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Albany to City: Drop Dead

By Sam Roberts

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Regardless of where you stand on banning plastic bags, regulating speeding cars near schools, or how to fix the subways, most New York City residents are probably asking the same question: Why are those decisions being made in Albany by the governor and the state Legislature instead of in City Hall by the mayor and the City Council?

Legally, the answer is the state Constitution, a bloated 55,000-word document that is more than 10 times longer than the United States Constitution.

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The simple answer to why, though, doesn't require a law degree. It's the result of political calculations. Some were well intended. Others were not. Some were well intended and backfired.

In the state Constitution, Article IX defines the powers of local government; it broadly allows local governments to pass laws relating to its property, its businesses, its roadways, and its transit facilities.

But the Constitution is also quick to point out the superseding authority of the state that created those localities. According to a ruling in 1929 by Chief Judge Benjamin N. Cardozo of the Court of Appeals, Albany takes precedence if the state has a substantial interest in the "property, affairs or government" of a locality.

In other words, the state can butt into a locality's business whenever it sees fit.

Albany mandates lots of other things that villages, towns, cities and counties (New York City has five of them) can and can't do and what they have to pay for.

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Sure, New York City voters are entitled to choose their State Senators and Assembly members, but in Albany, legislators from the five boroughs are outnumbered by the ones elected upstate and in the suburbs.

The conflict is not unique to this state, although it is more acute in places with partisan splits like New York, where Democrats control the city and Republicans have had a veto power in the Senate.

Brooks Rainwater, director of the Center for City Solutions of the National League of Cities, said that “bigger cities in general are passing more progressive legislation while state legislatures are trying to limit the authority of those localities.” He said legislatures are more vulnerable to lobbying by special interests because “local officials are closer to the people they represent and are more responsive.”

The complicating factor here is that New York City is the state’s economic engine. Close to half the state’s revenue from the income tax alone is generated by New York City residents.

Throughout the city’s history, the balance of power has seesawed between Albany and City Hall, depending on what was at stake and who has been in charge. For the moment, at least, Albany is.

The Origins of Albany vs. New York City

The city-state rivalry goes way back. It was no coincidence that in 1797 the Legislature decamped from Manhattan and moved the state capital to Albany, population 5,000, where it could more inconspicuously conduct its business.

“By the middle of the 19th century,” Gerald Benjamin, a political-science professor at the State University of New York, New Paltz, wrote last year, “the vestiges of New York City’s legal autonomy were gone.”

To officially and permanently circumvent the city’s Democratic machine, state

Republicans imposed the City Charter of 1857, which empowered Republican-controlled Metropolitan Boards to manage New York City.

These effectively gave Albany the ability to hire New York City employees and — maybe even more important — to pay them. “Until the government organized large forces for police protection, fire protection and sanitation, it was of no great advantage, either financially or politically, to control the appointment or remuneration of city employees,” Joseph L. Weiner wrote in 1937 in *The Columbia Law Review*.

“The great industrial expansion subsequent to the Civil War created legislative prizes beyond the dreams of an avaricious legislator a generation earlier,” Weiner noted — particularly the power to award franchises to streetcars.

This mid-19th-century power grab resulted in the sudden creation of two police forces in direct competition: Municipal officers, who laxly enforced temperance and election laws and were answerable to City Hall, and state-controlled Metropolitans, whose jurisdiction included the city as well as neighboring counties.

In June 1857, their redundancy became violent. Mayor Fernando Wood, a Democrat, and Gov. John King, a Republican from Queens (then not part of the city), appointed dueling street commissioners, a job that provided enormous opportunities for patronage and graft.

A police riot, between the Municipals and the Metropolitans, ensued at City Hall.

The mayor ordered the governor’s appointee forcibly removed from his office and mustered a force of hundreds of Municipals to do so. They were accompanied by what the diarist George Templeton Strong described as a “miscellaneous assortment of suckers, soaplocks, Irishmen and plug uglies officiating in a guerrilla capacity.”

A contingent of the governor’s Metropolitans arrived to rescue the state-appointed street commissioner, but they were routed. The standoff ended only after Governor King summoned the Seventh Regiment of the National Guard and Mayor Wood agreed to be arrested. (He was immediately released.) Not until the state’s highest court ruled that the governor’s police powers exceeded the mayor’s was the city’s

Municipal force disbanded.

The outcome for ordinary New Yorkers in the city was a no-win, Strong wrote in his diary, because all the court ruling did was stipulate, for the time being, “which horde had the legal right to be supported by the public plunder.”

New Yorkers Can Blame Boss Tweed for Home Rule

In those days, the undisputed plunderer was William M. (Boss) Tweed, a multitasking city, state and federal officeholder who ruled Manhattan’s Democratic political machine in the mid-19th century.



An 1871 cartoon by Thomas Nast of Boss Tweed, who bribed enough Albany politicians to briefly shift the balance of power back to the city. Hulton Archive, via Getty Images

Many of today's restrictions on the city began as safeguards that Albany imposed against Tweed.

“Because of archaic rules designed mostly to suppress Tweed’s Tammany Hall and

other long-vanished political machines,” wrote Kevin Baker, the novelist and historian, in Harper’s this summer, “the city’s ability to alter its own rental and tax laws is largely subject to approval from Albany, with predictable results.”

For example, a tax on the wealthiest New Yorkers proposed by Mayor Bill de Blasio to fix the subways or pay for other basic public services won’t even be entertained today by the Legislature, Mr. Baker wrote.

By 1870, the balance of power had shifted briefly back toward the city. Boss Tweed had bribed enough Albany Republicans with jobs and other favors to impose a new charter that returned supremacy to City Hall, with some individual demands occasionally subject to veto by the Republican-run Senate. With his power restored, whenever he wanted state permission to plunder — doling out streetcar franchises, confiscating private property (often his own, at inflated prices) for public purposes, consolidating power — he invoked a good government demand: home rule.

It didn’t take long for The New York Times to warn Albany Republicans against succumbing to “the catchpenny cry of local politicians on the subject of ‘Home Rule.’”

“The Democrats styled themselves the ‘responsible majority,’” The Times scoffed sarcastically after the 1875 legislative session, “and chafed under the restraint of a Republican Senate which failed to appreciate a good many of their peculiar examples of ‘Home Rule.’”

Today, that rallying cry is usually invoked when the Legislature rebuffs City Hall, not the other way around.

But in 1886, Gov. John David B. Hills, a Democrat from upstate, vetoed a pay raise for New York City police captains, a move that both acknowledged the power of the state and the impractical side of said power.

Acknowledging in his veto message that the principle had been violated in the past, the governor said: “I believe in home rule, and that New York City should be governed at home rather than at Albany, especially in reference to mere questions of discretion. The amount that should be paid the police or firemen and like employees in New York City should be fixed and determined by the proper departments in that

city rather than at the Capitol.”

Twentieth-century constitutional reforms intended to clarify and even enhance home rule haven’t done much to clear things up.

Christoph Hitz

“When the present Home Rule provisions were adopted more than 50 years ago, they were heralded as ‘strengthening the governments closest to the people,’” Michael A. Cardozo, a former city corporation counsel, and Zachary W. Klinger wrote last year in *The Pace Law Review*. “Given the manner in which those provisions have been interpreted, that goal clearly has not been met.”

“Home Rule in New York in its current form,” they added, “is, at best, tenuous and, at worst, inconsequential.”

How Both Sides Game the Home Rule System

But for all the shortcomings of 20th-century state constitutional reforms, New York City’s mayor, City Council and civic groups haven’t hesitated to hide behind the limits of home rule. They’ve appealed to the Legislature when they couldn’t, or wouldn’t, get something done at home themselves.

Gaming the system has a rich history in the city. Manhattan’s street grid, for example, was an end run around a proposal reviled in the city. Early in the 19th century, municipal politicians persuaded the Legislature to empower a commission to impose the street grid that many Manhattan property owners and local voters opposed. It worked. Similarly, the unification of the city itself owes to Albany’s heavy hand.

In the 1890s, patronage-hungry Republicans in Albany sided with major New York civic groups and overrode the mayors of New York City and Brooklyn to consolidate what became the five boroughs into Greater New York.

In 1894, Albany saved City Hall itself — literally — by passing a bill banning its proposed demolition. And during the 1970s, Albany imposed fiscal oversight when the city lacked the political will to extricate itself from a fiscal crisis.

In 1978, City Council was too beholden to local dog owners to enforce New York’s pooper-scooper law. Mayor Edward I. Koch appealed to Albany.

The Legislature, which generally lacked the legal authority to single out New York City in its statutes, agreed. It imposed penalties on antisocial pet owners in cities of more than one million people (of which, in New York State, there happens to be only one).

In 1994, when Staten Island was mulling secession from New York City, Assembly Speaker Sheldon Silver played Lincoln and preserved the Union. He decided unilaterally that the Legislature would intervene to vote on creating a separate city

only if City Council first approved a so-called home rule message asking Albany to do so. Since both Mayor Rudolph W. Giuliani and Council Speaker Peter F. Vallone opposed secession, the vote never occurred.

And when Mayor Michael R. Bloomberg couldn't get the Council to let livery cabs answer hails outside Manhattan and north of Midtown, he persuaded Albany, which was less subject to yellow cab lobbying, to let him do so.

But then there are the hyperlocal issues that have no reason to be gummed up in Albany. The current range of legislation that New Yorkers need the Capital's permission for is mind-boggling. Live in the city and want a pygmy pig as a pet? How about changing the official nickname of Staten Island to the "Borough of Parks?" You'll need to wait for legislators in Albany to weigh in.

New York City also needs the state's permission to impose fees on cars entering Manhattan, regulate rents or revive the commuter tax, which Mr. Silver killed in 1999 in a cynical — and failed — plot to elect a suburban legislator. (Mr. Silver was sentenced to seven years imprisonment in July for extorting \$4 million in bribes; repealing the commuter tax costs New York City nearly \$1 billion annually.)

"I wouldn't say that the level of state control in New York is uniquely draconian," said Prof. Richard Briffault, a legislation expert at Columbia Law School. "It's just that the relationship has seemed particularly dysfunctional lately."

There was a chance to change the legal relationship last November when state residents voted on whether to overhaul the Constitution. They overwhelmingly voted no, apparently fearing that matters would only get worse.

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