Unquantified Benefits

Jonathan Masur & Eric Posner
University of Chicago Law School
May 2015
U.S. Regulations, 2010-2013

<table>
<thead>
<tr>
<th>Agency Action</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partly quantified costs and benefits</td>
<td>48</td>
</tr>
<tr>
<td>Did not quantify benefits</td>
<td>36</td>
</tr>
<tr>
<td>Did not quantify costs</td>
<td>9</td>
</tr>
<tr>
<td>Did not quantify benefits and costs</td>
<td>11</td>
</tr>
<tr>
<td>Fully quantified benefits and costs</td>
<td>4</td>
</tr>
<tr>
<td>Total</td>
<td>108</td>
</tr>
</tbody>
</table>
The Problem

• Agencies routinely fail to quantify (in monetary terms) all major benefits (and costs) of regulations
  • This leads to overregulation when regulators exaggerate unquantified benefits
  • It also leads to underregulation when regulators disregard them
• They provide two standard explanations
  • Empirical uncertainty
    • Effect of mercury ingestion on heart attack rate
    • Effect of nutritionally superior lunches on children’s health
  • Unquantifiable in principle
    • Dignitary benefits to disabled people
    • Equity benefits to veterans
The Solution

• Bayesian Cost-Benefit Analysis
  • Regulators should use priors
  • They should publicly state their priors
  • They should use “back-of-the-envelope” calculations, however speculative

• The problem of uncertainty should be addressed *institutionally*
  • Interagency consistency
  • Proper updating over time
  • Institutional mechanisms for revisiting and updating earlier estimates
  • “Dignitary” concerns should be monetized.
    • Equity claims should be quantified
Example: EEOC’s ADA regulations

• These regulations broadened the definition of disability, enabling more people to claim accommodations

• Costs
  • 12-38.4 million people fall under the broader definition
  • 2-6.1 million people would be entitled to a new accommodation
  • Mean cost of accommodation is $150
  • Total cost approximately $60-$183 million / year (after further adjustments)
• Benefits
  • Initially, no quantification
  • Survey suggests that cost of hiring a replacement is $2000
  • Perhaps multiply this by 2-6 million, which would equal $4-12 billion
  • Additional unquantified benefits
    • “Efficiencies in litigation”
    • “Fuller employment,” which would “stimulate the economy”
    • “Non-discrimination,” which would reduce “stigma, exclusion, and humiliation, and promote self-respect”
• Plainly inadequate
  • No evidence that workers would need to be replaced
  • Replacement cost not calibrated to replacements avoided
  • No explanation for why employers would not voluntarily provide accommodations in order to avoid much higher replacement costs
  • No analysis of effects on employment market
  • No analysis of effects on litigation
  • No analysis of effects of accommodation on stigma, and so on
A better approach to quantifying benefits

• Use surveys to:
  • Determine the types of employment affected by regulation
  • Typical accommodation in a given type of job for a given type of disability
  • How much workers value those accommodations
  • Aggregate

• Take into account employer reactions
  • Will employers raise prices, lower wages, worsen conditions, etc.?  
  • Will employers hire fewer disabled people (as evidence suggests)

• Even where the regulator must guess, it can provide a mechanism for retroactive evaluation