



LOSING AT ITS OWN GAME: THE RIGHT RETREATS FROM COST-BENEFIT ANALYSIS

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PUBLISHED 10.10.19

Over the past four decades, the right wing has painstakingly built an intellectual scheme to try to justify the weakening of regulatory public health protections on the basis of neoliberal economic theory. But a couple of decades ago, when the EPA began to figure out how—at least sometimes—to beat them at their own game, that edifice began to crumble. At the 2018 [APPEAL conference](#), I presented a brief sketch of this story. More recently, I developed it in an article that [appears in this month's edition of *The American Prospect*](#).

In brief, the story goes like this:

In the 1970s, industry lobbyists and their right-wing allies, disgruntled by the wave of environmental, health, and consumer protection legislation that had just swept through Congress, latched onto an idea that had begun to kick around among conservative economists at the University of Virginia, the University of Chicago and the London School of Economics. Before government is allowed to intervene in the market with regulation, they argued, it should be made to show that the regulation can pass a cost-benefit test. This idea began to show up in industry briefs challenging EPA's first efforts at environmental regulation and in white papers from right-wing think tanks. Its pedigree in neoliberal economic theory lent an air of academic legitimacy to the idea and was a perfect fit with the Right's larger political strategy of selling the American public on laissez-faire economics.

Industry banked on the assumption that imposing a rigid system of cost-benefit analysis would weaken regulatory safeguards because the benefits of public health protections—preventing disease, saving lives, preserving ecosystems—would be hard to quantify and so inevitably under-counted in relation to the more easily quantifiable costs of regulation. And for the most part, that gambit paid off. Since Reagan first enshrined the cost-benefit analysis requirement in executive order in 1981, it has caused untold mischief—both procedurally, by delaying and confounding rulemaking in the industry friendly labyrinth of [OIRA](#) review, and substantively, by watering down regulatory protections in the name of cutting costs and reducing bureaucracy.

But something unexpected happened in the 1990s and early 2000's. The air pollution monitoring stations installed throughout the country in the wake of the Clean Air Act began to bear fruit in the form of a wealth of epidemiological studies documenting the nasty health effects of one particular air pollutant that is

widespread and easy to monitor—particulate matter. Using these studies, EPA began to regularly produce jaw-dropping numbers on the benefits of virtually all its Clean Air Act regulations—numbers that easily swamp the costs. Indeed, the huge, multibillion-dollar benefits estimates attributable to this single pollutant have amounted to more than half of the calculated benefits of federal regulation from all the executive branch agencies combined over the past decade.

This is driving the right-wing crazy. About 7 or 8 years ago, they began to notice EPA's big numbers on particulate matter and how those numbers allow the agency to justify even its most costly rules (what they call "the EPA train-wreck rules"). They quickly launched a counterattack, although with Obama in the White House, it was initially confined to the Right's prodigious think tank machine, which began producing white papers with names like "[The EPA's Pretense of Science: Regulating Phantom Risks.](#)" Now, of course, with a direct line to the Trump administration, these efforts are shaping EPA policy.

The right-wing's counter-attack is three-pronged: 1) Take a page out of the climate change playbook and deny the science behind the particulate matter numbers altogether. 2) Argue that particulate matter "co-benefits" must not be counted in cost-benefit analysis, a position that defies not just common sense but the basic tenets of the economic theory that the Right has relied on for the past half-century to lend legitimacy to their insistence on a cost-benefit test. (Co-benefits are benefits of a rule that are not the rule's principal purpose—reductions in particulate matter emissions, for example, that occur as a result of installation of pollution control equipment aimed at reducing mercury emissions. Under fundamental principles of economic theory, there's no question that a cost-benefit analysis must count them.) And 3) jettison benefits from the analysis entirely through the adoption of the new technique of cost-only "regulatory budgeting."

This is the pseudo-academic "theory" behind Trump's "2 for 1" executive order, which requires that federal agencies rescind two pre-existing regulations for every one new regulation they issue and requires that the cost savings from scrapping the two be equal or greater than the costs of the new one. This is perhaps the wackiest idea of all. By eliminating benefits from the analysis altogether, it strays far from the moorings of welfare economics in which the Right has worked so hard to ground its "regulatory reform" arguments for the last half-century, and into a new realm entirely untethered from any intellectually coherent theory about how government does or should operate.

In all three of these tactics, there's a new tenor to the Right's arguments—an apparent willingness to abandon even the appearance of intellectual legitimacy. Time will tell where this new approach leads. As of yet, it's still not clear if these are the first signs that the Right's dogged defense of laissez-faire has finally been stretched to its breaking point or the indicia of a more dystopian vision: a brave new politics of populism in which expertise in all forms is suspect and intellectual integrity (or even just its pretense) is vilified and dispensable.

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