

Cass Sunstein, Concern Troll

January 16, 2009

[Original link](#)

[\[cross-posted to Open Left\]](#)

Remember when President Bush tried to put more arsenic in our drinking water? Lots of people got outraged — it seemed like a classic example of a deregulator-in-chief helping his corporate friends at our expense. Not Cass Sunstein, a prominent (and nominally-liberal) law professor.

Sunstein, working for and with right-wing deregulatory think tanks, published a piece called “The Arithmetic of Arsenic”, arguing that everyone needs to stop being so *emotional* about these things. We can’t decide whether arsenic should be in our water based on fuzzy-wuzzy arguments about not killing people. No, we need to be hard-headed realists and decide exactly how much a human life is worth and whether filtering arsenic is worth the cost. In short, we have to do *cost-benefit analysis*.

As fellow law prof Tom McGarity pointed out, Sunstein continued to hold this view despite the fact that Sunstein’s own research into the subject showed that there was so much uncertainty around the issue that just using different previously-published estimates could result in whatever conclusion you like. And there was no obvious way to decide which estimate to trust.

All of this would be just another story in the annals of out-of-touch intellectuals — a law professor who gets off on killing people to save money, actual facts be damned — except for one frightening fact: Barack Obama just put this law professor in charge of cost-benefit analysis for the whole government.

The Office of Information and Regulatory Affairs (OIRA) was set up by Ronald Reagan to allow him veto power over any federal regulation. If the EPA wanted to stop companies from poisoning fish, if the DOJ wanted to stop businesses from discriminating, if OSHA wanted to protect miners’ lungs, OIRA could intervene and double-check their cost-benefit analysis. They could rejigger the numbers to make it so that the regulation got killed or if they failed at that they could just demand more and more research from the agency, delaying the regulation it was finally abandoned.

OIRA was one of Reagan’s most powerful tools for keeping the Federal Government from doing its job. And now someone who’s a strong fan of its mission has been put in charge. It’s a scary thought, especially as you’re going to get a glass of drinking water.