Inequality is a burning issue in our society but plays only a limited role in the design of regulations. In an article that came out a week ago, I try to work through questions about how economic and racial inequality can be integrated into rule-making.

In terms of economic inequality, the current system already has a built-in but controversial feature that promotes equality. The “value of a statistical life” represents the amount of money that society is willing to spend to prevent an additional death. Under the current system, that amount is the same for everyone, old or young, rich or poor. Economists find this wrongheaded: since the rich are willing to pay much more to reduce risks to themselves, economists think cost-benefit analysis should reflect this difference. I argue that this is wrong. In my view, society has a duty to devote equal resources to protecting the lives of each of its members, regardless of their personal characteristics. This protection of equal protection for everyone blocks the kinds of measures that economists would favor, such as favoring rich communities over poor ones in setting pollution standards (all else being equal), .

A second issue relates to racial disparities. The problem here is the tension between protecting disadvantaged communities and the Supreme Court’s insistent on colorblindness. Despite arguments from some conservative judges, I argue that agencies can safely follow a longstanding presidential mandate to avoid regulations with disparate impacts – that is, regulations that actually make communities of color worse off than they already are. I am skeptical, however, that agencies have statutory authority to choose regulations to maximize benefits to those communities, even assuming courts would not reject this on constitutional grounds.

Nevertheless, I believe that agencies can do a great deal to protect disadvantaged communities and communities of color through another route. The reality is that low-income communities and communities of color often suffer the greatest harms (and not just by chance). Not only do these communities often have higher pollution levels, but they are often more vulnerable – that is, given the same level of exposure, their members are more prone to health impacts. By using vulnerability as a metric for risk, along with exposure, agencies can legitimately prioritize protecting those communities, without having to make race or poverty themselves a basis for decision making. By using much more granular approaches to determining *who* is exposed to risks and their vulnerability to harm, agencies could do far more to implement this principle, identify the needs of disadvantaged communities, and effectively address them.

These are big problems, and I certainly don’t have the illusion that I’ve offered definitive solutions. But I hope the article at least advances the debate on the critical issue of regulatory responses to inequality.