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How Trump Officials Abuse Cost-Benefit Analysis to Attack Regulations

The secret: just ignore the benefits.

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In December of 2017, Donald Trump gathered the press for a variation on a familiar activity from his real estate mogul days. Stretched between a tower of paper taller than himself, representing all current federal relations, and a small stack labeled "1960," was a thick piece of red ribbon—red tape, if you will. The president promised that "we're going to get back below that 1960s level." With his daughter Ivanka and other advisors by his side, Trump used comically large scissors to cut the ribbon.

Cutting regulations has been a priority for nearly every Republican politician since at least the 1980s. But the Trump-era GOP, unsatisfied with the existing deregulatory toolkit, has found a bigger pair of scissors. Call it cost-cost analysis: to justify getting rid of regulations they dislike, Republicans have decided to systematically ignore their benefits.

Since the Reagan era, there has been a consensus among conservatives that cost-benefit analysis is the gold standard for evaluating regulations. It requires quantifying the benefits and costs of a proposed regulation, expressed in monetary terms. If its benefits exceed the costs, a regulation is justified, but not otherwise. For conservatives, this approach provides a veneer of objective, mathematical rigor that can be aimed against regulations whose benefits are hard to measure in dollar amounts. What's the precise value of a new clean air standard that slows down the rate of global warming? Cost-benefit analysis also ignores the secondary benefits of regulations that are hard to preemptively measure, like when new standards spawn new, vibrant industries. (Think fuel efficiency standards and electric cars).

Nevertheless, the cost-benefit analysis has given conservatives common ground with some moderates, like Obama regulatory czar Cass Sunstein; many economists; and at least a few environmentally inclined scholars. The critics of cost-benefit analysis have mainly come from the left. They argue that it is wrong to put a dollar figure on the lives saved by a regulation or on an endangered species. ("Should we really not mandate clean drinking water if it doesn't turn out to save money?")

But now conservatives are showing increasing disenchantment with cost-benefit analysis. Specifically, they like the consideration of costs but are unenthusiastic about the benefits side of the equation. In the Trump era, as Public Citizen's Arit Narang has written, costs play an expanding role in regulatory policy, both in Congress and the executive branch, whereas benefits are increasingly sidelined or underestimated.

A perfect example came in the waning weeks of 2018, with the rollback of an Obama era rule that limited the amount of mercury that coal-fired plants can emit. In late December, Trump's EPA announced that limiting mercury was not cost effective and shouldn't be considered "appropriate or necessary." The cost of the regulation is between $7.4 and $9.6 billion annually, but the Obama administration had calculated that it would save at least $80 billion in health costs every year, and would prevent roughly 11,000 premature deaths. Trump's EPA decided to recalculate that benefit number and came back with a mere $4 to $6 million in health savings per year. What math did they use to cut the number down by three orders of magnitude? They decided to ignore the regulation's so-called "co-benefits"—positive consequences of the regulation that weren't directly attributable to the reduction in mercury. In this case, the regulation would also have reduced the amount of certain particulates linked to lung and heart disease. Ignoring co-benefits is irrational, like saying that a doctor should ignore the fact that a treatment for one disease will also knock out another at the same time. By disregarding those health benefits, the Trump administration was able to generate number that made the regulation seem unjustifiable—likely the desired outcome all along.

The current administration's obsession with regulatory costs was on display from the very beginning. In his first month in office, Trump issued an executive order intended to force the repeal of many existing regulations. Under the elementary "one in, two out" logic, the order forbids agencies to issue new rules, regardless of their net benefits, unless they repeal two other regulations. Prioritizing the repeal of regulations on the basis of their costs alone, or setting quotas for regulatory repeals, makes no sense from an economic perspective. It's as if a retail company, looking to save money, decided to fire two salespeople for every one hired, without paying attention to how much revenue each employee generated. The whole premise of cost-benefit analysis is that regulations should be passed and priorities set based on total benefits minus total costs.

The rationale of Trump's order seems to be that the mere number of regulations on the books is economically significant. But several economists have debunked the assertion that regulation as such is an inherent drag on the economy. For example, Tara Sinclair at George Washington University found that the massive increase in spending to enforce federal regulations since the 1960s has had no impact on aggregate jobs or national economic output. Last year, libertarian economist Alex Tabarrok set out to quantify the correlation between the number of regulations and business growth—but found none.

Trump's pick to lead the White House Office of Information and Regulatory Affairs (OIRA), Neomi Rao, has rarely mentioned regulatory benefits, focusing instead on regulatory costs and the virtues of repealing regulations that have already passed cost-benefit analysis. She's now being rewarded for her deregulatory zeal with Brett Kavanaugh's recently-vacated seat on the D.C. Circuit Court of Appeals.

In addition to downplaying the significance of benefits itself, the administration is exploring ways to limit or even forbid consideration of regulatory benefits by agency employees. Unsurprisingly, much of this effort is taking place at the EPA. For example, a proposed rule would exclude scientific evidence of regulatory benefits (but not costs) unless the data behind the study is made public. That sounds reasonable enough. But many key public health studies involve confidential patient information that researchers cannot disclose to the public. Other studies may involve information protected by trade secrets law or by European privacy rules. The rule, then, is not really designed to promote transparency; it's designed to kill regulations by imposing an impossible standard. At one point, it appeared that opposition by some White Houser staff might have killed this proposal, but the head of EPA has announced that it's still on his agenda.

In a further effort to limit the consideration of benefits, EPA now also excludes consideration of the global effects of climate change from its analyses. Instead, it considers only impacts within the United States. And it has tinkered with a parameter called the discount rate, which determines how much weight is given to future benefits in comparison to present-day costs. By picking a discount rate that most experts regard as too high, the Trump Administration has further devalued the future benefits of reducing carbon emissions.

It's not necessarily impossible to defend any individual item on this list, though it may be difficult. But taken together, they show an obsession with regulatory costs that far eclipses attention to regulatory benefits. That's disturbing, whether you believe in cost-benefit analysis or not. Since most all regulations have some cost associated with them, to ignore the benefits and strike regulations on the basis of cost alone is to start down a path towards complete deregulation.

Well, not exactly. The administration has only applied this approach to regulations designed to protect consumers, workers, and the environment. The two-for-one order doesn't apply to foreign affairs functions, national security, and military matters. Moreover, presidential actions don't require cost-benefit analysis. No one in the administration is talking about repealing two immigration restrictions for every new one or about offsetting the costs of new trade restrictions by eliminating existing ones. What's sauce for the goose clearly isn't sauce for the gander–a clear indication that the real target is not regulation as such, but rather government protection of public health and the environment.

Economically, costs and benefits are the same thing, just with a minus or plus sign in front of the number. Ignoring benefits gives up the whole game: modern Republicans really don't care about the real-world economic impact of regulations. They have an ideological commitment to the general principle that regulations qua regulations are bad. When cost-benefit analysis shows a regulation to be good, that's a problem for them. They'd rather not know.

Environmentalists have often complained about cost-benefit analysis, arguing that it fails to capture the costs and stakes adequately. But at least it gives equal weight to regulatory benefits., which is an entry point for environmental considerations. That entry point is being gradually blocked in this administration, in favor of a world-view that sees regulations as all cost, no benefit.

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