



Policy Note

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THE “UNINTENDED CONSEQUENCES” GAME

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We are in troubled times. In almost every case where a nation finds itself in troubled times, the rules of the game are changed, and it is the government or other group in power that changes them. The public looks for its scapegoats, and the politicians offer hasty and ill-considered legislation (such as Sarbanes-Oxley) under the pretext that something has to be done now. The lions are hungry. The coliseum is full and the crowd wants action.

A simple consideration of history tells us that whenever there is a change in the rules, there are new beneficiaries. Once the legislation has been passed, the entrepreneurs and their lawyers move in. The loopholes are located. Some are small, but others are such that one can drive a bullion-laden truck through them. The unintended (and sometimes *intended*) consequences take over. While the broad print of the legislation satisfies the public and punishes the scoundrels, a skilled drafter of legislation can put in the appropriate fine print to take care of his or her special interest group, knowing that the public has neither the time nor the ability to read it.

There is a straightforward solution that would not be popular with special interest groups but that would likely make a few young lawyers rich fairly quickly. Create within the Department of Justice a small operational “war gaming group” for all major new legislation. Starting with the Prussian Army in the early 1800s, virtually every army or navy of any significant size has had a war gaming facility to check out and stress-test its plans and strategies. This technique can be applied to lawmaking. A game is designed around a new piece of legislation, and a first prize of, say, \$1 million is to be awarded to the competing lawyer or team of lawyers who finds the most egregious loophole. The competition is open to any lawyer, or to any student registered in an accredited law school. The “war gaming group” sponsors the scenario, running a series of games for 10 or 20 players selected by a panel chosen by an institution such as the American Bar Association or by a consortium of law schools. A prize of a million dollars or so is enough to attract young lawyers or students, both for the money and the prestige, but it is not enough to attract many established law firms—which stand to make tens or even hundreds of millions if the loopholes remain.

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