PANGLOSS WAS RIGHT: REFORMING CONGRESS IS USELESS, EXPENSIVE, OR HARMFUL

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"'Tis demonstrated that things cannot be otherwise; for, since every-thing is made for an end, everything is necessarily for the best end . . . those who have asserted that all is well talk nonsense; they ought to have said that all is for the best."[1]

"If this is the best of all possible worlds, what are the others?"[2]

Candide: *"Oh, Pangloss! This is an abomination that you had not guessed; this is too much. In the end I shall have to renounce opti-mism." (Candide, on encountering the crippled slave of the merchant Mr. Vanderdendur).*

Cacambo: *"What is optimism?"*

Candide: *"Alas! It is the mania of maintaining everything is well when we are wretched."[3]*

I. INTRODUCTION

Dr. Pangloss is usually seen as a fool. In fact, Pangloss had it right; he just needed a better press agent. Candide was the fool. He misinterpreted Pangloss, adopting a doctrine of "optimism" (the "mania of maintaining everything is well when we are wretched").[4] Most reformers are optimists, they appear to believe that things are so bad that meddling can't worsen the situation. I reject this view, and return to the wisdom of Pangloss.

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1. FRANCOIS MARIE AROUET DE VOLTAIRE, CANDIDE 14 (1930) (Dr. Pangloss teaching metaphysico-theologico-cosmolo-nigology).

2. *Id.* at 33 (Candide on being flogged, and seeing Dr. Pangloss hanged by the Inquisi-tion).

3. *Id.* at 85.

4. *Id.*

Though putatively a metaphysician, Pangloss was also clearly a scientist who was well ahead of this time. He advances an *equilibrium* theory by stating that: "things cannot be otherwise."[5] Further, "[t]hose who have asserted that all is well talk nonsense."[6] While things may be pretty bad, they still are as good as they can be. Candide, in his searing epiphany, shrieks to Pangloss's ghost: "If *this* is the best of all possible worlds, what are the *OTHERS*?"[7]

These other worlds are the worse worlds that come from attempts to use "reforms" to make things better. Ludwig von Mises is another scientist, who, like Pangloss, recognized that there are both laws of nature and politics which constrain what can be accomplished:

> Scarcely anyone interests himself in social problems without being led to do so by the desire to see reforms enacted. In almost all cases, before anyone begins to study the science, he has already decided on definite reforms that he wants to put through. Only a few have the strength to accept the knowledge that these reforms are impracticable and to draw all the inferences from it. Most men endure the sacrifice of their intellect more easily than the sacrifice of their daydreams. They cannot bear that their utopias should run aground on the unalterable necessities of human existence. What they yearn for is another reality different from the one given in this world.[8]

Modern public choice theory would deny that all is well because government may be dominated by interest groups,[9] and because legislative rules may fail to solve problems of cycling and manipulation by those who control the agenda.[10] Nonetheless, all may be for the best. I argue below that, with very few exceptions, reforms of Congress are (a) useless, (b) too expensive, or (c) harmful.

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5. *Id.* at 14.

6. *Id.*

7. *Id.* at 33.

8. LUDWIG VON MISES, EPISTEMOLOGICAL PROBLEMS OF ECONOMICS 200 (George Reisman trans., 1960).

9. *See* William C. Mitchell & Michael C. Munger, *Economic Models of Interest Groups: An Introductory Survey* 35 AM. J. POL. SCI. 512, 534 (1991). *See generally* ROBERT MCCORMICK & ROBERT TOLLISON, POLITICIANS, LEGISLATORS, AND THE ECONOMY (1981).

10. *See* Thomas Romer & Howard Rosenthal, *Bureaucrats Versus Voters: On the Political Economy of Resource Allocation by Direct Democracy*, 93 Q. J. ECON. 563 (1979); DENNIS C. MUELLER, PUBLIC CHOICE II: A REVISED EDITION OF PUBLIC CHOICE 173-75 (1989).

II. USELESS

Attempts to reform Congress, or any political institution, are useless. Obviously, this view is too extreme, but I lead with it to point out the futility of "Candide-ism," or naïve optimism about reform. To proceed, we will need to define a technical term: *equilibrium.* Equilibrium is a situation with no inherent tendency to change.[11] One possible form of equilibrium is illustrated in Figure 1. This circle represents a policy that is in equilibrium because no forces are acting on it. Now, let us test the wisdom of Pangloss: Can we reform, and make things better? Or is this the best of all *possible* (i.e., technically and politically feasible) worlds?

Figure 1: Equilibrium Is Policy At Rest
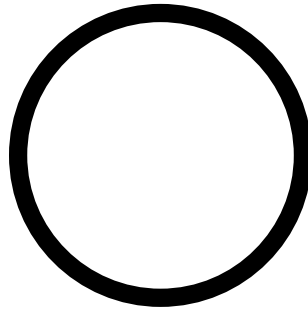
The first step would be for the political forces in favor of reform to modify the policy, as in Figure 2. Once reformers have begun the reform process, however, economic and political interests advantaged by the status quo are awakened,[12] as in Figure 3. It is irrelevant whether such interests were instrumental in writing the legislation (as in the example of the Emergency Petroleum Allocation Act of 1973[13]), or if they have simply come to capitalize its effects (as in the

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11. *See* MELVIN J. HINICH & MICHAEL C. MUNGER, ANALYTICAL POLITICS 52 (1997).

12. *See generally* ARTHUR F. BENTLEY, THE PROCESS OF GOVERNMENT (1908) (who conceived the idea of equilibrium in policy processes as a balance of competing forces); DAVID B. TRUMAN, THE GOVERNMENTAL PROCESS (1951) (adding a conception of responses to "disturbances," or threats to modify the status quo).

13. Pub. L. No. 93-159, § 4(C)(1), 87 Stat. 627 (1973) (creating categories of petroleum based on whether it was "old" or "new"; ostensibly designed to control inflation, the Act advantaged a number of powerful oil producers, and effectively cartelized the industry); *See* Judith C. Greenburg, *Legitimating Administrative Action: The Experience of the Federal Energy Office, 1974,* 51 U. CIN. L. REV. 735, 743-44 (1982).

case of a subsidy or incentive program).[14] Either way, organized interests will spring up like "Minute Men," in the Revolutionary War, who were capable of mobilizing very quickly in response to a threat.[15]

Figure 2: Reform Introduces A Disturbance
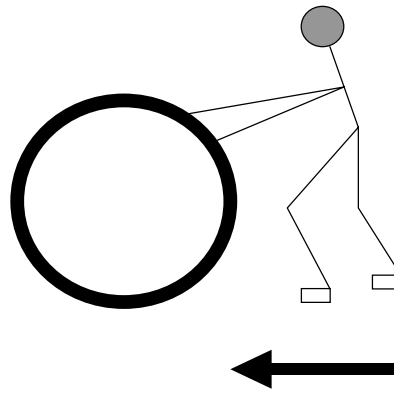
Figure 3: Interest Groups Are Awakened By The Disturbance

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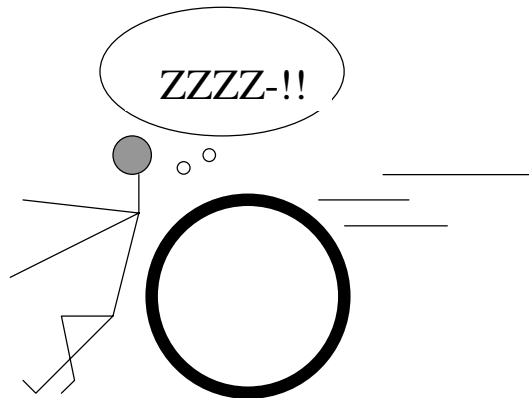
14. *See* Gordon Tullock, *The Welfare Costs of Tariffs, Monopolies and Theft*, 5 W. ECON. J. 224, 228 (1967); Anne O. Krueger, *The Political Economy of the Rent-Seeking Society,* 64 AM. ECON. REV. 291, 302 (1974).

15. *See generally* BENTLEY, *supra* note 12; *see also* TRUMAN, *supra* note 12, at 510-11; TERRY M. MOE, THE ORGANIZATION OF INTERESTS: INCENTIVES AND THE INTERNAL DYNAMICS OF POLITICAL INTEREST GROUPS 36 (1980) (introducing the concept of entrepreneurship into the debate about equilibrium in policy processes).

Now we have opposing forces, as in Figure 4: the reformers push one way, and interest groups respond by trying to maintain the status quo.

Figure 4: Equilibrium

INTEREST GROUPS   REFORMERS
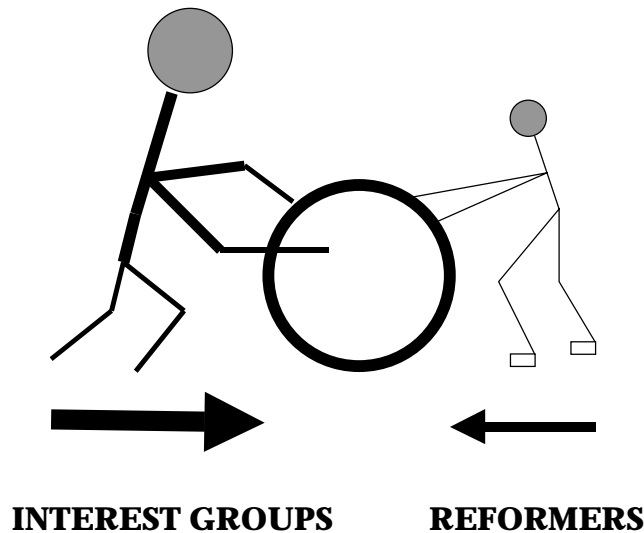
The questions become obvious: 1) which force is stronger and 2) how hard do interest groups have to resist to withstand the reform effort? The answers are equally obvious: generally, *interest groups can push as hard as they have to.* This is the tricky part, because this is a whole different notion of equilibrium.

Recall from Figure 1 that equilibrium might just be a policy no one wants to change. In that case, equilibrium results from universal satisfaction. But public choice theorists tell us that such a situation is rare.[16] Equilibrium is much more likely to be found in a situation like Figure 4, where forces for reform and for maintaining the status quo exactly balance.[17] Since interest groups can mobilize as much force as they need to combat reform (remember, they are like Minute Men), even stronger reform efforts may result in no net policy change. That doesn't mean that the reformers are incompetent; it just means that

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16. *See* JAMES M. BUCHANAN & GORDON TULLOCK, THE CALCULUS OF CONSENT 4 (1962).

17. *See* Sam Peltzman, *Toward a More General Theory of Regulation*, 19 J.L. & ECON. 211, 214 (1976).

interest groups can be as strong as they need to be to balance reform efforts.

Organized interests do not always have their way. Nevertheless, the status quo is privileged because the U.S. Congress affords interest groups so many "veto points"[18] (substantive committees, the House Rules Committee, the office of the Speaker, and the conference committees). Under these conditions it is almost impossible to reform either regulatory policy or an agency against determined opposition by organized interests.

Those who object to these assertions may wonder what role voters play. After all, elections ultimately drive the system by governing the selection and continuation in office of members of Congress. What happens when voters are in favor of reform? The answer has two parts. First, voters are rarely in favor, or even aware, of reform efforts.[19] Second, public choice theorists have incorporated voter preferences into equilibrium models of the policy process.[20] Voters may matter, but they don't always help the reformer.

Consider Figure 5. Here, we see that reformers may have an advantage, since there is some support by voters for the reform. Still, this hardly ensures the success of reform: the angle α describes the level of voter information about, and support for, the reform. Voter preferences play a role in the policy process by determining how easy or how difficult it will be for reformers to effect change. Thus, according to public choice theorists such as Danzau and Munger,[21] voter information and preference affects politics in much the same way that Coase showed "transaction costs" affecting market outcomes.[22] That is, just as transaction costs change the nature of market processes by ruling out exchanges that would otherwise take place,

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18. *See* GARY W. COX & MATHEW D. MCCUBBINS, LEGISLATIVE LEVIATHAN: PARTY GOVERNMENT IN THE HOUSE 256 (1996).

19. *See* ANGUS CAMPBELL ET AL., THE AMERICAN VOTER 171-72 (1960); JOHN ZALLER, THE NATURE AND ORIGINS OF MASS OPINION 40-52 (1991).

20. *See* Gary Becker, *A Theory of Competition Among Pressure Groups for Political Influence*, 98 Q. J. ECON. 371, 374 (1983); Arthur T. Denzau & Michael C. Munger, *Legislators and Interest Groups: How Unorganized Interests Get Represented*, 80 AM. POL. SCI. REV. 89, 92-94 (1986); David Austen-Smith, *Interest Groups, Campaign Contributions, and Probabilistic Voting*, 54 PUB. CHOICE 123, 126 (1987); David P. Baron, *Service-Induced Campaign Contributions and the Electoral Equilibrium*, 104 Q. J. ECON. 45, 50-53 (1989); James M. Snyder, *Campaign Contributions as Investments: The U.S. House of Representatives, 1980-1986*, 98 J. POL. ECON. 1195, 1197 (1990); Melvin J. Hinich & Michael C. Munger, IDEOLOGY AND THE THEORY OF POLITICAL CHOICE 132-34 (1994).

21. *See* Denzau & Munger, *supra* note 20, at 101.

22. *See generally* Ronald H. Coase, *The Problem of Social Cost*, 3 J. L. & ECON. 1 (1960).

voter preferences can thwart efforts by interest groups or by reform-ers. Further, a reform that would benefit voters, if they knew about it, may receive only tepid support, regardless of the zeal of the would-be reformer. On the other hand, if α is large enough, reform would never have been necessary in the first place![23] Analogous to the Coase theorem, policy will come out the same, whether reformers are active are not.

Figure 5: Information in Politics Plays The Role Of Transaction Costs in Economics

(Pigovian Policy Still Won't Work!)
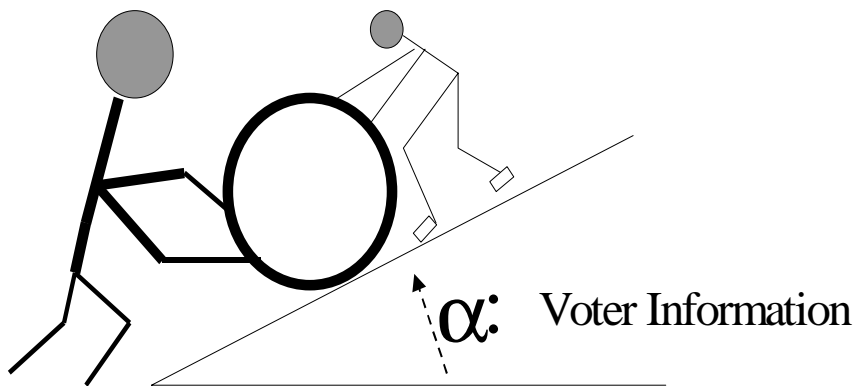
More simply, Denzau and Munger argue that voters generally get what they want, provided they know what they want.[24] Informa-tion campaigns on the part of public interest groups may be more likely to change policy than "reforms" at the elite level, because re-forms can be resisted by interest groups. Voters, however, don't pay much attention to information campaigns, unless some event (generally beyond the control of advocates) sparks widespread inter-est in the subject.[25] Voters can't help on reforms that matter.

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23. *See* Denzau & Munger, *supra* note 20, at 101.

24. *See id.*

25. *See* ZALLER, *supra* note 19.

III. TOO EXPENSIVE

Many economists have argued persuasively that the tax system that imposes the least deadweight loss is . . . whatever tax system we happen to have![26] The reason is that economic agents adjust their activities and rewrite contracts to optimize given the tax system that is currently in place. Changing the tax system in any way imposes large costs, costs that will almost certainly swamp the positive long term effects of "reform," no matter how well intentioned.[27]

This argument is equally persuasive for the reform of congressional institutions, only more so. The potential costs of reform are so large that they may not be measurable.

Consider three specific instances:

PRINCIPLE 1: "An old tax is a good tax."[28] Old policies are understood, their deadweight losses capitalized. These losses do not matter at the margin once contracts account for them. Interest groups, citizens, and consumers develop expectations under a given policy regime and gauge tax rates and regulatory costs in making investment decisions. Even if reforms "improve" welfare in a static sense of approaching optimality, constant fiddling diffuses expectations.[29] In short, predictable nonoptimality can easily be better for a society than widely varying, unpredictable reform efforts chasing optimal institutional arrangements.

Regarding the "good tax is an old tax" phenomenon, Buchanan points out:

> In the most general terms, the appropriate analogue is the physical law of inertia. It is easier to continue a flow once started than it is to start it in the first place. All that is necessary for this point to be accepted as relevant for an individual decision calculus is some acknowledgement of a temporal sequence of choices.[30]

So the burden of the reformer has to be more than just static improvement. Reform has to be a permanent improvement, with no

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26. *See generally* GEOFFREY BRENNAN & JAMES BUCHANAN, THE POWER TO TAX: ANALYTICAL FOUNDATIONS OF A FISCAL CONSTITUTION (1980).

27. *See* Gordon Tullock, *The Transitional Gains Trap*, 6 BELL J. ECON., 671, 671 (1974); Robert J. Barro, *Output Effects of Government Purchases* 89 J. POL. ECON. 1086, 1095-96 (1981).

28. JAMES M. BUCHANAN, PUBLIC FINANCE IN DEMOCRATIC PROCESS: FISCAL INSTITUTIONS AND INDIVIDUAL CHOICE 58 (1967).

29. *See generally* BRENNAN & BUCHANAN, *supra* note 26.

30. BUCHANAN, *supra* note 28, at 60.

further action required. Otherwise, it is far better to maintain the current policies. Since reformers rarely have this kind of foresight, and think only of short term improvements, most reforms end up being fantastically expensive.[31]

PRINCIPLE 2: The "transitional gains trap."[32] The government can't even *give* anything away. Subsidies for an asset result in that asset being overvalued, compared to its market price. Costs are bid up, and owners end up making a normal return, just as they did before the "reform."[33] Only owners at the time of the policy change get any benefits, and even *that* gain is realized only if the policy is unexpected.[34] All future owners get nothing.

But if the policy is *ever changed back*, all owners (those who gained, and those who didn't) lose large amounts of wealth.[35] Consequently, reforms designed to help a few people rarely accomplish that goal, and end up costing everyone. Ultimately, the costs last forever, because (by principle 1, above), it is cheaper to continue the bad policy than switch to the good one. It would be better still never to implement the reform in the first place, of course, but tell that to earnest young Candide!

PRINCIPLE 3: "Cost illusion."[36] Costs of reform are analogous to "renters' illusion," the situation where renters underestimate the effect of real estate taxes because renters (unlike homeowners) don't pay taxes directly.[37] There is some debate about whether renters' illusion is real, but "cost illusion" is rampant among the reformist followers of Candide.[38] The costs of reform are generally imposed on specific sectors and since the reformers don't have to pay anything, from their perspective, the reform is "free."

For example, we are told that campaign finance reform requires that television stations give political candidates "free" air time. While it is free to the reformers, air time is expensive. Prohibiting stations from charging hardly makes it free; reform would simply shift the cost of campaign finance reform onto the stockholders of

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31. *See* Tullock, *supra* note 27; Robert D. Tollison, *Rent-Seeking: A Survey*, 35 KYKLOS 575, 589 (1982).

32. Tullock, *supra* note 27.

33. *See* Gordon Tullock, *The Cost of Transfers,* 24 KYKLOS 629, 636 (1972).

34. *See* Barro, *supra* note 27; *see generally* BRENNAN & BUCHANAN, *supra* note 26.

35. *See* Tullock, *supra* note 33, at 639.

36. *See* MUELLER, *supra* note 10, at 342-44.

37. ARTHUR DENZAU, MICROECONOMIC ANALYSIS: MARKETS AND DYNAMICS 70 (1992)

38. Tullock, *supra* note 33.

communication companies. From this perspective, the "reform" no longer makes sense. Why should the stockholders of the media corporations bear all the costs of political reform? What about the alternative of using public funds to pay for the "free" air time? That would be too expensive! The flaw in this reasoning is obvious. If free air time is too expensive for everyone to pay for, it is certainly too expensive to extort from television stations as a condition of their license. The costs are the same either way.

And that is the rub: reforms are generally too expensive to pay for directly, so the costs of reform are disguised either by focusing the expense on a small group, or by pretending the costs don't exist.

IV. HARMFUL

Thus far, I have shown that reforms are either impossible or too expensive. If that were the whole problem, no one would be too concerned. After all, the costs can't be that big, and optimistic reform campaigns give public policy professors something to talk about. But I have saved the worst for last: real reform is generally dangerous because we can't predict its effects.[39] The dirty little secret of political science is that we don't understand cause and effect very well. More specifically, mapping changes in institutional structure into policy consequences is very nearly a black box: changing institutions may lead to completely unexpected, and undesirable, results.[40]

The reason is that the way institutions shape decisions is complex, and there are conditioning variables we are only beginning to understand. Given this complexity, and the lags with which unintended consequences will be recognized, the potential for error is enormous. Our political institutions (parties, congressional committees, primary elections, etc.) have evolved over time. Changing these institutions could make things better. These changes could also lead to disaster.

Let me give a specific example of the way that an attempt to manipulate political institutions may have unintended consequences. First, the theory. A number of scholars, writing in the "new institutionalist" public choice tradition, have pointed out that equilibrium in

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39. *See* William H. Riker, *Implications from the Disequilibrium of Majority Rule for the Study of Institutions,* 74 AM. POL. SCI. REV. 432, 442-43 (1980).

40. *See id.*; *see also* Allan Gibbard, *Manipulation of Voting Schemes: A General Result*, 41 ECONOMETRICA 587, 593-94 (1973); Mark Allen Satterthwaite, *Strategy-Proofness and Arrow's Conditions: Existence and Correspondence Theorems for Voting Procedures and Social Welfare Functions*, 10 J. ECON. THEORY 187, 188 (1975).

political processes may be "structure induced," or caused by the particular institutions through which preferences are filtered.[41]

One version of the theory involves Congressional institutions: as in Figure 6, imagine that we have a "legislature" composed of three members, Mr. A, Ms. B, and Mr. C. There are two policy dimensions, and a status quo "policy," X. Each legislator has a clear idea of what they think the best policy would be, and that point is labeled with their names (i.e., A, B, and C) in Figure 6.

Figure 6: The Instability of Majority Rule
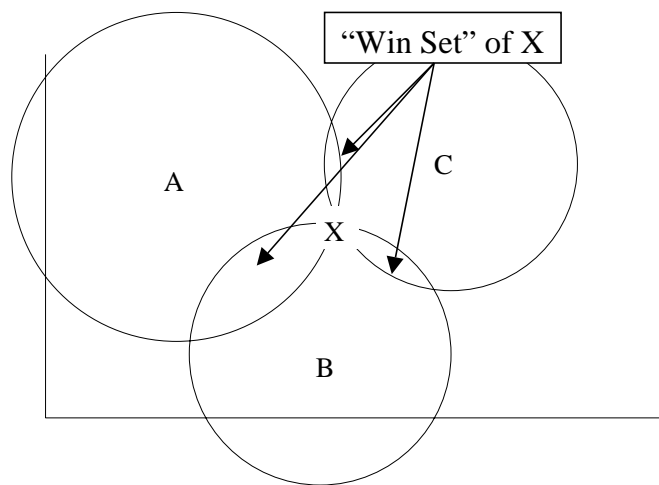
A problem arises when each legislator has some idea of what policies would be better than X, but they disagree on which is the best alternative. Let's define another technical term, the "win set." The win set of X is the set of policy alternatives that a majority (in this case, two legislators) find preferable to X.[42] How can we tell what policies are preferred to X? Suppose that preferences are separable, and that both issues have the same importance, or salience.[43]

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41. *See* WILLIAM H. RIKER, THE THEORY OF POLITICAL COALITIONS 174–181 (1962); BUCHANAN & TULLOCK, *supra* note 16 (two of the most salient works in the first wave of research); *see also* Kenneth Shepsle, *Institutional Arrangements and Equilibrium in the Multidimensional Voting Models,* 23 AM. J. POL. SCI. 27 (1979) (focusing on congressional institutions); Riker, *supra,* note 39 at 434; Kenneth Shepsle & Barry Weingast, *Structure Induced Equilibrium and Legislative Choice*, 37 PUB. CHOICE 503, 507-11 (1981); JOHN ALDRICH, WHY PARTIES? THE ORIGINS AND TRANSFORMATION OF PARTY POLITICS IN AMERICA 58 (1995).

42. *See* HINICH & MUNGER, *supra* note 11, at 62.

43. *See generally id.* (providing an introduction to the terminology and logic of spatial

In that case, the set of policies that the legislator likes just as well as X can be represented as a circle drawn through X and centered on the legislator's ideal point. These "indifference curves" enclosed the set of points the legislator likes better than X.

Then it follows that the win set of X is the union of all the inter-sections of the preferred-to sets of two or more members, as shown in Figure 6. The interesting thing about the win set is that it allows us to define the concept of equilibrium very concisely: A majority rule equilibrium must have an empty win set.[44] More simply, a policy is at equilibrium if, but only if, no majority prefers some other alternative.

Interestingly, if there are two or more policy dimensions, there are no policy alternatives with an empty win set.[45] Consequently, there is no equilibrium without some further restrictions. The "structure induced" equilibrium view is that the institutions of choice we observe in the United States Congress actually create equilibrium where none exists in the absence of these restrictive practices.[46] A simplified version of the argument can be understood by looking at Figure 7, where the same three legislators (A, B, and C) face the same decision problem. However, there has now been a "division of the question," so that each policy is considered separately. It has been known since Duncan Black's 1957 "median voter" result[47] that decisions along a single dimension can be reached if all preferences are "single-peaked."[48] Since that condition is met here, and in fact in most situations where budgets or other continuous policy issues are being considered, division of the question results in an equilibrium choice: the vector of unidimensional medians.[49]

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models).

    44. *See* Shepsle & Weingast, *supra* note 41.

    45. S*ee* Charles R. Plott, *A Notion of Equilibrium and Its Possibility Under Majority Rule*, 57 AM. ECON. REV. 787, 794-95 (1967); Otto A. Davis et al., *Social Preference Orderings and Majority Rule*, 40 ECONOMETRICA 147, 147 (1972); Richard D. McKelvey, *General Conditions for Global Intransitivities in Formal Voting Models*, 47 ECONOMETRICA 1085, 1085 (1979).

    46. *See* Shepsle & Weingast, *supra* note 41.

    47. DUNCAN BLACK, THE THEORY OF COMMITTEES AND ELECTIONS 18 (1971).

    48. *See* HINICH & MUNGER, *supra* note 11, at 51-52.

    49. For the classic references for the "division of the question causes equilibrium" result, see James Kadane, *On Division of the Question*, 13 PUB. CHOICE 47, 47-54 (1972); Gerald Kramer, *On a Class of Equilibrium Conditions for Majority Rule*, 41 ECONOMETRICA 285, 287-90 (1973) (The median position of each individual issue, without regard to any other issue, is called the unidimensional median; the collection of all these policies, decided one by one, is the vector of unidimensional medians.).

Figure 7: The Stability Of Congress –- Division of the Question

Issue 2

Issue 1
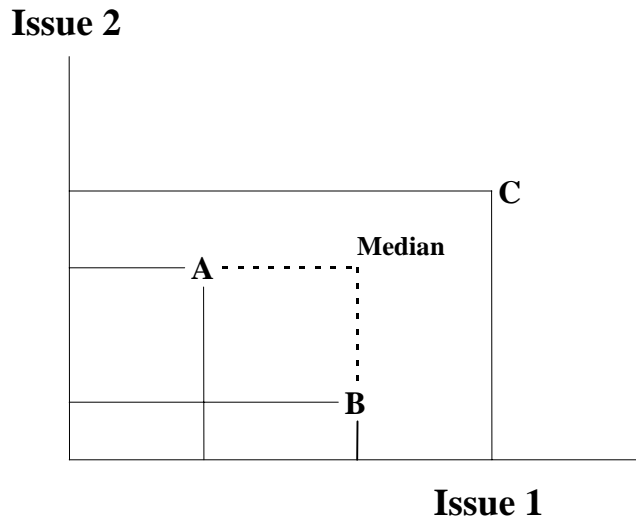
The general problem for the reformer is now obvious: in politics, the particular coalitional and institutional arrangements that exist may be fragile in ways that are not understood. The result of reform may just be change, not predictable change. Suppose we decided, for perfectly plausible reasons, that the committee system in Congress is cumbersome, and that all decisions will be taken by floor votes with no other institutions or restrictions. It is not clear that there would be any predictable outcome; chaos may result.

To sum up, the "successful" reform may be a victory for the disgruntled or out-of-power coalition that introduces it, but the victory may be Pyrrhic. The result of the introduction of a genuinely new issue, or institution, may not be an orderly transformation to a new political regime. Rather, the effect may be to release the genie of chaos from its bottle. This gives more room for maneuver and strategic action, it is true, but maneuvering is now possible for all sides in the conflict. In a reformed Congress, where the gate-keeping institutions designed by parties and legislatures to prevent multidimensional competition have collapsed, anything can happen.

V. CONCLUSION

In this paper, I have argued three main points from the public choice literature. Each argument focused on a different reason why reforming Congress is almost certainly a bad idea.

The first point is that reform is generally impossible because the existing set of policies and institutions are an equilibrium of a process that is largely hidden. Interest groups advantaged by the status quo will resist change. The level of this resistance is deceptive because it varies. For reforms that really matter, interest groups (like Minute Men) can mount whatever level of resistance is necessary to protect the status quo. The only exception to this argument is the situation where voters favor the reform, but in that case the reform effort itself is almost irrelevant.

The second point is that reforms that are instituted are expensive. Efforts to subsidize an activity, or to help a certain class, rarely do anything of the sort.[50] However, because the "help" becomes capitalized in the expectations and in the wealth of citizens, the reform may be impossible to repeal, despite its inefficiency. The only way out is to disguise the costs by unfairly imposing them on particular groups, or by camouflaging the incidence of the costs.

Lastly, it is argued that under the public choice theory of equilibrium in spatial voting in legislatures, outcomes in the United States Congress may be "structure induced." If that is true, then efforts to reform may have very unexpected results, and clearly can have disastrous long-run consequences. In particular, reform proposals that address the committee system or the process of elections are far too optimistic in terms of theory: we just don't know much about what will happen.

So, here is the bottom line: Dr. Pangloss was right. He was just ahead of his time, as he anticipated the development of an equilibrium theory of politics. It may not be true that all is well, but that is not a sufficient cause for optimism about reform. Things are almost never so bad that a little reform can't make them worse.

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50. *See generally* Tullock, *supra* note 33.