

Call Me a Panglossian



by [ALEX KOZINSKI](#)

CONVERSATION

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Okay, so call me Panglossian, but I *do* “judge the United States political order to be working well.” Which, of course, is not to say it’s perfect, or incapable of improvement. But I need not claim perfection for our system in order to resist calls for reform, unless they are very well supported indeed. In a system that does not work well, reform of any kind is likely to result in improvement, or at least upheaval that will spawn further change; the downside risk is small, while the upside potential is high. But we should be much more reluctant to accept fundamental change in a system that has proven itself to be working well, or at least well enough. In such a situation, a major change can result in major harm, and instability may lead from plenty good enough to pandemonium.

That having been said, I’m perfectly willing to consider change, provided we can predict with a fair degree of certainty the likely effects. This is always a tricky business, but more so in a situation like this where the author—here Dr. Buchanan—gets *less* specific rather than *more* as he is pressed for details. The devil is usually in the details, and it is only by examining and evaluating the details of a proposed change that one can hope to understand how the best hopes and aspirations of the proponents will fare under that supreme law with no exclusionary rule: the Law of Unintended Consequences. I might thus agree with Dr. Buchanan that fiscal responsibility is swell, and yet have very different degrees of enthusiasm about whether fiscal responsibility is to be enforced by way of the Constitution, depending on the mechanism chosen to achieve that purpose.

I do note an important concession in Dr. Buchanan’s response: “[T]he role for the judiciary might be expanded” under at least one of his proposals. I think “will certainly” could easily be substituted for “might” and be far closer to the truth. I’m grateful for Dr. Buchanan’s confidence in my colleagues and me, but we ought to think long and hard before adopting changes that shift even

more power into the hands of unelected judges and, necessarily, away from the political branches of government.

Not that I think we can't handle it—I surely think we could, some of us more gleefully than others. But I worry quite a bit about a system where political power is being exercised by public officials that cannot be removed by the voters. We'd have, in effect, a constitutional oligarchy. As one of the potential oligarchs, I'd be happy to oblige; but from the point of view of the voters, I'd worry a great deal about being ruled by the American equivalent of the Politburo.

Finally, a short word about the side debate between Prof. Amar and Dr. Niskanen about whether to repeal the Seventeenth Amendment.

Unfortunately, I don't have a book I can plug, though all my articles are available [here](#) and [here](#) free of charge. Nor do I have any great insight into the history of the Seventeenth Amendment. But I can't say I'm swept away with the idea of giving more power to state legislatures. This may sound like an awfully anti-federalist thing to say, but I must remind Dr. Niskanen and Prof. Amar that the Founding Fathers, or at least some of them, were as skeptical of local government as they were of the federal government, if not more so. See *Federalist* No. 10:

[T]he same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic,—is enjoyed by the Union over the States composing it. . . . The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States.

More fundamentally, I just don't see how having Senators appointed by the state legislatures will promote any of Dr. Buchanan's goals, or any other desirable ones. It will surely not promote fiscal responsibility—at least I can't see how. It cannot possibility promote equality to give the legislatures of Rhode Island and Wyoming the same power as those of New York and California. And, as for commitment to natural rights or the principle of non-interference, it may well cut the other way, as Senators beholden to state legislators may be more likely to promote local economic and trade interests than Senators elected at large. Nor do I understand what benefits—other than a nostalgic attachment to the good old days—would be served by this change,

and nothing my colleagues have said about it seems terribly persuasive.

Once again, I'd err on the side of caution: If it ain't broke, don't fix it.