

“Public opinion is a fickle creature and the right to environmental information will only be exercised by a few”. Can access to environmental information be seen as an environmental protection tool?

In recent years we have seen a proliferation of alternative approaches to environmental protection. The ever-growing complexity of regulatory legislation has rendered our basic administrative structure, unaided by alternative techniques, inadequate to deal with the problems that we face. This, combined with an increasing disillusionment with regulation through direct state authority, has led to the emergence of a plurality of alternative mechanisms, such as market instruments. These alternative mechanisms, on the most part, require an increased public understanding of the issues at hand, and therefore a greater amount of information at the disposal of the public.

The topic for discussion is the extent to which access to environmental information can be viewed as an environmental tool. Access to information is one of a number of entwined concepts, which work in alliance toward the goal of environmental protection. Therefore, adequate assessment of the utility of access to information as such a tool cannot be attempted without adopting a contextual view. However, due to the particular nature of the question, and constraints on space, this study must ignore a number of important issues¹, and omit further analysis on some issues for which it would otherwise be appropriate². Therefore the main analysis will be focussed on the specifics of the title quote.

Firstly, the stability of public opinion must be examined. This relates to the implementation of environmental information through processes such as ‘public participation’. The claim can be summarised as questioning the wisdom of placing technical or expert decisions in the hands of an (arguably) irrational, ignorant and erratic public. It might be said that this is not a course of action that will be conducive to a consistent and coherent policy on environmental issues, and that it will operate as an obstacle rather than an aid to the objective of improved environmental protection. However, such a position ignores the dynamic nature of the relationship between public understanding and stability, and the degree to which they are involved and exposed to information. If public participation in environmental decision-making is to increase, accompanied by increased availability and propagation of environmental information, their understanding of the issues at play may develop, and their intuitive positions will be challenged through exposure to alternative perspectives. Access to information and public participation can be viewed as an alternative and preferable approach to autonomous bureaucracy that can improve the substantive output of decisions by increasing the range of input; as a response to the failure of public administration; as ‘democratic pragmatism’³. Furthermore, discussion here has been limited to an assessment of effectiveness, without consideration of the philosophical consistency of omitting such rights to information and participation, given the democratic and human rights-based nature of Western

¹ For example, it is worth noting that fundamental controversy regarding the state of the environment, and what constitutes environmental protection, renders assessment of ‘an environmental protection tool’ an extremely complicated process.

² For example, thorough examination of issues such as the relationship between access to information and market instruments, and the effectiveness of utilising consumer choice, will be impossible.

³ J. Dryzek, *The Politics of the Earth* (Oxford University Press, 1997), Chap. 5

society. As policy develops, there are certainly obstacles to overcome in application, such as cost (in terms of both time and money) and practical issues of implementation. Circumnavigation of community power structures will also have to be achieved to accomplish true inclusiveness⁴.

Secondly, the degree to which the public will utilise the availability of environmental information must be considered. Environmental information exists in a number of forms. The officially held registers⁵ and most reports are open to public examination, but are not disseminated by the state or other bodies, unlike specifically targeted reports, company annual reports and eco-labelling. Regarding non-disseminated information, a wealth of literature is available on the intricacies of the legislation that regulates access⁶. Such issues are only relevant here so far as regulation is particularly obstructive to public examination, which it no longer is in the UK⁷. However, it has long been established that the registers are accessed very infrequently, and almost always by sales consultants, academics and individuals involved in the property market⁸. Academics have attributed this to a lack of a 'culture of participation'⁹ in general environmental issues. Some have concluded that the public simply has little interest in these matters, and therefore resources are being wasted by pushing for increased access and involvement. However, when the planning regime in the UK is examined, we can perhaps see this issue in a different light. Since the 1960s, planning policy has encouraged public involvement with planning matters and decision-making. The result of this approach can be seen in the strikingly higher figures for public access to the planning registers¹⁰.

Furthermore, arguments for the utility of access to information, regardless of the public's proactive access of it, may be made. In a climate where, despite little positive action, the public do generally hold a desire to improve the state of the environment, the nature of the competitive market compels business to improve environmental performance. The simple fact that standards must be disclosed for all to see applies pressure to ensure good practice, lest competitors (or the state) capitalise on their failure. In a world where PR is all-important, no company wishes to be seen as the polluting monster. Similar analysis explains the increasing use of company annual reports to explain environmental policy¹¹, and the popularity of schemes such as accreditation. These processes have the advantage over straightforward regulatory approaches that they are graduated systems, providing constant incentive for environmental improvement. This area of regulation is still early in development, and difficulties such as the lack of concrete financial incentive (for environmental consciousness) and the lack of enforceability can be addressed as policy progresses. Also worth noting is the role of environmental information to the consumer. Here, access to information operates in alliance with other mechanisms to

⁴ Lessons can be learned from the approach of international law in a number of fields, taking careful note of societal and community power structures and traditionally excluded groups.

⁵ Registers exhibiting the environmental emissions of various organisations and their compliance with regulatory requirements.

⁶ for example: Coppel, *Environmental Information, the New Regime* [2005] JPL 12

⁷ see Coppel, *op cit*

⁸ J Rowan-Robinson, A Ross, W Walton and J Rothnie, *Public Access to Environmental Information: A means to what end?* [1996] JEL 19

⁹ J Rowan-Robinson et al, *op cit*

¹⁰ see J Rowan-Robinson et al, *op cit*

¹¹ see Bell & McGillivray, *Environmental Law* (Oxford University Press, 2006) Chap. 10

effect market transformation, aiming to internalise some of the environmental costs of production. While problems of axiomatic assertions and a proliferation of non-standardised claims have troubled this area, successful moves are being made to address these issues¹².

Access to environmental information is an environmental protection tool that is still in its early development. Various claims have been made as to its unsuitability and ineffectiveness, but these are often misguided, based on a view of the concept as it was or is, not as it potentially could be. Additionally, as the RCEP stated, ‘The public must be considered to have a right, analogous to a beneficial interest, in the condition of the air and water and to be able to obtain information on how far they are being degraded’¹³. Moreover, the increased involvement and awareness of the public in environmental affairs is crucial given the nature of the problems we now face. Many of the most pertinent current environmental issues require fundamental changes in the way in which we live. The threat of global warming and the problem of waste disposal require transformation from the bottom up, requiring all to take responsibility in environmental stewardship. Access to information, and public participation, have an extremely important educational role in engaging the public in environmental self-evaluation. Once fostered by a shift to a more proactively disseminated and easily understandable form of information distribution, coupled with a more inclusive approach to participation in decision-making, a far more informed and concerned public will emerge, which is not only of benefit to environmental protection, but essential to it.

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¹² For example, in ISO 14021, and the UK government’s *Green Claims Code*.

¹³ RCEP, 10th Report, *Tackling Pollution – Experience and Prospects* (Cmnd 9149, 1984)