As you've probably heard, the Biden Administration has proposed aggressive new targets for greenhouse gas emissions from new vehicles. That's great news. One really important aspect of the proposal relates to the justification for the proposal rather than the proposal itself. Following a recent trend, the justification is based on the factors specified by Congress rather than on a purely economic analysis. That may not sounds like much, but it's a really big deal. Among other things, this will shift influence on the regulatory process somewhat away economists and toward lawyers.

Since the 1981, presidential directives have required federal agencies have been to produce a cost-benefit analysis of proposed regulations. The directives have also told agencies to select regulations that maximize the extent to which benefits exceed costs, except where a statute forbids this. Under this approach, statutory authority is relevant only when it happens to get in the way of doing the right thing economically. No wonder that some have heralded the rise of the "cost-benefit state."

As illustrated by the current proposal, that economist-dominated approach seems to be losing its grip in favor of one where law and lawyers play a current role . The proposal does contain an extensive discussion of costs and benefits, keyed to the lengthy "Regulatory Impact Analysis" prepared by the agency. According to the agency, the new standards for cars and light trucks (primarily SUVs) would avoid nearly 10 billion tons of CO_2 emissions; save the average consumer $12,000 over the lifetime of the vehicle, and have benefits that would exceed costs by at least $1 trillion.

But when it comes to the rationale for the proposal, the proposal shifts away from cost-benefit analysis. Here's what the proposal says:

> "We monetize benefits of the proposed standards and evaluate other costs in part to enable a comparison of costs and benefits pursuant to EO 12866, but we recognize there are benefits that we are currently unable to fully quantify. EPA's practice has been to set standards to achieve improved air quality consistent with CAA section 202, and not to rely on cost-benefit calculations, with their uncertainties and limitations, as identifying the appropriate standards."

[p. 45 of the prepublication version]

Similar approaches have been taken in other recent regulations such as limits on mercury emissions from power plants. Earlier, the Trump Administration had justified some of its key proposals as being required by statutory language and argued that the costs and benefits weren't relevant. Why is this happening?

Part of the reason may be that, for very different reasons, cost-benefit analysis has become unattractive at both ends of the political spectrum. Progressives are frustrated that it marginalizes consideration of social justice and subordinates environmental benefits to dollar accounting. Conservatives have found that cost-benefit regulation actually justifies a wide range of regulations, frustrating their "small government" impulses.

Another reason may relate to shifts in administrative law and statutory interpretation. Overall, the Court seems more interested in limiting agency leeway than in making policy judgments. The Supreme Court has thrown shade on the *Chevron* doctrine, which gave agencies extra leeway in interpreting statutes. In most cases, it has focused purely on statutory language and shied away from considering the broader purposes of laws, which again tends to narrow the agency's ability to engage in open-ended balancing of costs and benefits. Last year, the Court threw out Obama's Clean Power Plan, without a mention of the Plan's overwhelmingly positive cost-benefit analysis.

I have always been concerned about displacing the policy judgments that Congress has put into law in favor of a standard of economic efficiency based only on executive fiat. Viewing statutes as blanket authority for open-ended agency policy judgments is questionable as a matter of separation of powers. It also goes too far in supplanting the democracy in narrow technocratic judgments, rather than keeping a balance between expertise and accountability. It is heartening to see EPA paying more attention to Congress's directions rather than trying to fit all regulatory decisions into a single methodology.