Readings

Benefit/Cost Analysis in the Balance

Risks, Costs, and Lives Saved
edited by Robert W. Hahn
(Oxford University Press, 1996) 267 pp.

Reviewed by William A. Niskanen

A strange thing has happened to the analysis of risk regulations over the past fifteen years. Every president, a majority of Congress members, and most policy analysts have endorsed benefit/cost analysis as the primary instrument for evaluating regulations. And the empirical basis for estimating and evaluating risks has improved enormously—one might think the golden age of risk analysis had arrived. On the other hand, there is renewed grumbling from critics, including some economists, about an overreliance on benefit/cost analysis. And there is little evidence that the improved potential for risk analysis has had much effect on the types or levels of risk regulation.

All of these themes are reflected in the valuable but qualitatively uneven book *Risks, Costs, and Lives Saved*, edited by Robert W. Hahn of the American Enterprise Institute. The book has nine chapters and includes a brief introduction by Hahn. Four chapters are written by scientists, five by economists and policy analysts. Three chapters summarize major bodies of research and are the most important for policymakers and the public. Five chapters discuss specific applications of risk analysis. And one chapter, which is the most important for risk analysis professionals, is a broadside argument against an overreliance on benefit/cost analysis.

Bruce Ames and Lois Swirsky Gold summarize a mammoth body of research on the causes and prevention of cancer. The most important finding is that environmental pollution does little to increase the risk of cancer, and "even assuming that the Environmental Protection Agency's worst case estimates for synthetic pollutants are true risks, the proportion of cancer that the EPA could prevent by regulation would be tiny." The second finding, common to most risk surveys, is that overregulation of environmental risks is likely to increase total risks; for example, when the regulation of synthetic pesticides reduces consumption of fruits and vegetables. A third conclusion, to which Ames and Gold have made the major contributions, is: "Data from standard rodent bioassays are not sufficient to estimate low dose risks [and] the true risk might often be zero." For example, few chemicals that have proven carcinogenic at very high doses on test animals have been confirmed by epidemiological studies as contributors to cancer at the lower dose rates to which humans are exposed. A broader understanding of the research summarized in this chapter is probably required to make sense of risk regulation.

Kip Viscusi provides an efficient summary of the expanding body of research, to which he has made important contributions, regarding the implicit value of a statistical life as revealed by behavior. These studies lead to a wide range of estimates, depending on the level of risk, risk preferences, and income of the affected group. Viscusi concludes that the implicit value of life for the average worker is about $5 million. Several other findings, however, are also important. The willingness to pay to reduce risk is roughly proportional to income and is positively related to one's life expectancy. Moreover, revealed risk preferences seem to be consistent across types of risks; people who smoke, for example, are less likely to wear seat belts or to choose a low-risk vocation. Viscusi's chapter summarizes estimates of the cost per expected

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life saved for a wide range of federal regulations, many of which cost more than the implicit value revealed by behavior.

The chapter by Tammy Tangs and John Graham summarizes their study of the estimated cost per year of life saved by 185 proposed or implemented risk interventions. Tangs and Graham find an extraordinarily haphazard pattern of risk intervention, with estimated costs from several thousand dollars to several billion dollars per year of life saved. Moreover, they find "no apparent relation between the cost-effectiveness of the 185 life-saving interventions and their implementation." For the same total cost, they estimate that reallocating interventions could more than double the expected life-years saved. For the same total life-years saved, they estimate that a reallocation would reduce costs by about $31 billion annually. In general, a more efficient allocation would reduce the relative number of cancer-averting regulations and increase the relative investment in public health measures and transportation safety.

Five other chapters make smaller contributions to these issues. Professor of radiology William Hendee concludes that there is very little evidence of adverse effects from low levels of radiation, yet policies to avoid such exposure have been costly and have reduced the availability of beneficial applications of radiation. Toxicologist Bernard Goldstein complains that policymakers do not understand the complexity of risk assessment or provide enough financial support; most readers could skip this chapter without loss. Richard Lindzen, a leading meteorologist, provides an interesting commentary on science and politics, comparing the recent political misuse of science to forge a consensus on global warming with the American eugenics movement of the early twentieth century. John Graham, a leading risk analyst, editorializes for a technocratic regulatory review process that would substantially increase the demand for risk analysis.

The most perplexing chapter in this group is by the editor. Hahn reviews ninety-two health, safety, and environmental rules that have been proposed or approved since 1990. He starts with the agency estimates of the costs and impacts of each rule and then estimates the benefits. His estimates show that the proposed rules would yield net benefits of $515 billion and the final rules would yield net benefits of $280 billion! Moreover, Hahn estimates that net benefits would have increased by an additional $115 billion if the agencies had not implemented some rules with net costs. Hahn cautions, "It is plausible that the aggregate expected net benefits of the final regulations studied here are actually negative"; but the extraordinary uncertainty about the true magnitude of the net benefits or costs of these regulations does not seem to affect his commitment to making benefit/cost analysis the primary instrument of regulatory review.

In this book, the chapter by Lester Lave, an economist and leading risk analyst, is like a skunk at a garden party, but it is the most important chapter for risk analysts to read and understand. Lave asserts that benefit/cost analysis is not a sufficient basis for regulatory decisions when (1) the benefits and costs accrue to different people; (2) the costs of some activity are borne entirely by those (adults) who chose this activity; (3) there is no objective basis, such as revealed behavior, for estimating benefits or costs; (4) the estimates of benefits or costs are biased or subject to a high degree of uncertainty, and so forth. You get the picture. Some parts of Lave's broadside are indiscriminate or overdone and should provoke a reasoned response. His bottom line, however, is one that I share: "The time has come to purge the utilitarian foundation from benefit/cost analysis. This means identifying the tool as a decision analysis rather than a means for prescribing optimal decisions."

Silencing the First Amendment

New Information Industry: Regulatory Challenges and the First Amendment
by Richard Klingler
(The Brookings Institution, 1996) 208 pp.

Reviewed by Solveig Bernstein

In *New Information Industry: Regulatory Challenges and the First Amendment,* author Richard Klingler examines the regulatory issues facing policymakers in the emerging information industry. For the most part, Klingler argues that the best way

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to accommodate the industry's growth is through deregulation. Klingler maintains, however, that the government should continue to safeguard and coordinate competition, and he wrongly believes that such a role can exist without violating the First Amendment.

Klingler identifies two fundamental features of telecommunications markets that render the existing regulatory structure obsolete. The first feature is the convergence and integration of different segments of the industry, such as the new competition between phone and cable companies. The new networks will deliver a mix of one-way and two-way voice, video, and text services, defying categorization as broadcast, cable, or common carriage; carriers will become content providers; and, the print media will move on-line. This theme of convergence is not new, but it is particularly important at present. Klingler understands that this feature alone renders the existing regulatory structure inefficient and irrelevant. He correctly notes that the Telecommunications Act of 1996 did not address this problem—it left intact traditional regulatory categories and created an elaborate series of new categories for phone companies that are incorporating video services.

The second factor Klingler describes is the pace of change in telecommunications markets. He recognizes that much of the regulatory structure is backwards-looking, designed to solve problems that existed decades ago. Klingler also notes that the regulatory process creates even more uncertainty in the industry, which makes business planning almost impossible. The history of regulation shows that one must seriously question the premise that a council of "experts" (the Federal Communications Commission) can predict and guide development in the telecommunications industry. Klingler's observations are long overdue. But where does one go from here?

Klingler believes that the proper way to accommodate rapid change is to develop a minimal regulatory regime based on procompetition rules, buttressed by antitrust laws. He argues that regulatory costs can be minimized by narrowly defining the regulator's role and by placing regulators under closer executive and judicial oversight.

It is here that Klingler's analysis begins to falter. He does not discuss the important role that Congress could play in checking regulatory follies by reviving the nondelegation doctrine and insisting on voting on the regulations that the agencies pass. He also fails to explain how executive branch oversight could really make a regulatory agency less of a loose political cannon. He does not provide any institutional model that would prevent his minimal, general regulations from growing into a morass of burdensome mandates. Klingler acknowledges that antitrust principles are not necessarily equivalent to minimal regulation, describing how these general principles spawned the consent decree that allowed Judge Harold Greene to micromanage the Bell Companies for over a decade. Klingler, however, does not resolve this problem.

More importantly, Klingler fails to explain how even general procompetition rules and antitrust oversight could ever be anything but backwards-looking. The pace and complexity of change in telecommunications markets are equally threatening to Klingler's preferred regulatory regime, based on traditional antitrust principles, as to any others. Klingler correctly notes that the current system has not worked and will not work; but, he questions only the regulatory structure, not the underlying premises about market power that gave rise to that structure. Perhaps free markets are more remarkable than is widely believed. Perhaps these free markets can overcome market power by rapid innovation. Perhaps the cost of regulating market power will always outweigh the benefits. Or, perhaps the "perfect competition" of academic models, where many firms compete tidily on perfectly equal terms in endless equilibrium, is not the proper model for *real* markets. Klingler fails to examine these possibilities.

Klingler's willingness to allow the enforcement of antitrust and procompetition rules to trump the First Amendment is also disturbing. He argues that economic regulation can be safely distanced from content regulation—but a secure First Amendment requires secure economic liberties. As Klingler himself notes, the government's economic control over broadcasters has long given the government the leverage it needs to impose subtle forms of content regulation. Klingler's model is the *Turner* decision, in which the Supreme Court refused to strike down the "must-carry" rules that obligate cable companies to rebroadcast local television stations. Klingler's choice of a model is ironic in the extreme. The must-carry rules, as Justice O'Connor noted in her dissent, *are* a form of content regulation, designed to promote "local" content. Viewing the

rules as "procompetition" is quite a stretch; must-carry rules are simply a form of protection for broadcasters. Klingler's confidence that there can be a coherent category of "procompetition" rules that can be meaningfully distinguished from content regulation in the long run is misplaced.

Klingler falls into the trap of thinking that First Amendment "values" give the government the power to violate First Amendment rights—there is a fundamental contradiction between the *right* of free speech and *forcing* networks to extend their services. The right of free speech is not secure unless control of the means for distributing speech are beyond the government's reach. First Amendment rights, it has long been recognized, extend beyond the right *not* to have the government control content; they also include the right *not* to carry certain speech. Taking seriously free speech rights might mean tolerating some market concentration in the short-term. It is time to reexamine our assumptions about the nature of competition to see if there is any reason to fear market power.