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# AppointeeAlert



## this issue:

Lisa Heinzerling, Associate Administrator of the U.S. Environmental Protection Agency for Policy Economics and Innovation

## Heinzerling's Background

Professor of Law, Georgetown University Law Center

Visiting Professor of Law, Harvard Law School

Visiting Professor of Law, Yale Law School

Visiting Professor of Law, Yale Law School

Skadden Public Interest Fellow, Business & Professional People for the Public Interest

Law Clerk, Hon. William J. Brennan, Jr., U.S. Supreme Court

Law Clerk, Hon. Richard A. Posner, 7th Circuit

## EDUCATION

A.B., Princeton University

J.D., University of Chicago Law School

## Who is Lisa Heinzerling? Green by any means necessary...

Lisa Heinzerling is currently an Associate Administrator of the U.S. Environmental Protection Agency. This is a position within the Obama Administration that does not require Senate confirmation. She was previously a law professor at Georgetown University.

Heinzerling is the author of *Priceless: On Knowing the Price of Everything and the Value of Nothing*, THE NEW PRESS 2004. In this book Heinzerling and her co-writer diss the cost-benefit analysis

method typically present and sometimes required when promulgating regulations. She would replace this analysis with the precautionary principle which focuses on eliminating or severely curtailing risks – regardless of the costs.

Heinzerling's most notable claim to fame is her

work as counsel in *Massachusetts v. EPA* where the U.S. Supreme Court held that greenhouse gases, are "air pollutants" that can

be regulated under the Clean Air Act.

Unlike Cass Sunstein, the President's Regulation Czar, Heinzerling doesn't like cost-benefit analysis. On this point she has stated:

"Cost-benefit analysis is a deeply flawed device that has never been the environmentalist's friend. It impedes rather than aids understanding of the

concrete consequences of regulations. It would behoove the next president -- and all who value environmental protection -- to do more than fiddle around the margins of old debates, and to question whether a decision-making framework that can stare environmental catastrophe in the face and declare it "efficient" is really the best we can do." Fn.1.

**"Heinzerling's alarmist, environmentalist rhetoric reads like a screen play for a disaster movie. This isn't helpful. What we need instead is rational decision making based on real facts and sound reasoning."**

**-Bill Wilson, President, Americans for Limited Government**

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# What you really need to know about Heinzerling

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As noted in her quote above, Heinzerling is a noted critic of the cost-benefit type of analysis in regulatory actions. In the area of the environment her advocacy is particularly strong against this type of analysis. Not only does she reject cost-benefit, but she thinks that the situation is so bad and that we are so far down the path to global warming that the less restrictive “precautionary principle” type of analysis (regulate away risk even in the face of scientific uncertainty regardless of whether there is consensus as to the existence of risk) won’t even do the job. According to Heinzerling sometime in the 1980s the tipping point occurred where we could be complacent about this and still be ok. Desperate times now call for desperate measures.

At this moment in history, discussing climate change in terms of the precautionary principle is a serious mistake. As I discuss below, we probably blew past our precautionary opportunity sometime in the 1980s. We are now, and have been for some time, in a post-cautionary world. The scientific debate over whether climate change is happening, and whether it will hurt us, is over; the important questions are when it will get worse and by how much. I suggest, therefore, that we begin to discuss climate change in terms of a “post-cautionary principle.” Recognizing that we have hurtled past precaution into a postcautionary world has several important implications for public policies concerning climate change. Fn.2.

Heinzerling’s rhetoric in many instances is downright scary, in essence she at times equates flipping on a light switch to intentional homicide:

Knowledge that death and suffering will result from our actions leads uncontroversially to a moral obligation to change our behavior. In the United States, knowing killing is condemned in the criminal laws of all fifty states, in modern regulatory laws at the federal level, and in civil jury awards in tort cases. These laws embody a moral commitment against knowing killing that, in traditional criminal contexts, is uncontroversial. It should be no more controversial when it occurs on a global scale. Fn.3.

In another law review article Heinzerling discusses “knowing killing” in the context of environmental law. Here she attempts to draw parallels between intentional homicide, i.e., the killing of one human being by another human being, and deaths that occur due to pollution. Fn.4.

Heinzerling also complains about the review process of regulatory actions in the White House’s Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA), especially in the context of reviewing environmental regulations. She accuses OIRA of illegal action by insisting on cost-benefit analysis when many environmental statutes require something like “best technology available” as a benchmark for review. Fn.5.

## Sources for further reading:

**Fn.1.** *Cost-Benefit Environmentalism: An Oxymoron*, Lisa Heinzerling responds to Richard Revesz on cost-benefit analysis, Grist.org, May 14, 2008. Available online at: <http://www.grist.org/article/cost-benefit-environmentalism-an-oxymoron>. (Accessed September 30, 2009.)

**Fn.2.** Lisa Heinzerling, *Climate Change, Human Health, and the Post Cautionary Principle*, 96 GEORGETOWN LAW JOURNAL 445, AT 452 (2008). Available online at: [http://www.law.georgetown.edu/faculty/Heinzerling/Articles/Climate\\_Change\\_and\\_Clean\\_Air\\_Act.pdf](http://www.law.georgetown.edu/faculty/Heinzerling/Articles/Climate_Change_and_Clean_Air_Act.pdf). (Accessed September 30, 2009.)

**Fn.3.** *Id.*, at 460.

**Fn.4.** Lisa Heinzerling, *Knowing Killing and Environmental Law*, NEW YORK UNIVERSITY ENVIRONMENTAL LAW JOURNAL (2006). Available online at: [http://www.law.georgetown.edu/faculty/Heinzerling/Articles/Knowing\\_Killing\\_and\\_Environmental\\_Law.pdf](http://www.law.georgetown.edu/faculty/Heinzerling/Articles/Knowing_Killing_and_Environmental_Law.pdf). (Accessed September 30, 2009.)

**Fn.5.** Lisa Heinzerling, *Statutory Interpretation in the Era of OIRA*, FORDHAM URBAN LAW JOURNAL (2006). Available online at: [http://www.law.georgetown.edu/faculty/Heinzerling/Articles/Statutory\\_Interpretation\\_in\\_the\\_Era\\_of\\_OIRA.pdf](http://www.law.georgetown.edu/faculty/Heinzerling/Articles/Statutory_Interpretation_in_the_Era_of_OIRA.pdf). (Accessed September 30, 2009.)

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