As I've written before, substance and procedure are not easily separated when you are talking about law. As practicing politicians, lawyers, and political scientists all have noted, procedure shapes substantive outcomes. That is as true in environmental law as in any other area of law.

That makes it particularly frustrating to see this post today – which asserts that "NEPA is not an environmental protection law" simply because it has no substantive mandates. That is wrong.

NEPA imposes potentially onerous obligations on federal projects that have significant environmental impacts. If nothing else, that creates an incentive for federal agencies to avoid projects with significant environmental impacts! Which in turn reduces (some) environmental harms. That alone makes NEPA an environmental protection law. Indeed, the common practice of federal agencies imposing mandatory mitigation measures on projects to avoid a finding of significant impacts is a nice example of how NEPA works in this way.

There's more, indirect, ways in which NEPA achieves environmental protection – as I've written before as well. Public disclosure of those impacts can create pressure to reduce or avoid them. Requiring agencies to do environmental analyses may have changed who staffs those agencies, and agency culture, to more seriously consider environmental impacts. NEPA's requirement that agencies consider environmental impacts removed the default argument agencies had before the law that environmental considerations were outside the scope of the issues they were to consider in making decisions.

Of course, all that does not mean that NEPA is a perfect environmental protection law, or that it can't be made better, or that incentivizing federal agencies to avoid environmental impacts is an unmitigated good. Federal projects may both benefit and harm the environment, and we may think the benefits (far) outweigh the costs. For instance, federal agency permitting of wind or solar projects has climate change benefits, but can also have small-scale habitat impacts. We may think the climate change benefits far outweigh the habitat impacts. In that case, NEPA's incentives to avoid environmental harms may be counterproductive. More broadly, we may be concerned that NEPA's incentives to avoid harm are too strong, at the expense of other important social goals besides environmental protection. For instance, NEPA can exacerbate status quo bias in agency decisionmaking – and if we think change is important, that is costly.

And there are other ways in which NEPA might be problematic. As I've noted, the uncertainty of how environmental review is applied can be costly, because it exacerbates risk aversion and status quo bias. But of course, one could have NEPA that is more certain, but that is still procedural only, and would still to some extent deter agencies from taking environmentally harmful actions. Uncertainty, in other words, is a somewhat different question from whether a procedural only statute protects the environment.

And of course, one might think that lawyers are too focused on procedure and legal remedies, as Nicholas Bagley has argued, and that environmental groups are too focused on law and procedure as a solution (that I think conflates a lot of diversity among groups, but also has some truth to it). One might believe that on net, making it easier for the government to do more projects is beneficial from a democratic accountability perspective, or from an environmental protection perspective. But again, one can believe all those things while still recognizing the truth that NEPA does provide environmental benefits, and not just by coincidence.