

**REFORM IN NEW YORK:
THE BUDGET, THE LEGISLATURE
AND THE GOVERNANCE PROCESS**

A Background Paper
Prepared For
The Citizens Budget Commission Conference On
“Fixing New York State’s Fiscal Practices”

November 13-14, 2003

by

Gerald Benjamin
Distinguished Professor of Political Science and
Dean, College of Liberal Arts and Sciences, SUNY New Paltz

Table of Contents

<u>Introduction</u>	1
<u>The Albany Triad</u>	6
<u>A Professional Legislature – Members and Resources</u>	8
<u>Legislative Majorities and Leadership Power</u>	17
<u>Partisanship and Persistent Divided Party Control of the Legislature</u>	23
<u>Action Forcing Mechanisms</u>	29
<u>Budgeting and an Accountable Legislature: The Need for Constitutional Change</u>	33

Introduction

New York once prided itself as being a leader in governance among the states. Now mediocrity is the norm. One 50 state study is particularly revealing. In 2001 *Governing Magazine*, in collaboration with the Maxwell School of Syracuse University, graded the states in five key areas of government performance – Fiscal Management, Capital Management, Human Resources, Managing for Results, and Information Technology. New York got a "C+" average, and no grade higher than a "B."

Those who prefer to think of the glass as half full might be encouraged by the improvement over the state's "C-" average reported two years earlier.¹ But New York's improved *Governing* GPA (Grade Point Average) was helped by a higher grade in Fiscal Management. Knowing this, it would be understandable if those attentive to New York's fiscal practices and condition conclude that the state's movement from C- to C+ was evidence not of progress, but of grade inflation.

The focal points of criticism of New York's fiscal practices are numerous, and have been regularly advanced by the Citizens Budget Commission and others. Recurring state revenues do not cover recurring expenses. State budgets are "balanced" by extensive use of one shots, borrowing, movement of programs and activities off budget, and displacement of costs onto localities. This latter consequence, along with a failure to address the state's Byzantine overlapping arrangements for local governance, has resulted in one of the highest average per capita local property tax burdens in the nation.² In reaction to both the process and results of budgeting in New York national rating agencies in the summer of 2003 again downgraded state bonds. These are now among the lowest rated in the nation.³

More than any single factor, the consistent lateness of the state budget has become a metaphor for the dysfunction in New York State government. The regularity of late adoption of the state budget in Albany – 19 years in a row, 23 of the last 28 – is annually grist for editorialists' mills, and has become a leading symbol of state governmental nonperformance.

The 2001-2002 and 2002-2003 fiscal year were, some said, the worst for the American states since WWII. Virtually all experienced serious revenue shortfalls. The resultant fiscal stress engendered a number of late state budgets. But in almost all the states – unlike in New York – budget deadlock has not been the norm. In a recent paper, Dall Forsythe and Donald Boyd indicated that only California has in recent years had late budgets with a frequency similar to New

¹ *Governing Magazine* <<http://www.governing.com/gpp/2001/gp1ny.html>>. Academic support for this project, funded by the Pew Foundation, was provided by the Maxwell School at Syracuse University. See summary comparisons among the states at <<http://www.governing.com/gpp/2001/gp1glanc.htm>>. For a methodological explanation of the comparative approach used see <<http://www.governing.com/gpp/2001/gp1how.htm>>.

² Public Policy Institute of New York State, Inc., *Just the Facts, 2001* (Albany: The Institute, 2001), Table 24.

³ "Fitch Downgrades New York's Bond Rating," *The Business Review*, June 6, 2003.

York's.⁴ But California is constrained in budgeting by the results of statewide initiatives that significantly limit legislative discretion by mandating spending and limiting taxation. There is no initiative process in New York that has produced tax limits and spending requirements. And interestingly, where there is a limit on state government discretion in borrowing in New York—the constitutional referendum requirement to authorize general obligation borrowing—the legislature and governor have found numerous ways around it.

New York budgets were regularly adopted far in advance of the beginning of the state fiscal year until the mid-1960s, though more time was required during the Harriman administration (1955-1958), when partisan control of the government was divided, than in years of Republican control of the governorship and both legislative houses. The first late budget in the post WWII era came in 1965, during the Nelson Rockefeller governorship, after reapportionment and the Johnson landslide in the presidential election gave control of the legislature to the Democrats. Budgets became consistently late following (but not during) the mid-1970's fiscal crisis. The average time between the opening of the fiscal year and adoption of the budget has lengthened, and indeed has come to exceed that in California, as techniques have been developed in New York to allow it to operate for months without a budget in place. (See Table 1.)

Table 1
Average Number of Days Between Fiscal Year Start and Budget Adoption and
Percent of Years With Late Budgets
New York, 1947 - 2003 and California, 1968 - 2003

	New York		California	
	Average Days Late	Percent of Years Late	Average Days Late	Percent of Years Late
1947 - 54	32	0		
1955 - 64	20	0		
1965 - 74	-1	30		
1968 - 74			-13	86
1975 - 84	-10	60	-15	80
1985 - 94	-24	100	-19	80
1995 - 2003	-76	100	-32	100

Sources: Calculated by the author from data gathered from *The New York Times*, various years; Forsythe and Boyd, "Budgeting in New York State: The Growth and Waning of Executive Power," p. 10; E. Dotson Wilson and Brian S. Ebbert, *California's Legislature* (Sacramento: The California Assembly, 2000) p. 256 and Ron Heckart, Librarian, Institute of Governmental Studies Library, University of California, Note: Days late is expressed with a negative sign (-).

At about the same time that budget lateness was becoming the norm, successful legislative overrides of gubernatorial item vetoes emerged as another sign of stress in New York's budget

⁴ Dall Forsythe and Donald Boyd "Budgeting in New York State: The Growth and Waning of Executive Power" (draft typecript, files of the author, July, 2003), 7.

process. The governor was given the item veto in New York in 1874 as a check against legislative deprivations on the public purse. (The state Comptroller in 1863 called the annual appropriation bill an "abomination,...a general avenue to the Treasury for claimants and beggars of every description."⁵) It was regularly used. No gubernatorial veto or item veto was overridden in the 106 years from 1870 to 1976.⁶ The first override in the state's modern history came on the Stavisky-Goodman Bill, an effort to assure protection of school funding during the mid-1970's fiscal crisis that was later found unconstitutional.⁷ In 1980 and (massively) in 1982 Governor Hugh Carey had item vetoes overridden.⁸ Governor Mario Cuomo took a more accommodating posture with the state legislature, and avoided veto overrides.⁹ Of course, the overrides of Governor George Pataki's item vetoes were a major story in the 2003 legislative session.

Frustrations with the performance of the peak political institutions of state government in New York are not limited to the fiscal arena. Observers again remarked, for example, upon the dearth of legislative productivity in the 2003 legislative session. The failure to bring to closure the multi-year effort to reform or repeal the draconian Rockefeller-era drugs laws offers a particularly visible example. Governor Pataki, Speaker Silver and Majority Leader Bruno all said they were committed to this goal, but agreement was again not reached, the comic-opera intervention of hip-hop impresario Russell Simmons notwithstanding.

States commonly experience the use of litigation to compel action when their legislatures fail to deal with particularly thorny (often redistributive) issues. This has been the case across the country for elementary and secondary education finance reform, an area in which New York too must now act because of a decision of its high court. But in New York the persistence of inaction across a range of issues has been a long-time critical theme. In its final report issued almost a decade ago the New York State Constitutional Revision Commission wrote:

"We are on the edge of a dangerous cycle, in New York and the nation as a whole. Problems worsen and pressure for their resolution intensifies. The machinery of government responds ineffectively. The public reacts with anger. Some politicians respond to this mood by attacking and dismantling government. As a consequence, government's

⁵ New York State Constitutional Convention Commission, *Problems Relating to Taxation and Finance*, Vol. X (Albany: the Commission, 1938).

⁶ See Frank W. Prescott and Joseph F. Zimmerman, *The Politics of the Veto of Legislation in New York State* (Washington: University Press of America, 1980), and Robert Connery and Gerald Benjamin, *Rockefeller of New York* (Ithaca: Cornell University Press, 1979), 98-99.

⁷ Gerald Benjamin, "The Carey Governorship," in Gerald Benjamin and T. Norman Hurd, *Making Experience Count: Managing Modern New York in the Carey Era* (Albany: The Rockefeller Institute, 1985), 248.

⁸ Gerald Benjamin, "A Century of Change - Executive and Legislative Roles in Budgeting in New York State" (typescript, files of the author, 1986).

⁹ Forsythe and Boyd (2003), 11-14.

effectiveness diminishes further. Unaddressed problems fester and grow more acute. The fabric of trust, accountability and cooperation unravels."¹⁰

A recent Cornell University survey that found that 68 percent of New Yorkers had little or no trust and confidence in state government is one harbinger that this fear may not be misplaced.¹¹ Of the nine groups or institutions mentioned in the survey, respondents' trust in state government was at about the same level as that in the media, and exceeded only that for "large corporations" (See Figure 1.) Turnout rates for state elections among the lowest in the nation provide additional evidence that New Yorker's are detached from state government.¹²

New York's persistent fiscal difficulties have led to calls for reform. One set of proposals focuses directly upon the states budgetary processes. One idea is to shift the beginning of the fiscal year to July 1, the practice in 46 states, to allow the legislature more time to consider the executive budget proposal (and to have better information about actual income tax collections, due April 15). A second is to establish an authoritative – and perhaps politically disinterested – consensus process for revenue estimating. A third calls for a staged, more inclusive process for legislator participation in budgetary decision making, including the use of conference committees to resolve inter-house differences. And there are others.¹³

A second approach to reform, the one taken here, treats the budget process as the state's core political activity – the authoritative acquisition and allocation of scarce resources. It begins from an understanding that, major executive/legislative conflict notwithstanding, the state budget process worked reasonably well from its inception in 1929 until about a quarter of a century ago. It assumes that manifestations of stress in the budget process are indications of underlying institutional change. It thus seeks explanations for persistent deadlock in budgeting in a disjunction – between the political and structural assumptions that underlay the budget process as enshrined in the state constitution in 1929 on the one hand, and the contemporary workings of the state's political and governmental systems on the other. It concludes, therefore, that reform of the budget process is needed but insufficient to achieve fiscally responsible, responsive governance in New York State.

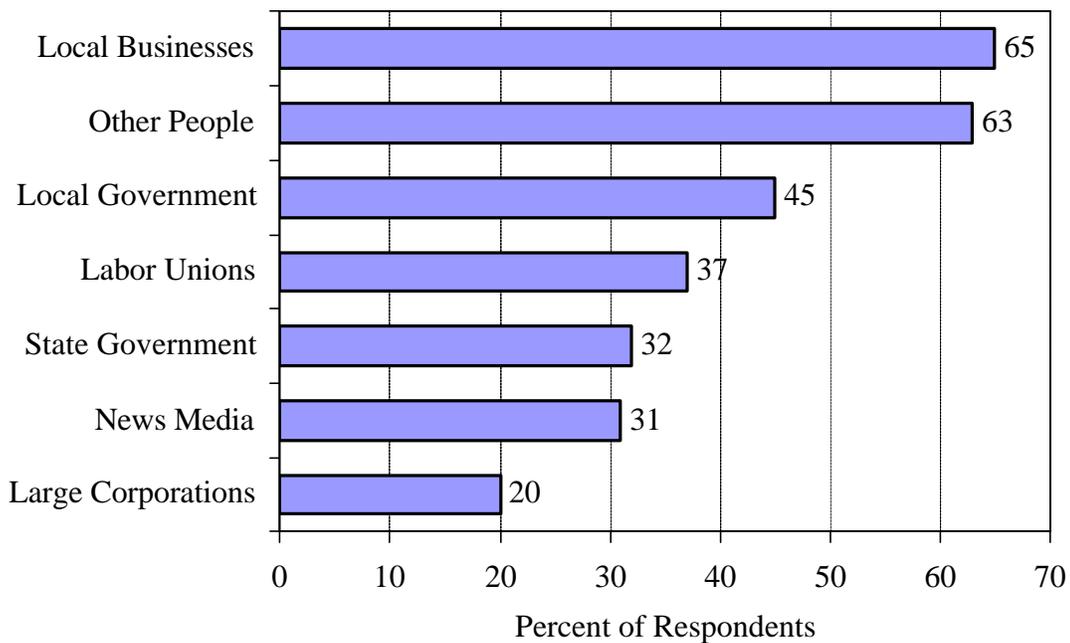
¹⁰ The Temporary New York State Commission on Constitutional Revision, *Effective Government Now for the New Century: A Report to the People, the Governor, and the Legislators of New York* (Albany: The Commission, 1995), 4.

¹¹ 2003 New York Empire State Poll conducted by the ILR Survey Research Institute at Cornell University. Sample size was 888. Range of error was + or - 3 percent. Regular surveys of trust and confidence in state government, conducted by the Advisory Commission on Intergovernmental Relations, ceased when that agency of the national government was abolished. For results in 1992 and 1987 see <<http://www.lib.niu.edu/ipo/im920911.html>>. Variation in question wording preclude direct comparisons with more surveys of trust and confidence in institutions. For one example see "State government" at George Washington University's *Polling Report.com*, <<http://www.pollingreport.com/institut.html>>.

¹² John F. Bibby and Thomas M. Holbrook, "Parties and Elections," in Virginia Gray and Russell L. Hanson (eds.), *Politics in the American States*, 8th ed. (Washington, D.C.: CQ Press, 2004), Table 3.6, 93.

¹³ See the concluding section of this essay for mention of a number of proposals before the legislature in 2003.

Figure 1
Trust in Institutions Among New Yorkers, 2003



Source: Survey Research Institute, School of Industrial and Labor Relations, Cornell University, Empire State Poll (August, 2003), Chart 12.

In order to understand this approach, it is necessary to assess how and why the operation of New York's peak political institutions changed just before and during the time that delays in budgeting became the norm. We begin by establishing that the triadic constitutional structure of New York State government, like the government of the nation and most other states, has inherent tensions that must be overcome. We argue that the professionalization of the legislature, accompanied by uniquely persistent divided partisan control of the two legislative houses, makes it harder to overcome these fundamental structural tensions. We look at the techniques and processes that have been used to overcome these tensions: strong legislative leadership; partisan organization; external power, pressure and/or deadlines; and sanctions for non-performance. We argue that the political conditions that have evolved in New York reduce both the incentives for effective decision making in the peak political institutions and the penalties for system non-performance. And we show that the combination of structural and political factors that has led to dysfunction in the New York budgetary process is unusual when comparisons are made with the situation in similar states.

The Albany Triad

It is a commonplace that the constitutional design of the New York political system, like that of the nation and all but one of the states, creates a three way relationship for peak political decision making among the executive and each house of a bicameral legislature.¹⁴ Political power has always been unequally distributed among the three participants in the Albany triad: the Governor, the Assembly and the Senate. From the state's earliest history, the two legislative houses have been more or less equal in power, though their constitutional authority has differed in detail. At first the governor was left less powerful than either of the legislative houses by the state constitution (though he was advantaged by being a unitary actor while each house of the legislature had to assemble majorities to act). In modern New York, as a result of a long chain of constitutional changes and fundamental transformations in the social, economic and political environment, the governor has become the most powerful actor in the triad.¹⁵

Research in settings ranging from the nuclear family to the international arena has shown that triadic relationships in which power is unequally distributed invite two-against-one coalitions, either to take action for the benefit of coalition partners or to prevent imposition of the more upon the less powerful.¹⁶ In New York state government these coalitions commonly form along one of two dimensions: the partisan, Republicans against Democrats; and the institutional, executive branch against legislative branch.¹⁷ The former is more usual, and can be regarded as the "normal state." But the latter is always potential, and emerges from time-to-time.

A reminiscence of Stanley Steingut, former Speaker of the Assembly, of budgeting in the mid-1970s is instructive on the two primary dimensions around which coalitions form in the Albany triad, and their interaction:

"When [Hugh] Carey became Governor and I became Speaker, in the first year there was no dialogue between the Executive branch and the Majority party...[in the Assembly]. Governor Carey never talked to us about his budget and what he was going to do. Frankly, we made up our minds that we were going to go our own way.

¹⁴ The state of Nebraska has a unicameral legislature, as do all American local governments.

¹⁵ For the best current constitutional history of New York see Peter J. Galie, *Ordered Liberty* (New York: Fordham University Press, 1996).

¹⁶ See Theodore Caplow, *Two Against One: Coalitions in Triads* (Englewood Cliffs: Prentice Hall, 1968), 2.

¹⁷ Ideological or personal differences may also provide dimensions that affect coalition formation in the Albany triad. This was the case in New York in 1971, a year of unified Republican control of the executive and both legislative houses. Assembly Speaker Perry Duryea led a revolt against Governor Nelson Rockefeller's budget that delayed its adoption and resulted in deep cuts. The following year Duryea was indicted for election irregularities, and his ambition to run for governor temporarily blocked, on the basis of evidence gathered by longtime Republican ally and running mate of the Governor, Attorney General Louis Lefkowitz. See Connery and Benjamin (1979), 86, 106.

We teamed up with the Senate, and we disregarded the Governor's budget. We formed our own budget.... After that first experience there was a great desire on my part, as Speaker, and his part as Governor, for us to recognize that we had to work together or we would not have a Democratic party or a Democratic program."¹⁸

Another triadic structure, that of the overall separation of powers system common in the United States – Legislature, Executive, Judiciary – sometimes mitigates against proper focus on the fundamental divide in the legislature that is so consequential for the triad within which peak political decision making occurs. Even sophisticated analysts sometimes speak of "executive-legislative relationships" rather than "executive-first house-second house" relationships. A confrontation between the executive and the legislative branches – the current litigation over the distribution of institutional power in budgeting is a good example – is evidence that the two less powerful members have joined along one major line of potential cleavage in the triad to attempt to overcome the more powerful member.¹⁹

Unlike in many other three-way situations, however – but like the situation in the national government and all states but Nebraska - participation of all three institutional participants in the Albany triad is almost always required to reach decisions. It is "almost always" because the constitution provides that the two houses of the legislature, if they can simultaneously assemble extraordinary majorities (2/3 elected to each house), may join in coalition and act without the governor.

An additional important dimension of the Albany Triad is that the institutional relationships that comprise it are continuous. In a continuous situation, the social psychologist Theodore Caplow has written, "the members of the triad are permanently related to each other within a larger social system which requires them to interact...Coalitions are formed for a variety of purposes, but the triad is expected to maintain some degree of unity despite its internal divisions."²⁰ In such a situation decisions are taken by each participant with the understanding that the other two will have to be dealt with again and again, in the context of the decisions already reached and the processes by which they were reached.

The continuous nature of the three way relationship in the Albany triad may constrain the reactions of the losing third party in a specific two-against-one situation, even if that party is the single most powerful actor. For example, there was some angry rumbling from Executive Chamber staff in the wake of the veto overrides in 2003 that Governor Pataki would extract a price from his co-partisans in the Senate for their joining with the Democratic Assembly majority to defeat him. But retribution would have provided incentives to continuation of the legislative-executive cleavage and raise barriers to restoration of the partisanship as the defining dimension in the three-

¹⁸ Gerald Benjamin and Robert T. Nakamura (eds.), "Interview with Stanley Steingut," *The Modern New York State Legislature: Redressing the Balance* (Albany: The Rockefeller Institute of Government, 1991), 86-87.

¹⁹ *Pataki v Assembly* and *Silver v. Pataki*. For a summary description of the issues in these cases see John Caher, "Appeals Challenge Balance of Power," *New York Law Journal*, September 2, 2003, 1 and John Caher, "Fiscal Power of Governor and Legislature Debated," *New York Law Journal*, September 4, 2003, 1.

²⁰ Caplow (1968), 5.

way relationships in the capitol. Though some help in fund raising was withheld from individual Republican Senators, the governor later foreswore revenge.

Also, in a sequential process in which numerous decisions are required, the presence of continuous relationships is an incentive to reach agreement on less contentious, more routine matters. Thus the familiar advice, “Choose your battles.” The continuous nature of the Albany triad, and the constitutional requirement that all participants almost always must concur before a decision is reached, work in some measure to overcome the structural predisposition to marginalize or confront one or the other actor. This is reinforced by the expectations for action by interested parties (interest groups) and attentive onlookers (the media).

A Professional Legislature – Members and Resources

One of the major changes in governance in the United States in the later portion of the 20th century was the professionalization of state legislatures. Professionalization was the result of a widespread purposive effort by a powerful reform coalition to make state government throughout the country more responsive to social and economic change, beginning in the 1960s and accelerating thereafter.²¹ An authority on the New York legislature, Stuart Witt, wrote in 1974: “The climate of legislative reform...[was]...prepared by the Supreme Court's apportionment decisions, the American Assembly, The Citizen's Conference on State Legislatures, the Ford and Carnegie Foundations, the National Municipal League, the National Conference of State Legislative Leaders, the Eagleton Institute, and the press. “Good government has once again become good politics.”²²

There are two major dimensions of legislative professionalization. The first is development of careers in elective legislative office. The second is the development in the legislature “...of its capacity to perform its role in the policy-making process with the expertise, seriousness and effort comparable to other actors in that process.”²³

Careers in legislative office. “The most compelling evidence for the establishment of Assembly and Senate Membership as a profession in New York ...[in recent years],” Bob Nakamura and I wrote in 1991, “[was] the change in the way members describe[d] themselves. ...[I]n 1964 not a single member of either house listed their occupation as “Legislator” in the official guide to state government....By 1988, however, more than two-thirds of Assembly

²¹ See Citizens Conference on State Legislatures, *The Sometimes Governments: A Critical Study of the Fifty American Legislatures* (New York: Bantam Books, 1971), and Advisory Commission on Intergovernmental Relations, *The Question of State Government Capability*, Document A-98 (Washington: GPO, 1985).

²² Stuart K. Witt, “Modernization of the New York Legislature,” in Robert H. Connery and Gerald Benjamin (eds.), *Governing New York: The Rockefeller Years* (New York: Academy of Political Science, 1974), 54.

²³ Christopher Z. Mooney, “Citizens, Structures and Sister States: Influences on State Legislative Professionalism,” *Legislative Studies Quarterly*, Volume 20 (February, 1995), 48.

members and more than half of Senators were describing themselves not as lawyers, businessmen or consultants but as legislators....”²⁴

Professional legislators seek to hold onto their jobs. Reflecting the growth in professionalization, turnover rates in state legislatures (the percentage of members not continuing in office, for all reasons) generally dropped steadily over the last two-thirds of the 20th century.²⁵ One fifty-state study showed that, on average, 51 percent of state Senate and 59 percent of state House seats turned over nationally in the 1930s; for the 1990s the numbers were 23 percent of Senate seats and 25 percent of House seats.²⁶ State-by-state averages for the last three decades of the century showed the New York Senate and Assembly always to be among the 10 state chambers with lowest turnover. In the 1990s the New York and Indiana Senates tied for third in lowest turnover of their seats. Among state Houses, the Assembly also ranked third.²⁷

Another comparison is of turnover within the group of states with the highest scores on the legislature professionalism index (discussed below). In this cohort, New York and Pennsylvania emerged with the lowest turnover in both chambers over the past three decades. (See Table 2.)

These trends notwithstanding – or perhaps because of them – there continues to be resistance in the United States to the idea of a career in public office. The adoption of legislative term limits in virtually every state in which the idea was brought before the voters through the initiative process was a reaction to the development of careers in state legislatures.²⁸ Note in Table 2 the upturn in rates of turnover of legislative seats during the 1990s in California and Ohio, and the halt of Michigan's downward trend. All these are states in which term limits was adopted. There is, of course, no initiative and referendum process in New York. Thus this major barrier to a professional career as a legislator has not been put in place.

²⁴ Benjamin and Nakamura (1991), xviii. For a detailed analysis of the development of legislative careers in New York based upon data from the 1931 and 1951 see Leonard Ruchelman, *Political Careers* (Cranberry, N.J.: Associated University Presses, 1970). Though none of the legislators he studied identified themselves professionally as "legislator," Ruchelman predicted that "...career-oriented individuals will increase and continue to dominate the lawmaking body" in New York. Table 16, 87 and 184.

²⁵ Keith E. Hamm and Gary F. Moncreif, "Legislative Politics in the States," in Virginia Gray and Russell L. Hanson (eds.), *Politics in the American States*, 8th edition (Washington: CQ Press, 2004), Table 6.4, 172.

²⁶ Gary Moncreif, Richard G. Niemi and Lynda W. Powell, "Time, Turnover and Term Limits: Trends in Membership Turnover in U.S. State Legislatures" (paper given at the 3rd Annual State Politics and Policy Conference, Tucson, AZ, March 14-15, 2003, files of the author).

²⁷ Ibid. (2003), Table 1, 14-15.

²⁸ Gerald Benjamin and Michael J. Malbin (eds.), *Limiting Legislative Terms* (Washington: CQ Press, 1992). Term limits currently exist in fourteen states. Of these, three are among those with the most professionalized legislature: California, Michigan and Ohio. Term limits have been repealed by the legislatures of Idaho and Utah, and have been undone by court action in Massachusetts, Oregon and Washington.

Table 2
Average Turnover of Legislative Seats in States With "Professional" Legislatures
(percent of seats)

	House			Senate		
	1971 to 1980	1981 to 1990	1991 to 2000	1971 to 1980	1981 to 1990	1991 to 2000
Michigan	22%	20%	30%	48%	30%	30%
New Jersey	40	27	23	50	28	21
California	27	16	40	22	11	28
Ohio	21	17	26	24	17	24
New York	24	15	14	18	11	11
Wisconsin	24	23	17	24	20	15
Pennsylvania	24	13	11	18	11	12
Illinois	26	15	22	24	14	16
Massachusetts	22	17	19	20	19	19

Source: Gary Moncreif, Richard G. Niemi and Lynda W. Powell, "Time, Turnover and Term Limits: Trends in Membership Turnover in U.S. State Legislatures," paper given at the 3rd Annual State Politics and Policy Conference, Tucson, AZ, March 14-15, 2003 (files of the author), Table 1, 14-15.

Viewing the matter from another perspective, Petersen and Stonecash show that the trend over the past century in New York has been for those elected to the legislature to seek re-election more frequently and to serve longer.²⁹ As summarized in Table 3, the proportion of incumbents seeking re-election to the Assembly and Senate, already quite high, reached the 90 percent range during the 1990s.

Re-election rates for incumbents to state legislative seats in the United States are generally high. Data compiled by the National Conference for State Legislatures for 1994 (the most recent year for which fifty state comparative information is available) shows that they have a 92 percent success rate in state Senates, and they win 90 percent of the time for state Houses.³⁰ In 1994 in New York, 96.2 percent of incumbent Assembly members and 100 percent of Senators who sought re-election were winners. Average success rates for Assembly and Senate incumbents in the 1980s and 1990s exceeded 95 percent. (See Table 3, Columns II and IV.) And this total does not include sitting Assembly members who successfully sought Senate seats.

²⁹ R. Eric Petersen and Jeffrey M. Stonecash, "The Legislature, Parties and Resolving Conflict," in Jeffrey M. Stonecash (ed.), *Governing New York State*, 4th. Ed. (Albany: SUNY Press, 2001), 144-148.

³⁰ Cited in Hamm and Moncreif (2004), 167-168.

Table 3
Average Percentage of New York Legislators Seeking and Gaining Reelection, 1920 - 2002

Years	Assembly Members		Senators	
	I	II	III	IV
	Percent Running	Percent Winning	Percent Running	Percent Winning
1920 - 1928	78.5%	91.4%	75.4%	86.0%
1930 - 1938	85.4	95.5	83.7	92.4
1940 - 1948	80.9	93.4	84.3	90.7
1950 - 1958	85.5	96.5	87.1	91.5
1960 - 1968	80.9	95.5	82.9	93.6
1970 - 1978	82.1	97.4	83.9	93.4
1980 - 1988	89.6	97.4	93.1	98.2
1990 - 2002	89.2	98.2	91.1	97.5

Source: Means calculated by the author from data supplied by Jeffrey Stonecash, Syracuse University.

In 2002, in the first election after the most recent reapportionment, only one of the 54 incumbents who sought re-election to the New York State Senate lost. He was Vincent Gentile, a Democrat in a Brooklyn district (much of which in the past had been represented by a Republican Senator). In the Assembly, the only incumbent to lose of 131 who sought re-election was a Republican, William Sanford, who had been placed by Democratic controlled redistricting into head-to-head competition with an incumbent Democrat, Joan Christiansen.

Greater availability for re-election and greater success at the polls has produced longer legislative careers. Between 1960 and 2000, the average tenure of a sitting Senator in New York doubled (from 7.9 to 15.8 years) and of the average Assembly member increased by almost 40 percent (from 8.2 to 11.4 years).³¹

The professionalization of legislative service has been paralleled by diminished competitiveness of elections. In legislative elections in New York held between 1968-1995, the victor in 22 percent of the races got 60 percent or less of the vote; during the 1996-2002 period only 11 percent of races were competitive by this standard. According to Hamm and Moncreif, only in New Jersey and Pennsylvania among states with professional legislatures did the percentage of competitive legislative elections drop more than it did in New York over these two periods. And of the nine states with professional legislatures only Massachusetts had a lower percentage of competitive legislative seats than did New York during the 1996-2002 period.³² The 2002 elections produced only 24 of 212 contests (11.3 percent) decided within the 40

³¹ Robert B. Ward, *New York State Government: What It Does, How It Works* (Albany: The Rockefeller Institute, 2002), 112.

³² Hamm and Moncreif (2004), Table 6.2, 166.

percent-60 percent range, one in the Senate and 22 in the Assembly. Of these, 10 (45.5 percent) involved no incumbent.

New York ranks sixth among the states in the percentage of its legislative races that was contested by the major parties. Yet the average percentage of contested races dropped from 90 in 1968-1995 to 80 in 1996-2002.³³ In 2002 there were 60 legislative elections (28.3 percent) that were non-competitive. There was no contest at all (not even from a minor party) for 11 Senate and 13 Assembly seats. For an additional eight seats in the Senate and 28 in the Assembly, one or the other major party had no candidate. As shown in Table 4, the number of competitive seats actually declined following the required decennial redistricting in the year 2000.

Table 4
Competitiveness of Elections for Seats in the New York State Legislature

Winner's Percent of Votes	Election Year					
	1998		2000		2002	
	Number	Percent	Number	Percent	Number	Percent
80 - 100	93	44.1%	104	49.3%	103	48.6%
60 - 79	97	46.0	79	37.4	85	40.1
Below 60	21	10.0	28	13.3	24	11.3
Total	211	100.0%	211	100.0%	212	100.0%

Source: Compiled by the author from published election results.

"Legislators are increasingly independent," former Majority Leader Warren Anderson said in 1990, "They're communicating with constituents out there through mailings and newsletters, and are developing personalities that are not completely dependent upon some leader saying 'You're the guy and you ought to stay on for another two years.'"³⁴ The emergence of candidate-centered politics for legislative seats during Anderson's tenure was an important concomitant of the development of legislative service as a career in New York.

In the 1930s nominees for the state legislature were selected and their candidacies funded by county party organizations. Primaries, though possible, were rare.³⁵ This practice persisted

³³ Ibid.

³⁴ Benjamin and Nakamura (1991) "Interview with Warren Anderson," 63-64.

³⁵ Interview with former Assembly member, Lieutenant Governor and Governor Malcolm Wilson (Albany: Unpublished Manuscript, files of the Rockefeller Institute of Government).

through the 1960s.³⁶ One unintended effect of federal reapportionment decisions in the mid-1960s was to remove coterminality of New York’s legislative districts with the state’s county-based party structure. Though the effect was not at first fully evident, this structural change diminishing the influence of county party leaders in the nominating process for the legislature.³⁷ Moreover, career legislators did not want their fate in the hands of others. In an era in which party loyalty was diminishing in the electorate, they began to organize personal campaigns apart from the overall party effort, to raise their own campaign funds and to use the resources of incumbency to assure their persistence in office.

It is common across the country for incumbents at every level to attract more financial support than challengers. According to the Institute for the Study of Money in State Politics, in 2002 funds raised by Assembly incumbents exceeded those raised by challengers by a ratio of better than ten to one. Senate incumbents collected more than two-and-a-half times as much money for their campaigns than did their challengers. (See Table 5.) These data only roughly represent the incumbent advantage in New York. Averages for incumbents are depressed because data includes all Assembly and Senate candidacies, including the large number in districts in which there is no competition (and in which, therefore, less money is likely to be raised and spent). Comparison with other states is problematic because third party candidacies are far more common in New York than elsewhere; funds raised by minor party candidates are included in these data, altering the ratios.

Table 5
Funds Raised by New York State Legislative Candidates
2002
(average amount)

	<u>Winners</u>	<u>Losers</u>	<u>Incumbents</u>	<u>Challengers</u>	<u>Open Seat</u>
Assembly	\$92,119	\$16,172	\$91,072	\$7,918	\$50,388
Senate	\$251,628	\$89,564	\$252,799	\$97,385	\$105,158

Source: Institute on Money in State Politics. Follow the Money
<http://followthemoney.org/database/state_overview>.

Note: This table reports only funds raised by candidates. Totals do not include funds raised by Senate or Assembly campaign committees, party organizations or others. (See Table 6.)

Office holders' advantage in raising political money, when added to the already daunting edge given to them by their incumbency, made them almost insurmountable as they sought re-

³⁶ Stuart Witt, *The Legislative-Local Party Linkage in New York State* (Ph.D. Dissertation, Department of Political Science, Syracuse University, 1968).

³⁷ Daniel M. Shea, *Transforming Democracy: Legislative Campaign Committees and Political Parties* (Albany: SUNY Press, 1995), 98.

election. Research has shown that a challenger has to spend more than an incumbent to be competitive, since he or she is less known at the outset of a campaign.³⁸ Not only were competitors hard-pressed to compete, but those most likely to be competitive were often discouraged from entry into races with well financed incumbents who had been regularly engaged in building the balances in their campaign coffers.³⁹

Institutional Development and the Case of Revenue Estimating. With regard to its legislature's institutional capacity, the high level of professionalization of the New York legislature is confirmed in comparative research. Using an index he developed based upon data from the 50 states on legislator compensation, lengths of legislative sessions and size of permanent professional staff, Peverill Squire found that New York's legislature was among the most professional in the United States.⁴⁰ Using a slightly different methodology, Keith Hamm and Gary Moncreif reached a similar result. They found that New York State ranked first in size of permanent staff, second in days in actual session, and third among the states in potential member compensation.⁴¹

In addition to support provided directly to members, both legislative houses have in the last four decades developed extensive legal, policy, fiscal and public affairs staffs. New York's 3,460 permanent legislative staff in 2002 was almost 30 percent larger than Pennsylvania's (2,680) and just under 40 percent larger than California's (2,510). The growth of legislative capacity for fiscal analysis is especially important for this analysis. As a result of reapportionment, Democrats gained control of both houses of the New York State legislature in 1965. Frank J. Mauro, long time legislative observer and former Secretary of the Assembly Ways and Means Committee, identifies this year as the start of the "first big push toward professionalization of the legislature," with special focus in both houses on their fiscal staffs.⁴²

Democrats retained the Assembly majority until 1968, and persisted in their need for fiscal and policy expertise to offset that available to the executive. Though Republicans regained control of the Senate in 1966, and the Governor was Republican, that house sought too to build its staff, if only to remain coequal with the Assembly in the governing triad. Reflecting this fiscal staff buildup, the Assembly Ways and Means budget rose at about twice the rate of that of the Division of the Budget between 1963 and 1983, and the Senate Finance Committee budget grew almost as

³⁸ See Gary C. Jacobsen, *Money in Congressional Elections* (New Haven: Yale University Press, 1980).

³⁹ See Linda Fowler, *Political Ambition: Who Decides to Run For Congress?* (New Haven: Yale University Press, 1989).

⁴⁰ Peverill Squire, "Legislative Professionalization and Membership Diversity in State Legislatures," *Legislative Studies Quarterly*, Volume 17 (1992), 69-79; Peverill Squire, "Uncontested Seats in State Legislative Elections," *Legislative Studies Quarterly*, Volume 24 (2000), 131-146. In Squires's updated index published in this later essay, New York (with an index score of .515) ranks third in professionalism behind Michigan (.516) and California (.571). The next ranking state is Wisconsin with a score of .459.

⁴¹ Hamm and Moncreif (2004), Table 6.1, 158.

⁴² Benjamin and Nakamura (1991), "Interview with Frank J. Mauro," 327.

fast.⁴³ The proposed budget for legislative fiscal staffs for 2003-2004 was \$10,750, 658, divided equally between the two houses.⁴⁴

The circumstances of the development of the legislative staffs for revenue estimating are particularly instructive. Serving during a period of Democratic control of the governorship, Republican Assembly Ways and Means chairman Abbott Low Moffatt realized in the 1930s the value to the legislature of a separate capacity for revenue estimating for offsetting executive fiscal power. Writing in 1937, Moffatt noted that the process of revenue estimating in connection with New York's constitutionally prescribed executive budgeting allowed the governor to get credit for spending, while the legislature was blamed for taxing.⁴⁵ Decades later, among the staff assembled by the Assembly Ways and Means Committee Secretary Howard Miller (later Budget Director) in 1965 was an expert in revenue estimating to "provide a focal point for intelligent opposition to executive fiscal initiatives."⁴⁶

During 1979 and 1980, Governor Hugh Carey, a Democrat, sought to extend the fiscal discipline he had achieved during the mid-decade fiscal crisis – and justify tax cuts and spending limits – through very conservative revenue estimates. Legislative leaders were embarrassed with their members, who they had convinced to support the governor's initiatives, when actual collections far exceeded predicted income. As a consequence, the Republican Senate turned to Wharton Econometrics for alternative revenue estimates. At about the same time, the Assembly too developed independent revenue estimating capacity, though it declined to enter the public debate with numbers different than the governor and Senate without all parties revealing their methodologies.

Independent revenue estimating allowed each legislative house to legitimize claims that made budgetary room for its own priorities. A usual result during the last two decades has been a level of spending higher than that proposed by the governor.⁴⁷ (See Figure 2.) Because the governor controlled the expenditure of appropriated funds, however, the two houses has no assurances that the money they added to appropriation bills would be spent. Therefore, beginning in 1984 the Senate and Assembly began inserting language mandating staffing levels to implement their spending goals for selected state agencies, and requiring reporting back to the fiscal

⁴³ Benjamin (1986), Table IV.

⁴⁴ The total budget proposed for the legislature for 2003-2004 was \$206,735,159, divided equally between the two houses.

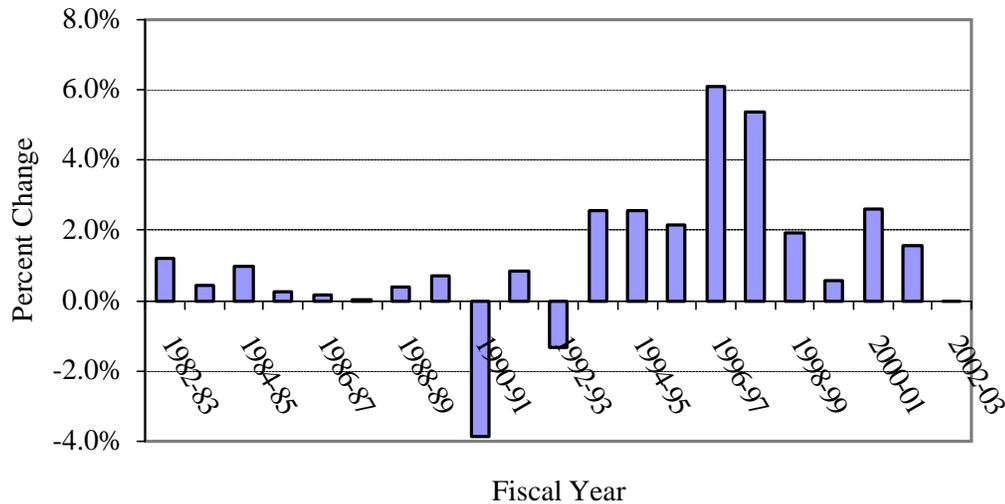
⁴⁵ Joint Legislative Committee on State Fiscal Policies, *Report* (Albany: Legislative Document #41, 1938), 24-25.

⁴⁶ New York State Division of the Budget, *The Executive Budget in New York State: A Half Century Perspective* (New York: Division of the Budget, 1981), 146. This book was written by Robert Kerker.

⁴⁷ Forsythe and Boyd (July, 2003), 12. Preliminary data used for this table for 2002 and 2003 may understate the degree of legislative induced change.

committees so that they could determine if these were met. Some of these were vetoed by Governor Cuomo in 1985.⁴⁸

Figure 2
Change from Executive to Adopted Budget in General Fund Spending
Fiscal Years 1982-83 to 2002-03



Source: Dall Forsythe and Donald Boyd, "Budgeting in New York State: The Growth and Waning of Executive Power," (draft paper, files of the author, July 2003), 12.

The members of the Albany triad approached the brink, but uncertainty about the effect of the likely outcome on the distribution of institutional power kept all three from seeking a clear constitutional reading from the courts about whether language could be added by the two houses to appropriation bills, or vetoed by the Governor. The Banker's Association of New York State, a party outside the triad but negatively affected by an audit fee provision added by the two houses to the 1990-1991 state operating fund budget, was not constrained by institutional considerations. The Association sued and won a court ruling that the legislature was unambiguously limited by the state constitution to reducing or removing items of appropriation in the governor's budget, or adding items.⁴⁹

The outcome of the battle over spending notwithstanding, the development of independent revenue estimating capacity in each house substantially shifted power relations in the Albany triad. New York's constitution writers assumed, as noted above, that revenue estimating would be an executive function. Once the executive lost this monopoly, the legislative houses were further empowered, and it became necessary to reconcile revenue estimates within the Albany triad. The

⁴⁸ Eric Lane, "Legislative Oversight of an Executive Budget Process: Impoundment in New York" *Pace Law Review* (Winter, 1985), 211-257.

⁴⁹ *New York State Bankers Association, Inc. et. al. v. James W. Wetzler* 81 N.Y. 2d. 98 (1993).

requirement to agree on revenues before considering a spending plan added a major item to the budget-making agenda, and has contributed significantly to delays in adopting a state budget.

In reaction, an oft proposed reform has been to take responsibility for revenue estimating out of the three-way negotiating process. As early as 1982, Governor Carey's Council on State Priorities called for "...a permanent legislative/executive committee, headed by an independent, professional executive director and a professional staff charged with developing revenue estimates or reconciling executive and legislative projections."⁵⁰ This goal, directly derivative of the professionalization of the legislature, has been intermittently on the agenda of budget process reformers ever since.

Interactive Effects. Careerists in public office expect more institutional support. This support simultaneously makes legislative careers more attractive and provides added capacity to remain in office. Resources added during the late 1960s and through the 1970s for legislators included individual offices in the capitol, district offices, staffs in each to provide constituent services, and extensive capacity to communicate with constituents (for example, publicly funded constituent newsletters and recording facilities in the capitol).

Statistical analysis shows the two aspects of professionalism – the parallel development of careers in legislative office and institutional capacity – to be closely inter-linked. A major study that looked at the experience of 42,000 state legislators in elections dating from 1970 to 1989 concluded that "...[m]embers of highly professional legislatures have a greater probability of winning than members of less professional bodies. Moreover, a high level of professionalism buffers incumbents from external political forces and the effects of national economic conditions."⁵¹ The process is thus circular; professionalization of the legislature itself assists incumbent members in re-election, which enhances professionalism.

Legislative Majorities and Leadership Power

As noted above, one advantage that the governor has over the other members of the Albany triad in peak political decision making is that he or she is a unitary actor. The chief executive, of course, delegates extensive authority to others. He or she consults with advisors in taking positions and must assemble political support for these. But formal power within the executive branch, and ultimate responsibility, is vested in a single person.

In contrast, majorities must be assembled in the Assembly and Senate before they may act. In a two-party situation, organizing business on a partisan basis within each house provides a short-hand way of assuring a majority while reducing the size of the "winning coalition." All those outside the party are effectively excluded from sharing power, thus increasing the portion of resources and power (the later at least in concept) held by each member in the majority. Partisan

⁵⁰ Council on State Priorities, *Report* (Albany: the Council, 1982), 63-64.

⁵¹ William D. Berry, Michael B. Berkman and Stuart Schneiderman, "Legislative Professionalism and Incumbent Re-election: the Development of Institutional Boundaries," *American Political Science Review*, Volume 94 (December, 2000), 871.

organization also enhances efficiency within each house by removing the necessity to separately gather majorities for each vote.

Yet, majorities in legislative houses in Albany do not seek to achieve “minimum winning coalitions” as the well known theory of William Riker might suggest.⁵² This is because exercising all power within each house, and enjoying most of the attendant perquisites – bigger budgets, larger staffs, sponsored bills passed, money for district projects, even better parking spaces – depends upon holding the majority. From an institutional perspective, the game in each two-year election cycle is zero-sum, all-or-nothing. Those who control the majorities within each house thus seek to capture as many seats as possible as a hedge against uncertainty.

There is another incentive to increasing the size of the majority in each house. Under provisions of the New York constitution, if the majority becomes big enough – two-thirds of the members plus one – and is kept cohesive, capacity is gained to overcome the governor’s veto. The political demographics of New York State make the achievement of a two-thirds-plus-one Republican Senate majority virtually impossible. In the Assembly, however, it has been a stated goal of Speakers to achieve a “veto-proof” majority. This was achieved in 1992 (101 Democratic seats) and 2002 (103 Democratic seats) following the decennial reapportionments of 1990 and 2002.

The institutional interest of each legislative majority to remain the majority most often converges with the interest of individual legislators to retain their seats. But when these two diverge, it is the institutional interests that prevail. In reapportionment, discussed further below, some majority members (but not majority seats) may be sacrificed if this is seen as necessary to retain the majority, assure its cohesion or comply with outside pressures.⁵³ In allocating centrally gathered campaign resources, more secure members forego a share for those seeking open seats or under risk of losing their seats.⁵⁴

Dominant Legislative Leaders. "The Legislature is more highly organized than any other in the world – bar none," Republican Assembly Speaker Joe Carlino told the *New York Post* in 1960. "Never once in the fifteen years I've been there have we failed to get a Republican majority for a "must" piece of legislation. We Republicans have a tradition of discipline. Any new member is immediately schooled in that tradition of Republican control."⁵⁵

Powerful legislative leaders are needed to keep partisan majorities cohesive. This is especially true where, as in New York, there is substantial diversity within the majorities, whether

⁵² William H. Riker, *The Theory of Political Coalitions* (New Haven: Yale University Press, 1962), chapter 2.

⁵³ See Edward Schneir and John Brian Murtaugh, *New York Politics: A Tale of Two States* (Armonk: M.E. Sharpe, 2001), 85-91.

⁵⁴ Jeffrey M. Stonecash, "Campaign Finance in New York Senate Elections," *Legislative Studies Quarterly*, Volume XV (May, 1990), 247-261; Jeffrey M. Stonecash and Sara Keith, "Maintaining a Political Party: Providing and Withdrawing Campaign Funds," *Party Politics*, Volume 2 (1996), 313-328.

⁵⁵ Ruchelman (1970), 153.

based upon clashing geographic interests, racial and ethnic differences, or intra-party ideological distinctions. New York has very powerful legislative leaders. Richard Clucas has compared the power of state House Speakers in the 50 states on five dimensions: to select other legislative party leaders; to determine the number of committees and appoint committee members; to control political resources and staff appointments; to dominate the flow of business; and to serve continuously as leader. As measured by the index Clucas devised, New York's Assembly Speakership is among the most powerful in the United States.⁵⁶ The powers of the state Senate Majority Leader in New York in his house, though different in detail, are substantially similar to those of the Assembly Speaker.⁵⁷

Assembly Speaker Sheldon Silver has held his post since 1994; Joseph Bruno became Senate Majority Leader a year later. The authority of legislative leaders grows as they lengthen their tenure in the leadership and employ their powers to create support and obligation.⁵⁸ Each develops one-to-one relationships by using formal powers and political resources in ways responsive to individual member's goals and needs. In the Senate the leader may be distributive – something for everyone – because the majority has fewer members. But former Speaker Stanley Fink observed that his larger majority in the Assembly gave him some leverage. Having to wait their turn for rewards controlled by the Speaker, he said – for example, for committee chairmanships – made members more responsive to him.⁵⁹ The leader is also reinforced in power each time his or her party's retains or extends its majority in a biennial election.

Governors are not a force for change in the strong leadership system. Out of deference to the separation of powers, and concern about precipitating less desirable coalitions in the governing triad, chief executives rarely involve themselves in the legislature's internal business.⁶⁰ Legislative leaders resist direct negotiations on policy between the governor and members of their majorities, as these tend to undermine the leaders' capacity to assure cohesion in their conferences. Moreover, dealing with a strong leader who can deliver a majority is more efficient for the executive than separately seeking to gather majorities one-by-one on a range of matters.

⁵⁶ Richard A. Clucas, "Principal-Agent Theory and the Power of State House Speakers," *Legislative Studies Quarterly*, Volume 26 (May, 2001), 319-338. It appears that in his categories "committee powers," "resource powers," and "procedural powers" (Table 1, 326) Clucas may have underestimated the power of the New York Assembly Speaker.

⁵⁷ Alan Hevesi, a former member of the Assembly and currently Comptroller of New York State, details the formal and informal powers available to legislative leaders in New York in his *Legislative Politics in New York State: A Comparative Analysis* (New York: Praeger, 1975), Chapters 1 and 2. On the Majority Leader of the Senate see John J. Pitney Jr., "Leaders and Rules in the New York State Senate," *Legislative Studies Quarterly* (1982), 491-506.

⁵⁸ For a comparative study of legislative leadership in 24 states see Malcolm Jewell and Marcia Whicker, *Legislative Leadership in the American States* (Ann Arbor: University of Michigan Press, 1994).

⁵⁹ Benjamin and Nakamura, "Interview with Stanley Fink," 120.

⁶⁰ A legendary exception was Republican Governor Nelson Rockefeller's intervention effectively to select the Democratic Party leader in the Senate and Assembly Speaker to break a months-long intra-party deadlock in 1965, after the surprise takeover of the legislature by the Democrats in the 1964 elections.

Two major developments over the past 25 years have enhanced the institutional power of New York's legislative leaders: the development of budgets controlled by the leader within each house to fund priorities of individual members in their districts, and the establishment of leadership-directed political campaign committees.

The Member Item System. The "member item" (to its critics) or "member initiative" (to its advocates) system became institutionalized in the early 1980s. "In 1984, \$26 million was allocated by legislative leaders outside of the executive budgets for projects favored by individual majority party members in their districts. Just two years later the amount had increased to \$80 million."⁶¹ Regular processes came to be established in each house to claim and distribute these funds, outside of the structure of executive budgeting as constitutionally conceived. In 2003, a total of \$170 million controlled by the leaders of each of the houses was appropriated to fund projects advanced by Senate Republicans and Assembly Democrats.⁶² Additionally, each year's negotiations in the triad often seek to assure that there are other funds – for Economic Development, for example – available for expenditure at the discretion of the leader. According to one account, in the 1998 election year a total of \$1.5 billion was available to Governor Pataki, Speaker Silver and Majority Leader Bruno to separately allocate.⁶³ Giving these discretionary resources to legislative leaders is defended as a way of bypassing the state bureaucracy to fund needed projects in local areas, and attacked as wasteful, unneeded spending.

Pork barrel appropriations to benefit specific legislative districts, a long established practice in American politics, remain alive and well. For example, the U. S. Congress, using an "earmarking" process, this year targeted \$2.012 billion for 1,964 scientific projects at 716 college and universities across the country. Critics of earmarking complained – as did those of the member item process in New York – that "...[M]embers of Congress and their aides chose recipients of direct grants based on their own judgments...." No systematic assessment or peer review was involved. Defenders said, as did those of member items in New York, that "...the practice is a necessary alternative to help worthy projects that agencies have wrongly rejected or misjudged."⁶⁴ However, review has not identified elsewhere than in New York a budget process within the legislature that parallels the executive budget process, with funds spent entirely at the discretion of legislative leaders.

Majority party members in each house use public funds to build support in their constituencies, and have come to be judged in their home districts, in part at least, on their capacity to "bring home the bacon." Clearly, the political effect of the member item system is to strengthen

⁶¹ Gerald Benjamin (1986), 22.

⁶² James M. Odatto, "Lawmakers Pass Spending Bill," *Albany Times Union*, September 17, 2003, B.2. Interestingly, an additional \$30 million was included for expenditure at the discretion of the Governor. The governors priorities were until recently met within the executive budget.

⁶³ Schneir and Murtaugh (2001), 233.

⁶⁴ Jeffrey Brainard and Anne Marie Boreggo, "Academic Pork Barrel Tops \$2-Billion for the First Time," *Chronicle of Higher Education*, September 26, 2003.

both the leaders – who control distribution of these funds – and the majority party in each house, further entrenching both the strong leader system and divided partisan control.

Legislative Campaign Committees. Following the progressive reforms of the early 20th century, both partisan political power and governmental authority shifted from state party leaders to the governor. Because county parties remained strong, Governors could discipline legislators through them. A concomitant of the development of legislative service as a profession in the states was the establishment in many states of campaign committees based in the legislative houses.⁶⁵ This re-centered legislative politics, shifting the primary institutional locus of the partisan effort from party committees (responsive to the governor) to the legislative houses themselves. New York was at the forefront of this trend.

First steps were taken within the party out of power in the Assembly. Perry Duryea raised resources and barnstormed on behalf of Republican Assembly candidates in the mid-1960s to gain the base for a successful challenge for the minority leadership, and then to win the majority.⁶⁶ Under the leadership of the minority leader Stanley Steingut, the Democratic Campaign Committee in the New York Assembly organized in the late 1960s and early 1970s to recruit candidates, provide campaign expertise and do fund raising to displace the Republican majority.⁶⁷ After a Democratic majority was achieved in 1974 the committee's efforts turned toward defending it. For their part, Republicans in the Senate initially organized politically in 1974, under threat of the Watergate backlash, to defend their majority.⁶⁸ Minorities in both houses reacted with similar structures.

In 2002, Democrats in the Assembly raised \$7,506,885 to defend and extend their majority. The total raised by Republicans in the Senate was \$14,736,106. In contrast the budget for Assembly Republicans was \$2,691,784 and Senate Democrats was \$3,770,416. (See Table 6.) From his thorough study of legislative campaign committees in the states that gives special attention to New York, Daniel M. Shea concluded that they are "...little more than independent consulting firms working for the benefit of the legislative caucus and its leadership."⁶⁹ Funds are controlled by the leaders in each house. Spending is primarily for campaign materials, services and expertise – not for transfer of funds to candidate campaign committees – and is focused on the most competitive (or "marginal") races.⁷⁰ With the majorities entrenched for almost three decades, groups interested in moving legislation behave pragmatically. As the imbalance of results in Table

⁶⁵ Shea (1995), chapter 5 is a case study on New York.

⁶⁶ Hevesi (1975), 160.

⁶⁷ Benjamin and Nakamura (1991), "Interview with Robert Del Guidice," 303-304.

⁶⁸ Benjamin and Nakamura (1991), "Interview with Warren Anderson," 64-66.

⁶⁹ Shea (1995), 112.

⁷⁰ Jeffrey M. Stonecash, "Working the Margins: Campaign Finance and Party Strategy in New York Assembly Elections," *Legislative Studies Quarterly*, Volume XIII (November, 1988), 477- 493.

6 suggests, they give to Democrats in the Assembly and Republicans in the House.⁷¹ Again leaders are further empowered. Again divided partisan control is reinforced.

Table 6
Funds Raised by Legislative Campaign Committees in New York, 1998 - 2002

	Election Year		
	1998	2000	2002
Assembly Democrats (Majority)	\$4,931,298	\$5,584,951	\$7,506,885
Assembly Republicans (Minority)	3,862,515	2,795,609	2,691,784
Senate Democrats (Minority)	1,502,656	2,786,345	3,770,416
Senate Republicans (Majority)*	5,145,395	7,607,994	14,736,106

Source: Institute on Money in State Politics, New York, 2003, p. 4. (PDF file accessed through the Institute Web site, <www.followthemoney.org>.)

* Senate Republican totals do not include housekeeping account for 1998 and 2000.

Resistance to Change. In such a legislative environment, organization to challenge the leader is daunting, and the potential consequences of failure disastrous. Only one sitting Assembly Speaker or Senate Majority Leader has been defeated in New York's modern political history. With overt support from U.S. Senator Alfonse D'Amato and State Party Chairman Bill Powers (and the exceptional behind-the-scenes support of Governor-elect Pataki), Joseph Bruno defeated Ralph Marino for Majority Leader in 1994. An attempt by Majority Leader Michael Bragman to defeat Assembly Speaker Sheldon Silver, based in part on a program of decentralizing power in the Assembly, failed in 2000. Bragman's legislative career ended, and the careers of most of those who supported him were set back severely.⁷²

Potential alternative locations of institutional power in each house of the legislature are the party caucuses (conferences in New York) and the legislative committees. Because of the lesser role played by committees and the invisibility of conference dynamics (assured through specific amendment of the state open meetings law) some have attacked the power of New York's legislative leaders as excessive and anti-democratic.⁷³ Others have defended the current

⁷¹ The Institute on Money in Politics does not provide amounts given for each party committee in New York. Data for overall giving to state party committees by top PAC contributors between 1998 and 2002 show that they give extensively to both parties. See "New York" (2003), 4. (PDF file accessed through the Institute Web site, <<http://www.followthemoney.org>>.)

⁷² For a detailed account see Schneir and Murtaugh (2001), 193-194.

⁷³ See, for example, Eric Lane, "Albany's Travesty of Democracy," *City Journal* (Spring, 1997), 49-56.

distribution of power as necessary and responsive to the priorities of the majority conferences.⁷⁴ Clucas's comparative research supports the idea that leaders are powerful because concentration of power in their hands meets the expectations and needs of legislative members.⁷⁵

Marginal changes in legislative organization or functioning occur at times of leadership succession. Candidates for leadership offer members a change agenda – for example, increase in member power and reduction of the influence of staff, or greater efficiency in the operations of the chamber – and feel constrained to act on these if they are selected. Partisan minorities in each house, systematically denied any real influence, are classically the source of proposals for change in the way the legislature does business.⁷⁶ But in recent history changes in leadership, or rare changes in partisan majorities, have not fundamentally altered the distribution of power in the legislature. This tends to reinforce the idea that majority party members in each house are not seriously out of tune with current arrangements.

As earlier noted, one proposed budget process reform is to decentralize institutional power to committees, on the model of the United States Congress. But as reform is considered, it is essential to understand that strong legislative leadership in the states is not unusual. This is especially the case in states like New York in which legislative professionalism is most advanced.

Partisanship and Persistent Divided Party Control of the Legislature

One of the primary axes for two against one coalitions is removed when all three major political institutions in the state are in the hands of a single party. Though the importance of party identification in the behavior of voters has diminished in recent decades, partisanship in government remains a core element of New York's political culture. Though (as has been shown) competitiveness in New York legislative politics has been minimal in recent decades, national 50 state comparative analysis continues to place New York among the two party competitive states.⁷⁷ Partisanship is enhanced because both major parties may still win major statewide offices and have substantial strength in local government.

Party majorities organize the legislature. Institutional power and the perquisites of office are distributed on a partisan basis. Minority party members in each house are almost always excluded from decision making. Because legislators are increasingly professional and careerist, party loyalty and reputation within the party is of particular significance to them. Though they work

⁷⁴ Petersen and Stonecash (2001), 155. See also Hevesi (1975), 161-162, and Robert P. Weber, *The Speaker of the Assembly: Party Leadership in New York* (Ph.D. Dissertation. Department of Political Science, University of Rochester, 1975).

⁷⁵ Clucas (2001), 335.

⁷⁶ John B. Sheffer II, *Project 1990: the Challenge of Effective Legislative Management in New York* (Albany: New York State Assembly Minority, 1985).

⁷⁷ Bibby and Holbrook (2004) Table 3.4, 88.

hard, and successfully, to decouple their own continuance in office from the outcomes in other races (that is, to reduce the "coattail" effect) the extent of legislators' influence and their career prospects remain closely linked to their party's success.

Partisan loyalty increases the prospects of career advancement for legislators and members of the legislative staff. As de-facto head of his or her party, the governor may influence nominations for other offices to which legislators may aspire. The legislature has long been a path to state judgeships. For those that are elective, party nomination is required. Those that are appointed require nomination by the governor and ratification in the Senate. As the transitions from Malcolm Wilson to Hugh Carey and Mario Cuomo to George Pataki illustrate, at times of partisan change in control of the governorship, the governor-elect's legislative co-partisans are an important source of state agency heads and key executive branch staffers. The fear that Republican Senators and their staffers would be cut off from influence and opportunity in the newly won executive branch because of enmity between Governor-elect Pataki and Senate Majority Leader Ralph Marino was a significant element in the only successful removal of an incumbent legislative leader in modern New York political history.

The governor of New York remains an important figure in national politics. As Forsythe and Boyd point out, partisan behavior by his or her adversaries in the state legislature is encouraged by expectation of it by their co-partisans outside the state. Thus the ideas that Senate Republicans had an incentive to delay the New York state budget to keep governor Mario Cuomo from vigorously pursuing the presidential nomination, and that Assembly Democrats sought to bloody Governor Pataki in the budget process in part to diminish his national reputation and prospects.

In this highly charged partisan environment, divided partisan control of the institutions in the peak political triad has been the norm, not the exception, in modern New York government. The state last had a governor and both legislative houses in the hands of a single party in 1974. In fact, there have been only two years since the adoption of the states current constitution in 1894 during which Democrats simultaneously controlled the governorship, the state Senate, and the Assembly.

The provisions for reapportionment written into the 1984 constitution were the basis of former Democratic governor Al Smith's description of both houses of the New York legislature as "constitutionally Republican."⁷⁸ Democrats were able to win the governorship half the time during the 20th century, but Republicans held the Senate majority for all but 15 years in this period (and continuously since 1966). The GOP also dominated the state Assembly until the reapportionment revolution, losing control only in 1913 and 1935. As a consequence of federal court forced reapportionment, a Democratic majority in the Assembly was achieved in 1965.⁷⁹ After a six-year Republican interlude between 1969 and 1974, the Democrats regained control of the Assembly.

⁷⁸ Article III sections 3-5.

⁷⁹ *WMCA v. Lomenzo* 377 U.S. 633 (1964).

Employing New York's unique “bipartisan gerrymander,” the Democrats have kept it ever since. As Edward Schnier and John Brian Murtaugh (a former Assemblyman) have written: "...the contemporary process of redistricting in New York boils down to this: the Democrats, who control the assembly, draw the assembly lines...[and]...the Republicans draw the state senate lines...."⁸⁰

Over much of the 20th century, both Republican and Democratic governors governed with Republican legislatures. Thus divided control, with one party in charge of the executive branch and the other in both houses of the legislative branch, has been common. Indeed, some of the state's greatest achievements in governmental reform – including the adoption of the executive budget – were made during periods of this kind of divided control. The key difference in the contemporary period is that divided control has resulted from different parties consistently controlling each house of the legislature, the Republicans in the Senate, the Democrats in the Assembly. This assures divided control regardless of which party wins the governorship.

The presence of divided partisan control in New York is not unusual. This pattern has been increasingly evident in state government in the United States during the post WWII period. Over the past two decades, half the states or more have regularly had a governor of one major party and one or two legislative houses of the other major party. (See Figure 3.) Part of this increase has been as a result growth in split control of state legislatures. (See Figure 4.)

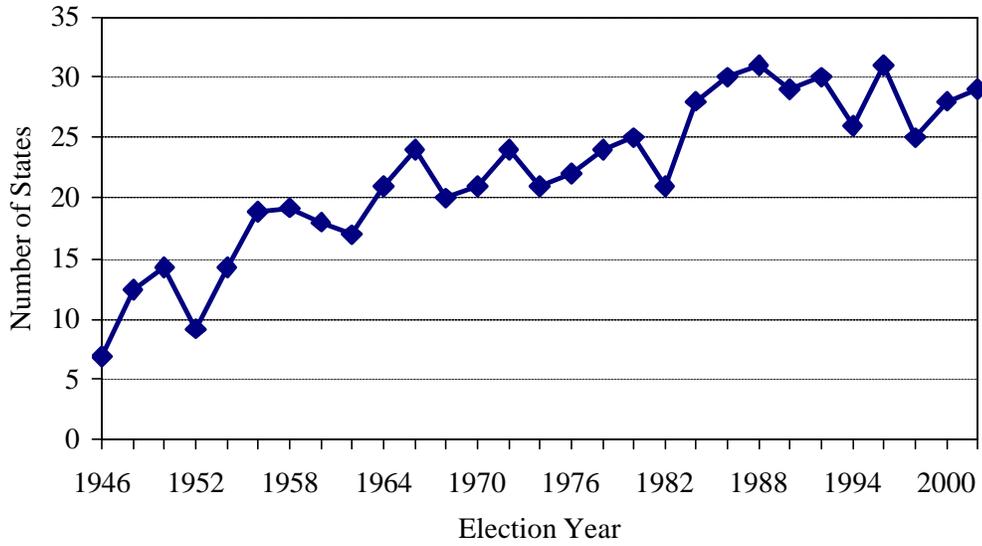
However, New York's period of persistent split control of the legislative houses, 29 years, is the longest in the United States. The persistence of split control in the New York legislature creates a shaping expectation in the state's political system that this pattern will continue, that it is “permanent.” This in turn diminishes the attractiveness of legislative service for potentially competitive minority party candidates in each house. It also results in behaviors by interest groups (for example, campaign contributions and other support for majority party incumbents in each house) that reinforce the status quo. To cite just one example, the United Federation of Teachers in New York regularly supports incumbent Democrats for re-election in the Assembly and incumbent Republicans in the Senate.

Finally, persistent divided partisan control tends over time to demoralize serving minority party legislators in each house, encouraging the most energetic and ambitious to leave for other opportunities when they can.⁸¹ Republicans in the Assembly minority regularly seek to move to the Senate majority. Three of the non-incumbent Republican victors for Senate seats in 2002 were sitting Assemblymen. Often advancement requires risking a career-killing primary election. In one famous example, Assemblyman George Pataki ran against incumbent Republican Senator Mary Goodhue to gain the nomination for the Senate seat from which he ran for governor. Democrats in the Senate rarely go to the Assembly, but seek to move on to Congress, or to city or county executive leadership positions. The current Mayor of Buffalo, Tony Masiello is a former Democratic State Senator, as is Gary Ackerman, now a member of Congress.

⁸⁰ Schnier and Murtaugh (2001), 89.

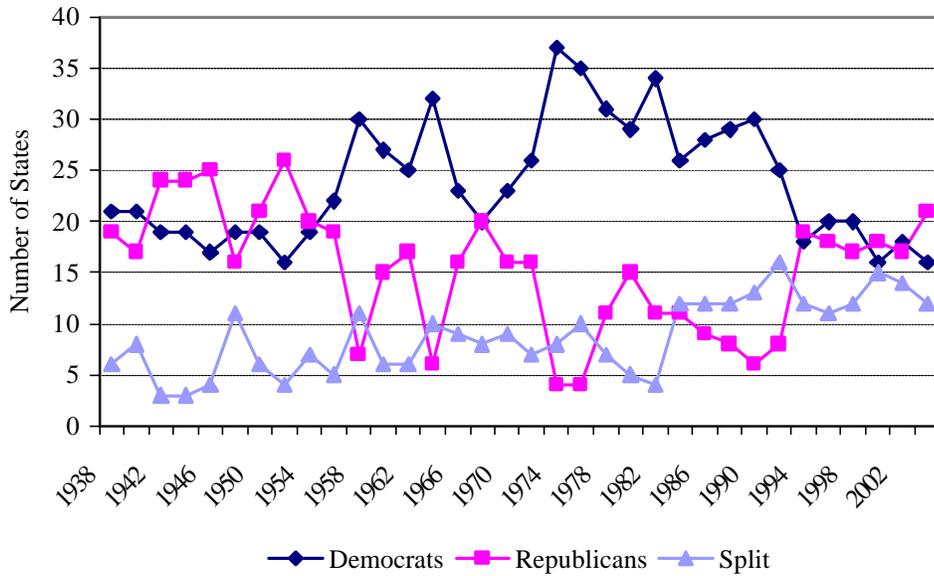
⁸¹ See Benjamin and Nakamura, xi – xxxv.

Figure 3
Number of States with Partisan Division of Legislature and Executive Institutions
1946 - 2002



Source: National Conference of State Legislatures,
 <<http://www.ncsl.org/programs/legman/elect/divgov.htm>> (17 March, 2003).
 Notes: States with nonpartisan elections (Minnesota prior to 1972 and Nebraska) are excluded.
 States with odd year elections are included in the succeeding even-numbered year.

Figure 4
Party Control of State Legislatures, 1938 - 2002



Source: National Conference of State Legislatures, Table of Partisan Control of State Legislatures, 1938-2003, <www.ncsl.org/programs/legman/elect/HSTPTYCT.HTM> (Oct. 31, 2003).
 Note: The Nebraska unicameral legislature is not included because candidates run in non-partisan elections.

As indicated in Table 7, all legislative chambers in states with professional legislatures had at least one change in partisan control during the period 1974-2003 except Massachusetts's two houses and the New York Senate. Notwithstanding recent GOP gubernatorial victories there, Massachusetts has long been among the strongest Democratic bastions, with that party overwhelmingly dominant in both legislative houses. In contrast, Republicans have retained persistent Senate control in New York as the party's strength in the electorate has declined. In only the Wisconsin House, the Ohio house and the California Senate of the remaining state legislative chambers in this comparison was change in the partisan majority as infrequent as in the New York State Assembly. Of the twelve states with split partisan control of their legislatures in 2003 only two – New York and New Jersey – also had a professional legislature.⁸²

⁸² In addition to New York and New Jersey, the states with split partisan control in their legislatures in 2003 were Delaware, Georgia, Indiana, Kentucky, Minnesota, Nevada, Oregon, North Carolina, Tennessee, and Washington.

Table 7
Changes in Partisan Control of Legislative Houses in “Professional”
State Legislatures
1974 to 2003

	House (Assembly)	Senate
California	1992, 1994	1974
Illinois	1978, 1980, 1992, 1994	1974, 1992, 2002
Massachusetts	None	None
Michigan	1990, 1992, 1994, 1996	1974, 1984
New Jersey	1984, 1988, 1992, 2002	1992, 2002
New York	1974	None
Ohio	1992	1974, 1980, 1982, 1984
Pennsylvania	1974, 1994	1980, 1992, 1994
Wisconsin	1992	1994, 1996, 2002

Source: National Conference of State Legislators.

Note: The cohort of states with professional legislatures is taken from those identified by use of an index of legislative professionalism reported in Keith F. Hamm and Gary F. Moncreif, “Legislative Politics in the States,” in Virginia Gray and Russell L. Hanson (eds.) *Politics in the American States*, 8th ed. (Washington: CQ Press, 2004), 157.

As it became more common at the national and state levels the past several decades, there has been considerable debate among political scientists about whether divided partisan control indeed contributes to governmental gridlock.⁸³ In an important essay published in 1999, Sarah Binder shows that most of the work denying the negative effects of divided control has failed to differentiate between the effects of a chief executive of one party facing both houses in a bicameral legislature controlled by the other and situations, like that in New York State, in which control of the legislature itself is split. Examining issues before the national government between 1947 and 1996, Binder finds that “divided party control does appear to affect the broader ability of the political system to address major problems,” and that “...bicameral differences have the greatest substantive influence on the level of gridlock.”⁸⁴ At the state level, Cynthia J. Bowling and Margaret Furgeson looked at eight different policy areas in all 50 states for the 1994 legislative session to test various explanations for legislative gridlock. They found: “Clearly, compound divided government ...[division within the legislature]...exhibits the gridlocking impact that is

⁸³ David Mayhew, *Divided We Govern* (New Haven: Yale University Press, 1991), generated a considerable scholarly debate by suggesting that divided partisan control did not dampen the productivity of the national government. See also Morris Fiorina, *Divided Government* (Boston: Allyn and Bacon, 1996).

⁸⁴ Sarah A. Binder, “The Dynamics of Legislative Gridlock, 1947 – 1996,” *American Political Science Review*, Vol. 93 (September, 1999), 519-533.

associated more generally with divided government. In all policy areas except the environment, compound divided government produces the lowest probability of bill passage.⁸⁵

Action Forcing Mechanisms

In the absence of common partisanship, a variety of other factors – some persistent, some more ephemeral – may work to align the governor and legislative houses for decision making.

One element is simply human. A positive personal relationship between leaders in the triad may mitigate partisan or institutional differences, while personal dislike may exacerbate them. Partisan differences were tempered by personal friendship between Republican Governor Nelson Rockefeller and Democratic Assembly Speaker Anthony Travia. In contrast, partisan differences have apparently been exacerbated by personal differences between Republican Governor George Pataki and Democratic Assembly Speaker Sheldon Silver.

A second factor is situational. The need to respond to a sudden tragedy or crisis – for example, the September 11 attack on the United States in New York – may temporarily draw leaders and institutions together.

Three additional structural elements that may, individually or in concert, force action in the Albany triad are the requirements of an outside authority, the pendency of a deadline, and the presence of a credible sanction for non-performance.

An Outside Authority with Substantial Control over All Actors in the Process. During the late nineteenth and early twentieth centuries state party leaders controlled nomination to the governorship, to numerous other statewide offices and, through county organizations, to the state legislature. Through their dominance of the state legislature, they also controlled the selection of U.S. Senators. Party leaders held valued rewards and a credible sanction; they could advance political careers, or end them. When a single party controlled the governorship and both legislative branches, party leaders could direct policy making from outside the government. To cite one spectacular example, Thomas Collier Platt used his power as party chief to achieve the consolidation of New York City in 1897 despite the deep reservations of two governors and numerous Republican legislators.⁸⁶

The capacity of federal and state courts to force action in state government provides a more contemporaneous example of the effect of an authoritative outside actor. Here the best example is policy making on reapportionment, which combines the involvement of federal courts enforcing national constitutional and statutory requirements and a compelling deadline that directly engages legislators' self interest. With the timing of the legislative election following the decennial census

⁸⁵ Cynthia J. Bowling and Margaret Ferguson, "Divided Government, Interest Representation and Policy Difference: Competing Explanations of Gridlock in the Fifty States," *Journal of Politics*, Vol. 63 (Fall, 2001) 182-206.

⁸⁶ Gerald Benjamin and Richard Nathan, *Regionalism and Realism* (Washington: Brookings Institution Press, 2001) p. 57.

fixed and known, threats by federal judges to take reapportionment out of the legislature's hands by turning to a special master have regularly resulted in legislative decisions that have met the court's requirements. Interestingly, the design of their districts is of such compelling importance to members of both legislative houses (which may, as noted, act without him) that the most powerful member of the Albany triad – the governor – has come to take a passive role in this area of policy.

A Deadline. Near the close of the 2003 legislative session, with the expiration of the state's existing rent control laws pending, Governor George Pataki and Senate Majority Leader Joseph Bruno, both Republicans, agreed to extend the law unchanged. *A fait accomplis* was presented to Sheldon Silver, the Assembly Speaker, a Democrat. Silver, who had announced that he was seeking changes in the law, could not unilaterally stop the expiration of the statute already in force. If it expired, the potential impact would be greatest in New York City, where all but two of 65 Assembly districts were represented by Democrats and almost a million residences were affected by rent regulation. The risk of a period without rent control was unacceptable to Silver. The deadline was decisive. The law was continued unchanged.

R. Eric Petersen and Jeffrey M. Stonecash report a different outcome driven by a deadline after the passage of federal welfare reform legislation in 1996. Devolution vested substantial discretion in state governments. Governor Pataki sought benefit cuts, a five year lifetime limit on eligibility, the use of vouchers instead of cash for some benefits, mandatory retraining, drug testing and denial of assistance to immigrants and those convicted of crimes. Democrats, whose districts were most impacted, resisted benefit cuts. Senate Republicans, with fewer constituents directly affected, did hear criticism of the likely cost of drug testing from suburban and rural county officials. (County governments share these costs in New York.) With a federal deadline looming, the governor gave way to the Democratic Assembly on the question of cash benefits and some upward adjustment of income eligibility thresholds to win passage of needed legislation.⁸⁷

In their highly regarded study on legislative bicameralism, George Tsebelis and Jeanette Mooney found that the house that can most easily accept delay is likely to prevail in two way negotiations. Drawing upon examples from the French political system, they write that strong public disagreement occurs between two houses when there is no time limit for action and "...the two chambers are controlled by opposite sides of the political spectrum."⁸⁸ The end of session "logjam," long a characteristic of the New York legislative process, finds explanation in this analysis.⁸⁹ Relatively few measures pass for months, and then there is a frantic rush to complete action on hundreds of measures in the session's waning hours. Without a deadline, both houses – always informed by what the governor is likely to accept – continue to press for their best outcome. The deadline, with potentially serious consequences for constituencies across the state, precipitates serious give-and-take, and sometimes successful outcomes.

⁸⁷ Petersen and Stonecash. (2001), 155-56.

⁸⁸ George Tsebelis and Jeanette Mooney, *Bicameralism* (New York: Cambridge University Press, 1997), 11.

⁸⁹ James Ruhl, *The Legislative Logjam in the States: The Case of the New York State Senate* (Rockefeller College, SUNY Albany: Unpublished Doctoral Dissertation, 1986).

A real deadline with real consequences may force the members of the Albany triad to come to timely agreement on the state budget. Forsythe and Boyd observe that most states continue to operate under the assumption that government must shutdown if it does not have a budget by the beginning of the fiscal year. Deadlines may be missed in particularly stressful fiscal circumstances, but (perhaps informed by the traumatic experience of the national government shutdown in 1995) performance to deadline returns when the crisis has passed.

New York too once operated under this assumption. Then after deadlines began to be missed, the idea emerged that there were “natural barriers” to the degree of lateness, for example the onset of the Passover and Easter holidays and concomitant vacation plans for the holiday recess (including plane ticket expenses) of key state leaders. When these barriers were breached, the timing of the state’s spring borrowing, crucial to provide scheduled aid payments for school districts, came to be the natural barrier. Replacement of short-term spring borrowing with long term bonds, a result of fiscal reform initiated in 1990 and completed in 1995, inadvertently removed this budget deadline.⁹⁰

When state budgets were first late in New York, the phenomenon was broadly understood as dramatic, exceptional and undesirable. This was reinforced by actions taken by state officials to deal with the situation. For example, to keep government operating the Comptroller reached special short term loan agreements with banks, who agreed to honor vouchers issued to state workers that looked like paychecks but were stamped with the message: “This is not a check.” This got the immediate attention of hundreds of thousands of New Yorkers. Now, budget or no budget, workers get paychecks. Extensive use of emergency appropriations keeps the doors of state government open without visible impact on daily operations.

In 1975 a constitutional amendment was passed that allowed two-thirds of the members of each house to petition the leaders to call the legislature back into session. (Previously action of the governor was required to do this.)⁹¹ This power is rarely used; the legislature now recesses rather than adjourns, obviating the need to formally reconvene. But legislative control of the likelihood and timing of special sessions, combined with the increased availability of full-time professional members after the regular session’s close, diminishes the necessity for action by an end of regular session deadline.

A number of proposals have been made to create a credible deadline for budgeting in New York. One idea is automatically to bring into effect an alternative budget if the legislature fails to act on the governor's budget. (One such alternative is a current services budget; another is the previous year's budget; a third is the previous year's budget discounted by some fixed percentage for all but mandated items.⁹²) A second idea is to limit to seven days the duration of continuing

⁹⁰ Forsythe and Boyd (2003), 15.

⁹¹ *New York State Constitution*, Article III section 18; Article IV section 3. See Peter J. Galie, *The New York State Constitution: A Reference Guide* (New York: Greenwood Press, 1991), 92.

⁹² A06500/S2112 (2003), offered by Assembly member Galef and Senator Morahan; A06501/S2291 (2003), offered by Assembly member Galef and Senator DeFrancisco.

resolutions passed to keep state government operating in the absence of timely adoption of a budget.⁹³

A Credible Sanction. The prospect of losing re-election is the most riveting potential sanction for professional legislators. For those in the majority in each house, this is closely followed by the prospect of losing majority status. As demonstrated, the Republicans in the Senate and Democrats in the Assembly have been enormously successful in using the powers and resources of government to assure that those in power stay in power.

Legislators are risk adverse. The need for re-election every two years produces an irreducible minimum of risk. Republican Senator's willingness to override a governor of their own party in 2003, and assure that cuts in school aid were substantially restored, was driven in part by concerns that very large local property tax increases for schools would increase their risk at the polls. But majority members in both houses have learned from experience over decades that persistent budget imbalance, chronic lateness in budgeted, ever increasing debt burdens and attendant fiscal issues do not increase electoral risk. Re-election rates are not affected. Majority control in both houses does not change.

Absent accountability at the polls, the measure passed to withhold pay to legislators if the state budget is late, accepted by them as part of a package that gave them a major pay increase in 1995, was an attempt to put teeth into the end of fiscal year budget deadline. Some argued that this approach failed because it was too easily gotten around. It was widely understood that there would eventually be a budget. Members would eventually get paid. Loans were therefore easily negotiated to tide them over. A second argument was that the denial of paychecks to legislators sanctioned persons who had little to say in state budgeting. This is correct, and is at the nub of the problem.

In the face of continued budget lateness other punitive provisions have been advanced. One, for example, seeks to dock the pay of the governor and legislators for each day that the budget is late.⁹⁴ Another – perhaps reflecting Ed Koch's negative view of the state capitol, famously expressed when he was a candidate for governor in 1982 – would require the legislature to convene daily, and members stay in town, if the budget deadline is missed.⁹⁵

⁹³ S04678 (2003), offered by Senator Krueger.

⁹⁴ S03635 (2003), offered by Senator Oppenheimer.

⁹⁵ S04739 (2003), offered by Senate Minority Leader Patterson.

Budgeting and an Accountable Legislature: The Need for Constitutional Change

The design of New York's peak governing institutions is unchanged. The state's provisions for executive budgeting remain intact. Yet the core political and governmental premises that underlay the design and adoption of the budget article in the State Constitution three quarters of a century ago are no longer valid.

More than in all but a few other states, legislators in New York are career professionals insulated from accountability at the polls. Legislative leaders have captured public resources and organized political committees within each house to build institutional and personal power, and to serve the professional interests of majority members. Governors can no longer hold legislative leaders and members accountable through the political party structure. Partisan division between the legislative houses is uniquely persistent, and reinforced by the expectation that it cannot be overcome.

The development of these political and institutional changes within the state Legislature simultaneously with the unfolding of a long period of increased fiscal problems in New York strongly suggests their linkage. Indeed, the struggle over budgeting in New York is the most visible manifestation of a larger phenomenon: a more politically and institutionally autonomous bicameral legislature demanding a greater role in policy making.

In the actual operation of New York's very strong constitutional provision for executive budgeting, even the minimal process role given the legislature prior to budget adoption – its right to question the governor and department heads about the executive budget – has long since been reduced to inconsequentiality. Through the development of institutional resources for budgeting – especially for revenue estimating – the two houses of the legislature have seized an extra-constitutional role. But in the ensuing separation of powers litigation, the state high court has not found a way to adjust the constitution's provisions to new political realities.⁹⁶

The genie of resurgent legislative power in New York cannot be put back in the bottle. Nor should it. A vital legislature with a central role in taxing and spending is fundamentally important to representative democracy on the classic America model – so long as the members of that legislature are really accountable to the electorate.

The time is ripe for a redefinition in the New York constitution of the state's budget process. New York should retain a constitutionally-based executive budget, but New York should also recognize and incorporate in its constitution the legitimate and hard-won role of the state legislature in budgeting. The inclusion of legislative priorities in the executive budget process

⁹⁶ The Committee on State Affairs of Association of the Bar of the City of New York argues in recent paper on the issues before the Court of Appeals in *Pataki v Assembly* and *Silver v. Pataki* that the Budget Article of the State Constitution, when written, incorporated a substantial legislative role in budgeting. See the Committee's "The New York State Budget Process and the Constitution: Defining and Protecting the "Delicate Balance" of Power" (New York: the Association, 2003).

removes the rationale for them to be separately recognized and funded outside that process. Such an approach thus attacks the basis for the member item system - an extra-constitutional dimension of budgeting that simply further entrenches the already very powerful leaders of both houses.

If the legislature is to be constitutionally empowered in budgeting to reflect current political realities, the state constitution must also be amended to assure greater accountability of members of both legislative houses. The linkage is crucial: constitutional recognition of more legislative power, but only with constitutional provision for more legislative accountability.

Recent failed efforts at budget change by rule or statute make amply clear the necessity to locate these changes in the state constitution. Only constitutional change will entrench a new balance in budgeting power, and drive participants in the system to new understanding of this balance. And only constitutional change can provide greater legislative accountability.

The needed elements of a new constitutional budget process are already under discussion. A constitutionally defined staged process in the legislature for considering the executive budget, engaging key committees, with conference committees to resolve differences, may both build the legislative role and redistribute power within each house. A consensus system for revenue estimating built into this process may be acceptable to the legislative houses, if their powers in budgeting are otherwise assured in the constitution. (The governor may resist this change, but gubernatorial power in revenue estimating is already compromised. Such a change may be a "less bad" option for the executive. And if push comes to shove, constitutional amendment may be achieved without the governor's participation.)

One intriguing compromise idea is to leave revenue estimating to tripartite negotiations, but to give "tie-breaker" authority to the Comptroller or another outside party for those elements of the estimate for which agreement is not reached by a specified date.⁹⁷ Another – quite unlikely of adoption in New York in a situation of divided partisan control – is to create a nonpartisan legislative budget office to prepare revenue estimates for that branch. Such a step would transform negotiations from three- to two-way, easing the path to agreement.⁹⁸

Various proposals have called for a shift of the beginning of the fiscal year to May 1, June 1, or July 1. Alteration in the beginning of the fiscal year (bringing New York's practice into conformance with that of other states) would allow the legislative houses the time to perform their roles. Because total income tax collections (due on April 15) would be known, they would also be proceeding in a context of more certain information about revenues. New York's fiscal year is not established in the state constitution, and has previously been shifted.⁹⁹ Constitutionalization of the beginning of the fiscal year might be a first step toward establishing a real budget deadline. A

⁹⁷ A06266 (2003), offered by Assembly member Kaufman.

⁹⁸ A01257/S1611 (2003), offered by Assemblyman Grannis and Senator Meier, passed the Assembly on June 20, 2003. See also S04680 (2003), offered by Senator Krueger.

⁹⁹ Benjamin and Nakamura (1991) "Interview with Abbot Low Mofatt," 32-34.

requirement for the adoption of a balance budget, certified by an outside body, might bring a measure of greater fiscal accountability.

More general changes in the allocation of governmental powers to the peak political institutions, less likely than more focused reform, are nevertheless worth considering as part of a synoptic effort to alter the balance of power in fiscal matters. For example, the majority in each house required for a veto override might be reduced. Or a two-term limit for service as governor, the pattern now in 38 states, might be adopted in New York.

But these changes in the formal balance of powers in budgeting will be highly effective only if linked to steps taken to make legislative seats more competitive and less secure and to make it possible for partisan majorities in each house to change. Term limitation for legislators provides one idea. Though again unlikely – and a second best approach to establishment of real accountability at the polls – the adoption of term limits would make certain greater turnover in the legislature and also increase the possibility of changed partisan control in both houses.

Two less draconian but still fundamental steps are the adoption of legislative redistricting by commission and serious reform in campaign finance.

A Constitutionally-Based Redistricting Commission. "Government is delegitimized in the eyes of the people when elected officials' behavior is palpably self-interested," the State Constitutional Revision Commission wrote in 1995. "With the possible exception of voting to increase their own salaries... the most visibly self-interested behavior of members of the state legislature occurs when they design their own districts to assure their own re-election and the continued control of their house by their party."¹⁰⁰ Distancing redistricting from the legislature's two houses will hardly extract all partisanship from the process, nor will it remove all conflict based upon racial, ethnic, geographic or other differences. But the experience of redistricting the New York City Council through the use of a commission (under the charter reforms adopted in 1989) does show that it may well enhance fairness in the process, mitigate the appearance of self-interest, and – depending upon the composition of the decision making body for redistricting – add a degree of political uncertainty.¹⁰¹

Among the states with the most professional legislatures, New Jersey, Ohio and Pennsylvania employ redistricting commissions. Since 1974, these three states experienced a change in the partisan majority of five of their six legislative houses in at least one election immediately following decennial redistricting. (Refer to Table 5.)

How might such a commission for New York be structured? One option is the design endorsed by the 1967 New York State Constitutional Convention – condemned in part for its domination by legislators. The draft constitution it adopted, but that failed at the polls, provided

¹⁰⁰ Temporary NYS Commission on Constitutional Revision (1995), 27.

¹⁰¹ Frank J. Macchiarola and Joseph G. Diaz, "Decision Making in the Redistricting Process: Approaching Fairness," *Journal of Legislation*, Volume 19 (1993), 199-217.

for redistricting by a five-person commission with each of four members appointed by one of the four legislative leaders and the fifth member, the chair, chosen by the Court of Appeals.¹⁰²

Constitutionally-Based Public Campaign Finance. Enormous imbalances in the availability of campaign resources to incumbents and challengers contributes to the non-competitiveness of New York elections and to the entrenchment of legislative majorities in both houses. All the advantages of incumbents seeking re-election cannot be removed. But public financing of legislative election campaigns, with concomitant limits on direct and indirect (through legislative campaign committees) private funding, would be salutary. The need to raise campaign money would be removed both as a measure of credibility and as a barrier to entry for potential candidates. A reasonable basis for presenting a viable alternative in each legislative district would be established. The costs of elections would rightly be acknowledged as a legitimate public charge in a representative system.

A great range of other campaign finance reforms are available and have been tried in various combinations: limiting the amounts and sources of contributions; constraining the purposes for which funds may be spent; requiring free access to some of the most expensive campaign resources (television time), to reduce the need for funds; and using the "sunshine" of disclosure as a disinfectant. Almost a century of experience with such regulations suggests that the administration of these is problematic, and that private money will find its way into campaigns, and around limits. With such approaches the money chase remains a major preoccupation of those seeking public office. The influence of money in politics, and the corroding appearance of its influence, persists unattenuated.

Reforms that combine full public funding with the acceptance of spending limits have been adopted in Arizona, Maine, Massachusetts and Vermont.¹⁰³ Current practice in New York City provides a model that has worked in New York. It combines limited, focused private fundraising with public support to finance legislative campaigns. When a candidate reaches a specified threshold of contributions and contributors, the city provides four dollars of public matching funds for each dollar of private contributions of up to \$250 per contributor. Corporate contributions and those from Political Action Committees not registered with the city Campaign Finance Board are bared. Candidates are limited in what they may contribute to their own campaigns. Spending limits are established, and total public funds available to a candidate may not exceed 55 percent of these limits, or 66 percent if an opponent chooses to remain outside the public funding system.

For 2003, Council candidates had to receive \$5,000 in amounts of \$10 or more from at least 75 contributors living in the boroughs in which their district was located to qualify for public funding. The contribution limit for City Council races was \$2,750; candidates might give their own campaigns three times this amount. The spending limit for these races was \$150,000. The recently

¹⁰² Henrik N. Dullea, *Charter Revision in the Empire State* (Albany: Rockefeller Institute of Government, 1997), 204-208.

¹⁰³ See Ellen S. Miller, Ernesto Cortes Jr., Cass Sunstein, Miles S. Rapaport, "Rescuing Politics from Money" <<http://www.prospect.org/print/V11/21/miller-e.html>>, and Sue O'Connell. "Clean Elections: The Arizona Experience" (May 13, 2003), Institute of Money in State Politics, <<http://www.followthemoney.org/>>.

instituted 4 for 1 match of private dollars for election campaigns in the city has increased the number of participating candidates and the number of campaign contributions and contributors.¹⁰⁴ With spending limits pegged near the level of funds actually raised by legislators for Senate and Assembly races in 2002, the cost of a similar program for state legislative races in New York would be \$30 - 40 million.

At the state level, public financing should be accompanied by legislation – similar to that recently advanced by both the Assembly and the governor – to limit soft money contributions, lower contribution limits, and strengthen enforcement of campaign finance laws.¹⁰⁵

The legislative houses have not thus far fared well in the courts in their efforts to have the greater powers in budgeting for which they have struggled recognized as constitutional. Crucial matters regarding the separation of power in budgeting are currently before the Court of Appeals. If the Senate and Assembly are disappointed again in the outcomes of litigation, the incentive grows for them to change the constitution itself. Changes commensurate with new political and governmental realities that legitimize the legislative houses' hard won role in budgeting and to assure a more participatory and responsible process are crucially important. But they should not be passed, and are not likely to work, unless they are accompanied by equally crucial measures that assure greater political accountability and competitiveness in New York.

¹⁰⁴ A description of the City law and program may be found at <<http://www.cfb.nyc.ny.us/>>. See also NYPIRG, "Reform New York: Campaign Finance" <<http://www.nypirg.org/goodgov/reformny/finance.html>>.

¹⁰⁵ S. 5553, A.8524 - A (2002).