000
Upstate	34	52	652,000,000

Source: Memorandum of Understanding Rebuild New York Bond Act, 1983.

motor vehicles into a new property tax which could be deducted from the Federal income tax.¹⁹ This was again rejected by the Republicans because suburban residents would constitute the majority of that tax base but would receive little in return. Republicans argued that: "Two-thirds of it is going to be collected in the suburbs, but it will go to meet the mass transit operating deficit."²⁰

Governor Cuomo then proposed drawing \$75 million from the state treasury the first year and \$150 million in following years. Upstate Republicans opposed this.²¹ They did not want the mass transit "sinkhole" drawing on state funds, especially when their constituents received nothing. The next proposal in the long line of defeated plans involved, for the most part, a six-month extension of an existing 17 percent downstate corporate surtax that already helped to pay the MTA operating deficit, as well as a doubling of the amount New York City pays on capital interest from \$100 to \$200 million. A decision on how to pay for parts of the program was put off until early 1987.²² With NYC subway and bus systems receiving almost all of the funds, the Senate Republicans delayed passage of the bill to argue for more money for commuter rails, which many of their constituents use. Senate Republicans wanted 35 percent for suburban commuter rail lines, while Cuomo and Democratic Assembly members wanted the entire package targeted at the bus and subway systems in New York City.²³

Facing a large fare increase and the wrath of voters everywhere, the legislature finally approved a financing plan for the MTA on December 31, the last day of the MTA fiscal year. Assembly Democrats were forced to give concessions to Senate Republicans in the form of increased spending for the rebuilding of highways and state aid directed toward commuter rail lines.²⁴

Then a new dispute arose. Republicans blocked the MTA capital funding program, arguing that too much of federal funds were going to pay for city bus and subway lines. They argued that the Long Island Railroad and the Metro North Commuter Railroad were receiving less than their usual 21 percent of federal aid.²⁵ There was also a squabble over how much each part of the MTA system (NYC or suburbs) was generating in revenue.²⁶

In an attempt to settle the dispute, Governor Cuomo proposed a plan that would involve converting registration fees and state sales tax on newly purchased motor vehicles into a property tax deductible from federal income tax, proposals that had been made by city Democrats and opposed by Republican senators in the past. A surcharge of six-tenths of one percent would be placed on this property tax for those living in the MTA area excluding suburban Orange, Rockland, and Dutchess counties. It would also involve an increase of one-eighth of one percent on the mortgage-recording tax.²⁷ The governor hoped this package would please suburban Republicans as well as provide the funds for mass transit. Senate Republicans still rejected the proposal. They

were concerned that if highway funding was done on a regional basis, then their constituents would end up paying for New York City highways and bridges.²⁸

Assembly Democrats finally broke away from the governor and proposed a new MTA financing plan that would drop the tax on newly purchased motor vehicles and would change the federal aid distribution from 79 to 21 percent in favor of the city over the suburban commuter rail lines to a 6 to 31 percent distribution formula.²⁹ The plan would deal with MTA budget deficits by increasing the estimates of expected revenues from various sources and by drawing from state treasury bond issues and commuter rail line surpluses. The Republicans had bargained for and obtained more suburban-rural aid from the urban-minded Democrats. Suburban Republicans had prevented the imposition of a new regional tax upon their constituents and had received substantial aid for their highways and commuter rails in return for passing a measure to solve the New York City fare issue. Once again regional needs had been dominant in fashioning a transportation solution.

1988 Action Bond Issue

The 1983 Bond Issue did not solve the problem of repairing New York's roads and bridges. More funding was still needed. Senate Republicans wanted a new plan to help the state's highway and bridge infrastructure. They still felt that the highway and bridge needs of the upstate and suburban regions were not being addressed. They proposed their plan in March 1988. At the same time both the governor and the Assembly each submitted plans to deal with the obvious road crisis facing New York but with a much different emphasis on how and where funds would be spent.

The Assembly proposal would have covered repairs only for the next two years and would have left the issue of what to do in the 1990s for a new committee to study. The Senate Republican plan, dubbed ACTION, was intended to provide long-term financing for upstate and suburban areas, without raising taxes. Their \$3 billion dollar plan would utilize debt financing and earmark revenues from existing gasoline taxes. ACTION would borrow funds for fifteen years and earmark two cents per gallon from gasoline tax receipts to pay off the debt. The amount of the gasoline tax dedicated to transportation funding would later be raised to five cents. The goal was to devote a large portion of the gas tax solely to highway purposes specified by ACTION. Suburban and upstate legislators deemed this fair because the people who use the roads the most would pay for their upkeep. Also, ACTION would draw at least \$500 million from the existing Infrastructure Trust Fund (ITF). The ITF was set up in the spring of 1987 when New York experienced a surplus in its revenues.

TABLE 16.4.
The distribution of population and 1988 Rebuild New York bond funds

Area	% 1980 population	% of bond funds	Total bond funds
New York City	40	23	\$690,000,000
Long Island	15	23	690,100,000
Hudson Valley	11	14	420,600,000
Upstate	34	40	1,199,000,000

Source: A 11980 / S 9207, 1988.

ACTION's proposed allocation of aid again reveals the enduring conflicts over transportation. The Senate plan would allocate aid proportionate to that area's vehicle registration. Long Island would have received the highest percent of the aid, which was strongly supported by the area's nine Republican Senators. New York City Democrats were not happy with the plan because the city would receive only 21 percent of the aid. The rest of the state would divide up the remaining 55.5 percent of the aid.

The final bill contained a distribution of aid that was very similar to the original Senate plan. As in the Rebuild New York plan, the state is divided into four regions, with the aid distribution shown in Table 16.4. Senate Republicans were successful because upstate Democrats wanted a major public works program for the 1990 elections. The Senate knew that sooner or later NYC Democrats would have to pass some major financing plan and thus could not afford to hold out for a major redistribution of the funds. Thus, the suburban and upstate legislators were able to bring home 77 percent of all of the funds while having only 60 percent of the population. The bond issue passed with 55 percent supporting it. Downstate again provided greater levels of support. In New York City, 67 percent supported the proposition, on Long Island 64 percent supported it, and in Westchester County 57 percent supported it. Elsewhere in the state the proposal was supported by only 46 percent of those voting.³⁰

Dedicated Transportation Fund

The battles over how to fund transportation eventually resulted in an effort to "permanently" set aside revenues to fund transportation needs. The battle became how to create a dedicated highway fund to finance ongoing highways and bridge repairs. Supporters of such a fund argued that the only fair way to finance transportation needs is from revenues raised from motor vehicle-

related sales. They argued that highway and bridges should be guaranteed all funds from these sources each year. Supporters argue that New York State has not spent enough on highway and bridges because motor vehicle–related revenues went into the state “general fund,” which encompasses all state revenues. Highway and bridge needs then had to compete with more prominent needs in the state, such as education. Highway and bridge needs suffered in this competition.

To opponents of a dedicated highway fund, a primary issue was whether this dedication of funds to highway and bridges would mean the neglect of mass transit. Given the importance of mass transit within the state, they argued it would be unfair for highway and bridge needs to be met each year automatically by the revenues in the fund, while mass transit needs would have to continue to compete with the other needs of the state.

Politically, the supporters and opponents of the dedicated highway fund were a part of the enduring regional conflicts that have affected transportation policy in the legislature. Support for the dedicated highway fund tended to come from upstate and suburban areas, since their constituents paid the greater majority of the motor vehicle–related funds in the state, funds that according to them, should be spent only for highways and bridges all the time. Republican senators from these regions were prime movers behind the creation of the fund, even if some of them, especially those from the suburban areas around New York City, knew that their commuter rail riders would have to be protected some way from the onslaught of the highway and bridge needs of the state.

Opponents of the fund tended to be legislators from New York City, especially Democratic senators and Assembly members. They felt New York City would lose if highways and bridges had their own fund ensuring them a set amount each year, and mass transit needs were left to compete in the regular budget process. They thought that any dedicated fund would have to include mass transit needs, especially those of New York City.³¹

Both houses of the legislature had talked about creating a transportation fund for years, but nothing happened. Both houses would have liked to pass such a fund to claim credit for its creation, but they knew the state could not afford to take all of these motor vehicle–related funds out of the regular state budget process without harming other needs within the state.

Finally, in 1991, the political needs of creating a dedicated fund of some kind became too strong for even the legislative leaders and governor to ignore. Many of the major highway and bridges interest groups made the creation of a dedicated highway and bridge fund their number one priority for the year and brought increasing pressure upon individual legislators, especially those from the upstate areas. The pressure became very intense during the lengthy discussions on the 1991–92 state budget, which lasted well be-

yond the April 1 deadline. Enormous political pressure was exerted on upstate Republican senators and upstate Democratic Assembly members during budget negotiations, even though everyone realized that no money could flow to it for at least two years because of the state's dire financial condition.

Upstate Senate Republicans and upstate Assembly Democrats then made it clear to their leaders that a dedicated fund of some type was an absolute imperative in the state budget negotiations. With the support of the suburban Republicans in the Senate, who also believed that the creation of such a fund would give their regions additional highway dollars, the senate made the creation of such a fund a *quid pro quo* of the settlement of the budget negotiations. However, they also realized they could not just create a fund for highways and bridges and leave mass transit out in the cold. In addition, they knew that New York City Democratic Assembly members would absolutely have to have a dedicated fund of some type for mass transit.

The Senate then proposed a dedicated transportation fund consisting of motor vehicle-related revenues that could be used for both highway and bridge and mass transit purposes. Because they knew that negotiating such a distribution would be difficult and would delay the state budget settlement, both houses quickly agreed to put off the distribution formula from the fund and payout of the fund for two years, until the 1993–94 state fiscal year.³²

Legislators in both houses could indicate they had created a fund but postpone establishing a formula for the distribution of such monies. Since the revenues in the fund would consist primarily of motor vehicle-related funds, upstate and NYC suburban legislators would continue to argue for the greatest share of the funds to go to highway and bridge needs in their areas, since their constituents were not dependent upon mass transit facilities. On the other hand, legislators from New York City and some suburban areas realized that it was absolutely necessary for their mass transit facilities to be given ample opportunity to contest for the funds by need, regardless of the funding source. In this case, location of the legislative district became the main criteria for the distribution analysis, rather than the actual party of the legislator. Both Democrats and Republicans from upstate knew that their areas would have to be taken care of, and those from New York City and surrounding areas knew that their mass transit needs would have to be a focal point of the discussions.

The Dedicated Highway and Bridge Trust Fund receives revenues from highway use taxes (taxes levied on truck mileage, fuel usage taxes, and highway use permit fees), four cents of the eight-cent per gallon motor fuel tax, a portion of motor vehicle registration fees, and a portion of the petroleum business tax.³³ In recent years, the distribution of funds to support roads and bridges has tended to follow a stable pattern, with New York City receiving 24 percent, Long Island 20 percent, Hudson Valley 14 percent, and the rest

of the state 42 percent.³⁴ New York City receives less from this fund because it gets most of the money in the Dedicated Mass Transportation Trust Fund, which is funded with receipts from a 1/4 percent sales tax and a business tax surcharge levied in the New York City metropolitan region, as well as a portion of statewide taxes on transmission and transportation companies and petroleum-related companies.³⁵ The creation of these dedicated funds represented considerable progress in addressing transportation needs. Designating specific revenues guaranteed a consistent flow of revenues for the purpose of supporting transportation needs.

The funds have not solved the state's problems however, for two reasons. First, the needs of the state are enormous. The state has the highest percent (70 percent) of deficient bridges in the nation.³⁶ Repair of existing roads was deferred over recent decades, resulting in the need for spending large sums of money.³⁷ The mass transit system in the New York City metropolitan area also needs extensive repairs and new equipment. The revenues dedicated to the trust funds are not sufficient to meet these needs. Second, not all the revenue dedicated to these funds have been used for transportation. The initial plan for these funds was that they would be "locked boxes," or funds that could not be used for other purposes. The recession of the early 1990s, however, resulted in declines in revenue and created significant budget gaps for the state. Desperate for funds, state officials agreed to "raid" the funds to provide additional revenues for several years after the creation of the trust.³⁸ Finally, with the state's economy growing, Governor Pataki agreed, beginning in 1996, to stop raiding the fund and even proposed spending beyond the level of the revenues generated by the trust funds. In addition, the national government, also experiencing growing revenues, enacted significant increases in federal aid for highways and mass transit in the late 1990s. The revenue needs of New York, however, are enormous, and the problems of the state are by no means resolved.

Politics and Transportation Policies

Regional conflicts are fundamental in transportation politics. Both New York suburban legislators and New York City legislators propose solutions favorable to their constituents. Upstate legislators worry about upstate roads. The challenge within the political process is to find a way to accommodate the divergent needs of regions while still providing the revenue to support transportation. This produces intense bargaining and a continual focus on the "fairness" of proposals. Legislators hold out for proposals that help their constituents. The outcome is inevitably a compromise, with no initial proposal surviving intact. The process is erratic, filled with brinkmanship, and attempts to outlast opponents.

Regional politics and the concern of the parties for regional interests are never far from the surface. The events of May 1999 illustrate how quickly these regional conflicts can emerge. A special election was being held for a seat in the state Senate. Both the Republican and Democratic candidates, in an attempt to present themselves as concerned about suburban residents, proposed that the tax of 0.45 of one percent of the income of those commuting to work in New York City be repealed. The tax, in effect for thirty-three years, had been enacted to balance the needs of New York City (needing revenue for service demands—fire and police—created by commuters, and needing revenue to help maintain the transportation system) and suburban residents' needs (a reliable transit system).³⁹ The Senate Republicans, in the majority and wanting to win the seat to retain their margin of seats, quickly embraced and passed the proposal to repeal the tax. Governor Pataki, seeing the political value of supporting suburban interests, said he would sign the legislation. No studies were made of the impact of the repeal, and the Mayor of New York City vehemently opposed the repeal. The politics were clear to all involved, however. The Senate was trying to look responsive to suburban residents, and argued that the city had a \$2 billion surplus, and could afford the estimated loss of revenue of several hundred million dollars.

The Assembly, not wanting it to appear that Democrats were not sensitive to suburban concerns, quickly joined in repealing the tax. As noted in chapter 3, Democrats hold the majority in the Assembly only because they win seats in the suburbs. They recognized the importance of regional politics in forming transportation policy, and the importance of not letting Republicans look more responsive.⁴⁰ As this incident illustrates, the process is not one in which the concern is always with some so-called best policy, but with policies that accommodate different political interests. The process is a struggle, but policies do get adopted.

Notes

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17

Environmental Policy in New York

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New York's efforts to protect its environment date back more than a century. In 1883, New York established the first state park in the nation—the Niagara Falls Reservation.¹ This was followed in 1892 by the creation of the Adirondack Park which now protects nearly six million acres of public and private parkland.²

Over the course of the last century, New York has created numerous laws, commissions, and government agencies to protect public health and the state's natural resources.³ Much of this responsibility now lies with the New York State Department of Environmental Conservation (DEC). But the DEC is only one player in an elaborate regulatory scheme that involves the federal government, the state, regional bodies, local governments, nonprofits, regulated entities, and citizens. To truly understand environmental policy and politics in New York, it is essential to understand the intergovernmental dynamics governing environmental policymaking and program implementation and the underlying environmental legal framework.

This chapter provides an introduction to these topics. First, it lays out the national context in which state environmental programs operate. It then discusses the development of New York's environmental programs and the underlying legal authorities governing environmental regulation and enforcement in New York. It concludes with a brief summary of the environmental conditions in New York and the challenges facing it.

The National Context

In the United States, responsibilities for environmental protection are shared by all levels of government—federal, state, and local. The distribution of

responsibilities depends upon many factors, including the capabilities and philosophy of particular states, the relationship between state and federal governments, and the type and nature of the environmental problems being addressed. This distribution of responsibilities is not static and continues to shift over time.⁴

At the close of the 1990s, states found themselves at the center of environmental program implementation in America. However, until roughly the turn of this century, responsibility for environmental protection rested primarily with local governments. They were in charge of ensuring the adequacy of water supplies, protecting public health, and controlling public nuisances. The federal role in environmental policy began around 1890 but was primarily limited to issues of natural resource management—agriculture, mining, timber, western land development, water supplies, and wildlife conservation.⁵

In the late 1960s, this began to change. Public concern for environmental protection was on the rise, and the public demanded more action to stop pollution. Growing national concern was reflected in the rise of conservation groups such as the Sierra Club and Friends of the Earth, which were becoming increasingly visible and powerful. These social and political forces culminated in 1970 with the first Earth Day, the creation of the U.S. Environmental Protection Agency (EPA), and the passage of the landmark National Environmental Policy Act (NEPA).

In response to public pressure, Congress followed NEPA with a series of laws to protect the air and water.⁶ These early national environmental laws were enacted with a strong federal focus because public concern for the environment was widespread, the regulated community demanded that requirements be fairly consistent across states, and at the time, most state environmental protection programs were not well-developed. Over the last three decades, Congress has passed more than a dozen major pieces of environmental legislation.⁷

The dramatic growth in federal environmental responsibilities did not come without opposition. Concerns over states' rights and the cost of federal environmental mandates have prompted several attempts to scale back federal involvement in environmental protection.

Perhaps the most successful of such attempts was initiated by the Reagan administration. Reagan's philosophy of "New Federalism" sought to decentralize and defund federal programs and activities and shift responsibility back to the states.⁸

Under plans laid out by then EPA Administrator Ann Gorsuch and Secretary of the Interior James Watt, new federal regulations would be delayed or eliminated, federal natural resources would be sold or utilized, environmental grants to the states would be eliminated within five years, and federal environmental programs would be rapidly delegated to the states.⁹ The theory,

according to James Watt, was that “greater cost sharing would diminish the demands for federal involvement in many [environmental] programs.”¹⁰

In many ways, this program was very successful. During Reagan’s tenure, significant new responsibilities for environmental program implementation were transferred to the states. Between January 1981 and October 1982 the number of environmental programs delegated to states increased from 33 percent of eligible programs to 56 percent—a 70 percent increase.¹¹ At the same time, federal funds for state programs were dramatically reduced. Between 1980 and 1981, EPA grants to the states were cut by more than 50 percent from \$6.8 billion to \$3.1 billion (constant 1995 dollars).¹²

Federal funds now account for a much smaller portion of state environmental spending than when Reagan took office in 1980. According to the Congressional Budget Office, in 1982, federal funds accounted for 49 percent of state air and water budgets, and 76 percent of state solid and hazardous waste budgets.¹³ By 1996, federal funds only accounted for 25 percent of all state spending to operate environmental protection programs.¹⁴

A backlash against the Reagan administration’s efforts to scale back federal environmental activity resulted in the passage of new federal environmental laws and amendments to existing laws. Several of these laws were “self-implementing,” requiring little or no regulatory development by the EPA. Others contained “hammer provisions”—i.e., obligations which went into effect if the EPA failed to adopt regulations within specified time frames.¹⁵ These laws greatly reduced federal and state policymaking flexibility and did little to reverse the decline in federal financial support for environmental protection.¹⁶

While the period between Reagan and the 104th Congress was relatively calm on the environmental front, the GOP *Contract With America* prompted renewed debate on the appropriate role of the states and the federal government in environmental protection. Responding to vocal concerns about federal inflexibility and unfunded environmental mandates, the 104th Congress initiated several efforts to scale back federal mandates and the EPA and shift more power to the states.¹⁷ While some reform legislation was enacted¹⁸ most reform proposals met with significant public opposition and were not passed.¹⁹ These issues continue to be debated and are unlikely to be resolved in the near future.

States are Central to Program Implementation

Events during the last thirty years have brought the states to the forefront of environmental program implementation in the United States.²⁰ Several substantive factors have contributed to this trend. One of these is the changing

nature of the pollution problem. As a result of having made significant progress in controlling pollution from identifiable sources such as factories, wastewater treatment plants, and power plants, pollution from these stationary “point sources” no longer constitutes the major domestic environmental challenge.²¹ Mobile sources of pollution from cars and trucks and hard-to-locate “nonpoint sources,”²² such as road salt runoff, fertilizers, and pesticides, have become relatively more important contributors to pollution. Traditional “onesizefitsall” federal command and control policies have limited effectiveness in managing these diverse and diffuse pollution sources. Public education and a locally tailored response are frequently required if these problems are to be effectively controlled.

At least as important as the changed nature of the pollution problem are the political and financial considerations that are motivating the states to demand more policymaking control. The vast majority of environmental legislation passed by Congress over the last thirty years was designed to be implemented by the states.²³ In fact, it is because these programs were designed to be run by the states that many states developed and expanded their environmental protection and regulatory infrastructures.²⁴

This growth can be seen by examining the rapid rise in state environmental protection staff and the number of state-delegated federal programs. In 1963, only fifteen states had comprehensive clean air laws, and no more than six enforced these controls.²⁵ In 1970, only 5,195 state staff were devoted to environmental quality.²⁶ By 1993, EPA had delegated thirty-four states with responsibility for managing some aspects of the federal clean air program and thirty-one states with responsibility for enforcement of the federal pesticide control program.²⁷ By 1995, forty states had been delegated responsibility for some component of the federal clean water program, forty-six states had responsibility for one or more components of the hazardous waste program, and forty-nine had responsibility for some aspect of the drinking water program.²⁸ States now devote more than 50,000 employees to environmental protection, three times the amount of staff and funding as the EPA.²⁹

The New York Experience

New York has been grappling with public health and natural resource protection problems since shortly after the close of the Civil War. The state’s earliest conservation efforts were targeted at the propagation of fish. In 1868, the state created the Fisheries Commission and charged it with studying lakes, streams, and rivers with an eye toward producing more fish.³⁰ New York’s public health mandate goes back almost as far. In 1880, New York created its first state Board of Health.³¹

New York also has a long history of innovation in environmental protection. At the end of the nineteenth century, the state undertook one of the earliest and most aggressive attempts ever made at ecosystem protection. By the late 1800s, much of the state had been left barren by lumbering; only 25 percent remained forested. The potential destructive effect of deforestation on canals and watersheds was of great concern to state officials.³² In response, the state created several commissions to protect and restore these resources. In 1872, New York created a Commission of State Parks to begin protecting state lands.³³ This was followed in 1885 by the creation of a Forest Commission, established to protect the Adirondack and Catskill Forest Preserves.³⁴

In 1892, seven years after creating the Forest Preserves, the state established the Adirondack Park to be “forever reserved, maintained, and cared for as open ground for the free use of all the people . . . and as timber supply.” Because of fears that state law was insufficient to protect the preserves, voters incorporated the “forever wild” clause into the 1894 State Constitution, the only such provision in any state constitution.³⁵

In 1911, concerns about the number of environmental commissions and bureaus prompted the creation of a new Conservation Department to centralize many water and natural resources protection functions. The department was run by a Conservation Commission made up of three members. It was divided into three divisions—Lands and Forests, Fish and Game, and Inland Waters. In 1925, it was reorganized into the “new” Conservation Department headed by a single commissioner. In 1926, further reorganization added two new divisions: Parks and Water Power and Control.³⁶

It was not long before the number of environmental organizations again began to proliferate. In 1935, New York, New Jersey, and Connecticut established a tristate compact—the Interstate Sanitation Commission—to control and abate water pollution caused by sanitary and industrial sewage.³⁷ In 1957, the state created an Air Pollution Control Board within the Department of Health. In 1962, air pollution control was also added to the scope of the Interstate Sanitation Commission.³⁸ In 1964, in response to growing concerns about chemical pollutants in the environment, the state created a Pesticide Control Board.³⁹ In 1966, the legislature formed the Natural Beauty Commission which was charged with surveying and preserving scenic, aesthetic, and cultural sites.

The Creation of the DEC

The idea for one “superagency” to oversee and coordinate all these functions first surfaced in 1967, during the Rockefeller administration. At the time, “key policy makers viewed it as a logical step in managing the state’s grow-

ing environmental and natural resource protection programs and a symbolic response to the growing environmental movement.⁴⁰

The reorganization could have occurred in many ways. But early on, the governor decided to concentrate the majority of environmental responsibilities in the Conservation Department, hoping that the reorganization would refocus the Department's attention on overall natural resource problems, rather than on the special interests of fish and game clubs, forest producers, and so forth. Election year politics was also a factor in the 1970 reorganization. The governor was keenly aware of the growing political power of the environmental movement. He saw the creation of a unified environmental protection agency as a way to illustrate his commitment to environmental issues.⁴¹

The law establishing the Department of Environmental Conservation was enacted on the first Earth Day, April 22, 1970.⁴² It took effect on July 1. The new department took over the functions of the Water Resources Commission and the Air Pollution Control Board, assumed water pollution control and solid waste from the Department of Health, took pesticide control from Department of Agriculture and Markets, and gained all the responsibilities of the Natural Beauty Commission. It was also given all the responsibilities of the Conservation Department, except those of the Division of Parks. Parks became a separate division under the Executive Department. The Department of Health retained control over drinking water protection programs and watershed rules and regulations.⁴³

Taken together, the new DEC inherited quite a menu of responsibilities: the protection of the state's air, land, and water resources; the management of most state-owned lands; the propagation and management of fish and aquatic life; the promotion of agricultural and forest land and open space; oversight of the forest preserve; and also an extensive public education program. But it gained sweeping new responsibilities and powers as well, such as developing and promulgating regulations to protect the state's resources from pollution and degradation, assessing new technologies to identify long-range environmental impacts, and mechanisms to minimize those impacts, and promoting social and economic growth in the state.

As broad as the mission was in 1970, the department's responsibilities have grown dramatically over the last thirty years. Since 1970, the DEC has added or expanded responsibilities in the areas of hazardous waste management and remediation, solid waste management, pollution prevention, multimedia pollution control, nonpoint source pollution control, environmental quality review, acid rain control, greenway development, and global warming prevention.⁴⁴

In response to its growing mandate, the DEC has almost doubled in size, from 2,140 staff in 1970 to almost 4,000 in 1996. Environmental quality programs—air, hazardous materials, solid waste, water, etc.—now account for approximately 61 percent of the department's \$300 million operating

budget. Fish and Wildlife and Lands and Forests, the bulk of the old Conservation Department, now make up around 12 percent of the department's operating budget, a dramatic change from 1970 when natural resource management programs were the dominant force.⁴⁵

While federal law has played a significant role in the development of New York's environmental laws and policies, the state has established its own extensive set of environmental laws and regulations. This section discusses the legal authorities and processes that New York has created to govern the establishment and enforcement of these environmental rules and regulations.⁴⁶ For the purpose of this discussion, five key types of these authorities exist: (1) the state constitution, (2) common law, (3) environmental statutes, (4) agency regulations, and (5) executive orders. A brief overview of each is provided below.

State Constitution

The State Constitution stands at the pinnacle of New York's legal authorities. Its most prominent environmental provision is the "forever wild" statement contained in Article 14. Adopted more than a century ago in 1894, this provision mandates: "*The lands of the state . . . constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.*"⁴⁷

Common Law

Common law is a second type of legal authority that has had significant impact on environmental protection efforts in the state. Common law is judge-made law. This distinguishes it from statutory law, which is enacted by the legislature. Common law causes of action, such as private and public nuisances, enjoy a rich history that reaches back centuries.⁴⁸ The case books are full of legal decisions that determine which types of insults to our environment are actionable.⁴⁹ In this way, the courts have played a significant role in defining the scope of the governments' power to regulate conduct that may adversely impact others or the environment. It also has helped define the ability of affected individuals to halt such conduct or receive compensation for it.⁵⁰

Environmental Statutes

The third branch of environmental law is comprised of statutes the legislature has enacted to establish state environmental policy. As previously mentioned, the body of such law has expanded dramatically over the past quarter-century.

As the authors of a leading environmental law casebook put it, “[i]n less than 30 years, environmental law has grown from sparse common law roots into a vast system of public law that lies at the heart of the modern regulatory state.”⁵¹

While the state legislature has been quite active in enacting environmental laws that respond to particular environmental concerns,⁵² it has also enacted two articles of the Environmental Conservation Law (ECL) with a more general orientation. These articles, 1 and 3 of the ECL, provide the state with overall direction in its environmental protection efforts. As an example, Article 1-0101 provides that it is the state’s policy to “conserve, improve and protect its natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well being.”⁵³ The broad nature of this policy statement raises the question of the extent to which these articles serve as independent sources of authority for the DEC, empowering it to act in situations where the agency lacks authority under a specific state environmental law.⁵⁴

Agency Regulation

The fourth key type of legal authority is the body of regulations that agencies such as the DEC promulgate to help implement environmental statutes. Agencies adopt regulations to provide clarification and direction to staff, regulated parties, and interested citizens on the requirements of particular environmental policies. These rules are subject to judicial review, and on occasion, the state’s courts have invalidated an agency rule-making (e.g., if, in the court’s view, an agency exceeded the scope of its authority as defined in the governing statute).⁵⁵ Nevertheless, the courts have generally been deferential to state agencies in reviewing the defensibility of their rule-makings.⁵⁶

Because no amount of regulation can foresee every situation, agencies often rely upon internal policies and “guidance documents” to help in the application of the regulations. While guidance documents are not legally binding, they have enormous importance in the actual implementation of environmental law in the state. It is therefore important for anyone interested in understanding the content of a particular environmental law or how it is applied to identify and review any relevant “guidance” that has been developed.⁵⁷ The State Bar Association Environmental Law Section compiled an index of these documents in the early 1990s, which is periodically updated. In addition, the DEC is now required to publish an index of guidance documents in the Environmental Notice Bulletin each January.⁵⁸

Executive Orders

Executive Orders are issued periodically by governors to establish various state policies.⁵⁹ They require no legislative action and can affect state policy and program implementation. For example, Executive Order No. 20, issued by Governor Pataki in November 1995, establishes a Director of Regulatory Reform and empowers the director to create an Office of Regulatory Reform and to participate actively in the rule-making and regulatory development process.⁶⁰

Regulatory Approaches: Rule-Making, Permitting, and Compliance/Enforcement

The authorities discussed in the last section provide regulatory agencies with tremendous powers. For example, DEC rules and regulations exert great influence on the economic and social behavior of the public. They also have the potential to benefit some parties at the expense of others. As a result, the state has established a variety of procedures and approaches to implementing laws and regulations designed to facilitate policy objectives while ensuring fairness and equity in the treatment of citizens. In particular, these procedures govern the process for agency rule-making, permitting, and compliance/enforcement actions.

Rule-Making

Agencies adopt regulations to facilitate the implementation of their statutorily-based obligations.⁶¹ Regulations are fully binding on covered parties and enforceable by the courts. The DEC has promulgated an enormous number and variety of regulations, which are contained in Volume 6 of the New York Code of Rules and Regulations (NYCRR).

DEC's obligations in the rule-making arena derive largely from Article 2 of the State Administrative Procedures Act (SAPA). This act imposes two different types of responsibilities on the Department. First, it requires the DEC, as well as a handful of other agencies, to prepare and publish semiannual "regulatory agendas" in the State Register. These agendas consist of "a list and brief description of subject matter being considered for rule-making."⁶² This requirement is intended to encourage DEC to articulate possible topics for rule-making activity and enhance transparency in government (i.e., allow the public to know what its government is doing). To date, the legislature has not required the covered agencies to adhere rigidly to these agendas. Consequently, while the agendas are a potentially important tool for those interested in monitoring agency activities, covered agencies are free to refine their rule-making plans over the course of the year.

SAPA also establishes the nuts and bolts of the process agencies must follow in developing and finalizing regulations. SAPA requires agencies to provide public notice of proposed rules and to allow for, and consider, public comment.⁶³ Further, SAPA obligates agencies to undertake a number of evaluations of the impact of proposed rules, with the list of such evaluations having grown dramatically in recent years. For example, an agency seeking to propose a rule generally must prepare the following documents:

- A *Regulatory Impact Statement* requiring consideration of, among other things, “approaches which are designed to avoid undue deleterious economic effects”
- A *Regulatory Flexibility Analysis* requiring consideration of approaches that will “minimize any adverse economic impact of the rule on small businesses”
- A *Rural Area Flexibility Analysis* requiring consideration of approaches that will “minimize any adverse impact . . . on public and private sector interests in rural areas”
- A *Job Impact Analysis* requiring consideration of the proposed rule’s impact on existing jobs and new employment opportunities.⁶⁴

The legislature has added several of these requirements to the rule-making process during the past few years. This expanding set of analyses is intended to ensure that agencies will conduct rule-making in an informed way and carefully consider possible impacts of particular rules on various constituencies. The risk is that the amount of work required to issue rules will deter agencies from developing worthwhile rules and, in some circumstances, simply shift their choice of tools—e.g., they can use “informal policy” rather than rule-making to provide necessary direction to agency staff and adequate guidance to interested parties.⁶⁵

Permitting

An enormous number and range of business and other activities in the state require permission from one or more government entities in order to operate legally.⁶⁶ DEC is one of the most active state permitting agencies, issuing more than 25,000 permits annually.⁶⁷ A permit establishes legally enforceable ground rules for a regulated party’s operations. They are typically of limited duration and must be renewed periodically.

DEC retains the authority to modify, suspend, or even revoke permits under appropriate circumstances, such as persistent or egregious violations of

permit requirements.⁶⁸ A party's failure to meet permitting obligations creates the possibility of permit revocation and facility shutdown. It could also lead to criminal prosecution, or civil sanctions, depending on the circumstances. In short, the stakes in the permitting process are quite high.

Every state and local government agency that issues permits is subject to the State Environmental Quality Review Act (SEQRA). Enacted in 1975, the "basic purpose of SEQR[A] is to incorporate the consideration of environmental factors into the . . . decision making processes of State, regional and local government agencies. . . ."⁶⁹ DEC's regulations implementing SEQRA provide that "[n]o agency involved in an action shall carry out, fund or approve [i.e., permit] the action until it has complied with the provisions of SEQR[A]."⁷⁰

The focal point of the SEQRA process is the Environmental Impact Statement (EIS).⁷¹ An EIS must, among other things, evaluate the environmental impacts of a proposed action, including assessing possible mitigation steps, and identify and analyze reasonable alternatives to the action.⁷² The public has the right to comment on the draft EIS. The final EIS must contain a summary of, and response to, significant public comments.⁷³ If the project is approved, the permitting agency must issue a "findings statement" in which it concludes that the proposed action is approvable under SEQRA. This means that the agency has balanced the impacts of the project against the benefits it will produce and is satisfied that the project will minimize environmental impacts to the maximum extent practicable.⁷⁴

Parties dissatisfied with the SEQRA process have used the state judicial system as a forum to bring a wide array of legal challenges against the offending agency action. As a result, a large body of judicial precedent has evolved establishing key features of the process and the judiciary's role in monitoring agency compliance with SEQRA's substantive and procedural requirements.

Complementing SEQRA with respect to most significant DEC permitting activities is another state law known as the Uniform Procedures Act (UPA).⁷⁵ The UPA establishes "uniform rules and stringent time limits" for major DEC permit proceedings.⁷⁶ As one prominent commentator has put it, the legislature's purpose in enacting the UPA was to "assure that the regulatory process fulfill[s] [the legislature's] intended objectives" without "costly delays or attention to frivolous concerns."⁷⁷

Compliance and Enforcement

The purpose of the state's environmental laws is to protect the environment and public health. The effectiveness of these laws depends greatly on the extent to which regulated parties comply with their obligations under the laws. Enforcement is one of the major tools used to promote compliance.

Government enforcement of the environmental laws takes one of three forms: criminal, civil, and administrative.⁷⁸

CRIMINAL ENFORCEMENT

The legislature has determined that certain types of environmental violations warrant criminal prosecution. As it has amended the laws over the years, the trend has been to make the sanctions increasingly severe. Several of the state's environmental laws now allow for felony prosecutions, which could result in jail time as well as significant fines.⁷⁹

CIVIL ENFORCEMENT

An alternative to criminal prosecution is the initiation of civil action in the state's courts. In a civil action, a civil complaint is filed against an alleged violator in State Supreme Court. The DEC typically refers such cases to the state attorney general's office for filing. The amount of the potential penalty depends on a wide variety of factors, including the number of alleged violations, their duration, and the specific laws allegedly violated.

ADMINISTRATIVE ENFORCEMENT

An alternative to both criminal and civil enforcement is the use of administrative enforcement powers to pursue an alleged violation and ensure that it is remedied. Doing so involves DEC staff's filing an administrative complaint with DEC's Office of Hearings and Mediation Services, the office housing the agency's administrative law judges (ALJ). If the case goes to hearing, DEC staff serve as "prosecutors," and the case is heard by an ALJ. It is ultimately decided by the DEC commissioner. Alleged violators who are dissatisfied with the outcome have the right to appeal to the state courts.⁸⁰

In reality, the vast majority of violations never reach trial.⁸¹ The cases are generally resolved by agreement between the state and the violating party. The resolution may simply consist of oral direction from the DEC to the alleged violator indicating what must be done to come into legal compliance. Alternatively, the department may issue a written "notice of violation," in which it outlines the alleged violation and directs the alleged violator to return to compliance. It may also negotiate a written agreement with an alleged violator committing that party to return to compliance.

EMERGENCY COMPLIANCE POWERS

In addition to the three primary vehicles for enforcement described above, the state legislature has given the DEC, in appropriate circumstances, the authority to seek immediate emergency relief through its administrative adjudicatory process. This authority is known as "summary abatement authority."⁸²

With this authority, DEC is empowered, in emergency situations, to require parties to take immediate action to abate environmental and public health threats. Because this type of authority allows the DEC to circumnavigate the normal enforcement/judicial system, it raises questions concerning constitutional due process protections. The legislature has sought to address this concern by requiring DEC to convene a hearing within fifteen days after issuance of a summary abatement order if the party receiving the order so requests.

Many Successes Achieved, Many Challenges Remain

In 1996, the Rockefeller Institute completed a twenty-fifth anniversary review of the DEC.⁸³ In its report, it noted that while New York has achieved many environmental successes, it still faced many environmental challenges. With regard to successes, the institute found that levels of lead, sulfur, particulates, and ozone have been greatly reduced, resulting in improved air quality throughout the state. Further, it found that the practice of dumping raw sewage into the state's rivers has been practically eliminated; hundreds of leaking municipal dumps have been closed statewide; recycling efforts have steadily grown; hundreds of hazardous waste sites have been identified and are being cleaned up; hazardous waste generators and other polluters are now subject to manufacturing and discharge permitting procedures; fishing bans have been or are being lifted statewide; swimmers have returned to key waterways; and many miles of stream rights have been acquired and thousands of acres of land have been protected through land acquisition and conservation easements.

However, the report concluded that despite many accomplishments, many environmental challenges remain. In the area of pollution control, the study found that point sources of pollution,⁸⁴ the focus of most environmental control programs, no longer constitute the major environmental challenge. Nonpoint sources of pollution are now the largest contributors to the state's pollution problem.⁸⁵ The sources of these contaminants are often widely diffuse and are hard to control using traditional end-of-pipe approaches. Effective nonpoint source control depends greatly on the actions of numerous individuals and often requires broad public education to be successful. Other problems identified by the Rockefeller Institute, such as acid rain, global warming, and ozone control, are national and international in scope and cannot be solved by state governments in isolation.

These challenges are not unique to New York. The federal government, several states, and a number of private organizations are grappling with many of the same issues. The widespread change in the nature of the pollution problem have prompted some observers to call for less command and control

regulation and more cooperative “compliance” related activities.⁸⁶ Others have called for more industry specific multimedia regulations and regulations specifically targeted to protect ecosystems.

The DEC, EPA, and other environmental agencies responded to these calls with several efforts aimed at promoting multimedia pollution prevention and the protection of entire ecosystems.⁸⁷ In New York, for example, the ecosystem protection approach is being used to cleanup, regulate, and protect Lake Champlain, Long Island Sound, the Great Lakes, and the Hudson River Estuary. The DEC has also created a Pollution Prevention Unit and initiated multimedia inspections at several large facilities.

Despite these efforts, moving from command and control to alternative regulatory systems is not as easy as it may seem. First, most federal and state environmental laws were written to address pollution problems as if they were created in isolation from one another. They do not easily allow for integration of information, money, or staffing resources.⁸⁸ Second, the level of scientific knowledge necessary for broad-scale ecosystem protection is extensive and generally not available without a large public and private expenditure of funds; something that is unlikely to occur except with regard to the largest and/or most important ecosystems. Even assuming that the information and financial resources can be made available for these efforts, their success still greatly depends upon an effective public education campaign. Numerous industries and individuals must buy into the final regulatory protection plan for it to be successful.

In addition to pollution control challenges, the Rockefeller Institute study found that effective natural resources management remains a challenge in New York. A greater number of New Yorkers (and out-of-state visitors) are using state-owned resources for increasingly diverse and sometimes incompatible sets of activities. Mountain bikers, hikers, hunters, animal rights activists, cross-country skiers, snowmobilers, and others continue to conflict over the appropriate use of the state’s resources. While this debate is often over the allocation of natural resources for various purposes, it is also much deeper, pitting the “wise-use” movement, which views private property rights as preeminent, against preservationists and others, who see land and water conservation as creating a crucial legacy for future generations.

Two regions of the state where these challenges are particularly apparent are in the Adirondack and Catskill mountains. Both regions contain large amounts of state-owned lands set aside for protection. Much of this property is tax-exempt, and the use of both public and private property is heavily regulated by the state. The Catskills are also home to the New York City watershed and state law gives the city the power to establish watershed rules and regulations to protect the water supply. These rules affect local land uses and the potential economic uses of property within the region. As a result, disputes over the

acceptability of various land uses, local control over land use, the impact of public land ownership on the local tax base and opportunities for economic development have been, and continue to be, very heated in these regions.⁸⁹

Several efforts to bring these various groups to consensus have been initiated by both public and private organizations. In the Catskills, recent negotiations between New York City, the EPA, New York State, local governments, and environmental groups over water quality protection led to a landmark "Watershed Protection Agreement" designed to ensure the longterm protection of drinking water quality while encouraging responsible economic development in Catskills communities.⁹⁰ While this is clearly a breakthrough, the plan has yet to be fully implemented, and consensus on natural resource utilization and protection has yet to be obtained.⁹¹ Given the difficulty of balancing the needs of these varied groups with protection of the environment, achieving a lasting consensus will not be easily achieved.

The multiple issues involved in addressing environmental challenges are very complex. However, at least two major conclusions can be drawn from this discussion. First, battles for control over the establishment and implementation of environmental policy will continue to be fought at the federal, state, and local levels for the foreseeable future. Second, the laws, regulations, and organizational arrangements currently established by the federal and state governments to protect the environment will continue to evolve in response to public concerns, the changing nature of environmental problems, and the development of new control technologies.

Notes

1. See *Preserve and Protect: Challenges Facing New York's State Park System* (Albany: Nelson A. Rockefeller Institute of Government, 1993).

2. L. 1892, c.707. The state now owns approximately 2.6 million acres of land in the Adirondack Park. See *The Department of Environmental Conservation: A Twenty-Fifth Anniversary Review* (Albany: Nelson A. Rockefeller Institute of Government, 1996), p. 55. For a good description of how the park has changed over time, see *The Adirondack Park in the Twenty-First Century: Technical Report*, vol. 1. The Commission on the Adirondacks in the Twenty-First Century, April 1990, pp. 24–29.

3. *Twenty-Fifth Anniversary Review*.

4. For a good historical analysis, see "EPA States Differ in Views of Environmental Federalism," *Congressional Quarterly Weekly*, November 27, 1982. See also, *Twenty-Fifth Anniversary Review*.

5. *A Twenty-Fifth Anniversary Review*.

6. *Ibid.* Earlier versions existed of some of these laws.

7. U.S. General Accounting Office. *EPA and the States: Environmental Challenges Require a Better Working Relationship* (GAO/T-RCED-95-95-64, April 1995). See also: Congressional Budget Office, *Environmental Federalism: Allocating Responsibilities*

for *Environmental Protection*, Staff Working Paper, September 1988. See also Robert Hahn, United States Environmental Policy: Past, Present, and Future. *Natural Resources Journal*, Vol 34, Spring 1994. Also Lester, James P. *The New Federalism and the Emerging Role of the States in Environmental Policy*, September, 1996. Also *The Department of Environmental Conservation: A Twenty-Fifth Anniversary Review*. Nelson A. Rockefeller Institute of Government, February 1996.

8. See Norman J. Vig, and Michael E. Kraft, *Environmental Policy in the 1980s: Reagan's New Agenda*. (Washington DC: Congressional Quarterly Press, 1984); Ann O'M Bowman, and Richard C. Kearney, *The Resurgence of the States* (Saddle River, NJ: Prentice-Hall, 1986); James P. Lester, *The New Federalism*.

9. *Congressional Quarterly Weekly*, November 27, 1982; "Reagan's Environmental Federalism—Are States Up to the Challenge?" *National Journal*, January 30, 1982.

10. *Ibid.*

11. *Congressional Quarterly Weekly*, November 27, 1982.

12. Data compiled by the Rockefeller Institute using information provided by the EPA Budget, Planning and Regional Operations Branch, Budget Division.

13. Congressional Budget Office, *Environmental Federalism: Allocating Responsibilities for Environmental Protection*, Staff Working Paper, September 1988. In the early 1980s (and today), air, water, and solid and hazardous waste programs accounted for the bulk of state environmental protection activities.

14. Survey Data Collected by the Council of State Governments and provided to the Rockefeller Institute.

15. Robert Hahn, "United States Environmental Policy: Past, Present, and Future," *Natural Resources Journal* 34 (spring), 1994; Everett Carl Ladd, and Karlyn H. Bowman *Attitudes Toward the Environment: Twenty-Five Years after Earth Day* (Washington, DC: American Enterprise Institute Press, 1995).

16. *Ibid.*

17. Legislation introduced to "flesh out" the *Contract with America* included riders to spending bills that, according to many critics, would have dismantled much of the health, safety, and public-lands safeguards erected during the past thirty years. See "Is Reality Dawning?" *New York Times*, July 31, 1996. Also H.R. 9 included provisions for property rights, risk assessment, and cost-benefit analysis; "The 104th and the Environment: 1995," *Congressional Quarterly Weekly*, October 12, 1996.

18. For example, Public Law 1044, the Unfunded Mandates Reform Act of 1995, March 22, 1995, and Public Law 104182, the Safe Drinking Water Amendments of 1996.

19. See "GOP Lawmakers' New Shade of Green," *Christian Science Monitor*, October 20, 1996; also, *Congressional Quarterly Weekly*, "Pressure to Curtail EPA Boomeranged . . . But GOP Can Claim Some Influence," September 7, 1996 "Earth First at the Polls," *The Washington Post*, November 11, 1996; "Hard Charging GOP Whip Seeks a softer Image," *Congressional Quarterly Weekly*, April 14, 1996; Everett Carl Ladd, and Karlyn H. Bowman, *Attitudes Toward the Environment: Twenty-Five Years After Earth Day*. (Washington, DC: American Enterprise Institute, 1995); "Environment Gets a Push from Clinton," *New York Times*; July 5, 1995; "GOP Is Warned of Backlash on Environment," *Washington Post*, January 24, 1996; "Voters Do Support

the Environment,” *Christian Science Monitor*, November 27, 1995; “How Three Ideas of Big Government from the ‘60s Helped Put the GOP’s Juggernaut in the Shop,” *Washington Post*, October 20, 1996; David Clarke, “The Elusive Middle Ground in Environmental Policy,” *Issues in Science and Technology* (spring) 1995; “GOP Sets the 104th Congress on New Regulatory Course,” *Congressional Quarterly Weekly*, June 17, 1995; “Republicans Defect to Kill Curbs on EPA,” *The Washington Post*, July 29, 1995; “Is Reality Dawning,” *New York Times*, July 31, 1996.

20. See National Academy for Public Administration Report to Congress, *Setting Priorities, Getting Results* (Washington, DC: 1995); also David Clarke, “The Elusive Middle Ground in Environmental Policy,” *Issues in Science and Technology* (spring), 1995; A. Hunter Bacot, Roy A. Dawes, and Ann Sawtelle. “A Preliminary Analysis of Environmental Management in the United States,” *Public Administration Quarterly* (winter), 1996.

21. A point source can be defined as “a stationary location or fixed facility from which pollutants are discharged or emitted. Also, any single identifiable source of pollution, e.g., a pipe, ditch, ship, ore pit, factory smokestack.” See EPA web site <http://www.epa.gov/watrhome/pubs/gloss2.html>.

22. Nonpoint sources can be defined as pollution sources that are diffuse and do not have a single point of origin or are not introduced into a receiving stream from a specific outlet. The pollutants are generally carried off the land by stormwater runoff. The commonly used categories for nonpoint sources are: agriculture, forestry, urban, mining, construction, dams and channels, land disposal, and saltwater intrusion. See the EPA web site in note 21.

23. See Joseph F. Zimmerman, *Federal Preemption: The Silent Revolution* (Ames: Iowa State University Press, 1991); U.S. General Accounting Office, *EPA and the States: Environmental Challenges Require a Better Working Relationship* (GAO/T-RCED-95-95-64, April 1995). See also Hahn and Lester.

24. Lester, *The New Federalism*. See also Bowman et al., *The Resurgence of the States*; “EPA States Differ in Views of Environmental Federalism,” *Congressional Quarterly Weekly*, November 27, 1982.

25. *Congressional Quarterly Weekly*, November 27, 1982.

26. U.S. Department of Commerce, Social and Economic Statistics Administration, Bureau of the Census. *Environmental Quality Control Expenditures and Employment for Selected Large Government Units: Fiscal 1969–70*. State and Local Government Special Studies No. 61, April 1972. According to Henry Wulf at the Census Bureau, this series was paid for by the EPA; 1980 is the last year for which annual expenditure reports were produced because, after that, funding for the analysis was eliminated.

27. Council of State Governments, *1993 Resource Guide to State Environmental Management*, 3rd ed. To be delegated a program, states must demonstrate to the EPA that their regulatory requirements are at least as stringent as national standards.

28. U.S. General Accounting Office, *EPA and the States: Environmental Challenges Require A Better Working Relationship* (GAO/T-RCED-95-95-64, April 1995).

29. Council of State Governments, *ECOS: The Environmental Communique of the States* 3 (5), 1996. About 75 percent of the state operating funds for environmental protection programs are generated through own-source revenues according to data on

state expenditures provided to the Rockefeller Institute by the Council of State Governments. State governments spend \$5.5 billion annually on the operation of environmental protection programs and \$14.5 billion on pollution abatement and control. This far exceeds the approximately \$6.3 billion in annual outlays made by the EPA and the \$1 billion annually spent on pollution abatement and control by the federal government. See the U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States 1996*, pp. 239, 334. Funds for the operation of environmental protection programs are also expended by the Department of the Interior, the Coast Guard, and the Department of Defense. The amounts could not be determined through this data source.

30. L.1868, c.285.

31. L.1880, c.322.

32. *A Twenty-Fifth Anniversary Review*.

33. L.1872, c.848.

34. *A Twenty-Fifth Anniversary Review*.

35. William Ginsberg, "The Environment," in Benjamin Gerald and Dullea Henrik, eds., *Decision 1997: Constitutional Change in New York* (Albany: Rockefeller Institute Press, 1997), pp. 317–27.

36. L. 1926, c. 619.

37. 49 Stat 932.

38. The 1993 Annual Report of the Interstate Sanitation Commission.

39. L.1964, c. 423

40. *A Twenty-Fifth Anniversary Review*.

41. *Ibid.*, p. 142.

42. L.1970, c.140.

43. For a thorough discussion of the reorganization that created the DEC, see *A Twenty-Fifth Anniversary Review*.

44. *Ibid.*

45. *Ibid.* In FY 1993–94, total disbursements for the divisions of air, solid waste, construction management, and water totaled approximately \$310 million. Disbursements for the divisions of Fish and Wildlife and Lands and Forests totaled \$6.4 million.

46. Readers interested in a more comprehensive discussion of state environmental laws and policies should review William Ginsberg and Philip Weinberg, *Environmental Law and Regulation in New York* (West Publishing, 1996) and Nicholas Robinson, ed., *Treatise on New York Environmental Law* (New York State Bar Association, 1995). Other helpful sources include two 1996 reviews of the first twenty-five years of *A Twenty-Fifth Anniversary Review* and *Outlook on Twenty-Five Years of the DEC: Environmental Officials Remember the Past and Provide a Blueprint for the Future of Environmental Regulations* (Albany Law Environmental Outlook, 1996). Readers interested in monitoring state environmental activity on a "real-time" basis should consider subscribing to one or more of several helpful resources, including the *Environmental Notice Bulletin*, published weekly (subscription information is available from Business Environment Publications, 518-383-1471); *Environmental Law in New York* (published monthly by Matthew Bender, 800-833-9844); and *New York's Business Environment* (subscription information available from Business Environment Publications, 518-383-1471).

47. Constitution Art. 14, § 3 (1). For a good discussion of the state constitution and the environment, see Ginsberg, "The Environment."

48. Ginsberg and Weinberg, *Environmental Law and Regulation in New York*, chap. 1, which provides a helpful overview of the relationship between common law and statutory law.

49. *Actionable* means that the injured party can seek recourse in a court.

50. See, e.g., *Boomer v. Atlantic Cement Co.*, 26 N.Y.2d 219 (1970). In this landmark case, New York's highest court, the Court of Appeals, adjudicated a dispute between a "state-of-the-art" cement factory and nearby landowners concerning air emissions from the facility that were allegedly harming the landowners and determined that the existence of such harm, even at significant levels, did not necessarily require issuance of an injunction to make the facility cease operations. Instead, a balancing of the equities was needed.

51. Percival, Robert V. et al., *Environmental Regulation: Law, Science, and Policy*, 2nd ed. (Boston: Little, Brown, 1996), p. xxxi.

52. Some of the more significant statutory enactments intended to accomplish specific environmental public policy aims include laws mandating cleanup of toxic waste sites and regulation of pollution of our water and air resources.

53. ECL § 1-0101.

54. One recent issue where this question is relevant is the implementation of the state's voluntary cleanup program. The DEC has signed and continues to sign agreements with parties to voluntarily clean up sites; however, it lacks specific legal authority to address all of these sites under the state's superfund law because the sites do not have hazardous waste or because they don't present a significant threat. DEC's position is that it has authority to enter into these agreements under the general authorities given by the legislature, even though the legislature's specific enactment governing cleanups of contaminated parcels [Title 13] does not give DEC this authority.

55. See, e.g., *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987). In this case the New York Court of Appeals invalidated an agency's "secondhand smoke" rules, holding that the agency's action was *ultra vires* of its authority.

56. Borchers and Markell, *New York State Administrative Procedure and Practice*, chap. 8.

57. See William R. Ginsberg and Philip Weinberg, *Environmental Law and Regulation in New York*, chap. 3.7.3 (West, 1995).

58. ECL § 3-0301(2)(z).

59. These Executive Orders are compiled in vol. 9 of the NYCRR.

60. 9 NYCRR § 5.20. For an in-depth discussion of Executive Order No. 20, see Borchers and Markell, *New York State Administrative Procedure and Practice*, see also the Governor's Office of Regulatory Reform web site (<http://www.state.ny.us/gorr/office.html#MISSION>). Executive Order No. 20 established criteria for how rules are to be evaluated. Specifically, the office is empowered to review a proposed rule to ensure that "it does not exceed the authority delegated by law; is consistent with and necessary to achieve a specific legislative purpose; is clearly written so that its meaning will be easily understood by those persons affected by it; does not unnecessarily duplicate or exceed existing federal or state statutes or rules; is consistent with

state statutes and rules; is consistent with state statutory requirements; will produce public benefits which will outweigh the costs, if any, imposed on affected parties; does not impose a mandate on local governments or school districts which is not fully funded, except as specifically required by state statute; prescribes methodologies or requirements that allow regulated parties flexibility and encourage innovation in meeting legislative or administrative requirements and objectives underlying the rule; is based on credible assessments, using recognized standards, of the degree and nature of the risks which may be regulated, including a comparison with everyday risks familiar to the public; gives preference to the least costly, least burdensome regulatory and paperwork requirements needed to accomplish legislative and administrative objectives; is based upon the best scientific, technical, and economic information that can be reasonably and affordably obtained; and if possible and practical, favors market-oriented solutions and performance standards over command and control regulation.” The office is also charged with ensuring that the agency has complied with the economic and flexibility requirements of the State Administrative Procedures Act and has provided adequate information to evaluate the rule. The Director of Regulatory Reform, along with four other senior advisors, the Secretary to the Governor, the Counsel to the Governor, the Director of State Operations, and the Director of the Division of the Budget, monitor agency rule-making activity and assure that all new rules comply with the provisions of Executive Order No. 20. The senior advisors also make recommendations for regulatory reform to the Governor.

61. For a discussion of the virtues of rule-making, see Davis, *Administrative Law Text*, pp. 142–143 (3rd ed. 1972).

62. SAPA 202-d(1).

63. SAPA § 202.

64. SAPA §§ 201-a(2)(c) and 202.

65. Borchers and Markell, *New York State Administrative Procedure and Practice*, chap. 4.12 (West Publishing, 1995).

66. See generally Borchers and Markell, *New York State Administrative Procedure and Practice*, chap. 9.

67. State of New York Office for Regulatory and Management Assistance, Report of Annual Business, Permit Issuing Activity by New York State Agencies for Fiscal Year 1992–93 (1994).

68. 6 NYCRR § 621.14(a)(1)-(5).

69. 6 NYCRR § 617.1(c). The most comprehensive discussion of SEQRA is contained in a two-volume treatise Michael B. Gerrard, et al., *Environmental Impact Review in New York* (Matthew Bender, 1997).

70. 6 NYCRR § 617.3(a).

71. 6 NYCRR § 617.9.

72. *Ibid.*

73. *Ibid.*

74. 6 NYCRR § 617.11.

75. ECL Article 70.

76. Philip Weinberg, Practice Commentary to N.Y. Environmental Conservation Law Article 70.

77. *Ibid.*

78. One major difference between state and federal enforcement authorities concerns the location of these enforcement authorities in the statutes. In New York, the legislature has adopted an article of the Environmental Conservation Law specifically for enforcement authorities. ECL Article 71 contains the vast majority of state enforcement authorities for violation of different state environmental laws. Federal environmental laws, on the other hand, are entirely self-contained. The Clean Water Act, for example, contains the provisions for enforcement of the Act. Recourse to a separate article or title of the law is not necessary.

79. See, e.g., ECL § 71-2707 (creating a Class E felony for unlawful possession of hazardous waste under some circumstances).

80. One of the interesting and important differences between DEC administrative enforcement statutes and EPA administrative enforcement under the federal environmental laws is that DEC generally has the same enforcement sanctions available, regardless of whether it files administratively or civilly. For example, the maximum penalty for violating DEC's requirements for controlling water pollution is \$25,000 for each day a violation continues, regardless of the judicial forum that hears the case. In contrast, in the federal Clean Water and Clean Air Acts, Congress has limited the total penalty EPA may obtain in administrative cases. See, e.g., 33 U.S.C. § 1319(g)(2).

81. Borchers and Markell, *New York State Administrative Procedure and Practice*, chap. 15.

82. ECL Article 71-0301; orders issued under this authority are known as summary abatement orders, or SAOs.

83. *A Twenty-Fifth Anniversary Review*.

84. See note 21.

85. See note 22.

86. *A Twenty-Fifth Anniversary Review Outlook on 25 Years of the DEC*.

87. For more information, see the Council of State Governments, *Ecosystem Connections: Results of CSG Ecosystem Protection Questionnaire*, 1995. See also David Markell, "Shifting From 'MonoMedia' to 'MultiMedia' Environmental Regulation in New York," *Environmental Law in New York* 5 (11): 161, 1994. See also EPA's Common Sense Initiative Update at <http://www.epa.gov/commonsense>. The Common Sense Initiative, a cooperative approach to environmental protection and pollution prevention developed by the EPA, addresses environmental management by industrial sector rather than by media (air, water, or land). Six industries were targeted as a pilot in this program: automobile manufacturing, computer and Eelectronics, iron and steel, metal finishing, petroleum refining, and printing.

88. See National Academy for Public Administration Report to Congress, *Setting Priorities, Getting Results* (Washington D.C., 1995).

89. *A Twenty-Fifth Anniversary Review*.

90. The Catskill Watershed Corporation was established under the historic New York City Watershed Agreement signed in January 1997 to establish a better working partnership between the City of New York and the upstate Catskill communities.

91. *A Twenty-Fifth Anniversary Review*, Executive Summary.

18

Guide to Further Research on New York Politics

Sarah F. Liebschutz

There are many sources of information available for the study of New York state politics and government. This chapter lists a number of them, including bibliographies, themselves useful in discovering additional sources. Both published and electronic resources are contained in the following listings.

General Resources

Libraries provide the best starting point for research. New York State has a large number of both public and university-based libraries that can be easily accessed. The New York State Library, founded in 1818 in Albany, holds the largest collection of official state documents and many other sources of information on state government and politics. The State Library also distributes copies of documents to approximately two hundred other libraries throughout the state and beyond.

An additional source of original documents is the New York State Archives, also in Albany. The Archives has copies of many records and has published the *Guide to the New York State Archives* (1981) to assist those who wish to search for specific records.

Internet Resources

The State Library's document retrieval system on the Internet at <gopher://unix2.nysed.gov/> is an extremely useful resource. The gopher provides access to:

- the full texts of State Library publications, including bibliographies and education law excerpts

- the Checklist of New York State Documents—sorted by year from 1992 to the present
- the New York State Information Locator, with lists of state agencies and services and connections to other governmental Internet resources
- the full texts of state government publications, including reports of the comptroller, Public Service Commission, and the Department of Housing and Community Renewal.

Through its link to other governmental Internet resources, the Information Locator provides access to current census information and materials about state and local government projects.

New York State also has a home page on the Internet at <http://www.state.ny.us>. It is designed to provide the public with information about the Empire State. Topics include: the governor, government agencies, education, environment, and health care. The search index provides the opportunity to search a large data base of information using a basic key word query system. While the home page has some general use, the State Library's gopher system is more useful for documentation, transcripts, and archived records.

Newspapers and Journals

Newspapers can provide excellent information for research. *The New York Times* features regular coverage of state politics and is indexed by subject matter to make finding references easier. Many libraries will have this newspaper on microfilm. Several other large city newspapers such as the *Times Union* in Albany; the *Buffalo News*; *Long Island Newsday*; the *Daily News* in New York City; the *Democrat and Chronicle* in Rochester; and the *Syracuse Post-Standard* and *Herald-Journal* provide information on state politics. These can be found at libraries as well, but usually on a more regional basis.

The principal journal dealing with New York politics and government is *Empire State Report*. Published monthly, it deals with current state policy issues, changes to laws, important figures in the state, and other related topics. Magazines such as *New Yorker*, *New York*, and *George* are useful sources of information on cultural aspects of life, particularly in New York City.

Other Sources of Information

Basic data on the state can be found in the *New York Statistical Yearbook* (Albany, NY: Rockefeller Institute of Government). It is published annually

and contains current economic, population, election, and financial data for the state. *The New York Red Book* (Albany, NY: New York Legal Publishing Corp.), published and updated biennially, is a guide to the organization of state government: its departments, personnel, and the basic duties carried out by each unit of the government. It includes biographies of state office holders. The state university system and various state authorities and commissions are discussed as well. *The New York Gazetteer* (Wilmington, DE: American Historical Publications, 1983) is a directory of basic reference data as well as a listing of places of historical interest in the state. It also includes a biographical index of important people in state history.

Research centers that deal with New York state politics and government include the Nelson A. Rockefeller Institute of Government at the State University of New York at Albany. Established in 1982, the Rockefeller Institute publishes newsletters, reports, and papers dealing with a variety of public policy issues and conducts conferences on topics related to state and local government. Further information can be obtained on the Institute's website (<http://rockinst.org>) by contacting the Institute at 411 State St., Albany, NY 12203, phone: (518) 443-5522. The Edwin F. Jaeckle Center for State and Local Government Law at the State University of New York at Buffalo focuses on the legal structure of state and local government, problems encountered in the administration of municipal laws, and efforts to reform state and local laws. The Jaeckle Center publishes papers and sponsors conferences for local government officials and lawyers. The center can be contacted at O'Brien Hall, Amherst Campus, Buffalo, NY 14260, phone: (716) 636-2052. The Center for Governmental Research is a nonpartisan corporation based in Rochester that compiles and analyzes statistics to evaluate state and local government programs. The center has published studies of various programs and their impact on local governments. Information can be obtained on the center's website (www.cgr.org) or at 37 South Washington St., Rochester, NY 14608, phone: (716) 325-6360. The Center for the Study of Business and Government at the Bernard Baruch College of City University of New York, 17 Lexington Ave., P.O. Box 348A, New York, NY 10010, phone: (212) 505-5902, was established in 1978 to analyze the relationship between business and government and the effects that government policies have on the business world. The center's studies focus on the effect of programs and policies on New York State or New York City business concerns.

Public opinion surveys are conducted in New York State by the Marist Institute for Public Opinion at Marist College in Poughkeepsie, NY. The institute is an independent, nonprofit survey and research center focusing on studies of voting behavior and electoral research.

Election data are made available by the State Board of Elections. Established in 1974, the Elections Board is responsible for the administration and

enforcement of election laws. It monitors campaign finances and practices, provides assistance to local election boards, and investigates complaints concerning election procedures. The Elections Board can be contacted at P.O. Box 4, One Commerce Plaza, Albany, NY 12260. The *New York Red Book* contains a listing of current members of the Board of Elections as well as election results. Each county in the state has its own board of elections. Addresses and names of current chairpersons are listed in the *New York Red Book*.

State Government Documents

The New York State Library has developed several excellent publications that can be used to locate documents issued by and concerning state politics and government. *New York State Documents: An Introductory Manual* (Albany, NY: University of the State of New York, State Education Department, New York State Library, Cultural Education Center, 1987) and *Official Publications of New York State: A Bibliographic Guide to Their Use* (Albany, NY: University of the State of New York, State Education Department, New York State Library, Cultural Education Center, 1981) provide extensive listings of available documents as well as suggestions to assist in locating these documents. *The Checklist of Official Publications of the State of New York* (Albany, NY: New York State Library, 1947-) is issued monthly by the State Library and lists all publications by state agencies.

Several sources provide information on the legislative process. The *Journal of the Assembly of the State of New York* and the *Journal of the Senate of the State of New York* are compiled annually and provide daily records of activity for each body, including floor proceedings, amendments, confirmation hearings, and voting records. The *Manual for the Use of the Legislature of the State of New York* (Albany, NY: Division of Information Services, Department of State, 1840-) is published biennially and contains information pertaining to the members of the legislature and their staffs, such as committee assignments, voting statistics, and party strength and leadership. The *Legislative Digest* (Albany, NY: New York Legislative Bill Drafting Commission) is an account of all bills introduced and action taken on previous bills. An annual summary of the progress of all bills is also available. The *Majority Leader's Report* (Albany, NY: New York State Assembly, Office of the Majority Leader) is an annual account of the activities of the legislature from the perspective of the majority leader.

The executive branch produces numerous documents as well. The governor's office issues *Messages to the Legislature* (Albany, NY: Office of the Governor, 1777-) and *The Executive Budget* (Albany, NY: Office of the Governor, 1928-). Reports issued by executive departments include those of the Office

of the State Comptroller (for example, the annual *Comptroller's Special Report on Municipal Affairs* and the *Comptroller's Report on the Financial Condition of New York State*, 1996); the *Annual Report of the Attorney General* (Albany, NY: Department of Law, 1890–), and the *Annual Report of the Secretary of State*, 1919–).

The Local Government Handbook (Albany, NY: State of New York, Department of State, 1975–) is the best single source for information on the structural and functional features of local governments in the state and their relations to the state government. The Department of State has produced various newsletters, such as *State and Local* (Albany, NY: New York State Department of State, Division of Information Services, 1983–88) dealing with general topics concerning state government, and *Excelsior* (Albany, NY: New York State Department of State, Division of Information Services, 1988–) presenting various viewpoints on specific state issues.

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One of the best sources of information on the New York State government is an internship in the legislature or an executive branch agency. Semester-long Assembly and Senate internship programs provide superior firsthand experiences for undergraduate and graduate students. Contact points for Assembly and Senate internships, respectively, are: (518) 455-4704 and (518) 432-5470. Comparable experiences in a wide variety of executive branch agencies are available through the Albany Semester Program (518) 485-5964.

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Notes

This is a revised version of a chapter that originally appeared in Sarah Liebschutz, *New York Politics and Government* (Lincoln: University of Nebraska Press, 1998), pp. 179–87.

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Index

- abortion, 64–5
- ACTION, 318–19
- Adirondack Park, 82–84, 327
- Adirondack Park Agency, 85
- Adirondack Park Commission, 183
- Aid to Families with Dependent Children (AFDC), 285, 291, 294, 296–7
- Amateur lobbyists, 82
- American Federation of State, County, and Municipal Employees, 93
- American Labor Party (ALP), 64
- Americans with disabilities Act, 220
- Appellate court, 173–174; definition of, 168
- Assembly Health Committee, 88
- Association of Commercial Property Owners, 90
- Association of Public Broadcasting Stations, 81
- Association of Realtors, 81
- Attica prison, 194; uprising, 128
- Attorney General, 113, 118
- Audubon Society, 83–84

- baby boom generation, 94
- Balanced Budget Act, 300
- Bartlett, Tom, 258
- Battery Park City Authority, 196
- Beer and soda industry, 90, 95
- Blue Cross, 277
- Board of Regents, 112, 217–18, 221–3
- Bruno, Joseph 17, 136; and rent control, 156–158
- budget, 116–117

- Bundy Aid, 246
- “business climate,” 93
- Business Council of New York, 90, 93
- business lobbies, 93–94

- Cable Television Association, 81
- Campaign spending, 54–56
- Campaign fundraisers, 88
- Capital Improvement Plan, 316
- Carey, Hugh L., 18, 127, 135–136, 312
- Catskill mountains, 340–41
- Change-NY, 264
- charges and fees, 210–211
- Child Health Plus, 285–286
- “civil appointment,” 111
- Civil court, 172
- 1964 Civil Rights Act, 219
- Civil Service Employees Association, 93
- Clinton, Bill, 291
- Coalition on Smoking and Health, 81
- Coleman, James, 217
- Commerce and Development group, 192–3
- Commission on the Adirondacks in the 21st century, 82
- Commission on Independent Colleges and Universities (CICU), 81, 247
- Commission on Judicial Conduct, 177
- Commission of State Parks, 331
- Commissioner of Education, 222
- Common Cause, 86, 89
- Conservation Department, 331
- Conservative Party, 64, 68–9
- conservatives, 13, 17, 315, 317

- Constitution, 25–6
 constitutional convention, 113
 Contract With America, 329
 contract lobbyists, 84–87
 Council on Health Care Financing, 277
 county courts, 172
 county (party) organizations, 57
 Court of Appeals, 113, 174–5, 222, 236
 Court of Claims, 173
 court system 118–119; administration, 175; finances
 criminal court, 172
 cross-endorsement rule, 66; and judicial selection, 179
 Cuomo, Mario M., 18, 50–51, 136, 154, 207, 231, 316
- Dairy compact bill, 94
 D’Amato, Alphonse, 91–2, 130
 Dedicated Highway and Bridge rust Fund, 321–2
 Democrats, 15–16, 137, 143–44, 155–56, 219–20
 demographics, 10–12, 143–44
 Department of Economic Development NY, (Exe.), 90
 Department of Family Assistance, 300
 Department of Transportation NY (Exe.) (DOT), 315
 “devolution revolution,” 27–8
 Dewey, Thomas E., 18, 243
 differential tuition, 257–8, 266
 “Dillon’s Rule,” 26
 Dinkins, David, 92
 Division of the Budget (DOB), 130
 Dormitory Authority, 194–5
 drug screening, 301
 Dwyre, Diana, 87
- Earned Income Tax Credit (EITC), 293–4
 Earth day, 328
 economic conflict, 13–14
 ecosystem protection approach, 340
 education; equity in, 216–217, 228–229; spending, 38–39, 223–229
- Education Department, 223
 Edin, Kathryn, 303–4
 education lobby, 91–92
 electoral structure, 66
 Elementary and Secondary Education Act (ESEA), 218, 228
 Energy Association, 81
 Empire State Development Authority, 193–4
 environment, 135
 Environmental Conservation Law, 334
 Environmental Notice Bulletin, 334
 Environmental Facilities Corporation, 195
 Environmental Impact Statement (EIS), 337
 Environmental Protection Agency (EPA), 328
 Equal Opportunity Program, 262
- Fair Education Practices Act, 244
 Family Assistance (FA), 301
 family courts, 172–3
 Family Support Act, 298
 Farm Bureau, 81, 94–5
 Farrell, Herman, 39, 40
 1986 Federal Tax Act, 196
 Financial Control Board, 10
 finance group, 193–195
 Fink, Stanley, 316
 fiscal issues, 27
 Fisheries Commission, 330
 Forest Commission, 331
 food stamps, 293
 “forever wild” clause, 331, 333
 Foy, George, 84
 Friends of the Earth, 328
 Freedom party, 65
 fusion, 20, 67
- Gargano, Charles, 133
 Goldberg, Nicholas, 100
 Goldmark, Peter, 206
 Golisano, Thomas, 65
 Gorsuch, Ann, 328
 governor, 126, advisors to, 130–134; leadership role of, 127–8; legal

- designations of role, 116–117;
- relations with legislature, 134–8;
- responsibility for budget preparation, 116–117
- Graduate Medical Education Pool, 279
- Great Depression, 295
- Greater New York Hospital Association, 305
- gubernatorial, 106–8, 127–30, limitations of, 18
- Guiliani, Rudolph, 12, 20–21, 73, 107

- Hamilton, Thomas, 270–71
- “hammer provisions,” 329
- Harriman, Averell, 18
- hazardous waste, 231; federal requirements, 331, 337; state efforts, 33; state politics, 338–43,
- Heald Commission, 275
- Health Care Financing Administration, 282
- Health Maintenance Organizations (HMOs), 279–80
- Health Professional Shortage Areas, 304–5
- Health Research, Inc., 219
- higher education, 242; impact of budget problems, 248; public-private relationships, 247–8, 283–6; relationship with politics, 251
- highways, 310, 317–18
- Home Relief (HR), 292–3
- home rule, 9, 82–84, 115–116
- Homestead Act, 217
- Hopkins, James, 230
- Human Immuno-Deficiency Virus (HIV) infection, 283

- Ickes, Harold, 191
- immigration, 12
- incumbency, 54–55
- Independence Party, 65
- Indigent Care Pool, 278
- Industrial Development Agencies, 196
- Infrastructure Trust Fund (ITF), 318
- interest groups, definition of, 78

- International Ladies Garment Workers Union, 81
- Interstate Sanitation Commission, 331

- Janison, Dan, 100
- J.F. Kennedy Airport, 190
- Job Development Authority (JDA), 192
- Johnson, Lyndon B., 218–219
- Johnstone, Bruce, 250
- judicial branch, 167; structure, 167–171
- judge selection, 166, 177–81; reform of, 180–81; and trial court merger, 181–2

- Katz, Michael, 305
- Kaye, Judith, 174–175, 181–183
- King, Bob, 132–33
- King, Martin Luther, 193
- Koch, Edward, 312
- Kozol, Jonathon, 216
- Kriss, Erik, 100
- Kroft, Steve, 85

- LaGuardia, Fiorello, 20
- LaGuardia Airport, 190
- Lasky, Roy, 187
- Learning, Achieving, and Developing by Directing Education Resources program (LADDER), 160, 235
- Legislative Affairs Office, 19
- legislative campaign committees, 57–8
- legislature, 114–116, 143; budget of, 152–3; budget passage, 153–5, careerism, 145–8; leadership and organization, 15, 144–5, 148–151; staff, 151–3
- Lehman, Herbert H., 20
- Lein, Laura, 303–4
- Levittown v. Nyquist*, 236
- Liberal Party, 64, 69, 72–73
- lieutenant governor, 112, 117, 133
- Lindsay, John, 19
- Lobbying Act, 88–89
- lobbyist(s), 79, 88; definition of, 78; disclosure reform, 88–9
- lobby representation and spending, 79

- local governments, 2–3; districts and authorities, 196
- local education spending, 29–30; equity in, 204
- Long Island Lighting Company
Shoreham nuclear power plant, 193
- Long Island Railroad, 317
- “long lines” tax, 314
- Madison, James, 111
- managed care, 279–80
- Managed Care Consumers Bill of Rights, 280–281
- mandates, 9–10, 27–8, 133, 209; definition of, 27
- McCaughey-Ross, Betsy, 133
- Marino, Ralph, 207
- McCall, Carl, 137, 269
- McGovern, George, 73
- Medicaid, 276–7, 300; and managed care, 281–5; spending, 282; abuse, 283–4
- Medicare, 276
- Memorandum of Understanding, 315
- Metro North Commuter Railroad, 317
- Metropolitan Transportation Authority (MTA), 19, 191, 309, 312, 317
- Moreland Commission (1976), 197
- Morgado, Robert, 131
- Moses, Robert, 188, 191, 192, 1197
- “Mozart Problem,” 223–4
- Mucha, Zenia, 131–2
- Municipal Assistance Corporation for the City of New York (MAC), 95
- Nash, Gregory, 92
- National Audubon Society, 82–84
- National Environmental Policy Act (NEPA), 328
- National Merit Scholarship Program, 215
- Natural Beauty Commission, 331
- NEA-NY, 92
- Newark Airport, 190
- “New Federalism,” 328
- news decisions, 102–4; point of view, 105
- newspapers, 99
- New York Bar Association, 156
- New York City, 196, 227; and media, 128; mayor of, 128
- New York City Health and Hospitals Corporation, 196
- New York City School Construction Agency, 196
- New York Health Care Reform Act, 278
- New York Prospective Hospital Reimbursement Methodology (NYPHRM), 277
- New York Public Interest Research Group (NYPIRG), 86
- New York State Archives, 349
- New York State Energy Research and Development Authority, 192
- New York State Financial Control Board, 218
- New York State Library, 349
- New York State Lobbying Act, 88
- New York State Statistical Yearbook, 350
- New York State United Teachers (NYSUT), 254
- New York State Urban Development Corporation (UDC), 136
- Niagara Power Project, 192
- Northwest Ordinance, 217
- nuclear waste disposal, 82–3
- NYNEX-NY, 84
- Office of Court Administration (OCA), 175
- Office of Children and Family Services, 300
- Office of Temporary and Disability Assistance, 300, 303
- Old Age Insurance, 295
- party enrollment, 48, 52
- party organization, 56–59
- Pataki, George, 19, 20, 23–24, 92, 127, 130–32, 236; and budget issues, 124, 139; and tax cuts, 208; and welfare reform, 155–6

- “Pataki Trustees,” 241, 256–8; and vote of no confidence, 268–9
 “patronage system,” 178–9
 permits, 336–7
 Personal Responsibility and Work Opportunity Act (PRWORA), 134, 291–2 298–9, 303
 Pesticide Control Board, 331
 “point sources,” 330, 339
 political action committees (PACs), 86–88
 Port Authority Bus Terminal, 190
 Port Authority of New York and New Jersey, 190
 “positive liberalism,” 139–40
 poverty threshold, 292–3
 Power Authority, 192–3
 Prepaid Health Service Plans (PHSPs), 282
 primary care, 277
 “private law,” 174
 private universities and colleges, 247–8
 Project Finance Agency, 194
 property taxes, 59–60, 157, 219
 Public Authorities, 120–1; features of, 188–9; problems with, 196–198
 “Public Authorities Control Board,” 197
 Public Employees Federation, 93
 Public Works Administration (PWA), 191

 qualifications of state officers, 113

 Race, Bradford, 131–132
 race issues, 218–219; and demography, 11–12, 47–48
 Reagan, Ronald, 297; and the environment, 328–9
 1983 Rebuild New York Infrastructure Bond Act, 315–16
 Regents exams, 221
 regionalism and political parties, 44–6
 religion, 10
 rent control, 17, 137, 156–8
 Republicans, 16–17, 45, 49, 51, 144
 Rethinking SUNY, 241, 256, 265–7
 revenue bonds, 188

 Right to Life Party (RTLPL), 64–65, 71
 Rinfret, Pierre, 71
 Rockefeller, Nelson E., 18, 128–9, 131, 138, 245–6
 Roman Catholic Church grassroots day, 81
 Roman, Samuel, 84
 Ronan, William, 128, 131
 Roper, Donald, 145
 Rose, Alex, 73
 Ryan, John, 258

 Sack, Kevin, 100
 Safety Net Assistance (SNA), 301
San Antonio Independent School District v. Rodriguez, 235–6
 Schmalz, Jeffrey, 80–81
 Scholar Incentive Program, 245
 School Tax Relief Plan (STAR), 234–5
 Scholastic Aptitude Test (SAT), 216
 school boards, 220–1
 Schumer, Charles, 92
 senior citizens, 94
 separation of powers, 111–112
 Sierra Club, 328
 Silver, Sheldon, 136–7, 206, 208
 Smith, Alfred E., 126
 1935 Social Security Act, 276, 295
 special education, 227
 split-ticket voting, 53–54
 “spoils system,” 177–8
 State Administrative Procedures Act (SAPA), 335
 state aid, 31–33
 1990 State Commission on Governmental Integrity, 197
 State Environmental Quality Review Act (SEQRA), 337
 State Harness Racing Association, 85–6
 State Tax Reduction Plan (STAR), 159–60
 State University of New York (SUNY), 261–2; origin of, 243–4; and Rockefeller, 245; mission statement, 260, 261; reputation, 264–5; New Paltz conference, (1997) 257

- Stonecash, Jeffrey, 87, 100
 summary abatement authority, 338–9
 swing power, 17
 Supplemental Appropriations Act, 302
 Supplemental Security Income (SSI), 297
 Supreme Court, 172, 173–4
 surrogate court, 173, 179
 Survivors Insurance, 295
- Take Back Democracy Project, 90
 taxes, 205–6, 208–9
 teachers unions, 88, 91
 Telephone Association, 81
 Temporary Aid to Needy Families (TANF), 291, 298–9; and time limits, 299; and child care, 299–300; problems with, 302–3
 1946 Temporary Commission to Study the Need for a State University, 243
 Temporary State Commission on Lobbying, 88
 Temporary State Commission on the Powers of Local Government (1973), 197
 Teterboro Airport (New Jersey), 190
 Trans-Hudson (PATH) system, 190
 transportation, 309; conflict, 309–311; and revenue generation, 310, 314–15
 dedicated fund, 320–1; and regional conflicts, 322–3
 Transportation group, 289–92
 trial court, 172–173; definition of, 168
 trial court merger, 181
 Triborough Bridge, 191
 Triborough Bridge and Tunnel Authority, 191
 Truman, David, 79
- Tuition Assistance Program, 203, 245–6, 253–4, 263–4
- Unions, 93–5
 Unified Court Budget Act, 176
 Uniform Procedure Act, 332
 United University Professions (UUP), 254
 University Senate, 268–9
 upstate-downstate conflict, 137
 upstate New York, 9, 10, 13, 348, 355, 356
 Urban Development Corporation (UDC), 193–4, 197
 Urban Renewal Agencies, 196
- veto power, 112, 116, 138
 voter turnout, 18
 voucher plans, 237–8
- Walsh, Hauck, 197
 Watershed Protection Agreement, 341
 Watt, James, 328
 Weeks, George, 125
 Wein, Louis, 113
 welfare, public opinion of, 294, history of, 295–8
 welfare reform, 155–6
 Welfare Reform Act, 300
 Westinghouse Science Award, 215
 Westway project, 312
 1975 Willowbrook Consent Decree, 133
 “wise-use” movement, 340
 Work Incentive (WIN), 297
 Working Families party, 66
 World Trade Center, 213
- Zeller, Belle, 93
 Zimmerman, Joseph, 93