The Government and Politics of New York State

SECOND EDITION

Joseph F. Zimmerman

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Second Edition

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For Peggy

In appreciation for her continuing support

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PREFACE

The first edition of this book was published in 1981, and a number of governance system changes since then have been politically significant, particularly the alteration of the gubernatorial-legislative balance of power as reflected in unanimous votes in the two houses to override Governor George E. Pataki's item vetoes. In common with the first edition, a balanced description and an analysis of the governance of the Empire State are presented, with particular emphasis upon political institutions and processes and proposals for major changes in the governance system. State government functional activities are examined only within the context of the political process.

A scholarly book on the government and politics of the Empire State of necessity draws briefly upon the state's political history to explain the evolution of political institutions and public policies. A thorough understanding of the history and political culture of New York will facilitate a proper understanding of current Empire State politics. Space limitations, however, restrict attention to these topics, and the reader is encouraged to read relevant materials cited in the bibliography.

The book purposely emphasizes the legal foundations of the state, as they influence greatly the behavior of leading public officers and interest groups. Most importantly, constitutional restrictions on the state legislature and local governments are examined, as well as the ingenious ways by which several restrictions upon the state legislature have been circumvented.

This edition continues to highlight three themes. The intergovernmental theme is a reflection of the political importance of national-state relations, interstate relations, and state-local relations. The large increase in the number of congressional preemption statutes removing completely or partially regulatory powers from states since 1965 has altered significantly national-state relations, which remain generally cooperative. Common to the intergovernmental theme is the subtheme of centralization versus decentralization of political authority. With respect to national-state and interstate relations, the key question is the extent to which

political power should be concentrated at the national level. A similar question is raised with respect to the concentration of political power at the state level versus affording general-purpose local government's broad discretionary authority.

Theme two is the group basis of politics. The importance of interest groups that influence the basic constitutional rules in the state is underlined, along with the influence they bring to bear upon the state legislature, the governor, and the bureaucracy. The latter perform important service provision and regulatory roles, including promulgation and enforcement of administrative rules and regulations.

Theme three focuses upon the question of the most desirable degree of executive integration under the governor. Two models for structuring of executive authority have been employed. The first is the traditional weak-governor model providing for fragmentation of executive authority; the second provides for the integration of all executive authority in the governor. The first model reflects fear of a strong executive with concentrated powers, a fear attributable to colonial experience under the British Crown and evident in the writings of James Madison. Reinforcing the traditional fear of centralized authority was Jacksonian democracy, which sought to hold public officers accountable to the electorate through popular elections and short terms of office. Reformers advocating executive integration made relatively little progress in achieving their goals until the second decade of the twentieth century. Their success, however, has not been complete, as two major executive departments—education and law—are not under the control of the governor, as they are in most states.

Acknowledgments

The first edition benefited greatly from the constructive comments of the following individuals who read one or more chapters: Dr. T. Norman Hurd, former Secretary to Governor Nelson A. Rockefeller and former Director of the Budget; Albert J. Abrams, former Secretary to the State Senate; Dr. Troy R. Westmeyer, former Director of the Legislative Commission on Expenditure Review; Dr. George H. Hallett, Jr., former Executive Secretary of the Citizens Union of the City of New York; Dr. Frank W. Prescott of the University of Tennessee at Chattanooga; and my colleague Ronald M. Stout. Their comments and suggestions greatly improved the quality of the book.

Expeditious revision of the first edition is attributable in large measure to the outstanding assistance provided to me by my research associates, Katherine M. Zuber and Karl G. Schlegel, who search most diligently and successfully the political science, public administration, and public law literature to locate and obtain copies of books, government documents, journal and newspaper articles, and unpublished works relating to the government of New York State. A debt of gratitude also is owed to copyeditor Wyatt Benner and Addie Napolitano for her expert preparation of the manuscript for publication. Any errors of fact or misinterpretation are my sole responsibility.

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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.[1]

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.[2] 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."[3]

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.[4] 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."[5]

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."[6] The state legislature in 2007 appropriated approximately $121 billion, an indication of the magnitude of the state government.[7] 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.[8] 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.[9] Jay Gallagher in 2005 highlighted the decline of the upstate economy and the problems of the state government.[10] A 2006 report by the Tax Foundation described New York's state business tax climate as the worst among the fifty states.[11] 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."[12]

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.[13] 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.

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Federal-State and Interstate Relations

To acquire a proper understanding of the operation of a federal system of government, one must gain a full appreciation of the complexities and dynamics associated with the changing division and sharing of governmental powers. Individual states establish relationships with the national government and other states under procedures contained in the U.S. Constitution as interpreted by the U.S. Supreme Court, and also must establish relationships with local governments.

Federal-State Relations

The U.S. Constitution might have allocated specific functions to each of the two planes of government, but members of the Philadelphia constitutional convention of 1787 decided to delegate enumerated powers only to the national government. To make crystal clear that the national government possesses only enumerated powers, Congress in its proposed constitutional bill of rights included the Tenth Amendment, reserving powers to the states and the people, and it was ratified by the states in 1791. This division-of-powers approach to government often is labeled "dual or layer-cake federalism." In practice, however, there is a sharing of most regulatory powers by the planes of government rather than the complete division of powers suggested by the term "dual federalism." The theory of cooperative federalism describes the cooperative activities of the national, state, and local governments. Neither theory adequately explains the functioning of the United States federal system in the twenty-first century.[1]

Powers delegated to Congress and not forbidden to the states—concurrent powers—may be exercised by either or both planes of government. The power to tax and the power to construct roads are examples.

As explained below, Congress employed its delegated powers to preempt many state regulatory powers.

Powers of the Federal Government

Most delegated or enumerated powers of the national government are listed in section 8 of the U.S. Constitution, which authorizes Congress to tax; to borrow money; to regulate interstate, foreign, and Indian tribe commerce; to establish a uniform rule of naturalization and uniform bankruptcy laws; to establish post offices and roads; to provide for patents and copyrights; to constitute courts inferior to the Supreme Court; to punish piracies and felonies committed on the high seas; to declare war; to raise and support armies and a navy; to call into federal service the national guards of individual or all states; and to govern the District of Columbia. Congress is free to devolve its regulatory powers to the states and has done so on three occasions. The most important devolution statute is the McCarran-Ferguson Act of 1945 devolving authority to state legislatures to regulate the business of insurance.[2] The reader should note that a congressional statute removing or making less-restrictive the conditions attached to a grant-in-aid is not a devolution statute.

Article II of the Constitution assigns the duty of conducting foreign relations and military operations to the president, and Article III establishes the Supreme Court and its trial jurisdiction. In addition to enumerated powers, the elastic clause (Art. I, §8) stipulates that Congress has the power "to make all laws which shall be necessary and proper for the carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States or officer thereof."

The Constitution contains a number of restrictions on the powers of the national government. Section 9 of Article I forbids the suspension of the writ of habeas corpus (a court order directing the jailer to bring a prisoner before the judge) except in the event of rebellion; enactment of a bill of attainder (a legislative declaration of guilt and imposition of punishment) or enacting an ex post facto law (a retroactive criminal law); levying of an export tax; and giving preference to ports of one state over ports of other states. Section 8 of Article I mandates that all duties, imposts, and excises must be uniform throughout the nation. And the Bill of Rights, the first ten amendments, contains many restrictions upon the powers of Congress by guaranteeing freedom of assembly, petition, press, religion, and speech, and protection of the rights of persons accused of crime, among other guarantees.

With the passage of time, the powers of the national government have been expanded by constitutional amendments, judicial decisions, and statutory elaboration of delegated powers.[3] The federal government

today is engaged in activities once considered to be the exclusive responsibilities of state and/or local governments. This power expansion has produced a continuing ideological debate over the proper roles of the national government and those of the states.

Constitutional Amendments

No constitutional amendment directly restricted the powers of the states until the Fourteenth Amendment—with its due process of law, equal protection of the laws, and privileges and immunities clauses—was ratified by the requisite three-fourths of the states in 1868. The first two clauses served as the basis for numerous U.S. court decisions striking down as unconstitutional actions taken by states. To cite only one example, the U.S. Supreme Court in 1964 ruled that seats in both houses of a state legislature must be apportioned on the basis of population—one person, one vote—because apportionment on the basis of geographical areas, such as one senator per county, violates the equal protection of the laws clause of the Fourteenth Amendment.[4] This decision necessitated the reapportionment of both houses of the New York State legislature (see chapter 6).

The Fifteenth Amendment guarantees the voting rights of black citizens, and Congress enacted the Voting Rights Act of 1965 to implement the guarantees, a subject examined in chapter 6 relative to the 1974 redistricting of assembly seats in Brooklyn.[5]

Whereas the Fourteenth Amendment provides the basis for a plaintiff to file a suit for judicial intervention in what previously had been the affairs of the states, the Sixteenth Amendment's authorization for Congress to levy a graduated income tax gave Congress power to raise sufficient funds to finance more than eleven hundred domestic categorical grant-in-aid programs with conditions attached. As a result, Congress has considerable influence over reserved-powers matters in states accepting such grants. While it is true a state may avoid federal conditions inherent in grant-in-aid programs by refusing to apply for and accept grants, the fiscal pressure bearing upon most states makes such a refusal politically impossible.

The sharp increase in conditional federal grants-in-aid to states during the 1950s and 1960s led some observers to express the opinion that states would become little more than ministerial arms of the national government. This opinion has proven to be unfounded; states continue to be very important units of government and possess broad discretionary powers. Furthermore, states retain a considerable amount of discretionary authority in administering federally aided programs and also are able to influence federal policies embodied in statutes enacted by Congress, as well as rules and regulations promulgated by the federal departments and agencies administering grant programs.

National grants-in-aid strengthened the position of the New York governor vis-à-vis the state legislature, since most grants were applied for and received by executive agencies under the control of the governor until the court of appeals in 1982 upheld the right of the state legislature to appropriate the grant funds.[6] As a consequence, the governor must engage in negotiations with the two houses of the state legislature with respect to appropriation of these funds.

Judicial Decisions

The U.S. Supreme Court developed the doctrine of implied powers in *McCulloch v. Maryland* by opining: "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adopted to the end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."[7] In general, the Court employed this doctrine to interpret broadly the powers delegated to the national government by the Constitution. The Court, commencing in the 1990s, invalidated a small number of preemption statutes; it removed regulatory powers from states on the ground that the acts exceeded the constitutional grant of powers to Congress or commandeered the resources of states.

Statutory Elaboration

The powers constitutionally delegated to Congress are latent ones, and it cannot be forced to exercise a power. The Constitution established Congress as the supreme regulator in specified fields—subject, of course, to a challenge that the given statute exceeds the scope of its various delegated powers. The failure of Congress to exercise several powers—the interstate commerce power, in particular—led to the term "the silence of Congress."[8] It did not enact a statute regulating interstate commerce until 1887 or use its supersession power to regulate completely bankruptcies until 1933.[9]

Preemption statutes, the products of interest group lobbying, may be complete, partial, or contingent. The first type removes all regulatory powers in a given field from the states, in contrast to the second type, which occupies only part of a regulatory field. A contingent statute applies to a state and/or a local government only if specified conditions exist or subnational units fail to meet a national standard of uniformity. To date, only two contingent preemption statutes have been enacted: the Voting Rights Act of 1965 and its amendments, and the Gramm-Leach-Bliley Financial Modernization Act of 1999.[10] State and local government officers often are not opposed to the goals of preemption statutes, but object strongly to mandates and restraints contained in many such statutes

that impose unreimbursed costs upon subnational governments. In fairness, it must be pointed out that Congress appropriates funds for grants-in-aid to assist state and local governments to fund mandated costs.

Congress enacted only 29 preemption statutes prior to 1900, and the pace of enactment slowly increased thereafter until 1965, when complete and partial preemption statutes were enacted with increasing frequency to supersede state regulatory laws and administrative rules and regulations. The number of preemption statutes totaled 588 by January 1, 2008. Sponsors failed to include an expressed preemption clause in many enacted bills, because a key number of supporters of the bills' objectives politically could not vote in favor of a preemption bill without losing the support of many constituents. In consequence, courts are called upon to determine whether a statute is preemptive.

The development of minimum-standards preemption, a type of partial preemption, in 1965 fostered a federal-state partnership to improve environmental conditions. To avoid complete preemption, a state must develop a plan with standards equal to or higher than the national standards and demonstrate that it possesses the necessary equipment and qualified personnel to enforce its standards. If the plan is approved by the appropriate national agency, regulatory primacy is delegated to the state, and inspections and enforcement will be carried out only by the state. The role of the national agency is to monitor the state.

It is important to note that the power of the New York governor is increased by partial preemption statutes devolving powers to the governors to initiate specified actions such as appointing members of a state health planning council to balance the need for economic development with preservation of air quality; and such statutes may designate the governor as responsible for administering a program such as highway safety.

Powers of State Governments

The U.S. Constitution in general reserves, rather than devolves, power to the states. The major reserved or residual powers are the police power, the power to provide services to citizens, the power to tax, and the power to control local governments, subject to provisions in the state constitution.

The police power, although undefinable in precise terms, is a power of utmost importance to the states, and the state legislature may delegate this power to local governments. In its broadest terms, the police power may be defined as the authority of the state to regulate personal and property rights in order to promote public health, safety, morals, welfare, and convenience. States may exercise the police power by enactment and enforcement of a statute, or the power may be exercised summarily to cope with health and safety emergencies such as epidemics and fires.

Although the powers of the states have not been expanded by amendments to the U.S. Constitution or judicial decisions, states have made increased use of their residual powers to cope with the challenges presented by industrialization, urbanization, the increasing number of motor vehicles, and other societal developments.

Restrictions on State Powers

Section 10 of Article I of the U.S. Constitution enumerates restrictions upon the powers of states. Specifically, states are absolutely forbidden to enter into a treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility. Furthermore, a state, without the consent of Congress, may not levy imposts or duties on imports and exports, lay any tonnage duty, keep troops and ships of war during peacetime, enter into an agreement or compact with a sister state or a "foreign nation, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay."

Five constitutional amendments specifically limit the powers of states. The most important—the Fourteenth Amendment—contains the famous due process of law and equal protection of the laws clauses, which the U.S. Supreme Court interpreted to encompass most of the guarantees of the Bill of Rights. The Fifteenth Amendment forbids states to restrict the right to vote because of race, color, or previous condition of servitude, and the Nineteenth Amendment forbids states to deny women suffrage. The Twenty-Fourth Amendment outlaws the poll tax as a condition for voting in federal elections, and the Twenty-Sixth Amendment lowers the voting age to eighteen in all elections. States remain free to establish a lower voting age.

Action initiated by the Empire State on a number of occasions has been restricted by an act of Congress or by U.S. court decisions, as illustrated by the following two examples. The Voting Rights Act of 1965 as amended necessitated a special session of the state legislature in 1974 to "reapportion congressional and State Senate and Assembly districts in portions of New York City," including the drawing of an assembly district's line in such a manner that the district contained a black population of 65 percent (see chapter 6). The U.S. Supreme Court in 1977 invalidated a 1972 New York State law providing approximately $11 million in financial assistance to private and parochial schools on the ground that the aid could result in "excessive State involvement in religious affairs."[11] The financial assistance was designed to compensate the schools for state-mandated record keeping and testing expenditures. In 1980, the

U.S. Supreme Court in *Committee for Public Education v. Regan*, by a 5-to-4 vote, upheld a similar law by opining it "has a secular legislative purpose," does not advance or hinder religion, and "does not foster an excessive government entanglement with religion."[12]

Federal Guarantees to the State

Four provisions of the U.S. Constitution contain guarantees to states. Article IV pledges to protect states against foreign invasion and domestic violence, and stipulates Congress neither may take territory from one state to form a new state without the consent of the concerned state legislature nor combine two or more states without the consent of the involved state legislatures. This article also guarantees a republican (representative) form of government to each state.

Article V guarantees to each state equality of representation in the U.S. Senate, and the Eleventh Amendment forbids a U.S. court to accept jurisdiction in cases involving suits against a state by citizens of another state or foreign nation. The latter provisions mean a state can be sued in its courts only with state legislative permission. The U.S. Supreme Court, however, has upheld a few congressional statutes abrogating the protection of the Eleventh Amendment.

Federal-State Cooperation

The U.S. Constitution devolves powers to states for determining suffrage requirements (subject to four amendments), for conducting the elections for members of Congress, and for appointing members of the electoral college. In addition, the U.S. Constitution cannot be amended unless the legislatures or specially chosen conventions in three-fourths of the states approve the amendments proposed by Congress or a constitutional convention.

The history of federal-state relations has been one of cooperation and conflict, with the former more common than the latter. The cooperation can be one-way, with either the state or the national government lending the other equipment, or two-way, as illustrated when the New York State department of taxation and finance exchanged with the Internal Revenue Service state income tax returns for federal income tax returns of the state's citizens in order to enable each government to detect individuals who filed a return with only one government or failed to report the same income on the two returns.

Congress has enacted numerous laws to assist states in apprehending criminals, and federal departments and agencies have promulgated

regulations making it a federal crime for a person violating a state law to cross a state boundary into another state. Examples include the prohibition of the transportation across lines of kidnapped persons, of other persons for immoral purposes, of stolen motor vehicles, and of wild animals killed in violation of state laws or administrative regulations.

In addition, Congress has been generous in sharing its revenues with state and local governments by means of categorical and block grants currently totaling nearly $350 billion annually. A 1972 law authorized a $30.2 billion general revenue-sharing program to assist states and general-purpose local governments, and the program was extended in 1976 for five years.[13] States were excluded from the program when it was extended in 1980, and the program was allowed to expire in 1986 because of the very large and growing national debt.

Rapidly changing conditions have outdated a 1954 statement by Lynton K. Caldwell: "Because of the finance resources and the strength of the administrative system, the State of New York is relatively less dependent upon federal assistance than are most States."[14] The importance of direct national financial assistance is highlighted by the approximately $36.1 billion provided to New York State in fiscal year 2007.[15] Without such funds, the state and its political subdivisions would be unable to provide the current level of services.

The increasing importance of the federal government led Governor Nelson A. Rockefeller to establish an office of federal affairs in Washington, DC, that seeks to maximize national financial assistance and to protect the interests of the state. The assembly and the senate each established a Washington, DC, office in 1977. In addition, the Washington office of the National Conference of State Legislatures represents the two houses and legislatures in sister states. The mayor of New York City, state board of education, State University of New York, and Nassau County also maintain a Washington office.

Interstate Relations

Seven constitutional principles govern interstate relations: equal protection of the laws, full faith and credit, interstate compacts, interstate free trade, interstate rendition, interstate suits, and privileges and immunities.[16]

Equal Protection of the Laws

The equal protection of the laws clause is contained in Section 1 of the Fourteenth Amendment, ratified in 1868, and was included specifically to protect African American citizens who were former slaves; it stipulated that no state may "deny to any person within its jurisdiction the equal

protection of the laws." Courts interpreted the broad wording of the clause to include all persons.

Full Faith and Credit

Section 1 of Article IV mandates: "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State." The clause was essential for the future success of the economic union and the political union established by the U.S. Constitution. Congress enacted five statutes clarifying the clause, and the U.S. Supreme Court fashioned a new common law in its various decisions interpreting the clause.

Interstate Compacts and Administrative Agreements

Inherent in a federal governance system is the need for a mechanism for formalizing relations between the individual states. Section 10 of Article I of the U.S. Constitution authorizes two or more states to enter into a compact or agreement with the consent of Congress. A compact establishes a uniform law for each party state. In 1893, the U.S. Supreme Court in *Virginia v. Tennessee* ruled that such consent was constitutionally required only for compacts tending to increase "the political power or influence" of the compacting states and to encroach "upon the full and free exercise of federal authority."[17] Congress since 1910 has granted consent-in-advance for states to enter into compacts on specified subjects, and the U.S. Supreme Court in 1981 concluded that a compact becomes federal law upon receipt of congressional consent.[18]

New York is a member of thirty-nine interstate and federal-interstate compacts. Their relative importance varies considerably from compact to compact, as measured by the nature of the problem(s) each is designed to solve. Three compacts are inactive. Certain compacts—the civil defense compact and the northeastern forest fire protection compact—are mutual assistance or standby compacts generally activated only if an emergency develops. A compact may establish a public authority to administer the compact, as illustrated by the Port Authority of New York and New Jersey Compact, or it may be administered by regular state departments and agencies, as illustrated by the driver-license compact providing for the reporting of violations to the home state, by the interstate compact for juveniles, and by the New England corrections compact.[19]

The federal-state compact is an organizational innovation dating to 1965. This type of compact involves Congress enacting a compact between the national government and several states into law, in contrast to congressional consent for two or more states to enter into a compact. The federal government is a full member of the compact commission, which has a

federal cochairperson and a state cochairperson. New York is a member of three federal-state compacts—the Appalachian Regional Compact (1965), the Delaware River Basin Compact (1961), and the Susquehanna River Basin Compact (1971).

Uniform state laws and model acts are similar to interstate compacts in that they establish uniform policies. The National Conference of Commissioners on Uniform State Laws, established in 1892 and comprised of three commissioners appointed by the governor of each state, meets annually to draft uniform laws for submission to state legislatures. By 1912, governors in all states appointed commissioners who drafted uniform laws on a wide variety of topics and sought enactment of the draft laws by their respective state legislatures. Most uniform laws pertain to regulation of commerce, family matters, and taxation. The conference also drafts model laws on subjects where uniformity, although desirable, is not essential. The best-known model law is the model administrative procedure act.

Interstate compacts attract a degree of media coverage, but written and verbal administrative agreements between New York State officers and their counterparts in sister states and Canadian provinces, including ones that are subjects of compacts, attract little attention. Such agreements also may involve U.S. government officers. There is no U.S. constitutional requirement of consent of Congress for an administrative agreement to become effective. Various New York statutes authorize heads of departments and agencies to enter into reciprocal interstate agreements. Most commonly, the agreements relate to emergencies, although they cover the alphabet from agriculture to welfare. One of the most important agreements is the international fuel plan, whose membership includes forty-eight states and ten Canadian provinces. The plan stipulates that a motor carrier's home jurisdiction must issue credentials allowing the carrier to travel in all member jurisdictions. The home state or province assesses and collects all motor fuel taxes owed by a carrier and distributes the revenues to other members based upon the amount of travel in its jurisdiction.

The secretary of state is charged with the duty of compiling and keeping current a list of all interstate compacts and other intergovernmental agreements between New York and other states, and between subdivisions of New York with other states and their subdivisions.[20] Although the New York Executive Law requires the filing of each interstate compact and written reciprocal administrative agreement with the secretary of state, few are filed. The bulk of the agreements, however, are verbal.

It is noteworthy that many of the goals of an interstate compact can be achieved by means of an administrative agreement. The Merrimack River Anadromous Fish Restoration Agreement—signed in 1969 by officers of Massachusetts, New Hampshire, and the United States—is designed to

restore anadromous fish (river herring, salmon, and shad) and has been particularly successful in restoring shad to the river. The Connecticut River Basin Atlantic Salmon Restoration Compact contains wording identical to that of the Merrimack River Administrative Agreement and received the consent of Congress in 1983.[21] The agreement also has been successful in restoring shad to the river. The interstate compact became officially inactive for a few months when Congress failed to renew its grant of consent, whereas the administrative agreement continued, in effect, uninterrupted.

Interstate Free Trade

The unicameral congress established by the Articles of Confederation and Perpetual Union lacked the authority to regulate interstate commerce, and the result was state erection of trade barriers that brought such commerce to a near standstill. To overcome this problem, Section 8 of Article I of the U.S. Constitution specifically authorized Congress "to regulate commerce with foreign nations, and among the several States and with the Indian tribes." The silence of Congress on the subject until 1887 resulted in the U.S. Supreme Court rendering decisions based upon its dormant commerce-clause doctrine to invalidate state-erected trade barriers.[22] The court also has interpreted broadly the constitutional grant of authority to Congress to regulate such commerce.

Interstate Rendition

Enforcement of criminal laws in a federal governance system necessitates a system for the rendition of fugitives from justice. Article IV of the Articles of Confederation and Perpetual Union specified the procedure for such rendition and in slightly modified wording was included as Section 2 of Article IV of the U.S. Constitution.

Interstate Controversies

Experience with the Articles of Confederation and Perpetual Union revealed the need for a mechanism to resolve disputes between two or more sister states. Section 2 of Article III of the U.S. Constitution grants the U.S. Supreme Court nonexclusive original (trial) jurisdiction in suits in equity involving disputes between two or more states. Congress in the Judiciary Act of 1789 made the court's jurisdiction exclusive, and it is exercised on a discretionary basis.[23] The first such lawsuit adjudicated by the court involved a 1799 boundary dispute between New York and Connecticut.[24] Disputes continue to this day, and most often involve boundary controversies attributable to the changing course of rivers.

Privileges and Immunities

A key constitutional principle in a confederacy or a federation is a guarantee of privileges and immunities for sojourners. Articles IV of the Articles of Confederation and Perpetual Union guaranteed the citizens of each state "shall be entitled to all the privileges and immunities of free citizens in the several states." This guarantee is included in Section 2 of Article IV of the U.S. Constitution with the deletion of the word "free."

Congress is authorized to clarify the full faith and credit guarantee, but is not granted power to clarify the privileges and immunities clause. The U.S. Supreme Court interpreted the clause in 1839 as excluding corporations, thereby allowing states to discriminate against foreign (chartered in another state) corporations.[25] The court commencing in 1870 began to invalidate certain taxes levied on nonresidents as violative of the clause.

Major Interstate Problems

New York has been involved in interstate water disputes as a plaintiff or a defendant. The state also has been struggling since 1996 to solve the problem of interstate "buttlegging."

Water Disputes

New Jersey successfully sued New York in the U.S. Supreme Court to limit the amount of water the state could divert from the Delaware River.[26] Disputes over diversion of the river's waters continued until 1961, when Congress, the Delaware General Assembly, the New Jersey State Legislature, the New York State Legislature, and the Pennsylvania General Assembly enacted the Delaware River Federal-Interstate Compact establishing the Delaware River Basin Commission with regulatory powers.[27] An identically worded Susquehanna River Federal-Interstate Compact, creating a regulatory commission, became effective in 1971, with Congress enacting the compact that earlier had been enacted by the Maryland General Assembly, the New York State Legislature, and the Pennsylvania General Assembly.[28]

Vermont since 1968 has been attempting to force the Empire State to remove sludge deposited in Lake Champlain, the boundary between the two states, by the former International Paper Company plant in Fort Ticonderoga on the ground that the decaying organic material and wood chips were killing aquatic life in the lake. New York counters that any attempt to remove the sludge will cause serious pollution in the lake, and less environmental damage will result if the sludge is allowed to remain on the lake bottom.

In 1970, Vermont sought permission to file a bill of complaint in equity against New York in the U.S. Supreme Court, alleging the state and the International Paper Company were responsible for the sludge. Permission was granted in 1972, and the court appointed a special master, who encouraged the parties to negotiate a proposed consent decree providing for a south lake master "to resolve the controversy" after the parties "exhausted all administrative and other remedies (except judicial review)."[29] The court rejected the proposed decree by suggesting that the two states, as members of the New England interstate water pollution compact, should use it to resolve the dispute or enter into a two-state agreement.[30] The dispute continues to this day.

Buttlegging

The most major interstate problem faced by the Empire State continues to be buttlegging—that is, the illegal importation and sale of cigarettes from other states and nations, particularly the People's Republic of China. The problem became acute when New York, several other states, and New York City in 1966 increased significantly their respective excise taxes on cigarettes. North Carolina at the time did not levy such a tax, and the state became the principal source of untaxed cigarettes for organized crime syndicates. The price differential between legal and illegal cigarettes increased sharply in 2002, when the New York State Legislature increased the state excise tax from $1.11 to $1.50 per package and authorized the New York City Council to increase its excise tax from $0.08 to $1.50 per package, thereby producing combined excise taxes of $3.00 in the city.

Currently, the principal sources of smuggled cigarettes are Virginia, with its two-cent excise tax, and Kentucky, with its three-cent excise tax. The high New York State and New York City excise taxes also increased sharply the sales of cigarettes by Indian reservations and via the Internet. To counteract illegal sales, the New York State department of taxation and finance promulgated regulations in 1989 establishing a limit on the number of tax-free cigarettes that wholesalers may sell to retailers on Indian reservations, a limit determined by multiplying the number of tribe members by the per capital cigarette consumption in the state. Although the appellate division of the New York Supreme Court struck down the regulations and its decision was upheld by the New York Court of Appeals, the U.S. Supreme Court in 1994 reversed the lower court's decision by opining that the Indian Trade Act of 1986 did not preempt the authority of a state to promulgate reasonable regulations to assess and collect a tax.[31]

It should be noted that New York State is very aggressive in personal and corporate taxation, and such aggressiveness often has led to interstate suits.[32]

Summary and Conclusions

A review of intergovernmental relations since 1789, when Congress first met, reveals that amendments to the U.S. Constitution, statutory elaboration in the form of conditional grants-in-aid and preemption laws, and broad judicial interpretation of Congress's delegated powers has produced significant national-government involvement in areas once considered the exclusive responsibility of state and local governments. The congressional response to emerging national problems generally has been pragmatic, but has produced a kaleidoscopic pattern of relations between the national government and individual states.

Evidence suggests that changing New York State demographics will make the state more reliant in the future upon national financial assistance to solve problems and will lead to the Empire State placing increased pressure upon Congress to assist the state. Although many preemption statutes have reduced the regulatory authority of the state, minimum-standards preemption, especially in the environmental field, has fostered a close partnership between the Empire State and the national government, and such a partnership will continue in the future. The state legislature continues to possess a vast reservoir of reserved powers that could be exercised to attack problems effectively.

Chapter 3 traces the changing legal and financial relationships between New York State and its political subdivisions and highlights the increased discretionary authority of general-purpose local governments—cities, county, towns, and villages—since 1923.

3

State-Local Relations

We continue the intergovernmental theme by examining the legal relationship existing between the Empire State and its 1,604 general-purpose local governments—57 counties, 62 cities, 931 towns, and 554 villages—that play important governance roles, as do the 683 school districts. Five cities—New York, Buffalo, Rochester, Syracuse, and Yonkers—have populations exceeding 147,000 each. The population of ten towns exceeds 108,905 each: Ramapo, Smithtown, Amherst, Huntington, Babylon, North Hempstead, Oyster Bay, Islip, Brookhaven, and Hempstead. The latter has a population of 755,924 and is second only to New York City in population.

New York City, because of its overshadowing economic and political importance, is accorded a special legal status by the state legislature, which enacts a number of laws upon receiving home-rule requests from the city. The near bankruptcy of the city in 1975 resulted in the state legislature creating an emergency control board with complete power over the city's finances while also providing special financial assistance.

Cooperation and conflict, in common with national-state relations, have marked state-local relations. The legal relationship between the Empire State and its political subdivisions historically was based upon the English common law ultra vires rule, popularly known as Dillon's rule in the United States, allowing the latter only to exercise powers specifically delegated to them by the state legislature. This doctrine is the root cause of state-local conflicts centering on the issue of the amount of freedom citizens should possess to run their respective local governments without state interference in the form of mandates and restraints. This conflict often involves a struggle in the legislature between two important types of pressure groups: associations of local government officers and municipal unions.

A fuller appreciation of state-local relations can be gained by an examination of the development of constitutional home rule modifying the ultra vires rule; it posits that local governments are creatures of the state

and may be abolished or modified at the will of the state legislature.[1] New York City consisted of Manhattan Island until 1874, when the state legislature merged three towns with the city.[2] The legislature continued to consolidate local governments with the city in 1895, 1896, and 1897, thereby creating the present New York City as a unified city and county government with jurisdiction over a five-county area previously governed by a plethora of local governments.[3]

The office of the state comptroller released a report in 2006 contending that the eighteenth-century designations of cities, towns, and villages and their respective powers are out-of-date.[4] The report suggests five new clusters: major urban centers, smaller urban centers (upstate), smaller urban centers (downstate), suburbs, and rural—to replace the existing designations.[5]

Constitutional Home Rule

"Home rule" has been a rallying cry of local government officers and citizens seeking to block state legislative interference in their respective political subdivisions and/or seeking a grant of additional authority from the state legislature. The term unfortunately often is employed without a definition or with a loose one. For our purposes, home rule is the legal right of the electorate in a political subdivision of the state to draft, adopt, and amend a charter, and/or to supersede certain laws—each affecting only one local government—and certain general laws of the state.

Abuse of the legislature's plenary power to control local governments in the nineteenth century generated a movement to amend the state constitution to grant local governments substantial powers and to limit legislative interference in the affairs of these governments. Home rule was urged for cities at the 1820 constitutional convention.[6] However, the first limitation on the legislature's plenary power over political subdivisions was not effectuated until 1874, when the power of the legislature to enact a special law, one applying to a named local government, was restricted by voter ratification of an amendment to the 1846 state constitution forbidding the legislature to enact a private or local bill in seven areas, including incorporation of villages.[7] Twenty years later the electorate ratified a new constitution containing a stipulation that all "special city" acts were subject to a suspensory veto by the concerned city—that is, the veto of an act by a city kills the bill unless the legislature reenacts the bill.[8]

The first constitutional home-rule amendment, adopted in 1923, limited state intervention in city affairs by forbidding the enactment of a law concerning the "property, affairs, or government" of a city if the law was "special or local either in its terms or effects," and granted cities general power to enact local laws in nine specified areas, provided the local laws