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*A Cost-Benefit State*

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Abstract by Ryann Kathleen Bernard

This article assesses Professor Cass R. Sunstein's argument that government should not protect citizens from the vicissitudes of the marketplace unless the benefits of such action outweigh the potential costs. The author argues that, although solutions like this will reduce the regulatory burden on private entities, such solutions will end up reducing the protections given to citizens and to the environment and that, ultimately, Sunstein's suggestion is the misapplied imposition of one group's social values onto the rest of society.

When evaluating regulatory schemes, cost-benefit analysis expands upon risk assessment in order to do a cost assessment, an evaluation that attempts to compare risks reduced by governmental action with the costs that reduction will impose on society. Sunstein and others suggest that cost-benefit analysis provides a rational and efficient way to make decisions and to prioritize while facilitating accountability and avoiding the perversion of agencies and reducing the burden on small businesses. Comparative risk assessment can be used to educate the public and serve as a rough test of the validity of agency action.

In actuality, McGarity posits, cost-benefit assessments are riddled with uncertainty and difficulty. Centralized risk assessment is a complex and expensive process that could impose on agencies policies contrary to statute, delay new regulations, conflate variables that are not easily quantifiable while inflating the judgments of professional risk assessors, make inappropriate comparisons, requires the quantification of human life and health, and is biased against both the future and protective legislation—all for an imprecise “best estimate” that relies on oversimplification of a complex world.

The author concludes that Sunstein and his contemporaries, in advocating a “soft” model of cost-benefit analysis, which evaluates more than economic efficiency, should consider how it will be applied in the real political world – a place in which Sunstein's “soft” model will be indistinguishable from the efficiency-driven “hard” model, which is riddled with the problems discussed above.