This is the sixth in a series of posts on the reasons we might have environmental review. The first post is here. The second post is here. The third post is here. The fourth post is here. The fifth post is here.

The last major category of potential benefits from NEPA that I want to cover is the argument that NEPA's public participation requirements create a space for community organizing and engagement that advances a more equitable vision of democracy. This is an argument that many environmental justice organizations make in defense of NEPA and environmental review more broadly.

Interestingly, the original version of NEPA had no specific mention of public participation. What public participation requirements that do apply came either from other statutes that might apply to an agency action – such as the Administrative Procedure Act – or from the regulations implementing NEPA by the Council on Environmental Quality (CEQ). Those CEQ regulations required public notice and comment on questions of the scope of environmental impact statements (EIS), and on draft EIS's. The 2023 Congressional amendments to NEPA entrenched in the statute a requirement for public comment on the scope of an EIS.

The benefits of public participation are only partially related to environmental outcomes. One can make the case (and there is evidence from other statutes) that public participation in environmental decisionmaking can provide information that agencies would otherwise not have access to, and that can therefore improve decisions. But many of the advocates for public participation through environmental review appear to have a broader vision of the benefits of public participation. A strong theme in the environmental justice academic and activist literature is that broader community engagement is a way to ensure that historically disempowered communities have more say as to what happens in their communities, and therefore more ability to prevent the concentration of environmental and other social harms in those communities. Even more broadly, advocates defend environmental review on the grounds that it is an important form of democratic governance. Thus, many of these benefits would exist even if they were not tethered to an environmental review statute – and so if you are a supporter of this approach, you might call for broader public participation in a wide range of areas, including (for instance) land-use regulation.

Public participation is not an unalloyed good, however. It can create delay and add cost to projects – producing a milder version of the veto point dynamic I described in the prior post. And there are real questions, raised most recently in the political

science literature, about who participates in public notice and comment processes, and how representative they are of the broader community. At least in the land-use regulatory context, those participants tend to be older, wealthier, whiter, and more likely to be homeowners – which is in tension with the promise of equity that some advocates articulate for public participation.