

# THE ALBANY HANDSHAKE

Lulus, do-nothings, and the machinery of the state  
By Christopher Ketcham

**T**he New York State Senate, one half of the most dysfunctional legislature in the United States, was late to begin its deliberations on September 10 last year. "They're still in conference," said a sergeant at arms named Joe, a grim, red-nosed Korean War veteran whose job was to guard the gallery above the chamber, where the public is invited to enjoy the proceedings.

"Can I get in to see them?" I asked.

Joe appraised me, and I got the impression he thought I was none too bright. "Can't get in," he snapped. "Conferences are closed."

"Well, can you guys get in?" I asked, nodding at Joe's colleague, Frank (their names have been changed), who was as craggy and harrumphing as Joe. Both men had spent more than twenty years watching the legislators from their balcony. Frank shook his head no.

*Christopher Ketcham's last article for Harper's Magazine, "They Shoot Buffalo, Don't They," appeared in the June 2008 issue. He is a Nation Institute Fellow and is currently working on a book about American secessionist movements.*



"But you're sergeants at arms!" I protested.

"No one can get in," said Joe.

I looked at my watch. "Is the senate always this late?" The senators were scheduled to meet in the chamber at 2:00 P.M. It was fast approaching three.

"Only when they get together," said Joe.

"So what do they do in conference?"

The men shrugged. "Democracy. Debate. The meat. That's supposed to be our right to know," said Joe. "So we don't know."

Downstairs, outside the closed doors of the conference room, a group of thirty or so citizens, all red-shirted members of the Real Rent Reform Campaign, were yelling slogans in a screechy way that suggested they planned to storm the room and hurt somebody. *Fight fight fight, housing is a right!*, they shouted, and then, in Spanish, *Tenants united will never be divided!*

One of the protesters, a round-faced Guatemalan immigrant named Aura Mejia, who lives in Brooklyn, handed me a flyer when I started asking her questions.

The flyer listed the bills the group was hoping the senate would pass that day in support of affordable housing in New York City. Mejia said she had had the luck earlier in the day to buttonhole Pedro Espada, the Democratic senator from the Bronx who had recently taken charge as majority leader. "I asked him, in Spanish, if he was going to support us, and he said yes," she told me. "But you never know with him. He changes."

I took this as a hilarious understatement, as Espada—who won his seat after his predecessor was indicted on

charges of mail fraud—had that summer jumped ship to the Republicans in what even for that chamber was one of the most embarrassing and embittering episodes in its history. Espada’s “treason” came at a particularly inopportune moment for the Democrats. In November 2008, the Democrats had secured control of the legislature’s upper house for the first time in forty years, taking a slim 32–30 majority. It was widely expected that they would work with the Democratic majority in the assembly to pass the many reform bills that had languished under Republican leadership. Unfortunately, the Democrats proved as resistant to reform as had their counterparts.

This became a moot point when Espada switched caucuses in June. Espada defected for two reasons: first, his fellow Democrats had denied him the position of majority leader; and second, they had refused his demand for \$2.2 million in “member items” to spread around his district (including funds for a Bronx community center and health clinic where Espada serves as CEO). The Republicans, in backroom negotiations, promised the power and the money that the Democrats would not, and on June 8, Espada, who once distributed a campaign video that showed him superimposed against the figure of a wolf howling at the moon, announced that he would now vote Republican.

Meanwhile, Senator Hiram Monserrate, of Queens, a retired cop on a psychological-disability pension, also decided to ride the wave of change. In December 2008, Monserrate was arrested for allegedly smashing his girlfriend in the face with a glass. The girlfriend at first declined to press charges—apparently Monserrate tripped into her face with the glass—but the newly elected majority leader of the senate, Malcolm Smith, whose predecessor retired after being accused of taking millions of dollars in kickbacks, decided to make a show of the Democratic Party’s upstanding morals. So he cut Monserrate’s \$12,500 “lulu” (short for “in lieu of detailed itemized expenditures”), a bonus that legislators receive for chairing committees or entering the leadership. Irrate at the loss of his lulu, Monserrate joined Espada in the party switch on June 8, handing the Republicans a 32–30 ma-

jority. Then, on June 15, Monserrate decided he was in fact a Democrat, deadlocking the legislature at 31–31.

The Democrats refused to recognize the power shift and denounced the tie in the senate as “illegal and unlawful,” conveniently forgetting that their own members were key to the plot. The pundits excoriated everybody in sight, charging the legislature with “idiotic incompetence” (as opposed, presumably, to the normal incompetence), demanding righteous reform and good government, and offering the usual litany of reproach against the “clowns” in Albany.

Among America’s state legislatures, it has been said (and it is largely true) that New York’s is the least efficient in passing laws, the most profligate in its operations, the least open in rules of participation, the least deliberative, the least democratic. One can look in almost any direction in Albany and find a problem: there are the lobbyists who infest the legislature, whose relationships with lawmakers are largely undisclosed and whose spending has risen, in constant dollars, almost 500 percent since 1990; or the campaign-finance laws, more loophole than legislation, which allow single contributions to party organizations of up to \$94,200 (three times the amount permitted to national parties funding members of the U.S. Congress); or the tortured shapes of the gerrymandered districts (one has been described as “Abraham Lincoln Riding a Vacuum Cleaner,” another as “Bug Splattered on Windshield”) that guarantee one-party fiefdoms for incumbents; or the fact that until recently a lawmaker could be drunk at a bar down the block and have his vote recorded (“empty-seat votes,” as they are known, are always recorded as *ayes*); or that the majority leader can unilaterally suspend action on any bill, at any time; or that in 2007, 89 percent of legislation passed with no debate; or that transcripts of the few debates that do occur can be accessed in nearly all cases only via the Freedom of Information Law; or that the Legislative Ethics Commission, empowered to oversee the conduct of its own membership, has in its twenty-three years of operation brought not a single case against a legislator.

New Yorkers, for their part, cared about the legislative crisis only enough to complain about it: in an August 2009 poll, a full 72 percent disapproved of how the legislature was handling its job and 49 percent felt that every single senator should be removed from office.

**T**he New York State legislature was in a similar do-nothing deadlock in January 1882 when a twenty-three-year-old assemblyman named Theodore Roosevelt arrived in Albany with the stated intention of cleaning up what the *New York Times* called the “most corrupt Assembly since the days of Boss Tweed.”<sup>1</sup> When Roosevelt was elected, both parties were dominated by venerable machines, the Democrats under Tammany, the Republicans under the banner of the Black Horse Cavalry. Both machines were led by big-necked Irish bosses who dictated how the party membership voted, physically assaulted legislators they didn’t like, and presided over a body of lawmakers of which an estimated one third openly proclaimed that their votes could be purchased. The spirit of Albany, as an observer visiting from Britain wrote in the 1880s, was one of “waste, speculation, and undisguised and unblushing robbery.” Its grandest symbol was the boondoggle of the unfinished capitol building, which would end up costing more to build than the U.S. Capitol in Washington, D.C., and take longer to complete than the Great Pyramid of Cheops.

Roosevelt carried with him to Albany, as “talismans against evil,” a series of letters his deceased father, a failed reformer from the moneyed elite in New York City, had written years earlier. “I feel sorry for the country,” Theodore Sr. wrote. “We cannot stand so corrupt a government for any great length of time.” Roosevelt would have to stand it for at least his first month in office, while the Tammany Democrats blocked the appointment of a new speaker for the 1882 session, demand-

<sup>1</sup> Tweed, the legendary Tammany Hall chieftain who was, until his arrest and indictment in 1871, a member of the state senate, had himself complained that in Albany it was “impossible to do anything . . . without paying for it.”

ing that several of them be made heads of powerful committees, which would have given them easier access to bribes. "Not even one of them can string three intelligible sentences together to save his neck," Roosevelt wrote of the hacks who had shut down the government. With no leader chosen for the assembly and no committee posts assigned, no bills could be sponsored, no laws voted on, and Roosevelt's official tasks consisted of showing up for a shadow roll-call and going home to his hotel, where he spent his nights mostly alone, despairing that the whole affair was "stupid and monotonous."

When the deadlock finally broke, Roosevelt charged into battle, managing even to punch in the mouth a fellow assemblyman who insulted his choice of clothing.<sup>2</sup> He was particularly dismayed at the brazen way the party bosses blackmailed corporations with the threat of regulatory reform. At one point he brandished a broken-off chair leg (for "sedative effect") in order to move onto the floor a bill that had been blocked by his opponents, nearly sparking a riot. "He was a perfect nuisance," one colleague later said.

But Roosevelt was for the most part ineffective. "The things I wanted to do," he later said, "I was powerless to accomplish." He killed scores of bills but passed few, the chief exception being civil-service reform, which was intended to smash the spoils system. (The lawmakers soon found loopholes.) He finally quit in disgust in 1884, shortly after the beginning of his second term. "Legislative life has temptations enough to make it unadvisable for any weak man, whether young or old, to enter it," he wrote that year. "A great many men deteriorate very much morally when they go to Albany."

Fifteen years later, when he returned to the city as governor, rocketed to office by his exploits in the Spanish-American War, he found that little had changed. The bosses still dictated the language of the laws, blackmailed corporations, controlled campaign funds, led loyal flocks that voted at their bidding, and "to all intents and

purposes," as Roosevelt wrote, formed "a majority of the legislature." As for the voters of New York State, who had elected him as a war hero and not as a reformer, "They on the whole tolerated, and indeed approved of, the machine."

**T**he 2009 deadlock lasted thirty-one days. It ended on July 9, when the Democrats caved to Pedro Espada's demands and named him majority leader. "It was never about power, but empowerment," Espada said at a news conference, leaving it to the reporters in attendance to figure out what he meant. Malcolm Smith, the Queens Democrat and president pro tempore of the senate, noted that "at the end of the day Democrats always come together." (By September, several Democratic legislators would denounce Espada as a "thug" and a "crook" who "should be in jail.")

Having wasted the final month of legislation and then left for the summer holidays, the senate on September 10 had much unfinished business. This included the kinds of matters that face every state legislature: an incomplete budget in a year of budget crises; a deficit approaching \$3 billion; gay marriage, gun control, taxes. But the most pressing issue was not how the state would be run but rather how the legislature would run itself. A series of ethics bills, so-called, had been proposed, and it was hoped that their passage would provide guidance to those lawmakers in Albany who had perhaps deteriorated morally.

There were certainly enough of them. Over the previous decade, fourteen legislators had left office due to felony crimes, misconduct, and ethical improprieties, five of them in 2008 alone. The Republican Joseph Bruno, senate majority leader for fourteen years, resigned in 2008 amid suspicion that he had accepted \$3.2 million from companies doing business with the state. That same year, Assemblyman Tony Seminerio, a Democrat from Queens who had spent thirty years in office, was caught taking \$1 million in secret payments from local hospitals in exchange for promises of inside access to the legislative process. Another

Queens Democrat, Brian McLaughlin, a labor leader and assemblyman, pleaded guilty to racketeering in 2008 for his role in the embezzlement of more than \$2 million in state and union funds. Assemblywomen Gloria Davis and Diane Gordon, both New York City Democrats, were convicted in 2003 and 2008, respectively, of taking bribes. Meanwhile, the governor of New York, Eliot Spitzer, resigned after it was revealed he had been having sex with a prostitute. The man who replaced Spitzer, David Paterson, was forced to drop his bid for reelection in February when it was alleged that he had intervened in a domestic-assault case involving one of his aides. That same month, Hiram Monserrate, finally convicted in a Queens court of assaulting his girlfriend, became the first state lawmaker since 1920 to be expelled from office by the vote of his fellow legislators.

Perhaps the most energized proponent of ethics reform was Blair Horner, a lobbyist for the New York Public Interest Research Group (NYPIRG), who sat with me in the gallery. He had been rounding up votes outside the chamber and now was having a rest. Horner started with NYPIRG in 1979 as a canvasser, and since 1984 had worked in Albany pushing the group's legislative agenda as a lobbyist. "It's trickier than I thought today," he told me as we watched the milling senators. "These ethics bills are brutal. One of the Democrats, well, his dad died, and he's at the wake, and we needed him. It may come down to a very short list of Republicans willing to vote for ethics reform."

Officially, the senate Democratic leadership consisted of Pedro Espada, but after his defection no one in the party trusted him. Unofficially, the Democrats had stripped the majority leader of any real power. Senator John L. Sampson, a veteran pol from Brooklyn, would do the heavy lifting on the floor, along with Senate President Smith. Espada, for his part, had other things to worry about. He was under investigation by the Bronx district attorney for violating New York electoral residency laws—he lived in a \$700,000 house in Westchester—

<sup>2</sup> Roosevelt often dressed in a satin waistcoat, silken top hat, and monocle, its chain slung over his ear. His fellow legislators took to calling him "Punkin-Lily," "Jane-Dandy," or, simply, "Weakling."



and the attorney general's office was looking into allegations that he had used taxpayer money, funneled through the nonprofit health clinic he ran, to fund his campaigns. He sat alone at his desk, speaking to no one, motionless, his eyes half-closed. Such was the public face of New York's Democratic leadership.

The hour grew late—almost 5:00 P.M.—and I expected the room to move quickly to action. But this was September 10, the day before the eighth anniversary of the 9/11 attacks, and the session opened instead with solemn commemorations, the chamber rising and falling several times in honor of the dead. Teddy Kennedy was also eulogized at length, his biography detailed via the senate journal clerk, who, tall and owl-eyed at his podium, mumbled along in a fine baritone, noting, “whereas the heartfelt condolences of this legislative body are offered,” “whereas Ted Kennedy was a right end for the [Harvard] football team,” and “therefore be it resolved” that the senate felt bad, until the resolution was carried in a voice vote by many more mumbings interpreted graciously as *ayes*. Sometime between the sixth and seventh resolutions, Horner slipped away to wrestle with the senators, most of whom had drifted from the floor. I opted to stick it out in the gallery, and ended up inspecting the ceiling, which was five stories high and made of coffered golden oak, with chandeliers the size of battleship anchors. The chamber was altogether a marvelous construction. The walls were built of picture-window marble and layered with 22-karat gold leaf. The windows were of double stained glass and faced the setting sun. Even the galleries, of which there were two, had Siena-marble balustrades and arches of Scottish granite. The senators sat at desks of Caribbean mahogany and in hundred-year-old reclining chairs of hardwood and Spanish leather. Under the desks there were neat stacks of proud-looking hardcover volumes, each one containing the thousands of pages of bills that were required by law to “age” for three days at each senator's desk before they could be voted on.

This got old after a while, and finally

I decided to find Frank and Joe and ask when they thought the senators would get started. Joe rolled his eyes.

“Your magazine sent you here as punishment,” he said. “You’re not gonna learn anything.” I commented on how lovely the room was. “You ever see this senate room empty?” asked Joe. “Without all that paper crap and all these people? This is the most beautiful senate chamber in the country when it’s empty.”

**I**n 1918, New York governor-elect Al Smith ordered a young civil-service reformer named Robert Moses to draft a blueprint for streamlining the New York government. The state's budget and operations were at the time overseen almost entirely by a legislature that labored under a constitution crafted by founders wary of centralized power. There were 187 state bureaus, boards, departments, committees, and commissions, many of them accountable to dozens of lawmakers (or to none), with taxation carried out by seven different agencies, and a budget so diffuse and chaotic that not even the leadership knew how much revenue they had appropriated.

Moses's plan for the state neutered the legislature, drastically reducing its control over the budget process. The governor would now propose a top-down “executive budget,” with the legislature weighing in to temper the most grandiose of his plans. The sprawling state agencies would be consolidated into sixteen entities, with their chiefs appointed by the governor and directly accountable to him. In effect, Moses sought to make the governor the most powerful elected official in the state. “The only serious argument advanced against [the] proposed reorganization,” wrote Moses at the time, “is that it makes the Governor a czar.” Between 1919 and 1928, in a series of viciously contested bills and constitutional amendments, Moses almost single-handedly achieved the reorganization of New York, often by massaging the language of the new laws so that the legislators in Albany had no idea of the powers they were ceding. (Moses's biographer, Robert Caro, noted that

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Moses was soon known as the "most hated man in Albany.")

Al Smith did not hesitate to exploit his new powers, ramming through the legislature progressive social-welfare policies, instituting the nation's first large-scale public-housing system, reforming the conditions on factory floors, passing child-labor laws, increasing teachers' salaries, and expanding the state hospital system. Moses's new government structure, with its centralized bureaucracy and strong executive, became the model for states nationwide. Walter Lippmann pronounced it "one of the greatest achievements in modern American politics." Franklin Roosevelt would later credit Smith as the forbear of much of the progressive platform enshrined in the New Deal.

The concession of such power to the executive branch, however, has not always been a good thing for New York's citizens. Consider, for example, Empire State Plaza, which was budgeted at \$250 million in 1962 by Governor Nelson Rockefeller (designed from notes he drew on the back of a postcard while on a plane). The plaza eventually cost nearly \$2 billion and displaced several thousand residents. Today it remains as it was conceived, a Brutalist complex of towers of marble and glass, set in vast stretches of concrete and reflecting pools, punctuated by the layer-cake Cultural Education Center and a helmet-shaped theater called the Egg. The plaza is usually empty, even at the height of the legislative season, as lawmakers and bureaucrats travel the complex through underground tunnels. Art critic Robert Hughes, duly impressed, wrote that Empire State Plaza "makes Albert Speer's projects seem delicate." Hughes pronounced it one of the world's great monuments to the centralization of state power.

The senators were finally called to order at 6:35 p.m. I noticed that the Real Rent Reform people had vanished from the gallery. Only the lobbyists held fast, along with a few cameramen employed by the news channels and the senate media office, their lenses aimed at no particular senator.

Then, at 6:39 p.m., just when I thought things would get moving, a

good number of senators stood up and walked out. They had adjourned to the bipartisan Senate Committee on Rules, to "report" what bills were to be voted on that evening. Joe, who was now sitting and reading a newspaper, suggested I go watch, as it was an open meeting. So I raced downstairs to find the room packed with more lobbyists, Blair Horner among them.

There are seventy standing committees in the New York State legislature. There are committees on budget, banking, housing, transportation, health, estates, and taxation, as well as on "racing and wagering" and "alcoholism"; there are subcommittees on child product safety and "Autism Retention" and "Banking in Underserved Communities" and "Students with Special Needs" and "Women Veterans." These bureaucratic entities are responsible for overseeing the effectiveness of the agencies that spend most of the \$131 billion state budget. So the committees could, if they wanted, thoroughly review how the Department of Health spends its \$44 billion on the state's Medicare and Medicaid recipients and on the facilities that deliver the care. They could examine just how much education the Department of Education provides with its \$31.4 billion. They could exercise oversight of the 1,098 "public authorities"—the Thruway Authority that runs the highways, the Metropolitan Transit Authority that runs the subways in New York City—which were created by Robert Moses specifically to spend money without public review.

But they don't do this. To begin to understand how Albany functions, or, rather, how the dysfunction in the legislature always serves a higher purpose, one must have a clear picture of the "Albany Handshake." This expression comes courtesy of Eric Lane, a professor at Hofstra Law School who spent six years as state-senate counsel to the Democrats in the 1980s and who, like Roosevelt (like a lot of people, it turns out), quit in disgust. Lane calls the handshake an integral part of "the political-cultural heritage of Albany."

Here's how it works. The majority membership of each party in New York elects a leader, as in most legislative bodies in the United States. The speaker runs the assembly, and in the senate, the majority leader and the president

direct the majority. Nothing unusual in that. But in Albany the leadership is invested with such extraordinary powers as to render the rank-and-file members largely irrelevant. For example, in almost every other U.S. state or federal legislature, committees do the hard labor of lawmaking. They mark up the bills, craft amendments, hold hearings, call for expert testimony, and provide a living record of law as it unfolds—the thinking that pushes it forward, the dissent that mitigates it. In Albany, the committees do none of this; often members don't even show up to committee meetings. The one committee with real power is the Rules Committee, which in the heated final weeks of the legislative session serves as the gatekeeper between all legislation and the floor. The leadership determines when the Rules Committee meets, frequently without notifying its members. The leadership determines what bills the committee discusses. When other committees do in fact attempt to push legislation, the Rules Committee can summarily shut them down. "Forget about campaign finance, forget about the lobbyists, forget about gerrymandering, forget about corruption. The fundamental dysfunction in Albany," said Lane, "is that no member is a participant other than through the leadership. There is no real representation because the membership has no real power."

Why do the members accept this situation? "Because it's easy to not go to work," Lane told me. "It's easy to say, 'You, the leadership, deal with things here, and I'll go back to my district as long as you give me a few things to give to the district.' For much of the year, their commitment to Albany is just two full days of the week. So they're outta there! The work ethic of the place is that you can go home, but someone has to do the work of government."

Because the leadership dictates which members get the most money to bring back to their districts and which members get the most money for electioneering, there is an incentive not to make a fuss. It's the old boss model, with the chief improvement being that the bosses no longer physically attack the membership.

Another benefit of this arrangement

is that if only those bills the leadership supports can possibly pass, members are free to propose legislation they know never will. In so doing, they can at least appear to be interested in satisfying the policy demands of their constituents, even if they can't or don't want to. This surfeit of hopeless legislation clogs the system: New York State lawmakers during 2008 proposed a record 18,000 bills—7,000 more than the U.S. Congress and more than any other state legislature. Only 9 percent passed. The laziness, the corruption, the shameless posturing, the unchecked power of the leadership—that's the deal in Albany; that's the handshake.

As a result, the process of lawmaking in Albany is, in its own way, quite functional. Three men—the senate leader, the assembly leader, and the governor—meet in secret to determine the shape of all legislation. The leaders then go to the membership, meeting in a secret party conference, the records of which are never revealed (whether there even *are* records is unknown). The legislators almost always emerge from the conference to vote in party lockstep, the scene on the floor resembling, as Eric Lane put it, "a meeting of the Supreme Soviet." The Democrats vote one way, the Republicans the other, with the majority party winning just about every time.

The governor occasionally intervenes to offer a "message of necessity" that demands legislation be passed with all due haste, abrogating the law that bills must "age" for three days before they are put to a vote. Bills the leadership wants passed still get passed, mind you, only now with no review by the membership. During an overnight session last June, for example, the assembly passed 202 bills—about one every 3.9 minutes—many of them introduced that day. In March 2009, the state budget was negotiated by the three men in the legendary backroom, presented to the membership at a length of 3,000 pages on March 30, approved by the assembly one day later, and then by the senate, with few changes, four days after that. Not a single committee had reviewed it.

After the ethics bills were finally reported out to the floor at 7:00 P.M., the senators erupted into another lull. I wandered outside to smoke a

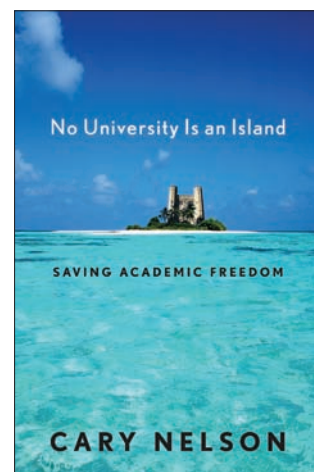
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cigarette and stare at Empire State Plaza, which houses in its towers the executive offices of most of the state agencies. The plaza was empty except for a jogger running a long circuit across its stone expanse. In the distance there was a great roar and hubbub, some sort of street protest, but it had nothing to do with the legislature.

One of the ironies of the June deadlock and the brief Republican takeover was that the instability and uncertainty resulted in some of the most far-reaching reforms in the senate in forty years. This was not the stated intention of those who pulled off the so-called coup; certainly Espada and Monserrate made no pretense of a high-minded rationale for their defections. The Republicans, however, needed something to justify their joining with the likes of Espada. So for the single week the Republicans held power, they actually passed more “reform” rules than the Democrats had in the six months they were in control. The reforms, even in the context of Albany, were hardly earth-shattering: senate-committee attendance records would now be made public, committee hearings would be recorded and webcast, the majority leader would be term-limited to eight years—things that sound like reform only in Albany.

At 7:25 P.M., the lawmakers attempted to debate the ethics bills. Almost no Republicans were in attendance. There were not many Democrats, either, and most did not speak, many of them sinking deep into their seats, playing with BlackBerries. As if to satisfy a caricature, one of them doodled on a pad. Those Democrats who did stand up offered wonderfully enthusiastic calls to out-reform the Republicans, “to show the people of the state of New York that we take our jobs seriously,” to bring “real enforcement, real transparency,” to have “the faith, the trust, and the confidence of the people.” None of it mattered, because none of it involved debate on the system that produced the ethics bills. True to custom, there had been no markup, no committee hearings, no reports from the committees.

Tocqueville, in *Democracy in America*, warned about the danger of an

increasingly privatized citizen, whom he described as “a stranger to the fate of all the rest; his children and his private friends constitute to him the whole of mankind. As for the rest of his fellow citizens, he is close to them, but he does not see them; he touches them, but he does not feel them.” In Albany, there is the privatized legislator. There is Pedro Espada, who won office in 2008 after a Democratic primary—essentially the election itself—that garnered the interest of just 7 percent of district voters. One third of all current New York State legislators took office in special elections for which voter turnout as low as 2 or 3 percent was typical. The legislators can only hope the number will go to zero.

All this made me think of a half-serious idea I had been turning over in my head while in Albany: namely, that the legislature, being a do-nothing affair of the mostly unelected, could be reformed only through its abolition. The representatives don’t represent, and they often pass wasteful laws, and they tend to pass their budget late and without really reading it, and they even on occasion shut down entirely—and yet the state’s services persist. The stop signs stay up, the highways get paved, the subways keep moving, the schools and universities stay open, the prisons stay locked, the police keep arresting, the public housing keeps on housing its millions of people, the Medicare and Medicaid disbursements keep on getting disbursed. It is the bureaucracies at Empire State Plaza that really run the state, and it is their enforcers with whom the citizen interacts: the toll collector on the highway, the state trooper on the road, the judge in the traffic court, the tax assessor in the municipal building, the teacher in the public school, the clerk at the welfare office, the game warden in the forest. The state couldn’t be any less efficient without the legislature. And no need for concentration camps or Stasi files—the people would go happily along with the program.

In the final pages of *Democracy in America*, Tocqueville imagined the rise of a kind of democratic despotism in which all men were said to be equal and all were free to go about their business, but none were citizens. In this future, a government “seeks, on

the contrary, to keep [people] in perpetual childhood . . . it provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, regulates the descent of property, and subdivides their inheritances . . . such a power does not destroy, but it prevents existence; it does not tyrannize, but it compresses, enervates, extinguishes, and stupefies a people, till each nation is reduced to nothing better than a flock of timid and industrious animals, of which the government is the shepherd.” Tocqueville, it seemed to me, must have spent time in Albany.

The ethics reform bill failed at 8:35 P.M. The vote was 31 to 29 in favor—one shy of the 32-vote majority needed for passage. It would have passed, of course, if the key missing Democratic senator with the dead dad had opted to skip the wake. Around 10:00 that evening, with not a single bill made law, Blair Horner reappeared in the gallery. “You’re 0 for 1,” I said. He smiled, told me he was feeling old—“Decaying,” he said—and then predicted that a “green jobs” bill NYPIRG had lobbied for would surely pass. The bill would put \$122 million in carbon-emission credits toward funding construction jobs retrofitting homes. Just about everyone on the floor agreed it was a “win-win,” he said, though because there was no committee report, the curious voter who reads the record will never know exactly why the legislators thought so. The green-jobs bill passed that night by forty-four votes, a surprise bipartisan effort. There was no debate, only statements of support. Everything had been worked out in conference.

The senators labored until 1:00 A.M., but I left just after midnight, walking across the plaza to my car. I drove west out of Albany on Interstate 88, a highway for which state funding was secured in the 1970s by a long-gone senate leader who hated driving home to Binghamton on the two-laner that the wide tarmac has replaced. The road got me out of Albany faster than any other route, which I concluded was what a smart New York lawmaker would want for the citizens. ■