

iLUMinate Blog Transcript: Richard L. Revesz on Balancing the Costs and Benefits of Federal Regulations

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- ANNOUNCER: 00:06 [music] This podcast is brought to you by iLUMinate, the Lehigh Business blog. To learn more, please visit us at business.lehigh.edu/news.
- JACK CROFT: 00:17 Welcome. I'm Jack Croft, host of the iLUMinate podcast for Lehigh University's College of Business. Today is March 28th, 2024, and we're talking with Richard Revesz, Administrator of the U.S. Office of Management and Budget's Office of Information and Regulatory Affairs, also known as OIRA for short. Ricky is one of the country's leading voices in environmental and regulatory law and policy. He is on Lehigh's campus today for this spring's Year of Learning lecture to speak on managing the regulatory process. Thanks for joining us on iLUMinate today, Ricky.
- RICKY REVESZ: 00:54 I'm delighted to be here. Thanks for having me.
- CROFT: 00:56 Now, I think it's safe to say that OMB's Office of Information and Regulatory Affairs is not exactly widely known to the general public. So if we could start by you just telling us a little about what the office's main responsibilities are and what role it plays in the federal regulatory process.
- REVESZ: 01:14 Sure. You're right. When the media writes about us, they often call us obscure. And on good days, they call us obscure but important. Bad days, just obscure. The agency does a number of things, and I'll focus on the regulatory components of what we do. We do a number of other things, which we could explore as well. So on the regulatory side, for any major federal regulation-- this could be health and safety regulations, environmental regulations, homeland security regulations, regulations protecting families and children, transportation regulations, safety standards across the federal government, cybersecurity standards across the federal government. For any regulation of this sort that is significant, we run a centralized review process. So we don't write any of these regulations. The various agencies, the EPA, Environmental Protection Agency, the Department of Transportation, Department of Homeland Security, the Department of Health and Human Services, they write the regulations. Often, these things are packages that are hundreds, sometimes thousands of pages long. Then they come to us, and we do two main things.
- REVESZ: 02:38 So one is we ensure that the benefits of the regulations justify the costs. And we do this pursuant to an executive order that dates back to the Clinton administration, although the Clinton executive order was a replacement of a Reagan administration executive order that wasn't actually all that different. So this system has been around for more than 40 years. And so we make sure that the American people get sufficient benefits from this regulation to justify the cost. And that's one thing. The second thing that we do is we run an interagency review process. So the government is a complicated place, and lots of different agencies have interests in regulations. And we need to make sure that the government doesn't work across purposes. So for example, if there was an environmental regulation that impaired the reliability of the electricity grid, that would be a problem. And the Department of Energy will be sure to tell us this. And so those sorts of things come up in the interagency review.

REVESZ: 03:54

And we actually run it not only with respect to every agency in the executive branch, but also every policy council at the White House. The White House has lots of policy councils, like the National Economic Council, the Council of Economic Advisors, the Domestic Policy Council, the Office of Science and Technology Policy, the Climate Policy Office, the Gender Policy Council, many more. And these have intense interests in regulatory policy because they are basically carrying out the priorities of the administration. And you want to make sure that the regulation is aligned with the administration's priorities and does not interfere with other agencies' missions and doesn't inadvertently have pernicious consequences. So this is kind of a complicated process where we send these regulations out. We get comments. We compile all this. Often disagreements arise. And when there are disagreements, we try to work it out, sometimes find a compromise, sometimes explain to an agency that their disagreement is misplaced, and so on. But all this has to happen before the regulation sees the light of day. And if it seems like a lot, it's actually twice as much because we do this both for proposed rules and then again for final rules.

CROFT: 05:13

Now you had mentioned the costs and benefits, and that this has been a part of the office's responsibilities over the last four decades. And I'm wondering if the approach you've brought, how it differs from what your predecessors have done in terms of how you calculate those costs and benefits.

REVESZ: 05:38

The main difference is that OIRA has a guidance, and it's a guidance to agencies on how they're supposed to determine the costs and benefits of regulation. And the guidance under which OIRA operated until this past year dated back to 2003. It was kind of a comprehensive document put out in 2003. And it was a good document, but it had become obsolete. It had become obsolete because relevant market conditions had changed and also because there had been significant advances in the economic and scientific literature. And one of the things that President Biden called for on his first day in office was to modernize regulatory review. And an important component of that was to update the guidance. We call it Circular A4. Talk about something obscure. That tells agencies how they have to compute the costs and benefits of regulation. We completed this work in November of 2023. So our new guidance is brand new. It went through a very extensive process of public comment and peer review. We benefited from the best scientific and economic minds in the country in putting this together. And it's now out and doing its work.

CROFT: 07:06

Now, one of the areas in particular - and again, this goes to one of the areas of your expertise even before you took your current job - is the effects of climate change on the potential future health and well-being of future generations. So how has the calculation changed to figure out what those impacts will be on people in the future?

REVESZ: 07:40

Yeah, and it's a great question. It's a very important issue. It was significantly affected by the change in the guidance. So most regulations have some consequences in the future, not just climate change regulations. And typically, although not always, the costs are dispersed in the near term, and a lot of the benefits accrue in the longer term. So for example, if we have a regulation protecting the quality of drinking water, public water systems are going to have to buy technology, change their production processes. That obviously costs money. But the benefits are going to accrue over a long period of time. People are going to drink better quality water and are going to be less likely to get illnesses of different kinds, including very serious ones, as a result of, for example, removing carcinogens from drinking water. And one of the challenges of

cost-benefit analysis, and this has to be done, is to figure out a metric under which future consequences are compared with current consequences. So we have these benefits in the future. And how do we basically compare them to money that's spent now for this equipment? And economics has developed a technique for that, which is to calculate the net present value of it, which involves using a discount rate.

REVESZ: 09:06

And one of the things we did was to update the discount rates. Basically, in 2003, the guidance suggested that agencies use a discount rate of 3%, a discount rate of 7%. The discount rate of 3% was trying to do something that if you did exactly the same thing now, the number would be 2% because of changes in the real return of 10-year government bonds. The 7% discount rate was trying to do something that can be better done in a different way, not through the discount rate, and had essentially become discredited in the economics literature. So we basically replaced those two rates with a 2% rate. And there's also a separate economics literature, a very highly regarded economist, explaining why for real long-term effects, the effective discount rate that one should use is lower. And we embrace that literature. And if something happens in the pretty far future, we're using a 1.1 discount rate. So those were significant-- and it's not that we just picked numbers out of a hat. I mean, it's kind of significant scientific and economic support for what we did.

CROFT: 10:20

Now, how do we as a society then find the right balance between the cost and the benefits of regulations?

REVESZ: 10:30

Well, so this is exactly what we do. We have to make sure that the benefits of regulation justify their costs. Actually, for a lot of important regulations, the benefits are many times the cost. I mean, it's not particularly close. We also have to do something else that for regulations that have an impact on the economy of more than \$200 million a year, we have to require that agencies present various alternatives to their preferred regulation. And among the alternatives that they evaluate, pick the one that maximizes net benefits. And net benefits are benefits minus costs. So that's what we do. I mean, actually, that's really what the agencies do in the first instance. And we make sure they've done it well, that they've basically done it consistently with the best techniques out there and they comply with their guidance.

CROFT: 11:25

So one of the criticisms regarding the changes and formulas that the government is looking at now comes from particularly the fossil fuel industry and others who say that it will kill the fossil fuel industry, that it's going to create economic harm for businesses and for employees. So where does that balance lie in terms of-- and a lot of this does fall under that umbrella of the effects of climate change, a lot of which we're seeing now. Where does that fall in terms of the future of energy in the country and the things that you're looking at?

REVESZ: 12:06

Well, I mean, the beauty of benefit-cost analysis is that it looks at all the consequences. So an environmental regulation doesn't just look at the benefits that might accrue to either the current generation or future generations. It looks at the costs that are being imposed on whoever costs are being imposed on. It's not always a kind of like imposed costs on industry to help breathers. I mean, often it's different winners and losers among producers of a product. I mean, none of these regulations are going to reduce the amount of electricity in this country. We have no danger of losing our power. What some might do is they might shift from some forms of producing energy to others. And that'll create some winners and some losers. And all of that needs to get accounted for and is accounted for. And if there are losses of

jobs, that is part of the analysis. But there might also be jobs gained in the part of the industry that is now capturing a bigger share of the market. That's also part of the calculation. And if there are broader economic impacts of some sort, those are considered as well. So that's the beauty of our process. And it doesn't look at just one of the consequences of regulation. It looks at all of the consequences of regulation, positive and negative. And it makes sure that the positive consequences outweigh the negative ones.

CROFT: 13:45

Now, one of the other interesting changes that have come about in your time at OIRA is the recent guidance that came out to encourage the general public to get more involved with the regulatory process. How will that work? And what was the impetus behind that? And particularly, I noted that it's meant to bring more people from underserved communities into the process specifically.

REVESZ: 14:17

Yes, this is a big priority of the Biden administration. Again, President Biden signaled this in his first day in office with a presidential memorandum on modernizing regulatory review. And he repeated this in an executive order with the same title that he issued in April of 2023. And the idea is exactly that. There's always been participation in the regulatory process, but it tends to be by sophisticated actors. And by sophisticated actors, I don't mean just businesses that don't want regulation. I mean, often for environmental regulations, there are also sophisticated national environmental groups that know how this process works. They can be effective. They have scientists. They have economists. They can bring expertise to the table. They know when to intervene and so on. But there are others who find this process daunting. I mean, it's not that easy to figure out how to not just have your voice heard in the government, but have it be heard effectively. And that's what we're trying to facilitate following the president's mandate for us to do that. So we want, as you indicated, underserved communities-- it might be not the national environmental group, but the local environmental justice group that's concerned about the local chemical plants. It could be tribes. It could be beneficiaries of government assistance programs.

REVESZ: 15:49

It could also be small businesses that, unlike their big business counterparts, are less likely to have trade associations and lobbyists in Washington whose job it is to navigate the system. And we're trying to facilitate that for them. And we're doing it in two ways. I mean, first, we're giving guidance to the agencies that write these regulations on how they can be more proactive to get a broader set of the public to participate in their proceedings. And then we are doing it ourselves at OIRA because OIRA also runs meetings with the public. We do that during the periods when we have rules under review where people can actually-- anyone can request a meeting. We typically grant all of them. And a person can come and explain their perspective. And we also invite the agency that's writing the regulation. We invite any other part of the government that's interested, like other agencies, White House Policy Councils, so that these issues can be aired. And in terms of our own interactions with the public in our own meetings, we are holding ourselves to the same principles. And we've done a number of things. I mean, just very recently-- I grew up in Argentina. Spanish is my native language. I recorded a Spanish language version of our instructions on how to request meetings with OIRA.

REVESZ: 17:13

Today, this morning, as I was on the train coming here, we released our race and ethnicity standards, which is something that OIRA has responsibility for doing. This

kind of governs how the federal government collects race and ethnicity information in federal statistical surveys. I mean, principally, probably the thing people see the most is the decennial census. And we just posted this morning a Spanish translation. Actually, personally, I didn't do the translation myself, but I actually edited late last night. We also posted a translation in Arabic because we are creating a Middle Eastern and North African category, which those communities had advocated for for a long time. And we thought it was right to post an Arabic translation. We're making all kinds of adjustments for people who have need for accommodations in communicating with the government. And we're continuing to work in that area. And we think this is hugely important.

CROFT: 18:13

I'm curious, what was it that led you to focus on policy and regulation for your career? Was there a specific instance or was it realization that, well, this is where so much actually happens?

REVESZ: 18:31

Well, it's a long story, and it goes way back. And I won't do the minute by minute because we'll be here for many decades. [laughter] So I grew up in Argentina. I came to the U.S. for the first time-- I mean, I had visited a couple of times before, but I came to the first time to live when I was 17, two weeks before I started my freshman year at Princeton. And I came here basically with the intention of being an engineering major. I never thought about going to law school. That wasn't something that-- it had kind of a different connotation in Argentina. Argentina was going through a lot of political upheavals at the time and so on. And this is what I wanted to do. And I wasn't one of those people who started doing that and decided, "Oh, I don't like the math," or, "I don't want to do--" I mean, I actually liked all that stuff. But I decided, I don't know, maybe by my junior year, I decided that I actually was more interested in the public policy aspects of science and technology problems than I was in the kind of pure scientific and technological part of it.

REVESZ: 19:38

So then I decided to become a joint major between the Civil Engineering Department, which is what I had planned to major in initially, and what was then the Woodrow Wilson School of Public International Affairs, now just the School of Public International Affairs. And at that point, I was already thinking in these terms. I wrote my senior thesis at Princeton on trade-offs between fuel economy regulations and environmental regulations, which is actually not all that different from stuff I do now, many, many years later. And then that also led me to decide to go to law school. Because I basically came to think, I think correctly, in retrospect, that the people who were influential on public policy issues in the United States tended to be lawyers. That's actually not true to the same extent in other countries, but it is true in the U.S. So that was kind of the couple-of-minute version of my kind of intellectual trajectory.

CROFT: 20:46

Now, you did get a degree in engineering, master's degree, from MIT in between there as well.

REVESZ: 20:53

Yes, I did.

CROFT: 20:54

So how does that fit into kind of what you were thinking at the time?

REVESZ: 20:59

Well, so I faced a constraint at the time, which is that when I graduated from college, I faced being drafted into the Argentine Army. And it was a bad time. This was during the so-called dirty war when a very high number of people were killed in government-sponsored violence. It's kind of like if the U.S.-- looking proportionally at the populations of these countries, it's like if the U.S. government killed more than

100,000 people on U.S. soil. I mean, it's kind of really unimaginable. And this is not a good time. This is going to-- military junta was ruling Argentina. This is not a good time to do this. But the way that I get deferrals from the draft was to remain in school. And so what I think I might have done otherwise, or what I would advise students now to do, which is between college and grad school, they should go work for a [inaudible]. That wasn't really an option. And I was still somewhat undecided. So actually, in my senior year, I applied both to graduate school in engineering and to law school. And I decided to go to MIT and I deferred law school. And my plan had been to get a master's degree and then go to law school. And that's what I did.

REVESZ: 22:08

Although while I was at MIT, I had co-authored a number of papers with my advisor. So I was like productive, cheap labor. And my advisor tried to talk me into staying there to get a PhD. And I actually thought about it briefly, but then decided not to and proceeded with the plan that I had laid out when I was a senior in college.

CROFT: 22:34

Now, you went on to a career at NYU, Dean of the Law School, and you're the Dean Emeritus now. But you also founded the Institute for Policy Integrity at NYU Law School in 2008. So what was the impetus for that? And what does it do?

REVESZ: 22:53

So I had, at that time, finished writing a book called *Retaking Rationality: How Cost Benefit Analysis Can Better Protect the Environment and Our Health*. And one of the points of the book was that environmental groups and other groups that could be beneficiaries of regulation had essentially absented themselves from methodological discussions of how cost-benefit analysis should be done. At the time, they were somewhat hostile to the methodology. But as a result, they had ceded this field to the other side, which were often trade associations for industry groups and then some anti-regulatory academics. And I thought it was important to reset the playing field so they would be even. That's why I wrote the book. But then I thought, well, the world isn't going to change because I wrote a book. I mean, and also how many people realistically are going to read a wonky book like that? And decided that I could actually have more impact by putting together Policy Integrity as a cross between a think tank and advocacy organization. And that our goal would be to basically put the balance back in place.

CROFT: 24:18

And how have you gone about doing that?

REVESZ: 24:20

Well, I'm now on leave both from NYU and from Policy Integrity. So I'm not doing any of this right now while I'm in the government. But in terms of what I did before is-- well, we did a number of things. So first, one of our areas is we actually did scholarship and produced reports and kind of think tank-type work addressing these conceptual issues. But we also created capacity building for environmental and other groups to be able to participate effectively in proceedings of this sort. And then that was our second kind of line of work. Our third line of work was participating directly ourselves through comments in major federal laws and comment rulemakings and litigation in the federal courts. And the fourth was by training students. We would run a clinic each semester, every year, where students would actually get hands-on experience doing this work. And many of them have gone on to leadership positions in the government and leadership positions in the nonprofit sector and leadership positions elsewhere. And over the years, by the time you have done stuff like this as long as I have, you train a lot of students.

- CROFT: 25:36 Now, one final question, and this was something more of a point of curiosity, I must say, but you had clerked for Supreme Court Justice Thurgood Marshall, I'm assuming after Yale Law School.
- REVESZ: 25:49 Yeah, I had clerked for a federal court of appeals judge in New York for one year, Wilfred Feinberg, and then I clerked after that for Justice Marshall.
- CROFT: 25:58 Yeah. So I'm just wondering what that experience was like and whether there was anything in that that has kind of helped inform your career ever since?
- REVESZ: 26:11 There was a lot. I mean, it was an extraordinary experience. And most importantly, it's not every day that we get to have daily contact with a real historical figure. I mean, Justice Marshall changed our country in very significant and hugely positive ways. And so you can't go have lunch with George Washington, but I could work in Justice Marshall's chambers and see him every day and talk to him. So that was amazing. Obviously, the work of the court is very interesting, and all that is a great professional experience. But beyond that, Justice Marshall had been a brilliant strategist for the civil rights movement. And he was an extraordinary storyteller. And every once in a while, at the end of the workday, he would come and talk to us about the strategies that led to Brown versus Board of Education. So this is the 1954 case in which the Supreme Court held that separate but equal was unconstitutional. But basically, this didn't just happen in a vacuum. He had been building the building blocks for this for more than a decade.
- REVESZ: 27:28 And the strategy behind this was super interesting, mostly because he wanted to make sure that this issue wasn't frontly presented before enough of the building blocks had been put in place. Because the concern was that without enough of the building blocks in there before, the Supreme Court might not do what it ultimately did. And he had this ability to control the flow of arguments and cases throughout the whole federal courts, which is actually something very hard to replicate now. But it was his force of personality and his distinction. And I learned an enormous amount about legal strategy and the strategy of how one pushes an idea through the legal and policy system. And I think that Policy Integrity did benefit from some of what I learned that year.
- CROFT: 28:16 Ricky Revesz, I'd like to thank you for being with us on iLUminate podcast today.
- REVESZ: 28:21 Thank you so much. I really enjoyed the conversation.
- CROFT: 28:23 Now, before becoming administrator of OIRA in January 2023, Ricky was the director of the American Law Institute, the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. He is also, as he noted, on public service leave as the AnBryce Professor of Law and Dean Emeritus at the New York University School of Law, as well as the Institute for Policy Integrity. Lehigh's Year of Learning is a college-wide initiative that focuses Lehigh Business students and faculty on a particular area of interest through classroom activities and campus events. This year's theme is the interdependency between government and business. This podcast is brought to you by iLUminate, the Lehigh Business blog. To hear more podcasts featuring Lehigh Business thought leaders, please visit us at business.lehigh.edu/news. You'll also find links there to follow us on your favorite social media platforms. This is Jack Croft, host of the iLUminate podcast. Thanks for listening.

