

Providence never intended to make the management of public affairs a mystery to be comprehended by a few persons of sublime genius.

Jonathan Swift. Gulliver's Travels

1. Positive Benefits of the AIE regulations

The public acceptance of climate change arising from human activity is critical to taking action to reverse and/or mitigate the effects of climate on our biosphere.

In our democratic way of governing ourselves, this means that there must be popular understanding of the complexities involved in action proposed, taken or not taken, including constraints.

The benefits of strong Access to Information on the Environment regulations are that they provide us with a means of ensuring that cronyism, abuse of position and conflicts of interest do not distort the measures needed to sustain a resilient society when adapting to climate change. Secrecy enables bad management and inefficiency to persist, in the application of measures needed.

The success of any public policy depends no less on its intrinsic merits than on the quality of the public service that executes it. In that public service procedure, precedent, protocol, expediency, all have an importance, but it is the intellectual capacity to respond to ideas that best serves the public interest in the end. The civil servant's task is at any time a difficult one; it will not be lightened if he fails to bring the public closer into his confidence.

Patrick Lynch. The Economist and Public Policy. Studies. Autumn 1953 p. 260

1.1. Democratic societies response to climate change.

This calls for that the late David Thornley described as the *mutual education of the democratic process*¹

*But there is in fact no reason at all why change in society should go pari-passu with change in the thinking of administrators or even of politicians. **There may be change in the criteria of decision-making at the top; change in the social habits at the bottom. But unless these two are bridged by the mutual education of the democratic process, communication between the top and bottom may cease. And in Ireland, where the stimulus to change is to a great extent external, something like***

¹ David Thornley. *Ireland: the End of an Era?* Studies Vol LIII (Spring 1964. Later published as Tuairim pamphlet no. 12, Dublin Branch of Tuairim 1965. Also published in Thornley, Yseult (ed) *Unquiet Spirit Essays in Memory of David Thornley*. Dublin. Liberties Press. 2008. P.167-184.

*this may in fact be happening. The nub of the argument is this. It is easy for a minority in administration, in politics, in the church, and in academic life, who may be to a greater or lesser extent committed to the decision-making process, to be alive to the tensions of novelty....**they may all too readily assume that both the material upon which their thinking is based, and the response which they make to it, are the currency of public opinion.** But change is in fact to some extent subjective; it gains much of its impetus from the conviction that it is both necessary and imminently feasible. It is not enough to ask if we have changed; we must also ask if we think we have changed. And that last "we" must not mean simply the 'elites', the 'controllers', the academics. The political society in which the holders of power lag behind the instincts of the community falls prey to revolution. But if the decision-makers respond more quickly to the challenge of change than the masses, **the continuing vitality of democracy turns essentially upon their capacity to communicate their convictions to society.** If the new convictions are not sufficiently strongly held and rationally understood in the key areas of party political power and administrative authority, or if the mass of the people, largely deprived of secondary, technical, and university education and congenitally sceptical of their political masters, turns a jaundiced ear to the new rhetoric, democracy in that society does not shatter in revolution. It wanes in political apathy....It is not enough for leaders to know what to do and have the courage to do it. They must be able to persuade the electorate of the necessity of what they are doing. (my emphasis)*

Yes, we are all better educated now than sixty years ago. That suggests we have the means to grasp the realities and possible impacts of climate change, especially as we experience unexpected changes (eg. storm surges, drought, sudden severe cloud burst etc) where we live, in addition to learning of similar changes in other parts of the world.

Although Thornley wrote about Ireland during the changes of the early 1960s, I suggest that there are useful parallels with current developments of which climate change is the most obvious persistent threat eg.

- Changes in trade patterns .
 - Ireland facing up to free trade during the 1960s;
 - EU now facing the emergence of both China and the rustiness of the post WorldWar2 multilateral world in which a US-led group of democracies dominated; ;
- New media emerging
 - Television in Ireland of the 1960s;
 - Social media now, coupled with a decline in older media on a scale not readily apparent when TV emerged.
- Generational change

1.2. Constraints

Although only a few may originate a policy, we are all able to judge it.

Pericles of Athens (about 430 BCE)

Proposing, adopting and implementing measures needed to successfully adapt to effects of climate change means that the vast majority of us have to be confident that our common good is enhanced by such measures.

As a matter of routine, we need the means to see what interest groups are putting forward, given that the changes needed to adapt to climate change will result in some losses and some gains, just as other major changes in policies have done.

In a republic, we have strong rights as citizens instead of mere liberties as subjects. Government for our common good is more than the bureaucratic mediation of interest groups.

In this context, Joseph Curtin and Gina Hanrahan suggested that a major constraint is the power of interest groups².

Political economy theory suggests that because of the inherent nature of climate policy, it will tend to face an implementation challenge. This is primarily because of how the costs and benefits of climate policy are distributed in society. Benefits are generally incremental and distributed evenly across society, and will in some cases only be felt by future generations. Costs can, on the other hand, often be immediate, and can in some cases disproportionately affect specific groups in society. Where this dynamic exists, it creates the classic conditions for the under-provision of a public good (in this instance, climate protection), and can be harmful to the public good, in a manner seminally described by Mancur Olsen.....Olsen argues that small distributional coalitions tend to form over time in countries to influence policies in their favor. These policies will generally generate selective benefits concentrated amongst the few members of the coalition, while the costs are diffused throughout the whole population; the "Logic" therefore dictates that there will be little public resistance to them. Hence as time goes on, and these distributional coalitions accumulate in greater and greater numbers, the nation burdened by them will fall into economic decline. See: Olson. M. (1971) [1965]. The Logic of Collective Action: Public Goods and the Theory of Groups (Revised edition ed.). Harvard, Harvard University Press.

² Curtin, Joseph & Hanrahan, Gina. Why Legislate? Designing a Climate Law for Ireland, Dublin: Institute of International and European Affairs, February 2012. p. 8 and 24 <https://www.iiea.com/publication/why-legislate-designing-a-climate-law-for-ireland/>

2. Amendments to specific parts of the regulation

Apart from these proposed amendments, the text of the Access to Information on the Environment Regulations should not be changed

2.1. Interpretation

- 2.1.1. "Public authority" add **transnational** to (a);
- 2.1.2. Insert **Accounting Officer** after (i) a Minister of the Government;
- 2.1.3. Change *all* to **50%** of the shares in (vii).

2.2. Delete **make all reasonable efforts** from 5 (1) (b)

2.3. Delete 15 (3) regarding the fee which the Commissioner for Environmental Information shall charge.

2.4. Add the complete text of

- 2.4.1. Article 7 Dissemination of environmental information;
- 2.4.2. Article 8 Quality of environmental information

From the existing Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003

3. Changes to our Constitution

It is necessary to ensure that a fundamental right of access to information held by all public bodies be inserted into the Constitution, should any changes be proposed to protect our environment.

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