

Comment on Cost-Benefit Analysis of Homeland Security Regulation

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To be most effective, domestic terrorism policy has to appreciate the linkages between public and private efforts to limit losses from terrorism, as well as between privately purchased insurance and private protection against terrorism. The government needs to concern itself not just with the level of protection against terrorism, but with the *type* of protection. It should seek to minimize zero-sum protective measures that simply shift risk from one set of targets to another, and it should instead encourage measures that limit the overall risks faced by society as a whole.

Public and Private Protection

Criminologists and analysts of criminal justice theory have long recognized problems with private “vigilantism” against crime. Since terrorism represents a class of criminal behavior, similar issues arise here too. Public policy should seek to promote collective protective measures against terrorism, and discourage private measures that make one agent secure at the expense of other agents.

Consider the case of a trophy high-rise in Manhattan. The specific way we choose to protect the building can have very different impacts on the total societal risk of terrorism. On the one hand, we could promote “private” protective measures, such as perimeter fences, metal detectors at the building’s entrance, sophisticated air filters, vigilant guards, and so forth. These measures would make it harder to perpetrate an attack against the building and would thus make it less attractive as a target. However, this would simply encourage a terrorist group to seek other softer targets. In effect, these private measures make one building more secure but subject other targets to greater risk. On the other hand, instead of promoting private measures we could promote more aggressive law enforcement or immigration policies designed to catch terrorists before they strike. Such measures would make the individual building more secure, but *not at the expense of other targets*. While both private and public protective measures make us better off, public measures are more successful at making broader classes of targets better off. As a result, they represent a more efficient deployment of social resources.

The distinction is not simply between investments made by private agents and those made by the public sector. It is also worth distinguishing between private measures that shift risk onto other targets and those that do not. For example, guards, metal detectors, and fences make a particular building harder to penetrate. and would tend to shift risk. On the other hand, a sound evacuation policy or emergency response plan for a high-rise

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building would not necessarily shift risk onto other targets, even though this would help limit the loss of life in the event of an attack. The presupposition here is that terrorists care mainly about their success at creating spectacular damage against a prominent building (or set of buildings), and less about the precise number of casualties they inflict. If so, measures designed to save lives in the event of an attack are preferable to those that make a successful attack less likely.

Put more generally, government policy should seek to minimize zero-sum protective measures that simply expose other targets to attack, and seek to maximize *societal* protection that limits the overall risks faced by all. As a matter of policy, therefore, we should seek to reallocate protection away from target-specific measures that simply shift risk, and towards other measures, such as public law enforcement, emergency response, or target-specific measures to minimize the loss of life in the event of an attack. A holistic approach is called for, that recognizes the way in which protecting specific targets can make others more vulnerable. Indeed, just as in the case of vigilantism, it makes sense to take decisions about protection at least partially out of the hands of private agents—who often do not consider their impacts on others—and into the hands of the public sector. This could either be done directly—by investing in public law enforcement, emergency response, or military interdiction of terrorists—or indirectly, by providing incentives to private agents to invest in protective measures that are not zero-sum.

Insurance and Protection

The insurance market provides an additional lever by which federal and state agencies can affect the allocation of resources to public and private protective measures. The link between insurance and private protection is often under-appreciated, but it is nonetheless true that increases in the availability of insurance often discourage zero-sum protective measures, and vice-versa. Individuals with more insurance have less to lose, and spend fewer resources protecting themselves. In most circumstances, this is a downside of insurance, in that it discourages “prudent” behavior. In the case of terrorism (and crime, for that matter), this is not necessarily so, because individuals often engage in zero-sum protection designed to secure their own interests, without considering the impacts on society. Ensuring the availability of insurance against terrorism, such as through the TRIA, helps to dull the incentives of private actors to undertake zero-sum private protective investments that elevate the risk faced by other potential targets of terrorism.

The goal of providing insurance is *not* to decrease the overall level of protection against terrorism. Rather, it is to help reallocate resources away from private protective measures and towards public protective measures that benefit all potential targets of terror. This is a difficult task, because individuals all have an interest in protecting themselves, without regard to the risks they impose on others. Fortunately, the government has several policy levers that can promote “good” societal protection and discourage wasteful zero-sum protective measures. Insurance subsidization is one, and public law enforcement measures are another. The latter can also help discourage zero-sum protective measures: if people feel safer as a result of successful law enforcement actions, they are less likely to spend resources protecting themselves.

Insurance can also provide a means to encourage the right kind of protection, since insurers can offer discounts to customers, based on protective measures they may have taken. Left to their own devices, insurers will not discriminate between protective measures that make a single target better off and those that make society better off. Their only concern is their expected losses from terrorism, which depend on the risk faced by their customers, rather than by society as a whole. However, insurers could be offered incentives if they, in turn, offered larger discounts for protective measures that do not compromise the risks faced by other targets. For example, buildings with evacuation policies may get bigger discounts than those with guards or metal detectors.

Rethinking Liability for Terrorism

The above line of reasoning suggests the need to revisit the proper liability regime for terrorism. The tort system encourages individual property owners to take precautions designed to protect themselves. In the event of an accident, individual owners are held liable for their failure to protect themselves. If these liability rules are applied without modification to a terrorist attack, each individual owner or institution will be held liable for a failure to protect his/her own assets, without regard to the fact that such protection may have placed a variety of alternate targets at risk. The underlying problem is that the tort system considers only the disaster that occurred, and not the range of potential disasters that were averted.

Return to our example of the trophy high-rise. It is likely that moderate private protective measures benefit the building and society as a whole. However, if the building takes extreme precautions to protect itself (and itself alone), it merely shifts risk onto other buildings. Unfortunately though, the liability system fails to recognize this. If the building is attacked, it cannot claim in court that increasing its level of protection would have increased the risk faced by other buildings. This suggests that liability for terrorist attacks ought not to be borne entirely by private individuals. There should be some effort to waive (perhaps partially) a building's liability for terrorist attack. In this light, the waiver of liability associated with the 9/11 Victim's Compensation Funds seems to have been a sensible policy.

Conclusions

It may at first seem counterintuitive for the federal government to worry about excessive protection against terrorism, when we as a nation face an unprecedented risk of losses from terrorism. However, a wise homeland security policy has to encourage the *right kind* of protection and discourage the wrong kind. From this point of view, zero-sum protective measures represent the wrong kind of protection. Resources are better spent protecting society as a whole, rather than just individual targets. This is not to say that private protective measures are entirely without value, only that there is relatively too much reliance on private measures rather than public measures. Policy should seek to tilt the balance more towards public protection, but this does not call for the outright elimination or suppression of private measures.

As a general rule, policymakers need to consider the broader social context of their actions. It is crucial that they consider the impact of specific protective measures on the risks faced by other targets. It may seem eminently reasonable, for example, to protect bridges. Indeed, protecting bridges makes us all better off, on balance. However, such measures expose whole classes of other targets— nuclear power plants, chemical plants, ports, and so forth—to increased risk, because they become relatively more attractive. The question to ask is whether or not resources spent protecting bridges could not be better spent apprehending terrorists at the source, funding law enforcement expansions, or developing building-wide or citywide evacuation plans. Such measures would benefit a wide class of terrorist targets, but not at the expense of others.