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## THE EMPIRE STATE

The study of the government and politics of New York State involves a study of an important segment of the history of the United States in which the Empire State played a major role in the political development of the United States by contributing outstanding men to the service of the nation and innovative laws, governmental programs, and projects. As the center of national finance and the national communications system, and as the most populous state for decades, New York was the natural center of political attention. The loss of its status as the state with the largest population has not diminished the political and economic importance of the Empire State.

The state has been the home of major political figures (Alexander Hamilton, the two George Clintons, John Jay, De Witt Clinton, Alfred E. Smith, Franklin D. Roosevelt, Herbert H. Lehman, Thomas E. Dewey, and Nelson A. Rockefeller, among others) and large projects (the Erie Canal, the thruway, the state university system), and has been an innovator of policies and programs subsequently adopted by Congress and the legislatures in many states. Jack L. Walker developed “composite innovation scores” for the states, and New York ranked the highest.<sup>1</sup>

The many dramatic and highly publicized activities of the federal government attract public attention and lead to an overshadowing of the fact that state governments and local governments are important regulators and provide all services, except the postal service, to citizens within states and affect their lives most directly. Although conducted on a smaller scale, the politics of state decision-making can be as fascinating and intriguing as the politics of federal decision-making.

The Empire State possesses the police power, which the federal government lacks, to regulate persons and properties in order to promote and protect public health, safety, welfare, morals, and convenience. The scope of the police power, exercisable summarily or through the enactment and implementation of statutes, is undefinable except in the broadest of terms.

In contrast, the direct activities of the U.S. Government are remote from the daily lives of average citizens.

### Political Development of New York

The Dutch in 1613 commenced to establish trading posts on the Hudson River and claimed jurisdiction over the territory between the Connecticut River and the Delaware River. New York became known as “New Netherlands” following its first permanent settlement by the Dutch in May 1624 and acquired the name “New York” four decades later, when the Dutch colony under Governor Peter Stuyvesant surrendered to an English expedition led by Richard Nicolls, the newly appointed provincial governor. English possession of the land was confirmed by the Treaty of Breda in July 1667.<sup>2</sup> The Dutch recaptured New York in August 1673, but the Treaty of Westminster restored British rule and became effective in November 1674.

Colonel Richard Nicolls was governor between 1664 and 1668 and published the “Duke’s Laws” in 1665, the first English code of law. The Duke of York in 1683 authorized the calling of a general assembly to draft the Charter of Liberties and Privileges; it was signed by the duke, but as King James two years later, he revoked the charter. In 1691, a new assembly reaffirmed the charter, which met with neither the approval nor the disapproval of the new king, William III. Citizens generally viewed the charter as the colony’s fundamental law. Historians are in agreement that the quality of the royal governors was mixed—ranging from excellent to fair to poor—although Leonard W. Labaree in 1930 maintained, “[T]he Governors appointed by the Crown compare not unfavorably in honesty and ability with the men now elected by the people of the several States of the Union.”<sup>3</sup>

The next governing document was the constitution of 1777, which provided for a strong state legislature and a weak governor (see chapter 4). Dissatisfaction with the constitutionally established council of appointment and council of revision led to the adoption of a new constitution in 1821 that abolished the councils and transferred the appointment power, subject to senate confirmation, and the veto power to the governor.

The *laissez-faire* theory of Adam Smith, developed in 1776, rejected government control and regulation of the economy and restricted the functions of government to national defense and to the maintenance of public order, public institutions, and public works.<sup>4</sup> Jeffersonians, fearful of centralized political power, agreed with the *laissez-faire* economists and exerted a powerful influence upon the governance system. New York State, however, underwent a dramatic transformation in the nineteenth century as the state was converted from one composed chiefly of small farming communities into a state with a population of 959,049 in 1810, 3,880,735 in 1860,

and 5,082,871 in 1880. By then it had become the leading manufacturing and commercial state in the nation. The dramatic economic changes necessitated the growth of the state government to cope with the problems arising concomitantly with urbanization and industrialization and to provide services needed by a more urban population.

In particular, the development of monopolies and restrictive trade practices in the post-Civil War period led to governmental intervention in the economy in the form of regulation, a type of intervention that accelerated in the twentieth century. John A. Fairlie explained in 1898, “[T]he revolution in the means and conditions of transportation has opened the way to centralizing influences. Central control of local officials under the conditions of communications existing before the middle of the century would necessarily have been exercised without any adequate knowledge of the local situation.”<sup>5</sup>

The period from 1821 to 1929 was characterized by the placing of constitutional restrictions upon the power of the state legislature and a gradual strengthening of the governor’s powers (see chapter 7). Scandals in the financing of canal construction and resentment of legislative interference in local governments produced a reaction in the form of a new constitution in 1846. It imposed the first restrictions, other than guarantees of civil liberties, upon the power of the legislature, restrictions found in the present constitution. Additional restrictions were placed upon the legislature by constitutional amendments in 1874 and a new constitution in 1894 (see chapter 6).

The first three decades of the twentieth century witnessed efforts by governors to promote the administrative reorganization of the state government and adoption of the executive budget system. Success in achieving these two objectives produced a transformation in gubernatorial-legislative relations as the balance of formal political power was tipped in favor of the governor and charges began to be made relative to executive dominance of the state government (see chapters 6–7). Professionalization of the staff of the legislature and the increasing number of career legislators commencing in the mid-1960s led to a more balanced power relationship between the governor and the legislature. Struggles over the enactment of budget bills and the use of the item veto by Governor George E. Pataki produced a legislative response in the form of a proposed amendment to the state constitution that would have changed the budgeting system by granting the state legislature additional powers. Voters rejected the proposal in 2004.

### Importance of the Empire State

New York has been a giant in terms of its contributions to the nation’s economy in the period subsequent to independence. In part, the state’s economic prominence has been a product of its location between the

Atlantic Ocean and the Great Lakes and between New England and the states to the south and west. With a superb natural harbor in New York City and the development of an extensive canal system, the Empire State has been blessed with an outstanding transportation system, which has facilitated economic development. Neal R. Peirce included the state among his ten “Megastates.”<sup>6</sup> The state legislature in 2007 appropriated approximately \$121 billion, an indication of the magnitude of the state government.<sup>7</sup> Not surprisingly, interest groups engage in continual battle because of the great importance of many of the decisions made by the legislature and the governor.

Only California has a gross state product exceeding New York’s gross state product of \$963,466 million in 2006. New York, although losing manufacturing jobs in the latter half of the twentieth century, remains a manufacturing giant. Surprisingly, farming is the state’s largest industry. New York is the largest producer of cabbage; the second-largest producer of apples, grapes, ice cream, maple syrup, and wine; and the third-largest producer of milk and cheese.

The state’s population increased from 16,838,000 in 1960 to 18,384,000 in 1970, and to 19,254,630 in 2005, a total exceeding the population of many nation-states. The relative economic prosperity—the per capita income of \$38,333 in 2004 was the fourth-highest among the states—and population density influence the nature of the state’s problems.

The population center of the state is the town of Oakland Valley, west of Middletown. The Empire State, with a land area of 47,531 square miles, ranks thirtieth among the states, but ranks seventh in population density, which increased from 217.9 persons per square mile in 1920 to 381.3 in 1970, and to 408.0 in 2005, reflecting urbanization and the impact of New York City on the average figure. Approximately 90 percent of the citizens reside in the state’s eight metropolitan areas, including the New York City area, which is the largest metropolitan area in the nation. The state has been an immigration gateway, and approximately 20.4 percent of residents were born in foreign nations. The state and New York City in particular are little United Nations, with residents representing all nations in the world. Blacks moved to New York State in significant numbers during World War I and have been joined more recently by a large influx of Hispanics.

State politics bears a close relation to national politics because of the political importance of the Empire State, which had forty-five votes in the presidential–vice presidential electoral college until 1962, when the number was reduced to forty-one (it was further reduced to twenty-nine in 2002). It is anticipated the state will lose two votes subsequent to the 2010 decennial census of population.

The size of the state's electoral-college voting bloc and the strong executive system encourage potential national leaders to seek the office of governor as a stepping-stone to the presidency and make the state a political heavyweight among the states. Not surprisingly, the state has been a major supplier of presidential nominees.

### Problems of a Mature State

The state experienced a halcyon economic boom as recently as the 1960s during the governorship of Nelson A. Rockefeller, who provided strong leadership in inaugurating new and innovative state programs. New York and other northeastern states were hard hit by the recession that commenced in the early 1970s and the movement of industry and population to the Sun Belt—induced in part by the state's high taxes, labor costs, and energy costs. The recession made it impossible for the state to launch expensive new programs; the state lost 5.5 percent of its jobs in the period 1970–77, whereas the remainder of the nation increased the number of jobs by 8.7 percent. The state had 20,776 manufacturing establishments in 2002, employing 625,000 persons, and annual payrolls of \$25,892 million.<sup>8</sup> The state government had 246,385 full-time equivalent employees in 2006. The unemployment rate in 2006 was 5.0 percent.

New York State, according to a 1975 survey of corporate executives, was viewed as a high-wage, high-tax, and high-cost state and was placed last among the forty-eight continental states in terms of a desirable location for a new factory.<sup>9</sup> Jay Gallagher in 2005 highlighted the decline of the up-state economy and the problems of the state government.<sup>10</sup> A 2006 report by the Tax Foundation described New York's state business tax climate as the worst among the fifty states.<sup>11</sup> Public school costs, the per capita income tax, and the per capital state-local debt in the state are the highest among the states, and the state-local tax burden in the Empire State is second only to the burden in Alaska. The state's debt of \$49,731,579,000 is the second-highest among the states. Many industrial firms view the strength of the state's labor unions as a negative location factor compared to southern states. Available evidence suggests the state will continue to experience a slower economic growth rate than southern and western states. Contributing to the slow economic growth rate are high energy costs. A report issued by the Federal Reserve Bank of New York in 2006 concluded: "The New York metropolitan area faces a number of pressures that could constrain its future growth and development. It faces ongoing competition from other metro areas as a prime location for jobs and economic activity."<sup>12</sup>

Certain congressional policies aggravated the problems of the state. Increased federal farm subsidies promoted mechanization of agriculture

subsequent to World War II, forcing blacks and whites off many southern farms and resulting in their migration to northern cities, where they often became “high-cost” citizens in great need of governmental services. And the interstate highway system, launched in 1956, encouraged industrial firms to leave the older central cities for suburban areas, thereby increasing the problems of the cities.

The near financial collapse of New York City in 1975 severely strained the state’s resources as it attempted to assist the city and the City of Yonkers. Several other large cities—Buffalo and Rochester, in particular—experienced fiscal strain, and the 2005 state legislature created a state financial control board for Erie County.<sup>13</sup> Complicating the financial problems of hard-pressed local governments is a 1978 Court of Appeals decision invalidating a law that allowed local governments to exclude from the constitutional tax limits those taxes levied for pensions and other fringe benefits (see chapter 10).

International developments also have impacted the Empire State adversely. The sharp increase in the price of oil resulting from the formation of the Organization of Petroleum-Exporting Countries (OPEC) in 1973 and the great growth in worldwide demand for petroleum products in the opening decade of the twenty-first century have hit the state hard, since it relies upon oil for approximately 65 percent of its energy needs and upon natural gas for an additional 15 percent.

## An Overview

To facilitate an understanding of the powers of the New York State government, chapter 2 focuses upon the constitutional division of governmental powers between the national government and the Empire State. Emphasis is placed upon the kaleidoscopic nature of the division and the growth in the sharing of governmental powers. The debate was launched at the Philadelphia constitutional convention in 1787 over the proper role of the national government continues today, and charges have been made that Congress—through conditional grants-in-aid and complete and partial preemption of many state regulatory powers—has encroached seriously upon the traditional sphere of state responsibility. Some observers express fear that states are becoming more and more the ministerial arms of the national government, since they must abide by conditions attached to grants-in-aid and must adopt standards meeting federal minimum criteria in these functional regulatory fields partially preempted by Congress to avoid complete preemption.

While federal-state conflicts occur, cooperation is more typical, as the sharing of governmental responsibilities—a partnership approach to solving problems—has become common, and in recent years the state has accelerated its efforts to influence policy-making by Congress and the

president. Chapter 2 also examines interstate relations, another area involving competition, conflict, and cooperation. The use of interstate and federal-interstate state compacts and of interstate administrative agreements to solve problems transcending the boundaries of the Empire State is examined, along with the efforts made to promote enactment of uniform state laws by the fifty state legislatures. The relative economic decline of the northeastern states has promoted several interstate cooperative efforts to improve the economy of the region.

Chapter 3 continues the subject of intergovernmental relations by focusing upon state-local relations over the years, with emphasis placed upon the development of constitutional home rule and the problem of state mandating of local government expenditures. Such mandates increase the fiscal burdens of local governments, but they are the beneficiaries of generous state financial assistance. The helpfulness of the state is highlighted by its 1975 rescue operation to obviate the need for New York City to file for federal bankruptcy protection.

A search for an understanding of political behavior in the Empire State leads in part to the state constitution, the subject of chapter 4. The state constitution not only establishes the framework of government and allocates power but also places important restrictions upon the powers of the state legislature and local governments, thereby leading to the employment of ingenuity to discover ways of avoiding the restrictions. The state constitution is the fundamental law of the Empire State and is largely the product of interest groups. Since the relatively detailed document contains numerous provisions inserted through the influence of interest groups, it is not surprising that groups benefiting from the various provisions closely monitor attempts to amend the constitution and employ their full political resources to resist assaults upon their entrenched interests. The political nature of constitution-making is revealed clearly to the public when a constitutional convention, such as the last one, in 1967, is held; then lobbyists flock to the convention because of the high stakes involved.

Politics in the state is colored by an upstate-downstate division, with "downstate" often referring only to New York City. The downstate area traditionally has been dominated by the Democratic Party, whereas the upstate area, with the exception of major cities, historically has been dominated by the Republican Party. I will treat the subject in chapter 5. Today, four political parties officially are recognized: Democratic, Republican, Conservative, and Independence. The two largest parties are pragmatic ones that attempt to appeal to all voters and often have platforms containing generally similar planks. The Conservative Party is a philosophical party espousing a discrete ideology and has been gaining strength at the polls since its organization. The Right to Life Party is a distinctive one-issue party.

Interest-group activity is not confined to the process of state constitution-making and extends to the legislative, executive, and administrative rule-making functions. Many political issues—restrictions on abortion and capital punishment—are highly emotional ones and are often supported or opposed by single-issue groups. Public utility and railroad lobbies were the most powerful lobbies for an extended period of time, but today their influence is minor; they have been replaced in strength by the public-employee unions and public-interest groups. Lobbying by public officers, especially officers of local governments and public authorities, has increased substantially.

The subject of chapter 6 is the state legislature, the annual forum attended by all political interest groups and the principal resource distributor in the Empire State. Abuse of the public trust by the legislature in the nineteenth century prompted public reaction in the form of constitutional restrictions designed to impede legislative action and discretion. Many shackling provisions adopted in the nineteenth century have proved to be less restrictive than their sponsors hoped, as the legislature has discovered how to work around many inhibiting provisions.

The most significant development since 1965 has been the gradually growing strength of the legislature. It has expanded its oversight of administration, participated more fully in the appropriation process, and increased its professional staff substantially. To a large extent, a troika—the governor, speaker of the assembly, and the president pro tempore of the senate—dominate the policy-making process in the state.

Gubernatorial-legislative relations underwent a substantial change in the twentieth century as the constitutional reorganization of the executive branch and adoption of the executive budget system produced the emergence of the strong governor in terms of formal powers. I will analyze the subject in chapter 7. Forces favoring a weak governor were successful in ensuring through the constitution of 1777 that the governor would possess relatively few powers. The history of the Empire State until 1929 witnessed the gradual strengthening of the office of the governor as forces committed to the integration of executive powers grew in strength. Charges of executive dominance began to emerge in the 1930s and reached a peak during the governorship of Nelson A. Rockefeller (1959–73). Chapter 7 examines these charges and draws a conclusion as to their accuracy.

Chapter 8 focuses upon the administrative departments, agencies, boards, commissions, and public authorities of the state. Whereas the government established by the 1777 constitution was relatively unimportant in terms of its administrative activities, the executive branch today touches all phases of the daily lives of citizens. The chapter also examines several highly political topics, including use of public authorities and the moral obligation bond, the civil service system, the Taylor law, the retirement



system, and various civil service reform proposals. The civil service reform proposals include creation of a department of personnel management, elimination of the rule of three for appointment of civil servants, and establishment of a senior management service.

The importance of the subject of chapter 9—the state judicial system—cannot be overestimated, inasmuch as its role expanded significantly as society has become more complex and litigious. In examining the various courts, ranging from minor courts to general trial courts to appellate courts, particular attention is paid to proposals for change, including greater use of administrative adjudication and arbitration. One very important political question involves the popular election or gubernatorial appointment of judges subject to the advice and consent of the senate. Part of this controversy was resolved in 1977 when voters ratified a constitutional amendment providing for gubernatorial appointment of members of the highest court—the court of appeals. The last section of the chapter examines the policy-making role of the judiciary and notes that, while this role has been a relatively minor one, judicial decisions have had major financial implications for the state.

The concluding chapter deals with financing the state and includes sections on federal funds, state budgets, constitutional restrictions, the fund structure, the accounting and the auditing systems, the revenue and the debt systems, and state-local fiscal relations. While any effort to change the system of financing the state activates political forces, attempts to change the formulas for distributing state financial assistance to local governments immediately result in the marshaling of political resources by interest groups attempting to maximize their advantage.