Technocratic democracy and the politics of cost-benefit analysis

Chase Foster critically assesses recent advocacy for technocracy in American government

Amidst the background of the Trump presidency, and its frequent disregard for economic and scientific expertise, 2018 might seem a surprising time to publish a book celebrating the advance of technocracy in the American government. Yet Cass Sunstein, the prolific law professor and occasional policy-maker, has done exactly this. In his new book, *The cost-benefit revolution*, he argues that science and economics are now at the centre of regulatory policy-making (Sunstein 2018). From highway safety to climate change, obesity to consumer protection, the institutionalization of requirements for scientific evidence and rigorous economic analysis has, according to Sunstein, 'revolutionized' policy-making, leading to regulatory rules that are increasingly oriented towards maximizing aggregate welfare.

Sunstein draws from his expertise in the fields of economics and law, and extensive experience working in government, including three years at helm of the Office of Information and Regulatory Affairs (OIRA), the agency responsible for reviewing agency regulatory impact assessments, to make a persuasive case that cost-benefit analysis (CBA) should be a central decision rule in regulatory policy. Within his 'technocratic conception of democracy' (Sunstein 2018, p. xi), the public has delegated the vast majority of policy-making decisions to insulated bureaucrats, who use science, economic theory, behavioural research, policy experiments, and cost-benefit analysis to devise policies that maximize social welfare. While acknowledging the difficulties of measuring welfare and ascertaining the prospective effects of policies, and noting that such an approach may sometimes run against the concerns of distributional justice, Sunstein nevertheless holds that strict cost-benefit analysis requirements lead to better public policies.

While the book offers much insight into many of the theoretical foundations and contemporary debates about CBA, it downplays the political role of regulatory review, while ignoring the ways that cost-benefit methodology itself is affected by politics. Not only have quantitative scholars identified strong empirical evidence that industry lobbying shapes regulatory impact assessments (Haeder and Yackee, 2015), but most observers agree that political control remains the central purpose and function of OIRA, which is housed in the White House (Posner, 2002). The institution's political function has only become more evident during the Trump administration. For instance, a 2017 executive order significantly expanded OIRA's powers to block new agency rules, requiring agencies to eliminate two rules for every new one enacted, while also mandating that the net costs of any new rule be zero, regardless of the benefits. Yet even amidst these developments, Sunstein presents regulatory review as a mostly apolitical exercise that is as constraining on the White House as it is on agencies.

Similarly, he portrays cost-benefit analysis as an apolitical technology. While Sunstein is right to note that the methodology is not inherently biased toward either regulation or deregulation and that it has been used to justify policies supported by Democrats and Republicans alike, this does not mean CBA is impervious to politics. Like any technology, the concepts and categories of CBA can be shaped by institutional actors and vested interests, including through advocacy, research funding, and model inputs and assumptions.

Take the social cost of carbon (SCC), the federal government's official estimate of the economic costs of a marginal increase in greenhouse gas emissions. The result of a working group involving more than a dozen agencies, the SCC is often hailed as an achievement of neutral, technocratic government. Yet, because it was developed during the Obama administration and used to support a flurry of rule-making to place limits on greenhouse gas emissions, the SCC was seen by most Republicans as a politically motivated endeavour (Wall Street Journal, 2013). And sure enough, as soon as Trump became President, he disbanded the Interagency Working Group on Social Cost of Greenhouse Gases, and withdrew from official policy the social cost of carbon (White House, 2017). Soon thereafter, the new administration established a revised SCC of just \$1 to \$6 – equal to less than a tenth of the Obama administration's estimate of \$10 to \$85.

Notably, these changes were made, not by throwing out any of the climate change models, but by making two changes to model specifications. Specifically, the administration employed a higher discount rate, and considered only domestic effects. Given that the effects of climate change are global, intergenerational and potentially irreversible, utilizing a high discount rate and focusing only on domestic effects is widely seen as inappropriate. But these choices are well within OIRA's rules, reflecting the discount rates and domestic focus of most other CBAs. That such a dramatic revision could be achieved while staying within the bounds of institutionalized practice, suggests that CBA methodology contains ample room to pursue a variety of political ends.

Indeed, there is little evidence from the current administration that Sunstein's 'cost-benefit revolution' has limited the