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Reclaiming Regulation: Making the Public's Values Heard in Regulatory Analysis

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February 2021

Introduction

For nearly 40 years, the federal government has evaluated new regulations using a peculiar yardstick known as cost-benefit analysis. Despite the influential role this analysis plays in regulatory decision-making, little is known about how well this methodological approach reflects the values of the country more broadly.

Our polling finds that the current cost-benefit analysis regime is grossly out of sync with the values of voters. Specifically, we find that likely voters broadly disapprove of the preferred techniques for performing cost-benefit analysis, calling into question its usefulness and legitimacy as a policy tool. These results should be cause to question the democratic legitimacy of how regulatory decisions are made and the need for reforming how new regulations are evaluated.

As part of a January 2021 survey, Data for Progress polled 1,156 likely voters nationally to measure attitudes toward the federal government's regulatory decision-making process, and more specifically, how the practices and techniques for evaluating regulations influence that process.

Regulations play a major, if often underappreciated, role in all our lives. Whether drinking water from our tap, buying food off a grocery store shelf, or strapping our children in car seats, we are able to go about our day without having to worry much about health and safety. And that is thanks to regulatory safeguards that public servants faithfully implement and enforce on our behalf. Without regulations, life, for many of us, would quite literally be nasty, brutish, and short.

Making good regulations is not easy, especially in a complex society like ours, where the need for safeguards is great. No doubt, then, it is important to have a system in place for evaluating the quality of regulations before they become enforceable.

Measuring the quality of regulations is not as straightforward as measuring flour for a cake recipe or hand size for a new pair of mittens. Inevitably, it involves subjective, value-laden judgment calls. This is true of the form of cost-benefit analysis that is most commonly used for regulations, which seeks to promote "socially optimal" regulations that "maximize economic growth." While these concepts might resonate with the select few who hold advanced degrees in economics, for the rest of us, they are obscure and wonky.

Our polling seeks to answer the question of how the worldview and values at the heart of current cost-benefit analysis practices represent those of the broader electorate. Significantly, we find that likely voters across the political spectrum largely reject cost-benefit analysis as ethically inconsistent with their own values.

The economics-focused cost-benefit analysis is not the only available yardstick for evaluating regulations, however. Before that form of analysis rose to prominence during the Reagan administration, other approaches were used, including ones that allowed greater space for consideration of other factors that Americans value, such as fairness, justice, and equity.

In a little-noticed memo issued on Day One, the Biden-Harris administration signaled that it is considering overhauling existing policies that govern the evaluation of new regulations as part of a broader regulatory reform effort. This memo, entitled "Modernizing Regulatory Review," directs relevant administration officials to explore options for redesigning regulatory analysis so that it can better account for a wider range of regulatory benefits that the economics-focused cost-benefit analysis either undervalues or disregards altogether.

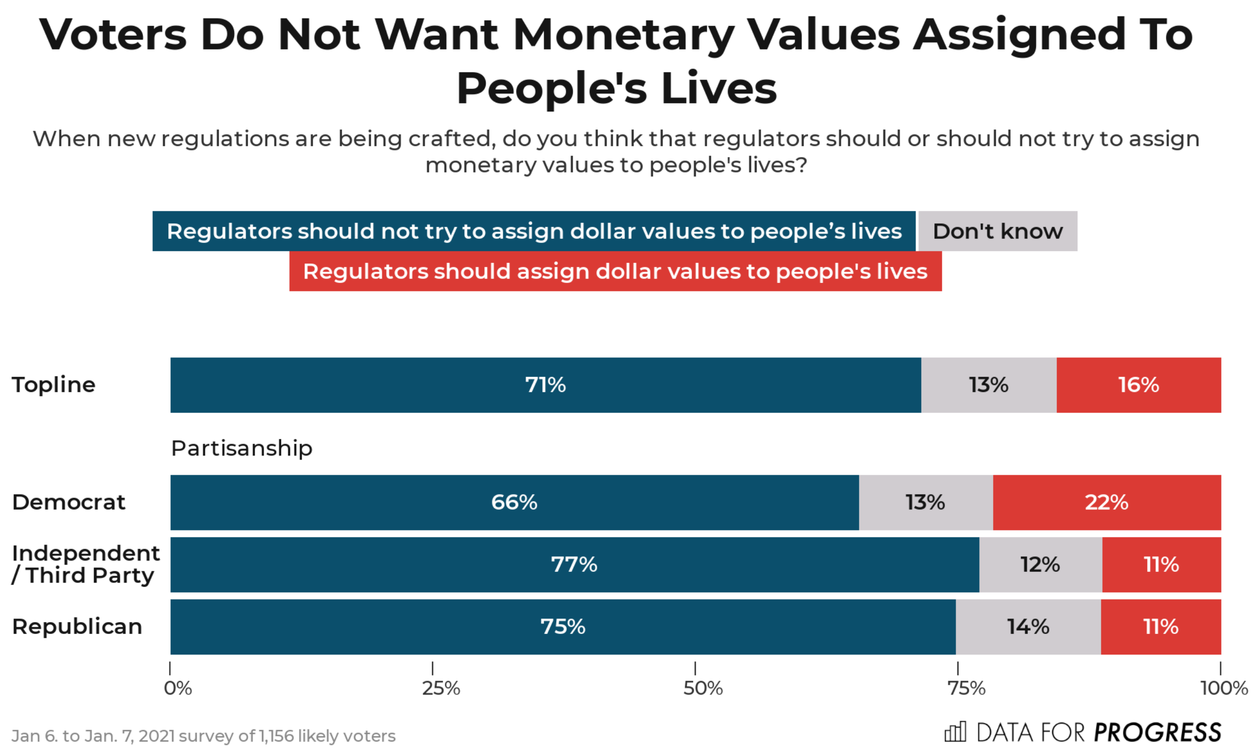
The results of this polling suggest that this reform effort would enjoy broad support from likely voters. If done well, the resulting new approach to regulatory analysis could help promote better regulatory outcomes and greater legitimacy in regulatory decision-making.

Voters Believe That Protecting Lives Is More Than Just Dollars and Cents

A basic tenet of the economics-focused cost-benefit analysis is that the only impacts that count when evaluating a regulation are those that are measured in monetary terms. That is because dollars and cents serve as the common metric that the analysis uses for directly comparing the pros and cons of a particular regulatory decision in order to determine whether it makes the most efficient use of our money.

For regulations to protect public health and the environment, this approach poses a big problem because the "benefits" of those rules — things like cancers prevented or endangered species saved — cannot be measured in dollars and cents. In these cases, economists have invented complex methodologies for attempting to assign a monetary value to what they call "non-market benefits" — that is, benefits that cannot be bought or sold at a store. One of the more controversial methodologies is what is known as the "value of statistical life," or VSL, which is used to put monetary value on protecting a human life. The VSL represents an important part of the benefits analysis for those public health and safety regulations that are aimed at preventing people from dying early due to preventable accidents or diseases.

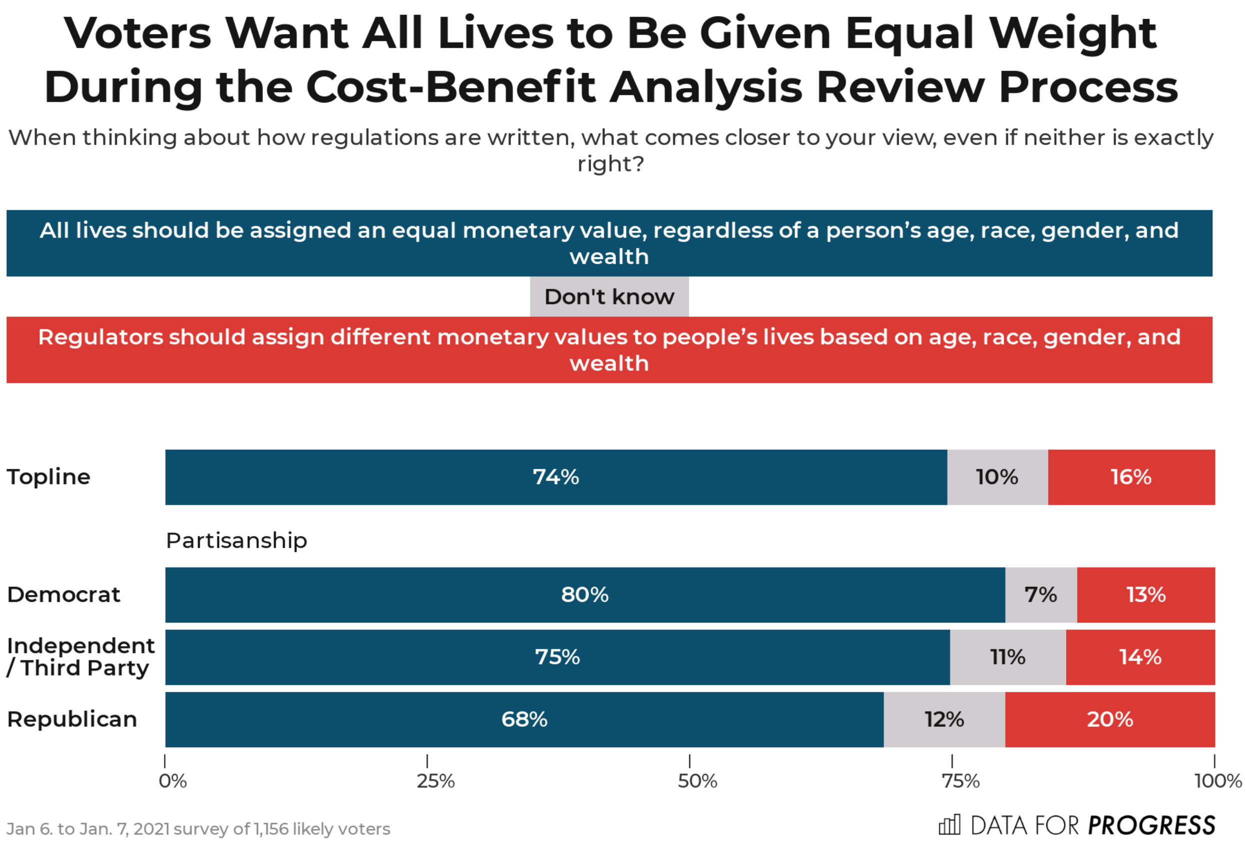
We asked likely voters about their views on attempts by economists to reduce human lives to dollars-and-cents terms. We find that likely voters disapprove of this practice by a margin of 55 percentage-points (71 percent oppose, 16 percent support). This attitude toward regulations is shared across self-identified partisanship. Voters who self-identify as Democrats, Independents or Third Party, and Republicans all oppose assigning monetary value to people's lives (by margins of 44 points, 66 points, and 64 points, respectively). Though perhaps not intuitive, this partisan pattern may be explained by a skepticism toward regulations more broadly among Republican voters.



The methodology that economists use to determine VSLs has another controversial consequence: Researchers have found that it yields different VSLs based on race. Specifically, this research has determined that the VSLs of Black people are lower than those of whites. Put differently, this research holds that saving Black people's lives is "worth less" for the purposes of performing cost-benefit analysis. Many mainstream economists support using different VSLs based on race because it would provide a more "precise" measure of regulatory impacts, thereby advancing their goal of promoting economically optimal regulations.

Similar research suggests that cost-benefit analysis would be "improved" if VSLs were adjusted for other factors, such as gender or wealth, with the lives of men or the wealthy potentially assigned a higher value.

We asked likely voters about their views on the economists' preference for using different VSLs in cost-benefit analysis based on characteristics of race, gender, or wealth. We find that by a 58-point margin, likely voters want all lives to be assigned equal monetary value (74 percent want all lives to be given equal weight, 16 percent do not). The notion that all lives ought to be treated equally during the cost-benefit analysis is shared regardless of partisanship: By margins of 67 points, 61 points, and 48 points, Democrats, Independent / Third Party voters, and Republicans, respectively, all think that lives should be treated equally during the regulatory review process.

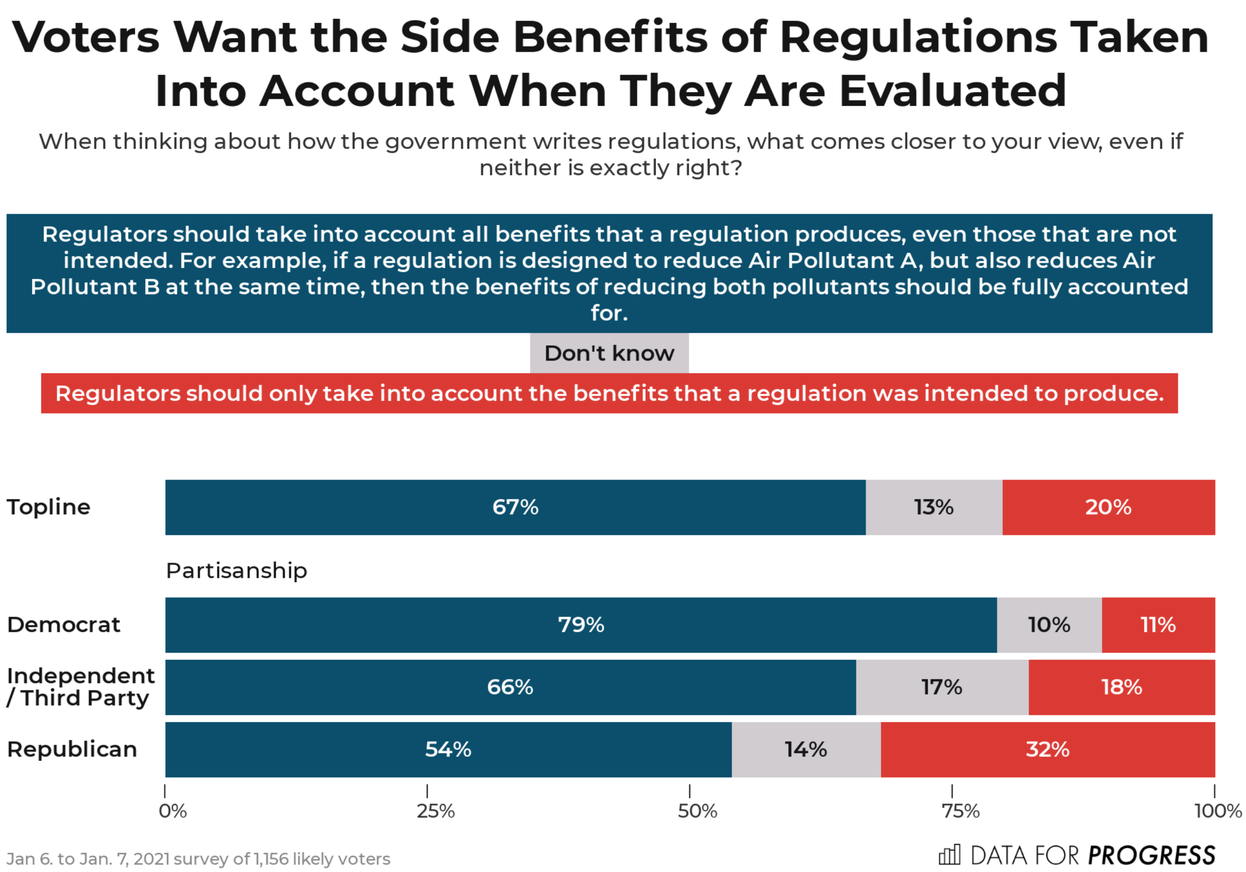


Voters Support Taking All Benefits Into Account When Evaluating Proposed Regulations

It is not uncommon for a regulation to produce benefits beyond those that were intended. For example, a regulation to limit greenhouse gas emissions from power plants is likely to reduce other pollutants, such as particulate matter and mercury, in the process. These additional, unintended benefits are sometimes referred to as "co-benefits" to distinguish them from the intended "direct benefits."

Many economists believe that cost-benefit analysis should treat co-benefits differently from direct benefits and have offered different proposals for doing so. One option would be to exclude them altogether if they are too large as compared to the direct benefits. Another would be to present them separately from the direct benefits in summaries of the analysis so that co-benefits would be given less weight.

We asked likely voters about their views on whether cost-benefit analysis should include co-benefits. Likely voters support including co-benefits by a margin of 47 points (67 percent support accounting for additional benefits, 20 percent oppose this). Support for this approach extends across party lines: Likely voters who self-identify as Democrats, Independent / Third Party voters, and Republicans all want the side benefits of a regulation to be included in the review process (by margins of 68 points, 48 points, and 22 points, respectively).



Conclusion: Putting Public Values Back Into Regulatory Analysis

This polling suggests that the economics-focused cost-benefit analysis that now predominates in federal regulatory decision-making is driven by a worldview and set of values that widely diverges from the worldview and values shared by the American public. At best, this striking divergence calls into question the relevance and legitimacy of this analysis as a policy tool.

At worst, it suggests cost-benefit analysis may be promoting regulatory decisions that are fundamentally inconsistent with the policy preferences of the American public as enshrined in the statutes that Congress has enacted. Instead, such decisions may reflect the unique policy preferences of economists who influence the practice of cost-benefit analysis. This is troubling because economists are not representative of the broader public in their worldview or set of values or democratically accountable to the public.

In short, the practice of cost-benefit analysis may be undermining the democratic integrity of the regulatory system.

These concerns present an opportunity for the Biden-Harris administration to reform regulatory analysis to make it more "people centered." The administration has already launched a process to reform long-standing cost-benefit analysis practices with its Day One memo on "Modernizing Regulatory Review." This polling suggests that this effort would enjoy broad public support. It also offers lessons for the administration as it carries out this reform. In particular, the polling results suggest that both the quality of regulations can be improved and the legitimacy of the regulatory system can be enhanced by developing and implementing a new form of regulatory analysis — one that eschews overly technocratic economics in favor of a more qualitative approach grounded in human experience and values.

Methodology

From January 6 to January 7, 2021, Data for Progress conducted a survey of 1,156 likely voters nationally using web-panel respondents. The sample was weighted to be representative of likely voters by age, gender, education, race, and voting history. The survey was conducted in English. The margin of error is ±2.9 percentage points.

QUESTION WORDING:

When new regulations are being crafted, do you think that regulators should or should not try to assign monetary values to people's lives?

- Regulators should not try to assign dollar values to people's lives.
- Regulators should assign dollar values to people's lives.
- Don't know.

When thinking about how the government writes regulations, what comes closer to your view, even if neither is exactly right?

- Regulators should take into account all benefits that a regulation produces, even those that are not intended. For example, if a regulation is designed to reduce Air Pollutant A, but also reduces Air Pollutant B at the same time, then the benefits of reducing both pollutants should be fully accounted for.
- Regulators should only take into account the benefits that a regulation was intended to produce.
- Don't know.

When thinking about how regulations are written, what comes closer to your view, even if neither is exactly right?

- All lives should be assigned an equal monetary value, regardless of a person's age, race, gender, and wealth.
- Regulators should assign different monetary values to people's lives based on age, race, gender, and wealth.
- Don't know.

COVER PHOTO
Christopher Burns/Unsplash