

# What are the Limits to Public Service Advising? The ‘Public Argument’ Test

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Some Wellington policy advisers seem to feel under-employed these days. Although the volume of work is reportedly high, they complain about being relegated to implementing policies rather than formulating them. Where big picture policy is concerned, it is said that governments mostly develop their ideas outside the public service’s field of vision, in party caucuses, think tanks, and prime ministers’ inner circles, or in consultation with special advisers who report directly to ministers. Policy advisers are then left to fill in the blanks. Some imply that things used to be ‘better’ and that advisers used to exert more leverage over high-level policy directions.

These concerns are difficult to confirm or deny. The professional role of ‘policy analyst’ is a fairly new creation and norms of influence are not yet institutionalised. Different tasks require different types of engagement, and different governments develop different relationships with their advisers. These relationships also evolve over time. First-term governments often treat inherited policy advisers with suspicion. Such suspicions should fade in a second term as the sitting government puts its own stamp on the public service, but some habits die hard, particularly if the public service’s policy advice capabilities deteriorate during its exile. In general it is probably safe to say that public service influence over high-level policy naturally ebbs and flows, though not necessarily in predictable cycles.

With a general election ahead, the current crop of advisers don’t know whether they will be facing a low tide or high tide of influence. Either way, it is a good time to reconsider the normative role of policy advice in a healthy policymaking system. Is there a role description that can provide a steady focus for practicing advisers across the peaks and troughs of the natural influence cycle, and weave together the many types of tasks, contexts, and relationships that advisers

encounter? I can think of no better place to begin addressing this question than with the work of my colleague, Robert Gregory, whose critique of rationalism in policy analysis (i.e., technocracy or rule by expert elites) has prompted much of my own thinking about the nature of policy advice. Although I disagree with much of this critique, I believe that it poses the kinds of questions that can lead to genuine advances in policy analysis and advising.

Gregory’s work supplies two cases, discussed below, which I argue can help us locate the boundaries between appropriate and inappropriate roles for policy advice in a healthy democratic polity. Working backward from these cases, a core principle of good practice emerges, which is provisionally called public argument advising. The term ‘argument’ refers here to a coherent set of propositions that lead from premises to a policy conclusion. An argument presents the case for a particular policy choice, including reasons why the policy should be favoured.<sup>1</sup> A public argument presents the kind of policy case that citizens will recognise as legitimate and worthy of discussion, even if they disagree with the premises and conclusions. This article reports on work in progress to develop the idea of public argument advising and give it practical form. Much further work needs to be done, and readers are invited to join in this project and also to critique it.

## US policy in Iraq: Is there a no-go zone for policy advice?

When searching for external standards of, say, justice or equity, it is often useful to begin by looking at cases in which the standards are clearly absent – i.e., cases of injustice and inequity – and asking why we judge these as we do.

<sup>1</sup> Those who would like to explore the general idea of public policy as a form of argument might begin with Paris and Reynolds (1983), Stone (1988), and Majone (1989).

Applying this principle to the subject of policy advice leads to the following question: How can we tell when policy analysis and advice has overstepped its bounds?

Consider first the case of giving policy advice on Iraq to the Bush Administration. Gregory (2004) suggests that Bush Administration analysts working prior to the invasion would have been wasting their time analysing policy options and explaining risks, because the decision to invade Iraq was based on the kind of crude impulses and covert intentions that do not yield to rational scrutiny. This was the quintessential case of policy advisers being told to shut up and implement policy. What should the policy adviser do in such circumstances?

The New Zealand Code of Public Service Conduct answers this question clearly. Regardless of whether they expect their advice to be accepted or rejected, public servants should deliver free and frank advice and then abide by the government's policy decisions and implement them conscientiously. Although the US setting is different, similar principles would apply. Policy advisers who follow this code may find the job exceedingly unpleasant if they disagree vigorously with a chosen policy, but they will not be compromising their professional integrity if they stick with it. Advisers always have the option of exiting (resigning), with or without voice (ordinary speaking out or, where necessary, whistle blowing), if they find the situation intolerable.

Gregory (2004, p.303) argues that something more is also required of policy advisers in this type of situation. In the name of relevance, he argues that policy analysis must be capable of swaying policy makers and carrying the day politically, which means that it must be able to engage with 'the dark recesses of political motivation, not only where hidden agendas need to be rationalised by publicly acceptable justifications, but where ultimate motivation depends far less on logical reasoning and much more on tacit beliefs and convictions' (Gregory 2004, p.302). Thus, analysts should not only abide by the government's policy decisions and implement them, but when formulating their advice, they should also take into account in some unexplained way the full array of interests and impulses that may be driving policy. In order to be relevant, as he defines it, policy advice must 'connect analysis to the complex, untidy, and usually opaque domain of political motivation' (Gregory 2004, p.303).

I look forward to further explanation of these points in Gregory's reply to this article, but it appears that a standard is being set that severely reduces the adviser's expected level of detachment from the inner workings of a government's psyche. In practical terms, this means that advisers are expected to work not only with the policy rationales that ministers present to them or ask them to construct, but also to guess at what additional, unspoken (and sometimes unspeakable) rationales might possibly motivate a policy choice.

The art of reading ministers' minds and detecting subliminal messages is nothing new to experienced advisers, and it is well understood that many of the best minister-adviser relationships operate as partnerships in which the full range of motivations and rationales for policy may be confidentially explored. Gregory's point is therefore a refreshing one, because it reminds us that analytical detachment is not always possible or desirable, and that every policy choice results from the convergence of multiple reasons and interests around a particular policy idea. Making this point in the context of the Iraq example, however, raises important questions about an adviser's obligations to engage with the dark recesses of political motivation when these are particularly contemptible.

A helpful distinction in this case is between the kinds of motivations and policy rationales that do and do not bear public scrutiny. In the case of Iraq, the unspeakable rationales are conveniently obvious. Some fail the test of being publicly presentable because they involve private agendas, such as exacting revenge for old Bush family grievances or distributing lucrative post-war reconstruction contracts to business cronies. Although access to oil has long been a key factor in the foreign policies of the US and many other countries (wink, nod), the goal of gaining control of Iraqi oil does not qualify as a public rationale for invading Iraq because it violates the principle that war is a last resort rather than an ordinary tool of foreign policy. If any of these hidden goals were animating Bush Administration decision makers, they could not have been presented forthrightly to American citizens without either violating core principles that the US espouses or distorting them beyond recognition.

The best of Bush's defence and foreign policy advisers under the circumstances would have been aware of these possible motivations but also kept their distance. They

would have focused exclusively on the kinds of arguments that could be vetted in public. They would have constructed these arguments, tested them, and presented their strengths and weaknesses, in the full knowledge that their advice was unlikely to influence policy choice but was nonetheless an important part of the historical record.

What kinds of rationales might pass the public presentability test in this case? The question is fraught and the answer depends on enormous assumptions concerning the morality of war and the degree to which international law should dictate a country's public policy options. Arguably, public rationales for invading Iraq might include removing illegal nuclear and chemical weapons (a rationale supported by international law but undone by lack of evidence), liberating Iraqis from oppression, hastening the spread of democratic freedoms in the Middle East, protecting Israel from its sworn enemies, demonstrating Anglo-American resolve to exercise hard power when it is deemed necessary, and punishing states that sponsor terrorism (referring to Saddam Hussein's support of Palestinian terror) in order to deter such sponsorship in future (e.g., in Saudi Arabia, Yemen, Jordan, and elsewhere). Each member of the US Congress who voted to finance the war would have had in mind his or her own preferred combination of these rationales. Some opponents of the war disagreed with these goals, while others supported the goals but felt that military intervention was the worst possible way to pursue them. Either way, most participants valued the opportunity to air the public rationales and debate them.

Conventional standards of good policy analysis practice require analysts to construct multiple policy options and assess these options against multiple goals, but rarely do the purveyors of conventional good practice mention the possibility that some goals may lay beyond the pale of public reasonableness. The policy adviser's role in these cases should not be confused with disdain for politics, as Gregory suggests. Advisers who refuse to help justify or pursue hidden agendas that would fail the public reasonableness test are not shunning politics, for the focus on public arguments contributes directly to political positioning. This approach to circumscribing policy advice is meant to promote public debate rather than suppress it and to support open politics over closed.

## 1980s New Zealand: when are analysts too powerful?

The second case is New Zealand's 1984 policy revolution, which Gregory (1998) describes as a case study in technocracy. As Gregory and other critics tell the now-familiar tale, the fourth Labour government allowed a small band of neo-classical economic advisers to formulate sweeping policy changes that touched all sectors of the economy and society. The reforms were driven through Cabinet and Parliament at top speed with woefully little public debate, according to critics, and along the way, the reformers rode roughshod over the public service's most valuable asset – trust between officials, elected representatives, and the people. The reformers shunned ordinary knowledge in favour of technical expertise, and asserted economic theory's dominance over democratic process. Although they claimed to be led by theory rather than political interests, Gregory argues that they were engaging in a misleading and quasi-dishonest form of covert politics.

With respect to the role of policy advisers in this episode, I respectfully disagree with Gregory and will argue, contrarily, that the policy advice supplied to the fourth Labour government was a stellar example of public argument advising. Elaborate rationales were constructed linking proposed policy directions to a particular vision of the long-term public interest. Although key planks of the resulting policy agenda were rushed through Parliament in urgency and many discussions were held behind closed doors, the advice itself was eminently presentable and, if presented, would have sparked a healthy, vigorous public debate in almost any other democratic country with a more heavily contested political environment and longer experience with ideas of deregulation, privatisation, and rolling back the state. This conclusion holds regardless of whether one agrees or disagrees with the content of the advice given at the time.

If 1984 was New Zealand's first serious encounter with full-throttle market liberal doctrine, then it should not come as a surprise that the public debate was a bit thin at first. Not only were the natural opponents of market liberalism understandably ill prepared for this burst of new ideas, having grown accustomed to a political system that largely delivered variations on social democracy rather than alternatives to it, but they were also taken off guard by the new doctrine's embodiment

in a Labour government. What's more, the frameworks and proposals being rolled out in 1984 and beyond were not the standard, garden-variety form of market liberalism. They were a complex hybrid of several different theoretical threads, some of them unfamiliar in this part of the world; it took time for the academics and practitioners to sort them out, both locally and internationally. Add to this the superb political skills of the people driving the agenda and their ability to wield the strong executive powers granted by the pre-MMP, first-past-the-post parliamentary system, and it becomes considerably harder to fault either the reformers or their advisers for behaving badly.

Viewed in this way, the general idea of a technocratic threat seems to lose some of its sting. The unusual circumstances faced in New Zealand in 1984 are unlikely to recur, given changes to the electoral system, and even if they did, Gregory argues that highly theoretical policy advice usually fails to move policy makers because it cannot speak to their political imperatives (Gregory 2004, 2002). New Zealand under the fourth Labour government is the exception that proves that rule.

Contrary to what its rationalist critics say, the practice of policy advice in New Zealand in the revolutionary period fits squarely within the boundaries of appropriate policy advice, understood within a public argument framework. Whatever one thinks about the wisdom of Treasury's advice to the fourth Labour government, it cannot be said that the policies were rigged to serve private motivations or hidden agendas. Just like any other ideologically and theoretically coherent set of policy proposals, their purpose was to give effect to a particular view of government's role in the economy and society. Toward that end, they employed the tried and true rhetorical method of asserting the absolute superiority of their approach ('there is no alternative'). Had the reformers been arguing the absolute superiority of a different body of doctrine - whether social capital theory, feminist theory, Keynesian economics, Methodist Socialism, post-positivism, liberation theology, or whatever you like - the sources and content of the criticism may have been altogether different.

This policymaking episode also helps to identify an important feature of good practice advice. The advisers to the fourth Labour government drew from several streams of theory to build their policy architecture, and

this no doubt has contributed to the remarkable durability, or hybrid vigour, of its basic elements. Had the election of 1990 gone differently, yet more streams of thinking could have been incorporated, including perhaps a more social democratic approach to social policy, which, combined with the economic and state sector reforms, would have constituted New Zealand's unique brand of third-way governance.

Critics who worry about ideological narrowness among policy advisers would do well to encourage broad exposure of public servants to a spectrum of theories, policy ideas, and worldviews, rather than arguing against theory-based policy formulation on technocratic grounds. This does not mean that every policy paper should contain a full array of ideologically tailored options from the political left to the right. Most ministers would not tolerate such a practice for a moment. Over time, however, policy advisers can and should be expected to develop and keep up to date their own cognitive maps of their policy field, including both basic descriptive data about the relevant phenomena (whether clients or environmental patterns or economic indicators) and some sort of multi-dimensional chart that locates competing policy approaches in ideological space.

Armed with such a virtual map, advisers would be able to break out of the usual ideological stereotypes, place the government of the day's policy preferences in a larger context, combine smart practices across political brands, search for solutions suggested by the descriptive data, avoid capture by policy fads, and reduce the problem of policy whiplash (see box p. 9).

## What is good practice in public argument advising?

Before the idea of distinguishing public from non-public policy rationales can become a useful guide for practice, criteria for making these judgments are sorely needed. The basic concept derives from philosophy's liberal restraint principle, which holds that citizens (including officials) who propose policies that involve coercion of their fellow citizens ought to restrain from using non-public reasons to support those proposals, out of respect for each other and the democratic system. Public reasons are understood as the kinds of reasons that other reasonable people might accept as reasonable without necessarily having to agree with them. The distinction between toleration and agreement looms large here. In

a system that values toleration, citizens should be able to accept a reasonable policy argument or rationale as worthy of democratic consideration and public debate while also disagreeing with it.

This formulation of the liberal restraint principle still leaves much to the imagination, however: What is a reasonable person? What might she reasonably accept as a tolerable argument? What about groups in society, such as religious fundamentalists, who reject the liberal restraint principle altogether? Philosophers have debated these points vigorously, and notions of what qualifies as a public reason will vary from society to society and age to age. A lot of work is needed to translate the abstract principle of liberal restraint into practice.

At a common sense level, the public argument approach simply requires analysts to ask themselves: What can I honestly and unashamedly say to my fellow citizens about the merits of this policy? Am I asking my fellow citizens to suspend either their core values or their common sense in order to support this policy? Beyond these deceptively simple questions, the job of recognising, building, testing, repairing, and refining public arguments for policy requires a sophisticated mix of skills, methods, and sensitivities. It requires confidence and clarity about the adviser's place within the larger policymaking process as well as finely tuned ethical radar. I agree with Gregory (2004, p.311) that policy advisers should be people 'who embrace political interaction; and who are both comfortable and effective in complex, conflict-ridden, uncertain, and transformational policymaking contexts,' but they also need to recognise the kinds of situations in which they ought to feel uncomfortable, as when they are expected to participate actively in non-public policy and politics.

A good practice agenda going forward could focus on developing the following features of a public argument model for policy advice:

- Establishing clearer principles and rules of thumb for distinguishing public and non-public policy rationales.
- Scanning the ideological and evidence terrain and building cognitive maps of a policy field, as described in the previous section.
- Developing better methods for building and testing arguments. For example, intervention-logic-type and results-chain-type methods can be used to describe

the arguments behind particular policy instruments, including both high-level rationales (which sit at the top of the chain linking policy to big-picture goals) and lower level delivery plans (which sat at the bottom of the chain and focus on implementation imperatives and risks) (Baehler 2001, 2003).

- Using evidence to build and support the argument framework. Note, here, that evidence is not the basis of policy. It is one ingredient in the overall argument, which consists of evidence linked with logic linked with an appeal to people's values and emotional commitments.
- Engaging ministers in the shared goal of building good public arguments. Policy advisers must give expression to ideas and aspirations that are often inchoate and complex. To do so requires both a good, collaborative relationship with the minister so that the minister's ideas can be drawn out and developed, and an eloquent tongue (pen) for articulating the ideas honestly, accurately and in ways that will help build political coalitions and win public support. In particular, advisers need to be able to engage ministers in crafting the outcome statements that sit at the top of results chains.

## Conclusion

The most significant contribution that policy advisers can make to policymaking is to focus intently on the job of tending a broad range of public arguments and thereby feeding the connective tissue of political association. This role description, though simple in principle, seems rich enough to provide a steady focus for good practice across the ups and downs of ministerial demand, continuity across different types of tasks and relationships, guideposts when ethical dilemmas arise, and a bulwark against the pressures for advisers to become either political hacks or pointy-headed evidence purists. Thus, the idea of public arguments for policy provides not only a bridge between political and policy logic, but also an architectural structure for understanding the role of policy advisers within the political and policymaking system.

This article both argues with and expands upon Bob Gregory's critique of rationalist policy analysis in order to begin sketching how an alternative approach to good practice might emerge. Considerable further work is needed to develop this approach, and the few broad

strokes presented here are meant to stimulate comment and draw others into the enterprise. They are meant to focus attention again on the question: What, then, should the policy adviser do?

## References

Baehler, Karen (2001) 'Intervention Logic: A User's Guide', *Public Sector* 25(3): 14-20.

Baehler, Karen (2003) 'Managing for Outcomes: Accountability and Thrust', *Australian Journal of Public Administration* 62(4): 23-34.

Gregory, Robert (1998) 'New Zealand as the "New Atlantis"', *Canberra Bulletin of Public Administration* 90: 107-112.

Gregory, Robert (2002) 'Political Life is Larger than Intervention Logic', *Public Sector* 26(1): 4-7.

Gregory, Robert (2004) 'Political Life and Intervention Logic: Relearning Old Lessons?' *International Public Management Journal* 7(3): 299-315.

Majone, Giandomenico (1989) *Evidence, Argument, and Persuasion in the Policy Process* New Haven: Yale University Press.

Paris, David C. and James F. Reynolds (1983) *The Logic of Policy Inquiry* New York: Longman.

Stone, Deborah A. (1988) *Policy Paradox and Political Reason* Glenview, IL: Scott Foresman and Company.

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