The "Relationship Premium": Should Cost-Benefit Analysis Include the Value of Human Connections?

by David C. Kimball-Stanley

David C. Kimball-Stanley is a J.D. candidate at Harvard Law School.

Summary

People care enormously about what happens to those with whom they are close. Nonetheless, standard cost-benefit analyses usually measure only direct impacts on individuals, as well as sometimes the abstract preferences people have about matters with which they have no connection. This ignores the indirect impacts of regulations on the loved ones of those directly impacted. This Article argues that these residual effects are more than mere opinions, but instead may result in distinct costs and benefits for the people who are indirectly impacted; more concretely, policies that could prevent the anguish of a parent, or create the pride of a sibling or spouse, ought to consider those effects if possible. This Article will examine if there is evidence that such "relationship premiums" exist, and address some of the implications and complications associated with including such costs and benefits in regulatory decisionmaking.

Since Ronald Reagan, U.S. presidents have used some form of cost-benefit analysis to determine what regulations to institute on a wide variety of topics.[1] Over time, cost-benefit analysis has become the default for administrative agencies carrying out their duties. While there are some examples of statutorily mandated cost-benefit analysis,[2] or arguably even judicially mandated cost-benefit analysis,[3] the process remains mostly governed by presidential executive orders.[4] Now, a bipartisan proposal would anchor the practice of cost-benefit analysis in statute, largely cementing what administrations have done on their own into a requirement for all administrations going forward. The U.S. Senate's Regulatory Accountability Act of 2017 would largely codify President Barack Obama's most recent cost-benefit analysis executive order into law, as well as extend its reach to independent agencies that were beyond his power.[5]

This bill, and particularly its more conservative counterpart in the U.S. House of Representatives,[6] has generated a fair amount of opposition from political progressives. Their criticisms tend to take one of two forms. The first, which should be taken seriously, is that the wide range of requirements (particularly in the House bill) will in practice disable the administrative state from functioning, gumming up the works with needless bureaucracy.[7] The other criticism is that the bill's language would put a thumb on the scale against the often-unquantifiable values that are behind regulations, like clean water, safety, honesty, or even dignity.[8]

These are common criticisms of current cost-benefit analysis practices, and the Obama Administration made some efforts to address them.[9] But there is more to be done. Before the U.S. Congress rushes to cement a cost-benefit

Author's Note: The author would like to thank Profs. Cass Sunstein and Joseph W. Singer for their valuable thoughts and criticisms of earlier drafts of this Article.

1. Maeve P. Carey, Congressional Research Service, Cost-Benefit and Other Analysis Requirements in the Rulemaking Process 3 (2014), https://fas.org/sgp/crs/misc/R41974.pdf.
2. 42 U.S.C. §7503.
3. Michigan v. Environmental Prot. Agency, 135 S. Ct. 2699, 45 ELR 20124 (2015).
4. *See*, *e.g.*, Exec. Order No. 13563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821 (Jan. 21, 2011), *available at* https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review.
5. *See* S. 951, 115th Cong. (2017).
6. H.R. 5, 115th Cong. (2017).
7. Letter From Environmental Groups to U.S. Senate Urging Opposition to Regulatory Accountability Act (RAA), S. 951 (May 16, 2017), https://www.nrdc.org/sites/default/files/letter-opposing-raa-s951-20170516.pdf.
8. William W. Buzbee, *Regulatory "Reform" That Is Anything But*, N.Y. Times, June 15, 2017, https://www.nytimes.com/2017/06/15/opinion/regulatory-reform-bills-congress-trump.html?mcubz=1.
9. Eric A. Posner, *Obama's Cost-Benefit Revolution*, New Republic, Jan. 22, 2011, https://newrepublic.com/article/81990/obama-cost-benefit-revolution.

regime in place, it should consider all of the ways current practices do not measure up. This Article attempts to illuminate one area that has been underexplored—the value we each hold for one another.

Today, regulators often try to convert abstract values into dollar sums using "willingness-to-pay" survey data. For example, to understand how Americans value safety, regulators may analyze data taken from surveys that ask: "How much more would you be willing to pay for a car in order to avoid a 1/100,000 chance of dying?"[10] If the regulation imposes costs on consumers in the form of higher prices for cars and gives them safety benefits that the consumers value less than that increase in the price, then the regulation should be abandoned.

This model has applications beyond safety. It may also be used to measure more abstract values, like the importance of certain forms of dignity to disabled Americans. Regulators might accomplish that by asking Americans who are disabled how much they would be willing to pay for the dignity of, for example, being able to participate in a given activity.[11] This kind of questioning allows the government to get a sense of how much that benefit is worth to the actual people who are directly affected.

Sometimes, however, the government recognizes that Americans care about things with which they are not directly involved. For example, many Americans care about animals and their habitats, even in cases where they do not live near them and have no plans to visit. It is simply a moral commitment, or perhaps a point of national pride. Whatever the reason, it is certainly legitimate to care for animals and nature in the abstract, so regulators may try to include those preferences through the use of survey questions like: "How much would you be willing to pay to protect the continued existence of pristine areas and the animals who live there?"[12]

However, regulators rarely consider a third kind of issue, which resides at a level of generality between those two extremes. When individuals feel costs and benefits directly, there are often others who also feel those costs and benefits indirectly. The harm that befalls one person in some way impacts all those who care about that person. The way Americans care about their loved ones is distinct from the way in which Americans care in the abstract about our national parks. Most people who see a loved one hurt feel it on some level themselves.

To put this in more concrete terms, imagine agencies asking, "How much would you be willing to pay to remove a 1/100,000 chance of dying *from your daughter's* car?" A question asked in this way could shift people's valuation for safety and dignity above the levels found in the abstract—and perhaps in some circumstances even above their values when considering personal impacts. This difference is what I will refer to as a "relationship premium"—a bump up or down for certain costs and benefits associated with regulations that affect people we know or with whom we are close.

The idea that current analyses ignore a key value by excluding relationship premiums echoes other broader arguments against the use of cost-benefit analysis.[13] For example, willingness-to-pay models are not the only way to extract a value for a given regulation. Instead of focusing on how much one would offer for a car with additional safety measures, regulators could ask how much one would ask for when selling such a car.[14] Or the government could create a participatory democratic process through which small groups of participants establish monetary values.[15] These alternatives illustrate a core criticism of cost-benefit analysis that will undergird much of this discussion: the calculations made can provide an illusion of scientific certainty to regulatory decisions that obscure value judgments being made behind the numbers.

That assertion should be kept in mind as this Article explores some of the criticisms of including a relationship premium. For example, some proponents of the current model might altogether dispute the consideration of preferences regarding the welfare of others ("external preferences" as opposed to "personal preferences"),[16] or may argue the government should only consider these external preferences in certain situations.[17] These replies should be taken seriously, but they must acknowledge that there is a value judgment behind them, just as my argument must acknowledge a value judgment undergirding a relationship premium.

The Article first outlines what a relationship premium looks like, and how it is not yet implemented with con-

10. Cass R. Sunstein, Valuing Life: Humanizing the Regulatory State 111-17 (2014).
11. Amiram Gafni, *Willingness-to-Pay as a Measure of Benefits: Relevant Questions in the Context of Public Decisionmaking About Health Care Programs*, 29 Med. Care 1246-52 (1991), http://www.jstor.org/stable/3765994.
12. *See* Eric A. Posner & Cass R. Sunstein, University of Chicago, Coase-Sandor Institute for Law and Economics Working Paper No. 802, Moral Commitments in Cost-Benefit Analysis 3 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2930450; *see also, e.g.*, Jonathan Silberman et al., *Estimating Existence Value for Users and Nonusers of New Jersey Beaches*, 68 Land Econ. 225-36 (1992).
13. *See, e.g.*, Frank Ackerman & Lisa Heinzerling, Priceless (2004).
14. *See* Gregory Crespi, *Valuation in the Cost-Benefit Analysis: Choosing Between Offer Prices and Asking Prices as the Appropriate Measure of Willingness to Pay*, 39 J. Marshall L. Rev. 429 (2006), *available at* https://repository.jmls.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1322&context=lawreview.
15. Jennifer Nou, *Regulating the Rulemakers: A Proposal for Deliberative Cost-Benefit Analysis*, 26 Yale L. & Pol'y Rev. 601 (2007), *available at* http://digitalcommons.law.yale.edu/ylpr/vol26/iss2/6.
16. *See, e.g.*, Ronald Dworkin, Taking Rights Seriously 234 (1978).
17. Michael W. Jones-Lee, *Altruism and the Value of Other People's Safety*, 4 J. Risk & Uncertainty 213-19 (1991).

sistency. It then describes some potential pitfalls with the current process for including such values. The Article then explores if there is evidence for a relationship premium large enough that it would be worth a wide application. Finally, it gives some counterarguments against including a relationship premium, along with some possible responses. While the ultimate impact of relationship premiums is not entirely clear, my research here suggests that when approached honestly and transparently, calculations that attempt to account for the effects of relationships will help achieve the central goals of cost-benefit analysis.

I. The Relationship Premium in Practice

As a threshold matter, one might ask if the government under current practices ever performs a cost-benefit analysis that includes a relationship premium. There are not many examples. Perhaps the clearest case of a relationship premium being used in a regulatory cost-benefit analysis came in 2014, when the U.S. Department of Transportation (DOT) finalized a rule to reduce backover crashes in automobiles.[18] The rule requires automobiles sold after May 1, 2018, to have a certain amount of area behind the car visible to the driver.[19] DOT anticipated this would be achieved through rearview video systems and in-vehicle displays.[20] In justifying the new rule, the agency used a cost-benefit analysis that incorporated several "unquantifiable considerations."[21] Among those unquantifiable considerations was the fact that many of the lives lost in backover crashes belong to children; further, often the child's own parent is behind the wheel.[22]

It is important to recognize here that there were two different "premiums" being applied: on the one hand, the deaths may have been undervalued by the usual value of a statistical life, given the young age of many of the victims. The agency also had a wholly separate benefit in mind that focused specifically on the reaction of the responsible parents.[23] These were not just children; they were the children of the drivers. This is the relationship premium. Whenever a backover crash occurs, the driver will likely have a reaction of deep guilt. This is particularly true when the victims tend to be children. But the agency made clear that the specific relationship of parents to their children carried extra weight.

Compare that analysis to the one employed in a recent U.S. Department of Justice (DOJ) regulation enacted pursuant to the Americans With Disabilities Act. In 2010, DOJ considered regulations that would have effectively provided wheelchair access in various new settings.[24] These regulations could, among other things, decide whether students who use wheelchairs are able to use the bathroom independently and get onstage at important events like graduation ceremonies.[25] In its final regulatory impact analysis of these proposed regulations, DOJ went outside its primary analysis (which focused on traditionally measurable benefits) to consider benefits and costs for those who may not be directly impacted by the regulations.[26]

These harder-to-quantify third-party benefits fit broadly into two categories: insurance values and existence values.[27] Insurance values attempt to quantify the values derived by people with and without disabilities who may never use the accommodations in question, but who nonetheless appreciate the fact that the accommodations are available to use in case they ever did need them.[28] Existence value attempts to quantify the benefit people get from the knowledge that an accommodation exists, merely because people appreciate knowing they live in a society that provides such services.[29]

When DOJ set out to quantify existence values, the agency seemed to consider essentially the value Americans would place on the knowledge that people in wheelchairs would have these accommodations available to them.[30] Unlike the regulation DOT considered, this analysis of third-party values contained no references to relationships between those who will use the accommodations and those who will not.[31] Whereas the fact that a parent might be behind the wheel when a child is killed was an important fact for DOT, DOJ considered the benefits to Americans with close relationships to those in wheelchairs without distinction from Americans' existence and insurance preferences generally.

The explanation for this is not entirely clear. When defining the motives that might be behind existence values, DOJ listed: "bequest motives, benevolence toward relatives and/or friends who require accessibility features,

18. Federal Motor Vehicle Safety Standards; Rear Visibility, 79 Fed. Reg. 19177 (Apr. 7, 2014), *available at* https://www.federalregister.gov/documents/2014/04/07/2014-07469/federal-motor-vehicle-safety-standards-rear-visibility.
19. *Id.*
20. *Id.*
21. *Id.*
22. *Id.*
23. *Id.* at 19236 ("Of course, any death of a young child is a tragedy, but we believe that this traditional measure also does not adequately account for the value of reducing the risk that parents will be responsible for the death of or serious injury to their own children.").
24. Disability Rights Section of the Civil Rights Division, U.S. Department of Justice, Final Regulatory Impact Analysis of the Final Revised Regulations Implementing Titles II and III of the ADA, Including Revised ADA Standards for Accessible Design 142-46 (2010), https://www.ada.gov/regs2010/RIA_2010regs/DOJ%20ADA%20Final%20RIA.pdf.
25. *Id.* at 138.
26. *Id.* at 140.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.* at 146.
31. *See id.*:

> The second threshold estimate, by contrast, calculates the average monetary value each American (on a per capita basis) would need to place annually (over a fifteen year period) on the "existence" of improved accessibility for persons with disabilities (or the "insurance" of improved accessibility for their own potential use in the future) in order for the [net present values] for each respective requirement to equal zero.

Two additional points are worth noting with regard to this framing. First, while the agency acknowledges that insurance and existence values are distinct, they essentially consider them together here. Second, this analysis is a deviation from the usual willingness-to-pay model. The agency engaged in a so-called breakeven analysis, a mode of cost-benefit analysis this Article will explore in more detail in Part II.

and general feelings of empathy and responsibility toward individuals with disabilities."[32] In a footnote to the motive of "benevolence toward relatives," DOJ pointed out that this was distinct from altruism, which "assumes no direct connection between the altruist and the recipient of the benefit."[33] The agency went on to say that the Office of Management and Budget's (OMB's) policy is to not consider altruism in cost-benefit analysis,[34] noting that it risks "double counting."[35] Perhaps then, this motivation suggests DOJ is talking about a relationship premium.

If it is, it is striking that DOJ considers it merely a motive, as opposed to something that might affect the level at which the value is measured. DOJ's fragmented analysis does not explain how the different brands of third-party preferences are being considered, but what is clear is that the analysis does not distinguish the values for a relationship premium from the third-party benefits of the rule to Americans generally. Instead, the value that might seem like a "relationship premium"—non-altruistic benevolence toward relatives—is merely categorized along with the abstract existence values of Americans in general.

This is at odds with the intuitively satisfying analysis of backover crashes, where it seems obvious that the relationship of parents to their children gives the deaths an extra value worthy of consideration. Those were not merely existence values—the parents were directly involved in the deaths in question and there was nothing abstract about the victims. But DOJ did not make its own analogous judgments about relationships implicated by their regulations. It opted not to separately consider the benefits to friends and family who, without the proposed regulation, would not get to see a student they know and love graduate while taking the important symbolic step of crossing the event stage and accepting a diploma.[36]

There is nothing abstract about this benefit to a parent of seeing his or her child graduate in the same manner as other students; like preventing backover crashes, that benefit cannot simply be filed under "existence value." The benefits of seeing a graduation are, of course, not on the order of avoiding the anguish associated with accidentally killing one's own child, but there is an extra, seemingly uncounted, value there.

II. Current Practices: "Breakeven Analysis," "Qualitative Specificity," and Their Implications for Relationship Premiums

This final assertion, that relationship benefits must carry some extra value, is actually somewhat controversial. It is not obvious what extra value in a relationship premium there would be. The relationship premium is difficult, if not impossible, to quantify. Additionally, it may often be adding onto another hard-to-quantify value, like dignity. Today, agencies deal with these unquantifiable benefits through a process known as "breakeven analysis."

The basic idea of breakeven analysis is to switch from assigning specific cost-and-benefit numbers, and instead ask how high the unquantifiable benefits *would have to be* in order to justify the expected costs.[37] Here is one illustrative (though truly morbid) example from Prof. Cass Sunstein:

> An agency is issuing a regulation designed to reduce the incidence of prison rape. The annual cost of the regulation is $470 million. The agency cannot specify the number of prison rapes that the regulation will prevent. In addition, it believes that its efforts to monetize the costs of prison rapes—suggesting a value between $300,000 and $600,000 million—are speculative and tentative. Under breakeven analysis, it nonetheless decides to go forward. It finds that at least 160,000 prison rapes occur every year, and it concludes that if a single rape is valued at $500,000, the rule would be justified if it prevented only 1600 rapes, about 1 percent of the total. It believes that the rule is highly likely to achieve that goal.[38]

Here, the agency need not decide an exact dollar amount at which to value the avoidance of a prison rape. Instead, some reasonable assumptions can be made about what it might be worth. The regulators can then arrive at a decision about whether the regulation's benefits outweigh its costs using only the level of specificity necessary to make a decision on that question.

Some criticisms come to mind regarding this approach. First, breakeven analysis can appear to be a kind of one-way ratchet. When the costs narrowly outweigh the benefits, agencies consider what kind of unquantifiable benefits might tip the scales in favor of the proposed rule. But it is difficult to find examples of agencies using the analysis in any other way. For example, what if the benefits narrowly outweigh the costs of a regulation? There are plenty of regulations that are meant to aid individuals but could conceivably have an impact on their dignity. Surely, agencies should consider those unquantifiable costs that could invalidate a regulation in the same way they consider unquantifiable benefits that save regulations. It appears, however, that they generally do not.

A deeper problem for present purposes is that these analyses suggest that whatever extra "bump" a relationship premium might give a regulation's benefits, it is likely to be extremely small. There is a clear, and wholly understandable, bias toward justifying a regulation on benefits that are easily quantifiable and therefore likely less controversial. Behind that bias may also linger a background assumption,

32. *Id*. at 141 (citations omitted).
33. *Id*.
34. *Id*. at 141 n.62.
35. *Id*. at 141. Though it remains unclear how the third existence value motive—"general feelings of empathy and responsibility toward individuals with disabilities"—would not include that definition of altruism.
36. *See id*. at 138.
37. Cass R. Sunstein, *The Limits of Quantification*, 102 Cal. L. Rev. 1369, 1369 (2014), *available at* http://scholarship.law.berkeley.edu/californialawreview/vol102/iss6/1.
38. *Id*. at 1388.

less easily justified, that the unquantifiable benefits tend to be smaller than quantifiable ones.

If unquantifiable benefits were expected to be as large as quantifiable benefits, agencies would perhaps be more searching in their approach. They might try to include unquantifiable benefits in all their analyses, instead of saving them for instances in which they are faced with results that show costs narrowly outweighing benefits. If the assumption that such values are relatively small is correct, it would suggest that the relationship premium (which in many instances would pile unquantifiable values on top of other unquantifiable values) may also be quite small. If the relationship premium were sufficiently small, one could argue it may not be worth consideration at all.

To illustrate this problem, consider the distinction between nonmonetizable and unquantifiable values. Thus far, in discussing unquantifiable benefits, I have largely used the term "unquantifiable" to refer to things that are both unquantifiable and nonmonetizable. But the two terms describe distinct ideas, each with its own challenges.[39] In the case of a relationship premium, the two kinds of problems may compound to create an even more confounding puzzle.

A value that is nonmonetizable but is quantifiable would refer to an instance in which an agency has a strong sense for how many people a regulation will affect, but where it is difficult to place a dollar value on each instance of the benefit or cost.[40] For example, the agency may know how many wheelchair users will benefit from a regulation, but may not know what dollar value to put on each person's benefit from the accommodation in question.[41] Without knowing that number, they will not be able to do an apples-to-apples comparison with the costs of implementing the accommodation.[42] On the other hand, a regulation whose benefits are monetizable but unquantifiable presents different challenges. This is an instance where the benefit itself is clear, but the number of people who will benefit is not.[43]

Relationship premiums could present cases where the two are combined. For example, consider a regulation that allows a student in a wheelchair to cross the stage at graduation. The benefit to the student's parents will be hard to quantify, as their feeling of pride at the sight of their child's achievement does not lend itself to an obvious monetary value. Likewise, it is not clear how many parents or other relatives and loved ones may share in such a moment. So, we do not know how much the feeling of pride is worth and we do not know how many people would be able to enjoy it.

One possible solution to this problem would be to accept that precision at a high level is not necessary with an unquantifiable value such as this, and may even be counterproductive. What is more important is a qualitative analysis that accurately describes what is being measured, and accords the value in question the respect and weight it deserves. Such a method would make clear where a judgment is being made by the agency without the veneer of numbers that oversell their own accuracy. For example, commentators have noted that regulatory impact analyses have taken dignity into account both quantitatively and qualitatively, depending on the circumstances.[44] Sometimes when dignity is not monetized, it is instead implicitly monetized within a range. So, while dignity in a particular rule may be left unmonetized, ultimately regulators make sure not to allow it to gain such a value that it would be worth more than the monetary value of a statistical life.[45]

There is a tension in this arrangement. While the approach attempts to avoid the distasteful monetization of dignity (and other unmonetizable values), those values ultimately do get monetized within a range so that regulators can make their apples-to-apples comparisons. Some have argued against monetizing dignity because there is an expressive difference in fully monetizing the benefits of dignity compared to simply saying it is outweighed by (and therefore smaller than) the costs against which it is balanced.[46] In this view, when the cost of dignity is not specifically assigned, there is an implicit "remainder" even when the analysis ends with it being outweighed by a specific dollar-valued benefit, which suggests a kind of respect for the value that is not offset.[47] Similarly, leaving the value unmonetized suggests that the cost of dignity is incommensurate with a specific dollar amount.[48] This comports with most people's view that it would be disturbing to say, "My child is worth $8 million to me."[49]

Instead of striving toward monetizing values like dignity at as specific a level as possible, some commentators have argued that dignity should be measured on a *qualitative* basis, and that agencies should resist the temptation to fully monetize it.[50] This process, dubbed "qualitative specificity," is not straightforward and requires agencies to exercise judgment.[51] But the process has the benefit of implicitly acknowledging its own shortcomings, and making clear on the surface where the precision ends and the judgment begins.

While the relationship premium is distinct from this discussion, the same approach seems appropriate. In fact, the argument for a qualitative specificity approach for relationship premiums is likely even stronger. Where dignity is

---

39. *Id*. at 1382.
40. *Id*.
41. *Id*.
42. *Id*.
43. *Id*.
44. *See* Rachel Bayefsky, *Dignity as a Value in Agency Cost-Benefit Analysis*, 123 Yale L.J. 1732, 1761 (2014) ("Agencies incorporating dignity into [cost-benefit analysis (CBA)] at times portray dignity as a monetizable value and at times emphasize the un-monetizable nature of dignity (sometimes within the same [regulatory impact analysis]).") (citations omitted), *available at* https://ssrn.com/abstract=2426044.
45. *Id*. at 1762-63 (citing Cass R. Sunstein, *The Real World of Cost-Benefit Analysis: Thirty-Six Questions (and Almost as Many Answers)*, 114 Colum. L. Rev. 167, 194-97 (2014)).
46. Bayefsky, *supra* note 44, at 1767.
47. *Id*.
48. *Id*.
49. *Id*.
50. *Id*.
51. *Id*. at 1771.

difficult to measure, as discussed earlier,[52] the relationship premium may present even more unwieldy combinations of unquantifiable values based on unquantifiable variables. Moreover, it is likely highly context-specific. The sort of relationship premium DOT puts on a child's life in a backover crash should be very different from that of a graduation ceremony. In some circumstances, the difference could be quite small, while in others it could be enormous. Determining what kind of difference there would be requires much further study, and an approach that acknowledges our current shortcomings.

III. Evidence in Current Research for the Relationship Premium

This part explores whether we can find evidence for a relationship premium outside of the most extreme cases. It is easy to understand that a parent responsible for the death of his or her own child will experience severe trauma. The death of any child must be deeply upsetting for anyone involved, and being the parent surely creates even more anguish. But is there application beyond the death of a child? It is possible that the relationship between parent and child is so deep that there truly are no analogous situations. Or, insofar as other relationships do carry a premium, they may be just too small to make a dent in the kinds of costs and benefits agencies are weighing. Is there evidence for a more widely applicable relationship premium?

The best place to start answering that question is likely by more closely examining the easy case, children. Research suggests that parents are willing to pay a "child premium" that could almost double the value of reducing a given risk that their child faces, compared to the amount they are willing to pay to reduce the same risk for themselves. Prof. Sean H. Williams reviewed several studies and found the following:

> Although the two unpublished studies only find a child premium under some assumptions, the nine published studies unanimously find a child premium, and they do so with a range of different methodologies (stated and revealed-preference studies of both fatal and non-fatal harms in both risky and riskless choice settings). Estimates of the child premium from published studies range from 32% to 160%, with a median of 80%.[53]

These numbers do not show us with very much granularity what value to place on the child premium. But they do show us that it is likely significant (potentially very much so), and that it extends to risks generally, as opposed to only traumatic experiences like a backover crash with the parent behind the wheel.

The child premium also raises some potential problems. For example, people may offer responses to questions about acceptable risk in ways that will make them look like "good" parents, as opposed to responses that represent their preferences as displayed through real-world choices.[54] Of course, one must wonder which preference we should value more strongly—the one given by a parent who answers what they believe is right during a survey, or the answer derived by watching how a parent behaves when the question fades into the background? But ultimately, it is quite clear that, consistent with the backover crash regulation assumptions, the relationship between parents and their children is a source of enormous value.[55]

This child premium may be the core of what could be a more widely applicable relationship premium. Moreover, the child premium is particularly useful in cost-benefit analysis because children are, generally, unable to articulate their own willingness to pay for a particular safety enhancement.[56] Children's valuations of risk to themselves may not be as reliable as those of adults.[57] They are also, generally, under the charge of adults in such a way that their behavior may not reveal useful information about their risk valuations.[58] These justifications may find themselves mirrored in other relationships, where other relationship premiums could be applied.

Similarities may exist in an example with far less proximity—foreign lives. For our purposes, foreign lives may be the best approximation for altruistic concerns about people with whom we truly have no relationship, and where there can be no "premium" for that relationship. Agencies run by the U.S. government do not answer to non-U.S. citizens, so the agencies separate out the costs and benefits to foreigners from the analysis, per protocols issued by OMB.[59] Somewhat remarkably, foreign lives are assumed to have, at least in some cases, no value to Americans.[60]

Consider the area of climate change, where the impacts of U.S. decisions could affect future generations of Americans as well as the environments of other nations.[61] The analyses in this area assume that Americans value future Americans, but make no such assumption with regard to foreigners.[62] This is particularly worrisome since the

52. *Supra* Part II.
53. Sean Hannon Williams, *Statistical Children*, 30 Yale J. on Reg. 63, 78 (2013), *available at* http://digitalcommons.law.yale.edu/yjreg/vol30/iss1/3.
54. *Id*. at 88.
55. *See id*. at 89-90 ("Although the child premium faces methodological objections, none of these objections ultimately undermines the child premium. If anything, the child premium is built on a more solid foundation than many existing benefits estimates that agencies routinely use in CBA.").
56. *Id*.
57. *Id*. at 87.
58. *Id*.
59. Arden Rowell & Lesley Wexler, *Valuing Foreign Lives*, 48 Ga. L. Rev. 499, 525 (2014), *available at* https://www.georgialawreview.org/article/3312-valuing-foreign-lives.
60. David A. Dana, *Valuing Foreign Lives and Settlements*, 1 J. Benefit-Cost Analysis 1, 3 (2010), *available at* https://www.cambridge.org/core/services/aop-cambridge-core/content/view/3B5397E56BFE9098AB4AC660AE610565/S2194588800000087a.pdf/valuing-foreign-lives-and-settlements.pdf.
61. *Id*.
62. *Id*.:

> Current CBAs for the costs to Americans of climate change do include dollar sums to reflect estimates of what U.S. residents would pay to prevent the loss of U.S. lives and the loss of U.S. "settlements" that might result from future climate change, such as deaths of U.S. residents from heat waves and losses of coastal towns and places of natural beauty within the United States from rising sea levels. Although a recent proposed joint federal [U.S. Environmental

United States is a major contributor to climate change,[63] but stands to suffer less than many other nations in the event of climate change catastrophes.[64] Some commentators have characterized legal academia as totally ignoring this question.[65] Despite that claim, there have been some fruitful contributions.[66]

In an article on this subject, Prof. David A. Dana used stated preference surveys to demonstrate that our assumptions about the proper value of foreign lives to Americans are almost certainly incorrect.[67] Professor Dana's survey results suggest that Americans value foreign lives *equally* to American lives.[68] Somewhat complicating those findings, Professor Dana's surveys also showed significant differences in Americans' willingness to pay for foreign and domestic disasters.[69] These results are by no means conclusive; Professor Dana himself describes them as a "first step."[70]

One reason for caution is that the surveys only report the stated preferences of Americans, and are not corroborated by behavioral studies that show how or if these stated preferences translate into real action. It may be that these are moral commitments Americans are happy to make as part of a study, but not statements of real principles that guide their behavior.[71] Though, as with the child premium, we should be careful before assuming that behavior is a better expression of Americans' desires than their perhaps more aspirational survey responses. Should we want our government to value what we say we want, or should our government use our inability to meet our own standards as evidence that we do not believe those standards at all?

Professor Dana's other findings provide further support for the idea of a relationship premium, albeit with what may be some troubling implications. Professor Dana's surveys suggest that while Americans do place some value on protecting foreign places, they may make important distinctions among those foreign places.[72] Americans, it turns out, are willing to pay more to protect a historic site in the United States than they are willing to pay to protect a foreign historic site, and they are willing to pay more to protect a European historic site than they are willing to pay for an Asian or African historic site.[73]

This European favoritism could be the result of a few different factors. One possible answer is that some form of invidious discrimination motivated the respondents. That may be the case, but another possible rationale could be that Americans visit Europe more often: of the top 10 countries that Americans visited in 2015, one-half were European.[74] It is possible that people who have a relationship to the place in question are willing to pay more to protect it. But the argument could be made in the other direction as well—according to 2010 census data, Latin America and Asia are the most common regions of origin for foreign-born residents of the United States.[75] Despite that form of familiarity, those regions were not valued as highly in Professor Dana's study.[76]

Of course, this is a somewhat tenuous inference to draw, since upon closer examination, Professor Dana's analysis begins to collapse with existence value. Unlike in the instance of talking about people, where individuals can distinguish between valuing children or the handicapped in general and valuing their own child or their own friends and loved ones, when talking about a place, there is no lower level of generality. Put simply, there is only one Europe, so we cannot distinguish between your Europe and mine and how we might place values on those distinct entities. So, while Professor Dana's numbers do suggest that familiarity can breed value (or perhaps just change value), we cannot say that we are strictly seeing a relationship premium in his research.

> Protection Agency/U.S. Department of Transportation] rulemaking broke from long-established practice in considering the global benefits of carbon reduction in addition to its domestic benefits, the agencies' methodology for calculating domestic benefits did not include any benefits to Americans from the saving of foreign lives and settlements from the adverse impacts of climate change. What agency estimates to date have not at all reflected, even nominally, is the welfare Americans would lose, and would be willing to pay money not to lose, when foreigners die due to climate-related disease and great coastal cities and sites and other foreign lands are submerged due to climate-related flooding or other adverse effects from climate change.

(Citations omitted.)

63. Chris Mooney, *The U.S. Has Caused More Global Warming Than Any Other Country. Here's How the Earth Will Get Its Revenge*, Wash. Post, Jan. 22, 2015, https://www.washingtonpost.com/news/energy-environment/wp/2015/01/22/the-u-s-has-contributed-more-to-global-warming-than-any-other-country-heres-how-the-earth-will-get-its-revenge/?utm_term=.a5e3e73c73ae.
64. Dana, *supra* note 60, at 4-5.
65. *Id*. at 2 n.4 (Dana did concede that these points were addressed in one instance: Jody Freeman & Andrew Guzman, *Climate Change and U.S. Interests*, 109 Colum. L. Rev. 1531 (2009). But that piece focused on costs to Americans, such as political instability abroad as a result of climate change that could lead to greater flows of impoverished migrants into the United States. It did not address the indirect cost to Americans from the loss of foreign lives.).
66. Before pressing on, it is important to distinguish this discussion from the ongoing debate around the proper way to account for damages in the social cost of carbon. Currently, academics and commentators disagree strongly over whether or not the U.S. government ought to pick a number for the social cost of carbon that represents the global damages of carbon, or if it should pick one that represents only the damage to the United States' interests. The difference is very real—a global cost of carbon comes in around $37, but it is four to 14 times larger than the domestic cost. *See* Ted Gayer, *Testimony: The Social Costs of Carbon*, Brookings, Feb. 28, 2017, https://www.brookings.edu/testimonies/the-social-costs-of-carbon/.
67. Dana, *supra* note 60, at 4-5.
68. *Id*. at 3.
69. *Id*. *See also* Rowell & Wexler, *supra* note 59, at 521-22.
70. Dana, *supra* note 60, at 4-5.
71. *See id*. at 2-3 ("In the view of some economists, 'talk is cheap,' and hence surveys or other means of recording stated preferences are unrevealing as to people's real preferences, that is, preferences they would really act upon.").
72. *Id*. at 19-21.
73. *Id*.
74. International Trade Administration, U.S. Department of Commerce, U.S. Resident Travel to International Destinations Increased Nine Percent in 2015 (those countries are France, Germany, Italy, Spain, and the United Kingdom, http://tinet.ita.doc.gov/outreachpages/download_data_table/2015_Outbound_Analysis.pdf).
75. U.S. Census Bureau, The Foreign-Born Population in the United States: 2010, American Community Survey Reports (2012), https://www.census.gov/prod/2012pubs/acs-19.pdf.
76. Dana, *supra* note 60, at 4-5. These incongruences could also be causes and/or effects of invidious discrimination. Indeed, even the choice of where to visit, *supra* note 74, may itself be a product of discriminatory background preferences.

Another area that suggests relationships can affect the valuation of benefits comes in the way individuals weigh relative costs. One criticism of standard willingness-to-pay methods has been the standard model's implicit judgment that individuals value their economic outcomes in isolation.[77] In fact, research suggests that this is not true, and that an important driver of people's appraisal of their own standing is relative to those around them.[78] This is supported by behavioral studies. Researchers have shown that for those who care about their income relative to others, a rise in others' income will lead that person to search for employment.[79]

The methodology in that research may be particularly instructive for the relationship premium. Because it is difficult to tell who knows whom, researchers focused on family members where familiarity can be inferred, and specifically focused on sisters.[80] Researchers found that a woman is 16% to 25% more likely to seek employment outside the home if her sister's husband makes more money than hers.[81]

There are plenty of other examples as well. Another relative value phenomenon is "last-place aversion." Researchers have used experimental games in which participants are given different amounts of money along a ranked distribution. In those games, they have found that those who are at the bottom of the distribution (with the least money) are likely to make riskier choices in the hopes of improving their rank from last.[82] Researchers suggest that these behavioral findings have real political salience, and believe it may explain why those who earn just above the minimum wage are likelier than others to oppose raising the minimum wage.[83]

These findings suggest that there is in fact a relationship premium, though not in the way we might expect. Consider three accounts of how someone might be affected by things that happen to a loved one: (1) happiness that he or she is better-off than the loved one; (2) happiness that the loved one is worse-off than he or she is; and (3) happiness about the loved one's relative position changing in society or among some other cohort. The first two seem clearly invidious and not what we actually want to count as benefits to society as a whole. Surely, everyone can agree that regulators should not price in someone's joy at another's misfortune as a cost or benefit. But even if we ignored such moral objections, the numbers are not necessarily helpful: if we measure someone's benefit from being a winner relative to someone else's loss, we also have to measure that person's loss relative to the other's benefit. The two offset each other, and, as people often overvalue losses,[84] may actually come out as a net negative.

The third value is one we might consider meaningful—though it is also the one that makes a larger inference and whose support from the research is more tenuous. But in some circumstances, we can imagine people's position being so intertwined that their relative positions are also connected. When a parent sees a child in a wheelchair cross the stage at graduation, their *family's* relative position is implicated. While this result is not commanded by the available data, it seems like the natural next step.

Similarly, we might wonder what the other students in such a situation think. While one might be able to use the data to argue that students would be unhappy that a friend is crossing the stage and no longer in "last place"—whatever that even means in this case—such a reading seems strained. A less controversial and more natural reading would be to accept that the sheer fact that another person's position could affect the way you consider your own shows that individual preferences are not cabined. While the research reviewed here shows instances where an inverse connection exists between those two values, it may well be the case that in many instances someone doing better also makes others nearby feel better.

IV. Possible Criticisms and Objections to the Use of Relationship Premiums

Long before cost-benefit analysis became the widely accepted default practice of the administrative state, legal philosopher Ronald Dworkin argued against considering what he called "external preferences."[85] Consider his hypothetical of a town deciding whether to build a theater or a pool.[86] Under a straightforward cost-benefit analysis, one would weigh the benefits to those who would enjoy using a pool against the benefits that would go to the theater, and weigh those against the two amenities' respective costs. Whichever amenity's benefits outweigh its costs by more ought to be built. But should the government consider the preferences of those who do not plan to use the pool, but would prefer it be built because they "approve of sports and admire athletes, or because they think that theater is immoral and ought to be repressed?"[87] Dworkin says these preferences are illegitimate.[88]

He justifies this by referring to the concept of "double-counting,"[89] which also was partly why OMB said that it does not include altruism in its analyses.[90] If the government counts the preferences of non-pool users, each swim-

77. Robert H. Frank & Cass R. Sunstein, *Cost-Benefit Analysis and Relative Position*, 68 U. Chi. L. Rev. 323, 326 (2001), *available at* http://www.jstor.org/stable/pdf/1600376.pdf.
78. *Id*.
79. *Id*. at 342.
80. *Id*.
81. *Id*.
82. Ilyana Kuziemko et al., *"Last-Place Aversion": Evidence and Redistributive Implications*, 129 Q. J. Econ. 105-49 (2014), *available at* http://www.hbs.edu/faculty/Publication%20Files/The%20Quarterly%20Journal%20of%20Economics-2014-Kuziemko-105-49(2)_20215a4d-e73b-48e9-8de7-f6862054e552.pdf.
83. *Id*.
84. Sean Ryan, *How Loss Aversion and Conformity Threaten Organizational Change*, Harv. Bus. Rev., Nov. 25, 2016, https://hbr.org/2016/11/how-loss-aversion-and-conformity-threaten-organizational-change.
85. Dworkin, *supra* note 16, at 234-39.
86. *Id*. at 235.
87. *Id*.
88. *Id*.
89. *Id*.
90. *Supra* note 24, at 141.

mer gets the benefit of his own preference as well as the benefit of someone "who takes pleasure in his success."[91] But this seems incorrect on its face. Regulators would be counting two different things: (1) the preferences of the swimmers; and (2) the preferences of nonswimmers.[92]

Dworkin's concern was also distinct from the relationship premium. Dworkin's conception of external preferences captures far more than the values meant to be included as relationship premiums. In a relationship premium as proposed here, it would not be the nonswimmers who have strong opinions about the virtues of athleticism who would be counted, but instead people like the parents of potential swim team members or the friends of swimmers who want to support their friends' hobbies. Of course, differentiating between those with mere opinions on what would be best for the community and those who are driven by their friendships presents very serious, and perhaps insurmountable, challenges.

Another challenge emerges when we think of the wishes from loved ones that are in some way invidious. Indeed, this was what truly concerned Dworkin in his discussion of external preferences.[93] For example, Dworkin contemplated a scenario in which "many citizens, who are not themselves sick, are racists in political theory, and therefore prefer that scarce medicine be given to a white man who needs it rather than a black man who needs it more."[94] The result of weighting these racist preferences would be, Dworkin feared, that "[b]lacks will suffer, to a degree that depends on the strength of the racist preference, from the fact that others think them less worthy of respect and concern."[95]

Cost-benefit analysis advocates have faced such criticisms many times before.[96] In reality, there are some moral questions on which we can draw clear lines based on the U.S. Constitution, various statutes, or other expressions of our national values. Whatever the costs and benefits of, for example, torture, we can say on deontological grounds that it ought to be forbidden.[97] While the possibility of justifying objectionable behavior exists in cost-benefit analysis, it is not difficult for agencies to draw a line at most truly out-of-bounds options.

But Dworkin's argument goes a little deeper than just to say that external preferences could lead to race-motivated public policy. He argues for only personal preferences to be counted in the name of a broad conception of egalitarianism:

> If a utilitarian argument counts external preferences along with personal preferences, then the egalitarian character of that argument is corrupted, because the chance that anyone's preferences have to succeed will then depend, not only on the demands that the personal preferences of others make on scarce resources, but on the respect or affection they have for him or for his way of life.[98]

Applying this to the relationship premium, it uncovers a real problem. If we think again of the graduation, should we weigh the benefits to some students differently depending on how large their families are? Most troublingly, one can imagine that in a world where society places value on the pride of a parent, it would also put more value on benefits to a child with two parents than benefits to a child from a single parent.

That cannot be right. But there are two possible responses to such a distressing possibility. The first is that, in reality, cost-benefit analyses are done with regard to broadly applicable rules. Agencies are not picking between helping Janet in the eighth grade with two parents versus Mark in the 12th grade being raised by a single divorcée. But even in the event that they were making such selections, rules and best practices could be drawn around such questions to ensure that the analysis was consistent with our values, and did not disadvantage people based on improper considerations. Creating such practices may be somewhat tougher than ruling out torture, but it is clearly achievable. The necessary moral line-drawing may be fact-specific to each rule, but it would not be difficult to make required assumptions such as "all children will be assumed to be from two-parent households," for the simple reason that the alternative of weighing benefits per parent would be objectionable.

Another distinction between the perceived relationship premium and the external-versus-personal preference weighting may come from being more precise about what is being measured. Dworkin's discussion does not touch on the relative value of the preferences measured; if anything, implicit in his discussion is a fear of external preferences and personal preferences being given equal weight. But willingness-to-pay studies are a possible solution to this problem. A third party who cares about the well-being of a loved one may be willing to pay to improve the loved one's well-being, but in many or most cases, his or her preferences will not be as strong as the preferences of the person directly affected (though the earlier discussed studies suggest we should be careful with such assumptions). In the best hypothetical circumstances, we would expect the third-party preference to simply magnify the preferences of the regulated party about whom he or she cares.

Our assumptions about such matters may of course be wrong, which leads us to another objection: it may be that the kind of benefits being measured should change whether or not it is advisable to include or not include a relationship premium. This objection is clearest when we frame the discussion from the perspective of the supposed beneficiaries of a rule, whose own perceptions about the value of that rule are insufficient on their own to justify the regulation. On a basic level, if someone is supposed to

91. *Id.*
92. *See* Posner & Sunstein, *supra* note 12, at 14 n.72.
93. Dworkin, *supra* note 16, at 235.
94. *Id.*
95. *Id.*
96. *See, e.g.*, Posner & Sunstein, *supra* note 12, at 5.
97. *See generally* Charles Fried & Gregory Fried, Because It's Wrong (2010).
98. Dworkin, *supra* note 16, at 235.

benefit from a rule but they do not value the rule as much as it costs, the person would likely prefer to just get a check for the cost instead.

Economist Kevin Brady gave the following hypothetical:

> Assume Peter is a neutral altruist who wishes to pay so that Paul has better access to the Grand Canyon. Paul, however, has little desire to visit the Grand Canyon. An improvement in road conditions to accommodate for Peter's altruistic feelings would be undesirable for both Peter and Paul: Paul, because he does not wish to see the Grand Canyon, would prefer a cash payment in lieu of better roads, and Peter, who is a neutral altruist, would prefer the action that maximizes Paul's welfare as it is perceived by Paul. In this sort of situation, government policies need not account for any altruistic concerns.[99]

This hypothetical is incisive regardless of whether Peter and Paul have any kind of relationship. If we imagine that Peter derives benefits from his perception of benefits to Paul and want to include that in cost-benefit analysis, we must also assume that Peter's perceptions about Paul are correct. And we know that our perceptions of one another's well-being will necessarily be flawed.

Brady goes on to argue, however, that this flaw in the altruistic calculation should not result in cost-benefit analyses excluding all altruistic concerns.[100] Researchers have performed mathematical proofs to suggest that, unlike altruism focused broadly on well-being, paternalistically safety-focused altruism can be justified.[101] The research is not completely conclusive, but makes some intuitive sense: safety is somewhat less subjective than conceptions of well-being. From the standpoint of mortality risks, when the downside of the risk is felt, it results in someone dying; there is no room for debate about his or her feelings of dignity or other abstract values. Further, insofar as there are inconclusive results, the costs of undervaluing safety are larger than in other areas. Altruism proponents have argued that if there is any question, the risks of undervaluing the value of a statistical life are more dangerous than the costs of overvaluing it.[102]

But limiting ourselves to only safety creates other problems. There may be some scenarios in which both safety and well-being concerns are at play. In such a case, the altruistic safety values may be inappropriate to consider, as they could push into the other non-safety concerns of the altruist.[103] All of these arguments are based on studies that the researchers themselves acknowledge are inconclusive, and as such, more study is required before firm conclusions can be drawn.

V. Conclusion

Congress should carefully consider this shifting ground in research before putting all its eggs in the cost-benefit analysis basket. It is a no-brainer to calculate costs and benefits wherever possible and to use those numbers in some way when making regulatory decisions. But the wisest course would be to also keep in mind what regulators do not know. It appears from this survey of available research that some form of a relationship premium does exist. But it remains unpredictable in size, and may tip the scales in ways we do not expect or even that we find morally objectionable. Congress must make sure the use of cost-benefit analysis, once codified in statute, does not preclude expanding on this question where more research is clearly needed.

This Article has remarked on the way a person's reaction to harm befalling a loved one is similar to measuring other unquantifiable or unmonetizable benefits and costs.[104] The specific value that could be added to a particular regulation on behalf of specific relationship premiums may be impossible to know. At this stage, further study is required to determine the bounds of what relationship premiums might be.

But whatever the value is, and however much variance there may be, attempting to include the values in regulatory impact analyses is worthwhile. As with dignity and other difficult-to-quantify values, the mere fact of its difficulty or abstraction cannot alone mean that there ought to be no benefit allotted. If no benefit is included, the extra value that regulators will put on our relationships will effectively be zero. This intuitively seems clearly wrong, and thus far, the available research does not justify it. Congress and the executive branch should take notice that these values are real and deserve consideration.

More concretely, regulators can start to put the relationship premium at work in some limited circumstances. It appears straightforward that we should attempt to consider relationship premiums where safety is at risk. The back-

99. Kevin L. Brady, *The Value of Human Life: A Case for Altruism*, 48 Nat. Resources J. 541, 560 (2008), *available at* http://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1186&context=nrj.

100. *Id*.

101. *Id*. *See also* Jones-Lee, *supra* note 17:

> [The i]nclusion of [altruism] is appropriate, within a utilitarian framework, *if and only* if altruism is exclusively focused upon other people's safety. The intuitive explanation for this initially somewhat puzzling result is that to push values of safety beyond the level implied by people's willingness to pay for their *own* safety would result in an overprovision of safety relative to the other determinants of their utility.

102. Brady, *supra* note 99, at 560.

103. *Id*.:

> Such an increase in values of safety would therefore be considered as desirable *only* by people who *disregard* those factors besides safety that contribute to other people's utility . . . But what form does altruistic concern for others' safety typically take? This is an essentially empirical question to which, currently, this author does not have an answer. Nonetheless, one can speculate about how things might turn out. For example, introspection and casual questioning of colleagues suggests that if people do display altruism, then for family and friends it probably takes a form closer to the pure type of concern for general well-being or utility (including safety), whereas for those more distantly removed, the safety-focused version seems more plausible. However, this is merely a conjecture, and a definitive resolution to the question considered in this article must await the results of urgently needed empirical work on the precise nature of altruism in the safety context.

104. *See supra* Parts II and III.

over crash regulation exemplifies this approach: there was a clear safety risk, and people with a relationship were likely to be present (and sadly participants) in the injuries that were expected to result. Were there other opportunities that are safety-related, where we knew parents would be implicated, the same approach should be taken. To go one step further, it is worth investigating whether agencies can consider similar approaches in instances where safety is at stake and we know that families may simply be present. Such an analysis may be appropriate, for example, when considering safety features designed for children in family-attended events and spaces.

Regulators should also consider how they could expand the premium beyond safety. If we accept that a relationship premium should be considered when life is at stake, that may offer some guidance for where else to apply it. For example, a death is final, with an individual lost who cannot be replaced. This is in general unlike dignity, where the moment may be terrible for the person whose dignity is lost, but the person can recover. Nonetheless, even while acknowledging how much more valuable a life is than other values, we may also be able to apply a premium in areas where the consequences seem final and irrevocable. Consider graduation from college or high school. For many students, this will be an enormous achievement, and they and their parents will remember the day forever. Perhaps we should consider that if a relationship premium exists, we ought to first consider and study it in areas such as these where the damages, while by no means as horrible as death, do also appear in some sense final.

Beyond those circumstances, agencies can also assume some value is associated with people's relationships if they acknowledge that it remains unknown at a precise level. If the agency uses qualitative specificity to describe the value for which they are accounting, it can put that value against whatever costs are known. The agency may then make its judgment, which will be based on some general idea of what the relationship adds. But by refraining from full monetization, and by describing qualitatively the benefits that the agency has in mind, relationship premiums can take into account a value that we suspect exists, even if we do not know at what level. This will not provide the kind of clear answer that can make cost-benefit analysis so attractive, but it will expose the judgments being made by regulators without false certainty, while serving the important transparency goals of cost-benefit analysis.

Ultimately, members of Congress likely appreciate cost-benefit analysis for its perceived ability to provide clear answers to otherwise difficult problems. It appears to keep normative judgments in the legislative branch, and away from government bureaucrats who simply "add it all up." Unfortunately, that arrangement is an illusion. The data in this area are inconclusive, without easy answers. If Congress forces regulators to make decisions only on the basis of firmly settled data, it will be requiring them to provide incorrect answers. The solution to the problem of imprecise values for certain costs and benefits is not to ignore the challenge, but instead to embrace it with transparency. That means tabulating what costs and benefits are clear while openly and honestly including the values that are harder to quantify—including the value we each hold for one another.