

THE ROLE OF THE POLICY ADVISOR:

AN INSIDER'S LOOK

Edited by Nadia Verrelli

Institute of Intergovernmental Relations
Queen's University, Kingston, Ontario, Canada K7L 3N6

Library and Archives Canada Cataloguing in Publication

The role of the policy advisor : an insider's look / edited by Nadia Verrelli.

Includes bibliographical references.

ISBN 978-1-55339-193-7

1. Policy scientists. 2. Government consultants. I. Verrelli, Nadia, 1975-
II. Queen's University (Kingston, Ont.). Institute of Intergovernmental Relations.

JF1525.C6R65 2008

352.3'73

C2008-907049-6

CONTENTS

Foreword	v
Executive Summary	vii
Résumé	xi
Notes on Contributors	xv
Introduction	
1 The Role of Experts in Policy Making <i>Nadia Verrelli</i>	3
Part 1: The Panel: Attempting to Understand the Role and Effectiveness of Experts	
2 The Expert Advisor in the Formulation of Government Policy <i>J. Isawa Elaigwu</i>	17
3 The Policy-Making Process in Federal Systems: Understanding the Role of Experts <i>Enric Fossas</i>	23
4 The Role of Expert Advisors in the Formulation of Policy: Brief Report on the Federal Republic of Germany <i>Rudolf Hrbek</i>	27
5 Role of the Expert Advisor <i>John Kincaid</i>	35
6 Role of the Expert Advisor in the Formulation of Policy <i>Cheryl Saunders</i>	39
7 The Role of the Expert in the Formulation of Policy on Federalism Issues <i>Nico Steyler</i>	45
Part 2: Discussing the Issues and Raising Questions	
8 Highlights of the Discussion	51
Conclusion	
9 Comments and Closing Remarks <i>Ronald L. Watts</i>	59

FOREWORD

In October 2007, the Institute of Intergovernmental Relations, Queen's University, in conjunction with the International Association of Centers for Federal Studies and the Forum of Federations, held a conference in Kingston, Ontario, entitled "The Federal Idea: A Conference in Honour of Ronald L. Watts." Scholars of federalism from all over the world gathered in Kingston to honour Dr. Watts, Principal Emeritus of Queen's University and a former Director of the IIGR.

Senior officials in the Intergovernmental Relations Secretariat of the Privy Council Office decided to take advantage of the assembled expertise to explore the role of experts in the formulation of public policy. Accordingly, a pre-conference panel entitled "The Policy-Making Process in Federal Systems: Understanding the Role of Experts" was organized. The members comprising the panel were as follows: J. Elaigwu, Institute of Governance, Nigeria; Enric Fossas, Universitat Autònoma de Barcelona, Spain; Rudolph Hrbek, Universität Tübingen, Germany; John Kincaid, Lafayette College, U.S.A.; Cheryl Saunders, University of Melbourne, Australia; and Nico Steytler, University of Capetown, South Africa. Dr. Watts served as *rapporteur*.

The Panel was asked to consider the effectiveness of the role played by experts in the formulation of policy, and the factors that influence that effectiveness. More generally, it was asked to consider the most effective ways of involving external experts in the policy-making process and the factors that influence the ability of governments to accept expert advice and incorporate it in their policy decisions. The initial statements by the panellists are presented here, together with the highlights of the lively discussion that ensued and Dr. Watts's insightful summation.

The Institute of Intergovernmental Relations is most appreciative of the support provided by the Intergovernmental Affairs Secretariat of the Privy Council Office, without which the Panel could not have been held. We are also grateful for the efforts of Dr. Nadia Verrelli, our Post-Doctoral Fellow, who helped organize the session, reviewed the transcripts and edited this publication.

John R. Allan
Associate Director

EXECUTIVE SUMMARY

Governments everywhere are spending substantial sums of public money for advice that will facilitate the formulation and improve the quality of public policy. Advice is obtained from a variety of sources, including consultancies of various forms, commissions of enquiry, think tanks and academics, among others. Despite the ubiquity of the practice and the sums involved, there is a dearth of literature on how to best use expert advisors in the policy formulation process. It was with pleasure, therefore, that the Institute of Intergovernmental Relations received the suggestion from Intergovernmental Relations in the Privy Council Office that the conference honouring Dr. Ronald Watts should include a panel that would explore the issue of how expert advisors are best used in the policy process.

Adding such a panel to the Watts conference was particularly appropriate: first, Dr. Watts himself has made singular contributions as an expert advisor to many governments, both in Canada and internationally; and second, there would be present at the conference many renowned scholars who had themselves served extensively in advisory capacities and who, collectively, were familiar with the manner in which expert advice is sought and used in diverse other countries. It was thus relatively easy for Privy Council Office officials to select a knowledgeable and widely experienced group of experts, all of whom agreed to be members of the panel: J. Isawa Elaigwu, Institute of Governance, Nigeria; Enric Fossas, Universitat Autònoma de Barcelona, Spain; Rudolf Hrbek, Universität Tübingen, Germany; John Kincaid, Lafayette College, USA; Cheryl Saunders, University of Melbourne, Australia; and Nico Steytler, University of Capetown, South Africa. Dr. Watts served as panel *rapporteur*.

The panellists were asked to consider the influence of such factors as the means by which policy advice is solicited. For instance, are the quality of the advice and the likelihood of it being accepted and implemented affected by how the advice is sought, be it a consultancy, a commission of inquiry or a think tank? More generally, what are the most effective ways of involving external experts in the formulation of policy, and what factors or considerations influence the ability of governments to accept expert advice and incorporate it in their policy decisions?

The panellists were also asked to comment on the particular challenges faced by experts when providing advice in a federal setting. Does the setting complicate the advisory process, and if so, how? Which particular features of a federation facilitate or complicate the provision of expert advice or significantly influence the probability of it being accepted by the client government?

Another area the panellists were asked to explore is the relationship between the issue or issues on which advice is sought and its likely acceptance by the client. Which issues, or which characteristics of issues, increase the ease of gaining

acceptance? Are there features or structures that make the acceptance of advice difficult or even improbable?

There are, of course, many ways in which experts may influence the policy process other than by direct consultation with governments. Should they, for example, assume an advocacy role and attempt to engage citizens directly? What factors influence the likely success of such attempts? Whatever strategy is adopted to influence the policy process, should experts be held accountable for the advice offered, and if so, how?

Each panellist was asked to prepare a brief opening statement for presentation at the session, and they are included in this compendium, together with the highlights of the discussion among members of the panel and the audience, and Dr. Watts's concluding remarks as *rapporteur*.

Perhaps the most evident conclusion to emerge from the session is that given the variety of circumstances in which expert advice is sought and the range of issues the solicited advice may be about, all generalizations are fraught with difficulty. As Professor Steytler observed, "There is no best way of engaging with experts. All depends on the context, a context determined, in the end, by political considerations." Clearly critical, however, is the stage in the policy formulation process at which advice is sought, with the influence of political considerations becoming stronger as the advisory function moves further from the primarily bureaucratic stages of the policy process. There was also agreement on the difficulty of excluding political and ideological influences on the advisory process, although some of the panellists thought this was more readily accomplished when the advice offered was primarily "technical" and directed to departmental officials. Given the importance and prevalence of such influences, several panellists emphasized the importance of seeking advice from multiple sources and the increasing need for openness the closer the advisory process is to the political decision makers.

John Kincaid noted the desirability of "speaking truth to power," but was concerned that the desire of some advisors "to be close to power" may be the stronger influence. Again, this reinforced the need for relying on multiple sources of advice and the need for discernment on the part of those responsible for selecting or recommending advisors.

The distinction between once-only and continuing policy advice was noted by several panellists. Cheryl Saunders, in particular, stressed that a continuing advisory body, especially one that is publicly funded, would be very conscious of the need to maintain its credibility by offering advice that was acceptable, certainly not invariably but at least much of the time.

There was virtual unanimity among the panellists that federalism both complicates and facilitates the role of the policy advisor. Complications may arise because inter-jurisdictional considerations cause one level of government to be reluctant to accept advice obtained by another. Additionally, in a federal context, to carry the day it may be necessary to appeal to what Kincaid calls "a super-majority that encompasses multiple regional and local majorities of different ideological hues and socio-economic circumstances." On the other hand, federalism offers multiple points of entry to the policy process and this can increase the scope for the

policy advisor. Moreover, a government that anticipates the emergence of a problem and obtains timely advice may be able to exert disproportionate influence as the federation grapples with a particular policy issue.

Finally, on the issue of accountability, there was general agreement on the difficulty of holding external experts accountable, except, perhaps, than by publicizing the bad advice and excluding the advisor from future processes. It was also pointed out that it would be difficult to enforce accountability by other measures given that the responsibility for choosing the experts and for determining the utility of the advice offered rests ultimately with government officials. Ultimately, as Dr. Watts observed, the real accountability for poor policy advice is provided by the negative impact that such advice has upon the reputation of the advisors themselves.

RÉSUMÉ

Les gouvernements investissent des sommes considérables à des fins de consultation en vue de soutenir l'élaboration des politiques publiques et d'en assurer la qualité. Les avis proviennent de différentes sources : services de conseil, commissions d'enquête, groupes de réflexion, universitaires, etc. En dépit du caractère généralisé de cette pratique, et des coûts qui y sont associés, la question de savoir comment les gouvernements peuvent utiliser le plus efficacement possible les experts dans le processus d'élaboration des politiques a été peu étudiée. Ainsi, c'est avec enthousiasme que l'Institut des relations intergouvernementales a accueilli la proposition de la Direction des affaires intergouvernementales du Bureau du conseil privé (BCP) d'organiser une table ronde pour débattre de cette question et en explorer les principaux enjeux dans le cadre de la conférence en l'honneur de Ronald Watts.

L'occasion n'aurait pu être mieux choisie étant donné que Ronald Watts lui-même a agi à titre de conseiller auprès de nombreux gouvernements, tant au Canada qu'à l'étranger. De surcroît, la conférence devait réunir un grand nombre de spécialistes de renom ayant une vaste expérience en la matière et à même de fournir un éclairage sur la façon dont les avis d'experts sont obtenus et utilisés dans plusieurs pays étrangers. Il n'a donc pas été difficile pour les responsables du BCP de sélectionner un groupe d'experts qualifiés et expérimentés pour participer à la table ronde, lesquels ont tous répondu à l'invitation. Les participants à la table ronde étaient les suivants : J. Isawa Elaigwu, Institute of Governance, Nigeria; Enric Fossas, Universitat Autònoma de Barcelona, Espagne; Rudolf Hrbek, Universität Tübingen, Allemagne; John Kincaid, Lafayette College, États-Unis; Cheryl Saunders, University of Melbourne, Australie, et Nico Steytler, University of Capetown, Afrique du Sud. Ronald Watts a été nommé rapporteur.

On a demandé aux participants de considérer, à la lumière de leur expérience, l'importance de divers facteurs tels que le mode de consultation. Par exemple, le choix de recourir à des services de conseil, à une commission d'enquête ou à un groupe de réflexion a-t-il une incidence sur la qualité des avis reçus et sur la probabilité qu'ils soient pris en compte? De manière plus générale, de quelle façon peut-on utiliser le plus efficacement possible les conseillers externes dans le processus d'élaboration des politiques, et quels facteurs ou considérations influent sur la capacité des gouvernements à accepter les avis d'experts et à les intégrer dans leur prise de décision?

Les participants ont aussi été invités à se pencher sur les défis particuliers qui découlent du fédéralisme canadien pour les conseillers. Cette situation complique-t-elle le processus de consultation et, si oui, de quelle façon? Quelles

caractéristiques spécifiques du fédéralisme ont pour effet de faciliter ou de compliquer le processus, ou ont une influence déterminante sur la probabilité que les avis formulés soient acceptés par les gouvernements?

Les participants ont aussi examiné le lien entre la nature de la question à l'étude et le niveau d'acceptation des avis. Quelles sont les questions – nature ou caractéristiques – sur lesquelles les avis d'experts sont les plus susceptibles d'être acceptés? À l'inverse, y a-t-il des éléments ou structures qui rendent l'acceptation de ces avis plus difficile, voire improbable?

La consultation directe avec les gouvernements n'est évidemment pas le seul moyen dont disposent les conseillers pour influencer les politiques. Ceux-ci devraient-ils, par exemple, jouer un rôle de mobilisateur et promouvoir la participation directe des citoyens? Qu'est-ce qui peut favoriser le succès d'une telle approche? Indépendamment de la stratégie employée, les conseillers devraient-ils assumer une responsabilité pour les avis qu'ils fournissent et, si oui, comment assurer le respect de cette responsabilité?

Chacun des participants avait préparé une brève déclaration d'ouverture. Ces déclarations, de même qu'un résumé des faits saillants des discussions entre les participants et avec le public et les observations finales du rapporteur sont inclus dans le recueil.

S'il ressort une conclusion de la séance, c'est sans doute l'impossibilité de dégager toute règle générale vu l'incidence de nombreuses variables liées au contexte et à la nature même des questions à l'étude. Comme l'a noté Nico Steytler, « Il n'existe pas de modèle à suivre pour la participation des experts. Tout dépend du contexte, lequel est déterminé, en bout de ligne, par des considérations politiques. » Un élément essentiel, toutefois, est le moment du processus où l'avis des experts est sollicité étant donné que le poids des considérations politiques s'accroît après les premières étapes, essentiellement administratives. Les participants ont aussi convenu que les influences politiques et idéologiques pouvaient difficilement être exclues, bien que certains aient signalé une difficulté moindre lorsqu'il s'agit d'avis « techniques » destinés à des fonctionnaires. Compte tenu de l'importance et de l'omniprésence de ces influences, plusieurs participants ont insisté sur la nécessité d'obtenir des avis de sources variées et sur le besoin croissant de transparence en fonction du degré de proximité avec le pouvoir.

John Kincaid a souligné que si « dire la vérité au pouvoir » devait toujours motiver le travail des conseillers, il craignait cependant que certains soient plutôt guidés par le désir d'« être près du pouvoir ». Cela ne fait que confirmer l'importance de diversifier les sources ainsi que le devoir de discernement qui incombe aux personnes qui sélectionnent ou recommandent les conseillers.

Plusieurs participants ont fait observer que la situation est différente selon que la collaboration est ponctuelle ou permanente. Cheryl Saunders, en particulier, a attiré l'attention sur le fait qu'un organisme consultatif permanent, surtout s'il est financé par le gouvernement, aurait le souci de maintenir sa crédibilité en offrant des avis qui sont acceptables pour le client, certainement pas dans tous les cas, mais du moins la plupart du temps.

La vaste majorité des participants estimaient que le fédéralisme compliquait et facilitait à la fois le travail des conseillers. Par exemple, les rapports de force entre le fédéral et le provincial peuvent faire en sorte qu'un palier de gouvernement soit réticent à accepter les avis reçus par l'autre. En outre, il est parfois nécessaire d'obtenir l'adhésion de ce que John Kincaid appelle « une super-majorité englobant les multiples majorités régionales et locales de différentes allégeances idéologiques et conditions socio-économiques ». En revanche, le fédéralisme a l'avantage d'offrir de nombreuses occasions d'intervenir sur le processus d'élaboration des politiques et peut ainsi permettre aux conseillers d'élargir leur champ d'action. De plus, un gouvernement qui prévoit l'émergence d'un problème et qui obtient un avis en temps opportun peut être en mesure d'infléchir la situation.

Enfin, en ce qui concerne la responsabilité, les participants voyaient difficilement comment elle pouvait être assurée autrement qu'en dénonçant publiquement les conseillers qui n'accomplissent pas bien leur travail et en les excluant des processus de consultation futurs. Il a été mentionné que l'application d'autres mesures serait problématique puisque ce sont, en fin de compte, les représentants gouvernementaux qui choisissent les conseillers et qui doivent déterminer l'utilité des avis qu'ils reçoivent. Comme l'a noté Ronald Watts, la responsabilité est assurée ultimement par l'impact négatif que peut avoir le mauvais travail d'un conseiller sur sa réputation.

NOTES ON CONTRIBUTORS

J. ISAWA ELAIGWU is Professor Emeritus of Political Science, University of Jos, Jos, Nigeria. He is also President of the Institute of Governance and Social Research (IGSR), Jos, Nigeria. A well travelled academic, Professor Elaigwu's works have been widely published within and outside of Nigeria. He has also served as a consultant to many national and international agencies. His primary areas of research include comparative federalism and intergovernmental relations in Nigeria. This is reflected in his presentation, "Nigeria: The Decentralization Debate in Nigeria's Federation," which examines the issue of decentralization in Nigeria and its implications for the future of federalism in that country.

ENRIC FOSSAS is a full professor in the Department of Political Science and Constitutional Law at the Universidad Autónoma de Barcelona. He is the author and publisher of diverse books and articles published in specialized journals. He has made research stays at universities in France, Italy, Canada and the United States. He was a member of the Comparative Federalism and Federation Research Committee of the International Political Science Association (1997–99), and a member of the advisory board of the "International Journal of Canadian Studies/Revue Internationale d'Études Canadiennes" (1996–99). He is Second Vice-President of the International Association of Centres for Federal Studies (IACFS) and has been a law advisor of the Spanish Constitutional Court (1999–2003) and Director of the Institut d'Estudis Autònoms of the Generalitat of Catalonia (2003–04).

RUDOLF HRBEK has been since 1976 professor of Political Science at the University of Tübingen, Jean Monnet Chair and responsible for the Jean Monnet Centre of Excellence at University of Tübingen; he is Speaker of the European Center for Research on Federalism at the University of Tuebingen. Since October 2006 he has been Professor Emeritus. He has also been a visiting professor at the College of Europe in Bruges since 1980 and spent periods as visiting professor at Washington University; University of Washington, Seattle; Chulalongkorn University, Bangkok; Bocconi University, Milan; and University of Basel. At present (fall term 2007) he is visiting professor at Dartmouth College, Hanover. His major research interests are European integration and the EC/EU; problems of federalism and political systems in Western Europe with a focus on territorial structure, party systems and governance structures and has published widely (over 200 monographs, articles and books) on these subjects.

JOHN KINCAID is Robert B. and Helen S. Meyner Professor of Government and Public Service and Director of the Meyner Center for the Study of State and Local Government at Lafayette College, Easton, Pennsylvania. He has also served

as acting head (1997–98) of the Department of Government and Law at Lafayette College; as Kestnbaum Fellow (1994–95), Executive Director (1988–94), and Director of Research (1986–88) of the US Advisory Commission on Intergovernmental Relations, Washington, DC, and as associate professor of Political Science at the University of North Texas (1979–94).

CHERYL SAUNDERS has specialist interests in constitutional law and comparative constitutional law, including federalism and intergovernmental relations and constitutional design and change. She is presently working on two major projects: an account of the Australian Constitution written from a comparative constitutional perspective and a text on comparative constitutional law. In addition to her research and teaching activities, Cheryl Saunders is active in public debate on constitutional matters in Australia and internationally. From 1991, as deputy chair of the Australian Constitutional Centenary Foundation, she was closely involved in its pioneering work to encourage public understanding of the Constitution. She has had some involvement in aspects of constitutional design in other countries, including Fiji, South Africa, Zimbabwe, Sri Lanka and East Timor.

NICO STEYTLER is Director of the Community Law Centre of the University of the Western Cape, a research and advocacy institute that works for the realization of the democratic values and human rights enshrined in South Africa's Constitution. He has been involved in the development of the new constitutional order for the past decade. He was a technical advisor to the Constitutional Assembly drafting the 1996 Constitution (1995–96) as well as a technical advisor to the Western Cape Provincial Legislature on the drafting of a provincial constitution (1996–97). His main field of research is intergovernmental relations and local government.

NADIA VERRELLI is a post-doctoral candidate at the Institute of Intergovernmental Relations. Her research looks principally at Canadian federalism and Canadian constitutional politics. More specifically she focuses upon the influence of the Supreme Court of Canada on the conceptualization and evolution of Canadian politics. Currently she is looking at how the Supreme Court understands Canadian federalism. She is also exploring environment policy options and is in the process of compiling a comprehensive analysis of actions taken by the international community to date to reduce the impact of climate change.

RONALD L. WATTS is Principal Emeritus and Professor Emeritus of Political Studies at Queen's University, where he has been a member of the academic staff since 1955 and was Principal and Vice-Chancellor 1974–84. He is currently a Fellow and is a former Director of the Institute of Intergovernmental Relations at Queen's University. He was President of the International Association of Centres for Federal Studies 1991–98, was a founding board member of the International Forum of Federations 2000–06 and is currently a Fellow. He is a former board member and chairman of the research committee and currently a Fellow of the Institute for Research on Public Policy. On several occasions he has been a consultant to the Government of Canada during constitutional deliberations, most

notably as a commissioner on the Task Force on Canadian Unity (Pepin-Roberts) 1978–79, as consultant to the Federal-Provincial Relations Office in 1980–1981, and as Assistant Secretary to the Cabinet for Constitutional Development (Federal-Provincial Relations Office) 1991–92. He has also been an advisor to governments in several other countries including Uganda, Papua New Guinea, South Africa, and more recently Switzerland, Kenya, Cyprus, Yugoslavia, Pakistan, the Philippines and India. As a political scientist he has worked for over forty-nine years on the comparative study of federal systems and on Canadian federalism, and has written or edited over twenty-five books, monographs and reports and over one hundred articles and chapters in books. He has received five honorary degrees. He became an Officer of the Order of Canada in 1979 and was promoted to Companion of the Order of Canada in 2000.

INTRODUCTION

THE ROLE OF EXPERTS IN POLICY MAKING

Nadia Verrelli

From 18 October to 20 October 2007, a conference in honour of Ronald L. Watts was held at Queen's University by the Institute of Intergovernmental Relations.¹ In addition to exploring Professor Watts's contribution to the study of federalism in Canada and abroad, the organizers of the conference, with the support of Intergovernmental Affairs, Privy Council Office (PCO), dedicated a session on the role of experts in the formulation and implementation of policy, particularly in a federal system. This session fit well with the overall objective of the conference, as Professor Watts has been active in offering his advice, services, and expertise on various policy panels in Canada and abroad. The most notable positions he has held include Consultant to the Constitution of Kenya Reform Commission regarding devolution (2001 and 2002); member of expert group of three academics (from Canada, Germany, and Switzerland) to advise the president of Yugoslavia and the governments of Serbia and Montenegro on the restructuring of the Federation of Yugoslavia (October–November 2001); Assistant Secretary to the Cabinet for Constitutional Development, (Federal-Provincial Relations Office), Government of Canada (April 1991–September 1992); member of the team of advisors to Premier Peterson (Ontario) for constitutional deliberations regarding ratification of the Meech Lake Accord (June 1990).

In this session we took an insider's look at the role experts play in the policy-making process, with a specific look at the effectiveness of such a role in a federal system. We had a rich panel of internationally recognized scholars that included J. Isawa Elaigwu, Institute of Governance, Nigeria; Enric Fossas, Universitat Autònoma de Barcelona, Spain; Rudolf Hrbek, Universität Tübingen, Germany; John Kincaid, Lafayette College, USA; Cheryl Saunders, University of Melbourne, Australia; and Nico Steytler, University of Capetown, South Africa – all well known and respected in their fields of study, with extensive experience as policy advisors.

¹ The Federal Idea: A Conference in Honour of Ronald L. Watts was made possible by the Institute of Intergovernmental Relations, in collaboration with the International Association of Centers for Federal Studies (IACFS), the Forum of Federations and the International Political Science Association RC28.

The six panellists were asked to consider issues concerning experts and the policy-making process, ranging from factors influencing the effectiveness of the role played by experts to the accountability of expert advisors when advising policy makers. Specifically, the panellists were asked to draw on their experiences as policy advisors to consider one or more of the following: whether the vehicle through which advice is sought (consultancy, a commission of inquiry, or a think tank) affects the quality of advice and the likelihood of it being accepted and implemented; the most effective ways of involving external experts in the formulation of policy; and the factors that influence the ability of governments to accept the expert advice and incorporate it in their policy decisions. In addition, they were asked to explore the relationship between the issue(s) on which advice is sought and the likelihood of its acceptance by the client; which issues (or characteristics of issues) increase the ease of gaining acceptance or conversely render the acceptance of advice difficult or even improbable. Finally, they were asked to discuss the responsibility of the advisor. Should the policy advisor be held accountable for the advice offered? If so, how?

Following the introductory statements of the six panellists, an enlightening discussion ensued in which members of the audience were asked to participate during the question and answer period. The session concluded with insightful observations made by Professor Watts, who acted as *rapporteur*.

This compendium, therefore, is a compilation of the introductory statements delivered by the six panellists, highlights of the discussion that followed, and finally, Professor Watts's observations and concluding remarks. In what proved to be an enlightening and thoughtful session, the panellists and *rapporteur* provided considerable insight into the role of expert advisors in the policy-making process. Considering first the importance of policy advisors and the potential role they play in the policy-making process; second, the substantial sums of public money spent to solicit advice to facilitate the formulation and improve the quality of public policy; and third, the dearth of literature on how best to use expert advisors in the policy formulation process, we believe readers will find much here that is both relevant and useful.

THE IMPORTANCE OF POLICY ADVISORS

Simply put, a policy advisor is a person employed by government "to investigate an area of critical public concern and to recommend a suitable course of action" (Jackson and Jackson 2006, 352). According to Elaigwu, "the expert advisor's skills are required either to provide new or an alternative perspective to the issue of policy under formulation and/or confirm existing hunches or data or analyses." In this sense then, acknowledging the importance of the policy advisor in the policy-making process is inescapable; as Kincaid points out, "advisors continue to be fixtures in government." Hrbek, too, acknowledges the growing role and importance of policy advisors. According to Hrbek, in the past decade there has been a proliferation of special advisory bodies. In Germany, "this phenomenon has been explained as representing a new policy-making style and approach." Indicating

the importance of policy advisors, Elaigwu points to the example of Nigeria in the midst of a religious crisis: "it seemed that the government [at this time] needed external advisors (in the form of a committee) to reduce tensions." The importance of policy advisors is also evident in Canada in the role they played in the revision of the Meech Lake Accord and the negotiations and discussions leading to the Charlottetown Accord, to name two examples. In both cases, advisors were asked to contribute to constitutional packages in hopes of reducing the tensions between various competing groups in Canadian society.

In addition, it is safe to assume that governments spend a considerable amount of money in seeking advice in numerous disciplines. However, despite the growing importance of policy advisors and the increasing amount of public funds directed towards their employment, literature on this issue is scarce. With perhaps the exception of Carol Weiss writing in the late seventies on the use of policy research and the politics of policy advising, very little literature exists on the influence of policy advisors, how government can best use experts and their advice, or where in the policy process advisors should be used.

One way of analyzing and perhaps contextualizing the role and effectiveness of expert advisors is to engage those very experts in a conversation of their views and insights based on their knowledge. From such experiences we can begin to better understand just how democracy, citizens, and governments are served through the use of independent policy advisors in the policy-making process. It is from such desire for a better understanding that the PCO panel on the role of policy advisors and this collection of papers were born.

WHAT IS A POLICY ADVISOR?

As indicated above, a policy or expert advisor is understood to be someone who consults or advises government. Consultancy can include participation in royal commissions, advisory bodies, departmental task forces, or individual consultancy. Though seemingly simple to understand, we must acknowledge the complexities involved when attempting to define policy advisor and their roles.

Such intricacies did not escape our panellists when preparing and delivering their statements. Hrbek begins by affirming that "there is a variety of types of actors and ways to have them involved; they co-exist and one cannot make general statements on which way could be said to be the most effective one." Saunders's preliminary observations expand on this point. She cautions against the potential dangers of "generalizing about the role of the policy advisor." The type of advice sought, the politics associated with the issues, how the policy advisor is used, and the political culture of the country all affect how the advisor, his role, and his effectiveness are understood.

Furthermore, we must acknowledge that there are different types of advisors. All six panellists and the *rappporteur* discuss their personal experiences of serving as experts providing advice in the capacity of a legal or a political advisor. However, the various types of advisors neither begin nor end with these two; other types include economic advisors, scientific advisors, and so on. Also, we must

recognize that within these categories of advisors there are sub-categories. For instance, the political advisor can be either left leaning or right leaning. Kincaid discusses how in the US the policy-advisory process is a struggle between the “Left and Right Brains.” More generally, there is a multiplicity of perspectives or schools of thought from which the advisor may approach his consultative task, and the perspective adopted will undoubtedly shape the advice given. Indeed, knowing the perspective likely to be adopted is frequently critical in the selection of a particular advisor. Also distinguishing the different types of advisors is how advice is sought. More specifically, Steytler discusses the difference between private and public consultation, while Saunders notes the difference between advice sought on a continuing basis and that sought on a single issue. The importance of such distinctions is noted by Watts in his observations.

Finally, in attempting to define policy advisors and their roles, we must take into account the differences between countries. For instance, Saunders mentions that in Australia academic advisors are not highly regarded; rather, “the public service is the principal source of advice.” Kincaid mentions that under the present administration, advisors on the left of the political spectrum (active under the Democrats) have sought refuge in universities and liberal foundations, implying that those on the right providing advice may be more highly regarded than those on the left. Hrbek adds to this in his discussion of different actors and different roles policy advisors play within different institutions. He elaborates on this by looking specifically at the case of Germany. For instance, in discussing German think tanks, he points out that the selection of advisors tended to reflect the increasing Europeanization of policy. Steytler mentions that in South Africa, the “most common vehicle [of seeking advice] is through direct consultancy.” All these factors must be taken into consideration when attempting to understand the role and effectiveness of the policy advisor in the policy-making process.

THE POLICY-MAKING PROCESS

In order to manage the analysis of public policy, analysts simplified public policy-making by “disaggregating the process into a series of discrete stages and sub-stages; this is known as the policy cycle (Howlett and Ramish 1995, 9).² Policy formulation according to the Phidd and Doern model (1983) involves six stages: first, the identification of the problem(s); second, the definition of the problem(s); third, search for alternative solutions (to solve the problem); fourth, choice (between different solutions); fifth, implementation (of the policy); and sixth, evaluation of the policy (this involves feedback and learning).

² Howlett and Ramish (1995) offer a five-stage policy cycle: first, agenda-setting; second, policy formulation; third, decision-making; fourth, policy implementation; and fifth, evaluation.

For our purposes of understanding the role of expert advisors in the policy-making process, public policy is understood as “a set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation where those decisions should, in principle, be within the power of those actors to achieve” (William Jenkins quoted in Howlett and Ramish, 5). This also includes government deciding not to take action. Also, public policy is not necessarily the result of one single decision, but various interrelated decisions. In this sense then, public policy is viewed as a process.

In a parliamentary democracy, “most legislation emerges from complex interplay between the federal cabinet and the public service, between the political and policy imperatives of cabinet ministers, on the one hand, and the related expertise and at times policy imperatives of bureaucrats, on the other” (Archer *et al.* 1995, 184). Legislative initiatives may stem from an array of factors including domestic and international forces, interest groups, special inquiries, court decisions, world and domestic events.

As Howlett and Ramish (1995) point out, in any process of policy making, we need to recognize that not all decisions go through the structured sequential process as described in the policy cycle; decisions can and are made in an ad-hoc manner. Stages and steps can and are often skipped. It is also important to acknowledge that the policy-cycle model simplifies the process of policy formulation as it “lacks any notion of causation”; that is “who or what drives a policy from one stage to another” (*ibid.*, 12).

Despite the indicated shortcomings of this model, it does “facilitate the understanding of public policy-making by breaking the complexity of the process into a limited number of stages and sub-stages, each of which can be investigated alone, or in terms of its relationship to any or all the other stages of the cycle” (Howlett and Ramish, 12). In other words, the policy cycle model simplifies the process of policy-making, and for our purposes, it helps to put the role of expert advisors, their value, utility, and effectiveness into perspective; it can help us contextualize the point at which expert advisors enter the process.

The policy advisor, consultant or expert can be active in various stages of the policy-making process. He can, for instance, help to identify and define the problem. However, it would be safe to assume that the advisor is most influential and useful to government during the third stage of the policy-making process – the search for alternative solutions. As Elaigwu indicates, “at the formulation stage, the expert advisor provides options to the decision-maker who is responsible for taking or rejecting the advice proffered.” It is here that advisors begin to advance their thoughts and provide options to the decision-maker on how best to solve the problem. However, the influence of the advisor does not end with this third stage; she can be active in the choice and implementation stages – once again giving advice on how best to resolve the matter at hand. There is also scope for the productive use of the policy advisor in the final, evaluative stage of the policy process. Through evaluation of policies, the expert can provide valuable information on why a policy is or is not working according to the objectives set

out by the government or expected by the people, and how best to address or re-address the problem. We must, however, keep in mind, as Steytler points out, that policy making is a complicated process; the policy advisor is but one of many factors that influence the final product. The advisor, Elaigwu argues, must realize this: “the government has many other sources (at times competing sources) of advice.” Furthermore, as Kincaid argues, “policy advising is an interactive process – one that ultimately depends on the choices and responses of government officials who will own a policy once they give birth to it, thereby reaping the rewards of policy success or the punishments of policy failure.” We must also note that the policy advisor can also be involved in the policy-making process outside of being formally employed by government. As Saunders points out, policy advisors “can inject their views into the policy-making process . . . for example, through evidence to parliamentary committees, expert advice to Opposition parties, contributions to the print and electronic media,” and so on.

FEDERALISM AND POLICY ADVISING

Underpinning the session – papers delivered, comments made, experiences shared, questions asked and answered – was the issue of federalism. Specifically, how is the role of the advisor understood or affected by a federal system?

In a federation, think tanks and academics are able to offer their ideas to either order of government, multiple parties, etc; this serves the advisor well as the federal system does, as Watts and others point out, “provide multiple points of entry” and in turn “an opportunity for expertise to be brought in at various levels and at various points.” Kincaid argues that federalism can facilitate policy innovation in the federation. “Adoption by even one constituent government can produce a diffusion of policy innovation across the states and provinces, eventually effecting even federal policy.” Doern and Phidd, however, point out that consultation is made especially difficult in a federal state for the simple reason that “legitimacy rests on a regional base, a geographic base, and a cultural/ethnic base” (Doern and Phidd 1983, 88). It would be difficult for consultants to satisfy all these competing forces. The authors speak of Canada; however, this is also true of other federations with various dimensions of diversity.

In addressing this specific aspect of the issue, Kincaid, Elaigwu, and Fossas all acknowledge how federalism can both complicate and facilitate policy advising and the acceptance of the advice. Elaigwu, for example, notes that the complexity of giving advice centres on the idea that the advice cannot underestimate or put into jeopardy the idea of striking a balance between unity and diversity. The advisor must be aware of the dynamics of the federation. Kincaid argues that policy advising is complicated in a federal system for the simple reason that the policy advisor needs “to appeal to a super-majority that encompasses multiple regional and local majorities of different ideological hues and socio-economic circumstances.” Adding to this discussion, Fossas points out that the unique nature of a federation must also be taken into consideration. More specifically, he argues that “the multinational nature of a federation is important and the presence or absence

of nationalist parties in the political system” should be taken into consideration when assessing the effectiveness of expert advice. Regardless of the potential complications generated by a federal system, Doern and Phidd argue that “there is clearly (in a democratic state – federal or otherwise) a legitimate place for formal consultation in the policy formulation process. It is needed to identify ideas, to learn about problems and with luck and goodwill, to achieve some solutions” (Doern and Phidd, 90-91).

THE POLITICS OF ADVICE

The quest for a good and sensible solution is of course the objective of both the government formulating the policy and, arguably, the advisor offering her recommendations. However, before we accept the legitimate role of the policy advisor pointed out by Doern and Phidd, and before accepting the importance of the policy advisor in the policy-making process, we must be aware of the political nature embedded in both the act of giving advice (including the development of advice to be given) and the acceptance of the advice by the government (this includes acceptance by society as well).

Therefore, in discussing the effectiveness of the policy advisor, we must consider the conditions and barriers faced by both the policy advisor in giving advice and the policy-maker in seeking and implementing recommendations. Carol Weiss argues that evaluation research “takes place in a political context” (Weiss 1993, 94). Weiss understands evaluation research as the examination of the “effects of policies and programs on their targets [...] in terms of the goals they are meant to achieve” (ibid., 93). In this sense, “evaluation assists decision-makers to make wise choices among future courses of action. Careful and unbiased data on the consequences of programs should improve decision-making” (ibid., 94). Though Weiss looks specifically at evaluation after the policy has been put into place, it is clear that politics is involved in the evaluation of the problems, solutions, and alternatives during the policy-formulation process. Both evaluation of the policy once enacted and evaluation of the situation and issues during the policy formulation stage are sought in hopes of arriving at a better understanding of the matter at hand with the ultimate goal of pursuing the best policy possible.

According to Weiss, politics in the evaluation of policy (and evaluation leading up to the policy) “intrudes in three major ways”: first, the product (policy or program) by its very nature is political; second, evaluation of the issue, be it during the process or after the fact “feeds into the decision-making process [thus] the reports enter the political arena”; and third, “evaluation (leading to, and after, the formulation of policy) has a political stance” fuelled by a particular ideology and, we must add, a particular understanding of truth and justice (Weiss 1993, 94).

The panellists all acknowledge the various difficulties faced by them in their capacity as policy advisors. Succinctly articulated, Elaigwu lists the factors that influence the effectiveness of the policy advisor (also discussed by the others): first, the issue on which advice is needed; second, the circumstances or the socio-political context; third, the nature of the expert advice sought; fourth, the timing

of the advice; fifth, the political will of the leader and society; and sixth, the relationship between the advisor and the policy maker.

Policy programs are not neutral. This is true of the issues pertaining to and leading up to the choice and subsequent implementation of policy instruments. Similar to the policy programs discussed by Weiss, there is political support, opposition, bargaining, and so on, for a particular avenue vis-à-vis policy choice and the way in which an issue is understood and addressed. Issues may or may not divide the nation; interest groups may be involved; there may be preconceived notions by the general public and government officials. The course of action is typically not self-evident; it is determined by many variables that are affected by political ideologies, societal needs, government willingness and ability, the nature of the problem and how it is defined, among other things. Also, the policy choice does not necessarily affect one issue alone; the course of action taken by government or recommended by the policy advisor does not occur in a vacuum. In short, the issue in which the expert is asked to provide guidance is political.

In looking at the effectiveness and value of the role of the expert advisor in the policy-making process we must thus consider the political environment. That is, the urgency of the issue and the pressures facing the advisors – were they truly independent in their advisory role? This leads us to examine how policy advisors are chosen, how the mandate is explained to them, and when they are sought by government. According to Saunders, “responsibility for policy decisions can be lured by manipulative choices of experts or by influencing the expert advice that is given.” These points are well addressed by Hrbek, who argues that these and other factors can influence effectiveness of the policy advisor and his role in the policy-making process. Steytler and Saunders also acknowledge this when they raise the issue of clarity in relation to the challenges facing the policy advisor. For example, a lack of clarity in the objectives set out by the government, or for the policy, or in the role that the advisors are expected to play, can determine the product of the advisor and ultimately the effectiveness of the advisor and her advice.

Weiss hypothesizes that “evaluation research is most likely to affect decisions when the researcher accepts the values, assumptions, and objectives of the decision-maker. Decision-makers heed and use results that come out the way they want them to” (Weiss 1993, 99). If this is true, it leads us to question the objectivity, neutrality, and independence of the advisor. It can be assumed that advisors believe that they look at the issues from an unbiased, objective, and non-political standpoint. But, as Weiss points out, “many researchers are unaware of the political nature of the assumptions they make and the role they play” (ibid., 100). By agreeing to advise on a policy direction or course of action, the expert advisor accepts the problem and goals as they have been defined; inevitably, ideology and preconceptions are embedded in the perception of both the problem and the goals. The expert advisor is simply asked how to get from problem to solution; he is not necessarily asked to problematize either the problem or the goals. As Elaigwu points out, “the circumstances or socio-political context in which the advice is given is important when evaluating the role of the policy advisor.”

Therefore, we need to consider the parameters set in analyzing an issue and asking for direction vis-à-vis policy formulation. Institutional and political power, embedded discrimination, and so on, are perhaps not taken into explicit consideration when analyzing the issues within the narrow confines set out for them by the government or by the interested party. Since the politically conditioned objective set out by the government underpins the analysis and guides the advice of the advisor, these may be biased even before the advisor tackles the problem. There is also the risk that the advisor, aware of the politics, may gear his advice accordingly so as to ensure acceptance.

Adding to this, Kincaid argues that the political ideology of the advisor can cloud his advice. He recognizes that policy advisors have a tendency to view issues “through an ideological lens.” Thus, Kincaid questions the perceived objectivity of the advisor. He, as well as the others, recognizes that think tanks as well as individual policy advisors in promoting their policy ideas and course of direction aim their advice towards those who will be more receptive to their opinion. Kincaid raises this not to dispel the value of the policy advisor, but to caution governments of the reality. This is also addressed by Saunders, who questions the point at which the advisor needs to be completely objective and whether such objectivity is achievable. The answer for both as well as the other panellists rests in the assurance of diversity. That is, one way to ensure some level of objectivity – or at least balance – is to seek the advice of many who come from different ideological leanings.

A condition for the advisor – who is either affiliated with a think tank, is an independent academic or is providing advice on a continuing basis or on a single issue – is the necessity to maintain intellectual autonomy so as to be taken seriously and to maintain integrity amongst government officials and their peers. For Steytler, Kincaid, and Saunders, trust between the advisor and the government in general and the government department in particular, are necessary. Thomas Fleiner, during the discussion that followed the presentation, adds to this point by stressing the importance of ethics and realism. That is, to ensure the credibility of the advice, the expert must in fact be knowledgeable in the area and must be free to excuse him or herself if the subject matter falls outside of her expertise. Connected to this, the government must also have the liberty to excuse the expert if it feels that she is not fulfilling the government’s expectations.

Elaigwu, Hrbek, and Douglas Brown (an audience participant) also point out that society, including the media, plays a role in the reception of the expert advice. That is, the acceptance of advice is at times dependent on society’s receptiveness coupled with how well the government will be received regarding the implementation of the advice: is it a course of action that will hurt or benefit government in the eyes of the public? In this sense, “bad” or “wrong” advice could be regarded as effective. As he indicated in his paper, Fossas understands “effective” to mean “the likelihood of advice being accepted despite its quality.” So he alludes to the possibility of “wrong” advice being effective possibly because it is well received by government and a majority of the people as it is in line

with the dominant ideology or direction of society. We must, however, question the way we understand “good” and/or “bad” advice. Who determines the quality of the advice? As Saunders points out, when the public is consulted by either the experts (in formulating their final recommendations) or the government (in deciding whether to implement the recommendations), the effectiveness of advice is further complicated by the mere process of “disentangling expert advice from political considerations.”

In addition to these factors constraining the advisor, we must also consider those that hamper the policy makers’ final decision of whether to accept the advisor’s recommendations. The policy-maker must consider first what would or would not work; second they must “respond to imperatives of their own institutions” (Weiss 1993, 98); and third, the “horizon of the policy process,” that is, their tenure in office and desire to make a lasting impression before the next election so as to secure re-election (ibid., 99). According to Weiss, “it is often more important to a politically astute official to launch a program with great fanfare to show how much he is doing rather than to worry about how effectively the program serves people’s needs” (ibid., 99). Elaigwu adds four other factors: first, “the quality of advice given – how useful it is considered to be by government”; second, “the political context” – is it in the best interest of government to accept and/or implement the advice (the advice may be accepted, but this does not necessarily mean it will be implemented); third, “the pressure from society” may lead government to either accept or reject the advice; and fourth, “the political will of the leadership.”

We must keep in mind that, in the final analysis, government does as it wishes with the report it receives from the advisor. Governments, if they do not like a recommendation, can simply shelve it. Pierre Trudeau’s decision not to embrace the recommendations of the Royal Commission on Bilingualism and Biculturalism is a good example of recommendations made by advisors but not accepted by government because they were not necessarily what the government had in mind. Even if recommendations are rejected by the government, the advice can, as the panellists point out, be effective in the long run. Steytler argues, “Expert advice may or may not have an impact. The impact may be immediately observable, or its value may only become apparent years later when the time is right for a policy change.”

Furthermore, government can interpret the advice in the same manner as was intended by the advisor, or they can interpret it differently, which may lead to their understanding and implementing the recommendations in a manner that was not intended by the advisor. Clearly, in such circumstances it is difficult to hold the advisor accountable for the outcome. The issue of accountability is well addressed by all the panellists. All participants, including members of the audience, the *rapporteur*, and the panellists, arrived at a consensus on the matter of accountability: ultimately, it is the government who selects the advisor, interprets the advice, chooses whether to accept it or not, and finally enacts policy. The policy advisor, though not directly accountable to the people or to the government for the consequences of the advice, is indirectly accountable in that his

credibility and professional stature – both among her peers and with government – is on the line.

CONCLUSION

We believe that the contributions made by the participants prove valuable in advancing our understanding of the effectiveness and role of experts in the policy-making process. In the first section, we have included the papers prepared by our six panellists. In the second section, we provide highlights of the discussion triggered by the issues addressed by the panellists. This collection of papers and discussion concludes with the observations made by Professor Watts in his role as *rapporteur*.

If it is true that “federal policy-making is often preoccupied with achieving fairness among diverse interests as well as developing a bigger and better social and economic ‘pie’” (Milne 1999, 18), then we begin to understand the role and importance of the policy advisor in a democratic state. As Milne states (referring to private institutions dedicated to policy research), “one of their most important functions is to generate research, provide alternative views and options, and help develop a strong, healthy public debate about important policy issues that otherwise may be decided in relative obscurity” (ibid., 29). In this sense, policy advisors serve an important public function. It is only fitting then that we take this insider’s look at the role and effectiveness of the policy advisor in the policy-making process.

REFERENCES

- Archer, K., R. Gibbins, R. Knopff, and L. Pal. 1995. *Parameters of Power: Canada’s Political Institution*. Toronto: Nelson Canada.
- Doern, B.G. and R.W. Phidd. 1983. *Canadian Public Policies: Ideas, Structure, Process*. Toronto: Methuen.
- Howlett, M. and M. Ramesh. 1995. *Studying Public Policy: Policy Cycles and Policy Subsystems*. Don Mills: Oxford University Press.
- Jackson, R.J. and D. Jackson. 2006. *Politics in Canada: Culture, Institutions, Behaviour and Public Policy*. Toronto: Pearson Prentice Hall.
- Canada. Department of Justice. 2007. *Policy Statement and Guidelines for Public Participation: Department of Justice*. Accessed 24 October 2007 at http://www.justice.gc.ca/en/cons/printable_release.asp
- Milne, G. 1999. *Making Policy: A Guide to the Federal Government’s Policy Process*. Ottawa: Glen Milne.
- Weiss, C.H. 1979. “The Many Meanings of Research Utilization,” *Public Administration Review* 39(5): 426-431.
- Weiss, C.H. 1993. “Where Politics and Evaluation Research Meet,” *American Journal of Evaluation* 14: 93-106.

Part 1

THE PANEL

ATTEMPTING TO UNDERSTAND
THE ROLE AND EFFECTIVENESS
OF EXPERTS

THE EXPERT ADVISOR IN THE FORMULATION OF GOVERNMENT POLICY

J. Isawa Elaigwu

INTRODUCTION

My little experience shows that there are, perhaps, no firm rules or guidelines about the role of the expert advisor in the formulation of government policies. I have had the opportunity to serve as an advisor to Nigeria's military president (President I.B. Babangida) within the context of the Presidential Advisory Committee (PAC) for eight years. The PAC was a group of seven professionals – economists, political scientists, industrialists, an agriculturalist, and a sociologist. In addition, I have had the privilege of serving on the White Paper Panel on the Political Bureau Report on Nigeria's transition to democracy. Under the current democratic regime, I have also given expert policy advice to the National Assembly governors/government of sub-national states, as well as the federal government (i.e. the executive branch).

However, it does seem that the effectiveness of the role played by the expert advisor in the policy process would depend on many factors, including

- the *issue* on which advice is needed;
- the *circumstances* or the socio-political context in which such advice is sought or given;
- the *nature* of expert advice required;
- the *timing* (crisis or non-crisis) of the expert advice;
- the political will of the leadership; and
- formal/informal relations with policy-makers.

Generally, an issue which can be sufficiently handled in the policy initiation and formulation stages of policy making may not require an external expert advisor. Often, the bureaucrats would provide such desirable insights or data. It is therefore assumed that the expert advisor's skills are required either to provide new or alternative perspective to the issue of policy under formulation and/or to confirm existing hunches, data, or analyses. The issue may be one which requires

information. Usually, consultants may be sought in this case. Or, it may require a committee or commission of inquiry.

The circumstances or the socio-political context in which such advice is given is important. When the Babangida regime took Nigeria to the full membership of the Organization of Islamic Countries (OIC), a religious crisis erupted in Nigeria. In response, the government set up a committee of religious leaders under the Minister of Internal Affairs to recommend ways to handle it. The committee recommended first, that the multi-religious nature of Nigeria as guaranteed under the 1999 Constitution be maintained; second, that religious leaders should preach the importance of peace and tolerance to their followers; and third, that an Advisory Council on Religious Affairs (ACRA) be established. It seemed that the government needed external advisors (in the form of a committee) to reduce tensions. The advisory council, ACRA, which emerged later, was, however, ineffective.

In essence, the context may affect the effectiveness of the expert advisor. The ACRA in Nigeria was not effective. It remained only a symbol of the desire of Nigerians for an ecumenical society. The numerous religious conflicts which took place thereafter confirmed this point.

What is the nature of the expert advice sought? Is it such that warrants the appointment of a single consultant, a committee, a commission, or an ad hoc body required over a period of time? Under the Babangida regime, the PAC played a regular role of first, linking up with the various ministries and offering necessary advice to the President and the Armed Forces Ruling Council (AFRC); second, collating data from all ministries and departments for the purpose of harmonizing annual inputs into the draft budget; and third, feeling the pulse of the public and giving advice to government on relevant issues. It lasted from 1985–92.

On the other hand, there were other ad hoc committees or commissions that performed specific functions. An illustration of these is the Revenue Mobilization and Fiscal Commission appointed every five years to advise government on the collection and sharing of revenues. In this case, the commission dissolves after making its recommendations. The final decision is political (by the legislatures), after which the implementation of the new formula for resource allocation or sharing begins. There have also been many commissions of inquiry into cases of communal conflicts and corruption in parastatals (such as the Nigerian Airways and the National Maritime Commission). Thus, the nature of the expert advice sought is important in the evaluation of the effectiveness of the role of the expert advice.

The timing of the appointment of expert advisors is also important. In crisis situations, such as the Niger-Delta or violent communal crises, the role of the bureaucracy is usually reduced, while the bureaucracy plays more important roles in non-crisis situations. Consultations with the leadership in crisis situations are more regular, thus cutting out bottlenecks.

Yet, crucial in the effectiveness of the expert advisor is the political will of the leadership. Given the political undercurrents and costs of the advice, political leaders may decide to delay the implementation of the advice and wait for a more auspicious time – or never implement it at all.

There are circumstances where an informal relationship and trust between the expert and decision maker may lead to the acceptance and utilization of expert advice. One's experience with the National Assembly and state governments shows how effective this mode can be.

It is, therefore, difficult to determine a most effective way of involving expert advisors, as a rule. It would depend on the factors listed above and others. Government may involve expert advice when it most needs it because it is not available in its structures. It may even involve expert advice in response to public opinion, or as an interim face-saving mechanism. The general trend in Nigeria is that government involves experts with credibility in the public opinion arena, also to buttress its legitimacy when the need arises for expert advice. There are so many reports of expert panels to which no "white paper" or responses have been written over the past twenty years.

ACCEPTABILITY OF ADVICE

A number of factors are often responsible for the acceptability of advice given. Among these are the following:

- The *quality of advice* given – how useful it is considered to be by government. In 1978, the military appointed a Revenue Commission under Professor Aboyade. However, when the Shagari regime came in 1979, it rejected the Aboyade Commission Report because it was too technical. Even the language of the report is important.
- The *political context* – how politically conducive is it to accept and implement given expert advice? In principle, advice may be accepted but not implemented.
- The *pressure from society* – may leave the leadership with little option but to accept and implement advice.
- The *political will* of the leadership in analyzing the advice and implementing it. While the 1979 Constitution had provided for an Abuja *Mayorality*, the military leadership in 1999 lacked the political will to follow this up. The Niki Tobi panel which put together the 1999 Constitution provided the Federal Capital Territory (FCT) with the status of a state government, whose laws would be made by the National Assembly. The Minister of the FCT is constitutionally known as "Administrator," an equivalent of a state governor, not a Mayor. Here is an example in which the political will of the leader failed to implement recommendation of the Akinola Aguda Panel and the provisions of the 1979 Constitution.

These factors, among others, affect the ability of government to accept advice and incorporate it in its policy and decisions. It is also important to note that less political and more technical advice is probably easier to accept than that which is decidedly political and controversial.

CHALLENGES FACED BY EXPERTS

From my experience, the first lesson an expert advisor must learn is that he is providing *advice*, which may be accepted or rejected. The moment an advisor insists that her advice must be accepted, she has transitioned from the status of an advisor to that of a policy maker. Secondly, the advisor must realize that government has many other sources (at times competing sources) of advice. Thirdly, the expert advisor must always present her case lucidly, stating the pros and cons of the advice. The language must be clear to the source receiving the advice. Finally, the advisor must always remember that he may not be in the implementing or monitoring team. The advisor must weigh the consequences of the advice, within the limits of human knowledge. Political sensitivity is important even if the advisor is not to be deterred in putting forward the facts and the advice. As much as possible, the expert advisor should be apolitical.

The expert advisor faces numerous challenges, and among these is the bureaucracy. It may or may not be cooperative. The expert must be sensitive to the rules and regulations governing the institution while proffering advice.

In a federal setting, policy advice can be more complex. One's experience shows that if the expert advice is given at two tiers of government, there may be a crisis for the advisor. Often, while the centre (in Nigeria) pushes for penetration and control of states, states usually welcome such advice that would enhance their autonomy. The expert advisor's knowledge of the dynamics of the federation and desirable compromises are indispensable. In a unitary system, the expert may not need to be sensitive to the nature of shared powers by tiers of government and their limits. Again, whether the federal system complicates or facilitates expert advice depends on the nature of advice and its implication for each tier of government.

Depending on the issues, advocacy and engaging citizens directly may be useful techniques. Nigeria has a poor system of sampling public opinion. In Nigeria, while the press is active, the civil society is weak, urban-based and donor-agency dependent. They have limited capacity for the mobilization of the masses for participation in political activities. The political parties have not been very active agents for the aggregation and articulation of interests at this point in time. While advocacy may be a useful technique, engaging the people directly in Nigeria has to be sensitive to the weaknesses of the civil society. Pressure and interests groups are also weak in Nigeria.

ACCOUNTABILITY OF EXPERTS FOR ADVICE OFFERED

We have argued earlier that the advisor must accept that he is not a policy maker. He may be required at different points of policy making, formulation, implementation, monitoring, and evaluation. More often, the skills of the expert are called upon at the formulation stages.

At the formulation stage, the expert advisor provides options to the decision-maker who is responsible for taking or rejecting advice proffered. The expert

advisor should regard herself as accountable to the policy-maker for the advice, if it is accepted. The policy-maker must be ultimately accountable for his decision to the people.

At the monitoring and evaluation stages, one is dealing with the nature of implementation or the results. Here the advice is based on empirical evidence and the expert should be accountable and directly responsible for his assessment.

More often, expert advice is desired at the policy formulation stage. The expert advisor must realize that his integrity and credibility are directly intertwined with the advice proffered, and he must contribute his best possible effort.

CONCLUSION

Like in all human affairs, there are limits to our knowledge. The expert advisor is an advisor, not a policy-maker, and must accept limits to her expertise. If she is lucky to have such advice accepted and implemented, and subsequently its implementation draws negative reactions from the public, she is morally bound to re-assess her advice, find out what went wrong, and work with government to find an appropriate solution to the problem. The expert advisor must not play god and must remember the observation of Carl J. Friedrich:

Public policy is being formed as it is being executed, and it is likewise being executed as it is being formed. Politics and administration play a continuous role in both formulation and execution, though there is probably more politics in formulation of policy, more administration in the execution of it. (225)

REFERENCE

Friedrich, C.J. 1966. "Public Policy and the Nature of Administrative Responsibility," in *Public Administration and Policy*, ed. P. Woll. New York: Harper and Row.

THE POLICY-MAKING PROCESS IN FEDERAL SYSTEMS: UNDERSTANDING THE ROLE OF EXPERTS

Enric Fossas

First of all, I would like to thank the organizers (the Institute of Intergovernmental Relations, the IACFS and the IPSA) for inviting me to take part in this Conference in Honour of Ronald L. Watts. It is a great honour for me to be here to pay tribute to the life and work of Professor Watts, from whom I have learned so much about federalism, but not only about federalism. Also, I would like to thank the Privy Council Office (PCO) for inviting me to take part in this international roundtable on the role of experts in the formulation of policy in federal systems. I am also grateful to the Canadian Embassy in Spain and the Spanish Association for Canadian Studies for funding my travel to Kingston.

Let me say that it is a great pleasure to meet Cheryl, Isawa, Rudolf, John and Nico again. I am happy to share this table with them: I have learned a lot from them at many IACFS conferences, as they are prominent scholars and prestigious experts.

I will try to contribute to this panel from my experience as a Spanish constitutional lawyer (not as a political scientist), more or less as a specialist on federalism. To be more precise, given that Spain is not a fully federal system, I have been focused on constitutional and legal questions concerning the Spanish system of political decentralization and in particular the autonomy of Catalonia. I undertook my work at the university, as a professor of Constitutional Law in Barcelona; in the public administration, as a director of the Institut d'Estudis Autònoms, a research institute linked to the Catalan Government; and at the Spanish Constitutional Court in Madrid, as a legal advisor. In all these activities and positions I have provided more legal than political advice, although you probably would agree (we can argue about it) that there is not a clear-cut division between those fields. Very often the line between the two is quite blurred. From this experience (which is not so great compared to that of my colleagues), I will deal with the issues the PCO has asked the panellists to explore. But I have to admit that I am overwhelmed since the list, as Dr. Allan points out in his letter, includes topics on which a couple of books could be written. Fortunately, the organizers have requested only a brief 4-6 page statement, and not 46 pages!

If I understand the main issue (or one of the most important questions) to be addressed in this session correctly, it is the effectiveness of expert advice in the policy process and the influence of such factors as the vehicle through which advice is sought. I assume that “effective” means here the likelihood of advice being accepted despite its quality. So, in this sense advice may be effective even if it is wrong. This question is not included in the PCO template, or maybe it is referred to as the accountability of the expert providing the advice. I propose we discuss this. Michael Ignatieff, a well known Canadian scholar and expert now involved in politics, made an interesting point in a recent article. He stated that “the accountability of an intellectual with regard to his/her ideas is to follow its consequences, and the accountability of a politician is to control those consequences and to prevent them from doing harm.”

If we understand effectiveness in this sense, then it is difficult to answer, as the likelihood of advice being accepted depends on many factors. In my opinion, at least in legal advising, the vehicle is very important but the client is also important. Advice provided by a consultant (a law firm), a commission (a public body), or a think tank can be very different; and it is not the same to counsel the government (federal or regional) as it is a political party or a private company.

Spain offers a good example of effective advice provided by scholars (in particular, public law professors) to political parties in framing the “autonomic model” at two key moments: at the Constituent period (1978–79) and when the process of devolution began. As Spain did not have a constitution after the Civil War due to the Franco dictatorship, the founding fathers have imported (and been inspired by) the principles and rules of European constitutionalism developed after the Second World War. Political parties were advised by those who knew something about German federalism or Italian regionalism (and also about the Second Spanish Republic), and by foreign experts. It is worth mentioning that during the so-called “political transition,” Spain had neither political scientists nor constitutional lawyers: we had professors of what was labelled “political law”: a mixture of political thought, comparative law, and constitutional history. This is why those who had the most influence were, among others, the experts on administrative law. These experts were lawyers, some of whom had experience with decentralization in other countries (unfortunately, too much with the French system).

After the constitution was adopted, the two main political parties (nationwide) – the socialist and the conservative – set up a Commission of Experts (“Comisión de Expertos sobre Autonomías”) in 1981. The Commission drafted a report that was used to pass an agreement between them (Autonomic Pact of 1981) aimed at addressing the process of devolution. Here too the influence of administrative law (and the centralistic approach) was crucial. I would highlight that during the first stages of the Spanish devolution, experts on public law played an important role in the policy-making process, particularly in the constitution-making process or even in the so called “mega-constitutional politics.” The legal and political advice was delivered through formal and informal channels, and I would say that it was very effective for the reasons that I have mentioned. Unfortunately I was too young

to be involved in that process, so I'm not explaining from personal experience, but I am old enough to know about it directly.

Time passed and constitutional experts flourished in Spain, especially in what we call "autonomic law," that is to say legal federalism, for many reasons: first, the process of devolution entailed the creation of 17 constitutional units and the establishment of new governments, legislatures, and administrations in each of them; hence the great demand for expertise. Second, from the very beginning, central and autonomic institutions started to litigate in the Constitutional Court, thus a huge demand for legal advisors. Third, constitutional law came into faculties as a subject, and a new generation of professors (I among them) specialized in autonomies, and federalism burgeoned. This gave rise to a need for scholars to teach and write about thousands of questions concerning decentralization. Since then, experts have been playing an important role in the policy process of decentralization. One of the main reasons is that Spain, like Canada, has been living with a permanent debate not only about *policy* but also about the *polity*. This means that the constitution itself has been at issue. In Canada, for many reasons which I would not dare to explain in this panel; in Spain, because the constitution did not establish a clear structure or model (federal or regional), but more a kind of a *work in progress*, leaving the structural development in the hands of the national parliament, the local governments, and the Constitutional Court. So, on the one hand, political parties have been searching for politically oriented advice provided by scholars (political scientists and lawyers) with foreign experience; on the other hand, constitutional judges have been advised mostly by lawyers, attorneys, or civil servants. In both cases, expert advice has had a significant influence. However, in light of my experience, politicians tend to look for practical solutions through negotiation and consensus, whereas scholars are usually searching for rationality, logic, and consistency. Unlike politicians, judges must solve conflicts according to the law. But as everybody knows, the Constitutional Court is not an ordinary court given the political impact of its decisions. Notwithstanding the theoretical advice or the influence of legal doctrine, constitutional judges tend to find pragmatic solutions and never overlook the consequences of their decisions.

With regards to the features of a federation in relation to the provision of expert advice, I think we should consider if (and in what sense) the multinational nature of a federation and the presence or absence of nationalist parties in the political system are important. I wonder if competing nationalisms may be a drawback for interchange and communication among experts on both sides. In this context, sometimes experts tend to be committed to a cause and develop their influence in many ways, for instance, by trying to have an impact on public opinion.

Finally, I move now to another area we were asked to explore: which factors influence the ability of governments to incorporate advice into their policy decisions. At least in legal advice, I think it is possible to make a general statement on this point. To put it bluntly, I will quote the book of M.A. Graber, *Dred Scott and the Problem of Constitutional Evil*:

J. P. Morgan demanded his attorneys make only those legal arguments that advance his causes. When informed by counsel that his business plans violated federal law, Morgan bluntly replied: "I don't ... want a lawyer to tell me what I cannot do; I hire him to tell me how to do what I want to do."

REFERENCE

Graber, M.A. 2006. *Dred Scott and the Problem of Constitutional Evil*. New York: Cambridge University Press.

THE ROLE OF EXPERT ADVISORS IN
THE FORMULATION OF POLICY:
BRIEF REPORT ON THE FEDERAL REPUBLIC
OF GERMANY

Rudolf Hrbek

EXPERT ADVISORS: TYPES OF ACTORS AND WAYS OF
HAVING THEM INVOLVED

There is a variety of types of actors and ways to have them involved; they co-exist. One cannot make general statements on which way could be said to be the most effective one. The following report shall give an overview to help better understand the special roles of expert advisors in Germany.

As a preliminary remark, one can observe a proliferation of special expert advisory bodies during the past decade. This phenomenon has been explained as representing a new policy-making style and approach with a focus on bargaining and negotiations, including experts (with their expertise) and stakeholders (promoting their particular interests and supplying expert knowledge in their respective field); see the term “Berliner Raeterepublik,” referring – ironically – to initiatives at the end of the First World War, to establish “Raete” (Soviets) in Germany as well. Such negotiation processes are expected to produce consensual solutions.

Institutionalized Bodies

There are permanent as well as ad hoc established bodies; they can be either linked with the executive (government) or the parliament. This applies both to the federal and the land level.

- *Sachverstaendigenrat* was established in 1964 via federal legislation. It was given the task to monitor and evaluate the macro-economic situation and development, and then show which alternatives for political decisions exist; it was not authorized to formulate precise recommendations. It considers how to achieve four major goals simultaneously: price stability, high (if not full) employment, continuous growth, and external economic relations in balance. There are five members appointed by the federal president, on proposal of the federal

government, for a period of five years (renewable once); all of them economists (university professors) with high reputations. Trade unions and employers are entitled to nominate one expert each. The annual reports (to be published) may contain dissenting opinions. The federal government has to comment on and respond to the report in its annual report on economic development. During the first three decades, the reports have always been given great public attention (headline on page one of newspapers). This has changed, since statements and recommendations of competing bodies (such as specialized larger research institutes, see below under “think tanks”) have proven to be of greater value, taking into account current framework conditions with better and more efficient PR strategies and practices. As a result, membership is no longer regarded as especially desirable. The reports (annual report or extra reports, either on its own initiative or on the federal government’s demand) cannot expect to be welcomed or praised throughout the country. Trade unions especially criticize the focus on (fiscal) stability, whereas big enterprises and employers in general are in favour. Party politicians are split accordingly. This often-criticized bias in the reports (supported by the majority of its members) was the background for the establishment of a counter-body, representing demand-side thinking.

- *Wissenschaftliche Beiräte* are connected with individual ministries (in general at the federal level only). These are permanent bodies. Best known and with considerable reputation, they are the groups attached to the ministries for Finance and for Economics.
- *Expert Commissions* are established by the federal government or individual ministries, either as permanent bodies or – with a very precise task and mandate – for a limited period of time. As already mentioned in the introductory remarks, these have been set up more recently. They do not follow the same pattern, as the following examples will show.
- *Umweltrat (Environmental Council)*. Established by the Ministry for Environment (with approval by the Cabinet as a whole) for a period of four years (renewable once), with only seven members from different disciplines. Task: to monitor and evaluate the ecological situation in Germany and its development, and to draw attention to false developments and how to avoid them. It decides on the topics and issues to analyze on its own. It submits a report every two years (from 2004 every four years) and may submit extra reports.
- *Deutscher Ethikrat (Council for ethical questions)*. Established by the federal government and the Bundesrat (50 percent each), consisting of 26 members from various disciplines, for a period of four years (renewable once), as the national forum for an open and transparent discourse on ethical aspects in the field of life sciences. It decides its agenda (which topics) on its own; meetings are public; cooperates with other bodies (internationally as well) in this field. Statements and (annual) reports go to government and Bundestag; they are published, and from time to time to a special public fora.
- “*Hartz-Commission*.” Established in February 2002 by the federal government (Chancellor and Minister for Labour and Social Affairs), with a mandate limited

in time (final report was submitted in August 2002) and with the precise task to make proposals for a reorganization of the federal agency for employment designed to secure a better service for job-seeking people. Fifteen members (seven from enterprises/companies, two trade unionists, one for craftsmen, two academics and only three from politics and administration – with Mr. Hartz (from Volkswagen and close to the Chancellor) as chairperson who was authorized to select the members, all of them with good personal relations with him. The working procedure was neither public nor transparent. Rather, it was determined by the chairperson with his remarkable management skills. He was able to present a unanimously supported report, in a simple language, easy to understand (see the term “*Ich-AG*,” meaning “I – myself-company”). The recommendations had great influence and were perceived as successful, primarily since they were oriented (and qualified) to be put into practice. Also, the Commission succeeded in finding a compromise acceptable for all stakeholders present in the Commission.

- “*Rueruep-Commission*.” Established following the “model” of the Hartz-Commission in November 2002 by the federal government, with 26 members – representing various different and diverging interests, plus one-third professors, with a mandate (limited in time) to submit proposals on the sustainability in financing the system of social security, taking into account the demographic situation and development. It had a very broad field to consider: pension system, health insurance, and care for elderly people. The working procedure was very transparent: all controversies were discussed publicly. Prior to the first Commission meeting, the chairperson, Rueruep, in an interview with SPIEGEL, tried to anticipate the discussion and to provoke contradicting statements by other Commission members, thus generating veto-positions and a very tense climate for Commission discussions. The result: no new insights or consensus (majorities in the cases of pensions and care, no decision on health insurance due to an insurmountable split in the Commission). The Commission had to be regarded – and was regarded – as an outright failure.
- *Enquete Commissions*. They are set up by the Bundestag (simple majority or on request of 25 percent of the members), composed of parliamentarians and the same number of external experts, nominated by the party groups according to their strength, and given the task to consider specific issues, such as legal and ethical questions in medical research, or culture in Germany. The Commission has to prepare a report no later than the end of the legislative period in order to allow the Bundestag to discuss the findings and recommendations. Meetings of the Commission are not public. Additional hearings, however, are public. In most cases, there are majority-supported reports and dissenting minority votes. The effect depends on whether the Commission can find a common standpoint. Reports are consultative only; they will then be discussed in Bundestag committees and the plenary.

Individuals Who Became Formally Involved in Decision-Making Processes

- Hearings of Bundestag Committees and Hearings of Land Parliaments Committees (the latter primarily on education). Such Hearings assemble stakeholders (e.g. representatives of special organizations and associations) as well as independent experts; the latter are nominated by the party groups following their numerical strength. Therefore, the composition can be regarded to be “balanced.”
- The Commission (of Bundestag and Bundesrat) on the Reform of German Federalism 2003–2004 included 12 experts (professors of law, economics and political scientists), nominated by the party groups. Their impact is said to have been limited. To prepare an independent report; in most cases on the demand of a government/ministry, if opinions and interests of government and opposition clash.

Think Tanks

- *Stiftung Wissenschaft und Politik (SWP, Berlin)*. This think tank has the function to give independent expert advice to the federal government and the Bundestag. It is financed with money from the budget of the Chancellery (90 percent).
- *Bertelsmann-Stiftung*. This is an independent think tank which goes public with its activities (such as conferences, roundtables, reports, studies). It is financed privately (57 percent of the shares of the Bertelsmann Company are held by the Foundation).
- Party Foundations have special research sections. The results are in most cases accessible to the public.
- Research Institutes, dealing primarily with economic and social issues. A group of them (they have to apply to belong to this privileged group for a period of four years) has the official task to provide a joint forecast on economic development. The members of this group follow scientific criteria in their work. This forecast, published in spring and fall, is given highest attention. It is on the economic situation to be expected in the current and the following year in the world, in the Euro-area and in Germany; and it contains recommendations. Federation and Laender jointly finance this task.
- Highly specialized institutes, e.g. *the Oeko-Institut Freiburg* (with its “green” concerns): its voice is welcomed amongst the respective clientele, which may include a ministry, led by a Green minister or belonging to a coalition government with the Green Party. The *Institut fuer Europaeische Politik*, Berlin deals primarily with EU matters. As such, it cooperates closely with the Ministry for Foreign Affairs and the European Commission/European Parliament; this is an indicator of the growing “Europeanization” of the expert advisor – business, due to the transnational character of issues and problems.

Experts Going Public on Their Own Initiative (Advocacy Role)

Examples include:

- The public appeal of a group of scientists (University of Goettingen) in the 1950s, against the nuclear armament of the newly established West German armed forces. This appeal was widely heard (welcomed and criticized) and became a point of reference for the then very heated political debate.
- Public appeals of individual experts and personalities with high reputation (as writers, actors, etc.) against the deployment of the Pershing weapon system in the context of the dual-track-decision of NATO in the 1980s, thus criticizing the policy advocated by the then-chancellor Helmut Schmidt. This contributed much to the politicization of the issue and the debate.
- Manifestos of groups of scholars for and against the establishment of the European Monetary Union with the introduction of the Euro (to give up the DM) in the 1990s. Those against – or at least skeptical and warning or rather demanding to maintain and insist on necessary preconditions for stability – were in agreement with a clear majority of the public, as opinion polls showed. If a popular referendum had been held (excluded by the Basic Law), the government would probably not have been given sufficient support for its course.

Opinion Poll Institutes

There are good reasons to subsume them under the category “expert advisor function,” since opinion poll data – either published or only for special (political) client’s use – may have an impact on decision-making processes.

There is data on issues which concern people most (e.g. unemployment, safety of pensions, immigration, domestic security); this gives political actors signals on where to place focus.

There is data on which particular policy options enjoy majority support (e.g. as concerns nuclear power plants: to close them as soon as possible; to prolong the time period of their operation, to build new ones; or: to authorize the state to have access to the personal computers of individual citizens as a means to fight terrorism; to ban smoking in public; to allow homosexual couples to adopt and raise children); or on trends in the development of such dispositions and preferences.

FACTORS FOR THE EFFECTIVENESS OF THE ROLE OF EXPERTS

The Role of the Media

They convey particular messages – given by experts – to the public; they can select and, thereby, support single messages; they offer the experts platforms for issuing and explaining their messages. This shows the importance of a “sound” plurality of media. To a certain extent, the opinion climate generated by the media

is part of the political environment. This has some impact on direction and intensity of the public debate. Media have ways and means to politicize – whatever this means – issues and the debate.

The Type of Issue/Question

- *Highly technical and complex*: such issues are in general difficult to explain and to give a short and “clear” answer or solution for. Experts can be very important and influential for all such “technical” aspects, as long as these do not adopt political saliency. Experts can contribute to politicizing issues, but in such issues their role and influence will be reduced, since it is political considerations which dominate the political actors’ approach and final decision. Expert opinions will then become rather instrumentalized.
- *Norms and values prevail*, such as “solidarity,” “social justice,” “equality.” Such values may function as “barriers” against “radical” solutions the experts would prefer to recommend. An expert, who would himself refer to and exploit such values, would underline and strengthen respective thinking.
- *Costs of policy if it would follow expert advice*: as soon as redistributive effects are implied, experts’ recommendations become controversial, which may reduce their effectiveness.
- *An issue is of high saliency and requires a quick solution*: this may contribute to make the voices of experts better heard.

Features of the Experts

Here we refer to their academic/scientific reputation, to their credibility, and last, but not least, to their didactic talent in conveying a message and convincing the audience. In addition, the special skills of the respective chairperson can be an important factor, as was the case with Mr. Hartz.

One should, however, not overestimate such features. Since most issues under debate are controversial in the political arena, all political actors will be capable of engaging experts with these talents and strengths to support them.

Experiences Abroad

To refer to examples elsewhere (in the sense of “best practice”) may be a good or success-promising argument. On the other hand, this could mean arriving at a “simple” solution whose weakness is that the respective overall systemic framework differs from the one at the domestic level, so that it is not convincing to focus on and isolate one single point only (e.g. Swiss cantons are frequently quoted: they have some power of discretion to decide on taxes – why not follow this example and model?!). Other experts in the discourse could raise this argument and weaken the “best practice” recommendation.

ACCOUNTABILITY OF EXPERTS

I do not see the possibility of introducing formal procedures and rules or sanction measures, and there is no discussion to introduce such devices. The individual independent expert may lose his reputation, not only in the academic community – and this will be a primary point of orientation for him. Financial rewards do not play a role; therefore, they cannot serve as a potential source of compensation for a loss of reputation and credibility.

ROLE OF THE EXPERT ADVISOR

John Kincaid

Policy advisors have been fixtures in government at least since Joseph interpreted Pharaoh's dreams and Moses predicted the consequences of not letting his people go. Government officials not paying attention to the advice of their advisors is an equally venerable tradition, as is government officials losing their kingdoms as a result of accepting bad advice. Quite common, too, is the enactment of policy that bears a resemblance to advice given but has the substance of advice not given or taken. Hence, policy advising is an interactive process – one that ultimately depends on the choices and responses of government officials who will own a policy once they give birth to it, thereby reaping the rewards of policy success or the punishments of policy failure. Either way, the policy advisor almost always wins by claiming maternal responsibility for policy success or disclaiming paternal liability for policy failure.

The contemporary American practice of recruiting as policy advisors intellectuals, who are presumably non-partisan experts, had its genesis in the United States at the beginning of the twentieth century. This practice blossomed through the so-called "Brain Trust" (a term coined in 1901) assembled by President Franklin D. Roosevelt in the early 1930s, and reached an apogee under Presidents John F. Kennedy and Lyndon B. Johnson in the 1960s. Daniel Bell's notion of an end of ideology reinforced this practice by suggesting that problems of government are technocratic rather than ideological; consequently, non-partisan experts can advise governments on how to manage the economy and society effectively and in the best interests of all citizens.

This idea of expert non-partisan intellectual advice flourished in the context of some 30 years of predominantly Democratic Party control of the federal government and most state governments. Republicans had to cooperate with Democrats in a spirit of bipartisanship in order to achieve their ends, thus reinforcing politically the idea that government had ascended from partisan politics to a technical nirvana.

This nirvana was incinerated by 1968, however, in the flames of Vietnam and urban riots. As David Halberstam put it, the disastrous policy of making war in Vietnam had been engineered by some of the best and the brightest minds in America. How could they have failed so terribly? Domestically, the federal government's War on Poverty failed to stem the spread of race riots across the nation's

cities. What went wrong in the 1960s was at least twofold. For one, intellectuals who are supposed to speak truth to power declined to do so because they wanted desperately to be close to power. After all, an advisor who speaks truth to power is usually exiled to some powerless position in an obscure bureaucracy or university campus. This continues to be a problem that can be mitigated only by government officials reaching out to contrarians and to intellectuals who shun power. Second, human problems proved to be resistant to technocratic policies. This lesson has gone unlearned.

As a result, ideology re-entered the policy arena with the election of Republican Richard M. Nixon to the presidency in 1968. The notion of non-partisan or bipartisan expertise and policy advice withered as intellectuals on the left sought refuge in universities and liberal foundations while intellectuals on the right built think tanks and foundations to promote what they regard as policy choices rather than policy echoes. During the administration of President Ronald Reagan (1981–89) especially, the non-partisan consensus notion of a policy Brain Trust finally gave way to a “battle of the left and right brains,” which is today the essential condition of the policy advisory process in Washington, DC and the nation’s state capitals.

Government, therefore, can recruit policy advice from experts who are employed by universities, think tanks, foundations, and public interest groups. Policy advice, of course, comes from other sources, too, especially lobbyists employed by interest groups. Although only a fine line exists between experts and lobbyists, lobbyists are ordinarily easily identifiable as promoters of self-interested policies, while experts ordinarily claim to speak in the name of truth based on specialized knowledge and experience. Likewise, policy advice can be secured from experts in corporations, but these experts have self-interests grounded in their employment.

Intellectual experts are trickier, because they claim to be motivated not by their employer but by the truth and the facts. Yet, every expert who serves as a policy advisor perceives the truth and interprets the facts through ideological lenses of varying thickness. This is not to say that they are insincere, because virtually every fact of any policy of significance is subject to different interpretations, and even if there is consensus on the facts, there will be ideological disagreements about what to do with those facts. Government officials must be aware of these pitfalls and adroit in selecting from the array of policy advisors available to them. This is appropriate in a democratic polity because government officials are elected to interpret the facts and apply their ideological orientation to those facts in making policy.

In seeking to make sensible policy on behalf of the public interest, then, diversity is one important criterion – that is, soliciting views from a diversity of advisors who can bring a variety of facts, interpretations, and ideological orientations to bear on an issue. This should be a natural process in a federation because federalism seeks to achieve unity while preserving diversity. Certainly at a minimum, the advisory process should solicit views from the diversity of regions and locales

present in the federation. In turn, policy advisors should be sensitive to these diversities, especially when advising federal officials.

Commissions of diverse advisors, diverse advisory committees attached to government agencies, and other mechanisms ensuring diversity are likely to be more effective in many cases than relying on unconnected or isolated consultants or on any one think tank. Each consultant has an ideological bent, and think tanks usually have obvious ideological commitments, though some are subtle. Effective use of advisors also requires repeated intermediation over time among the advisors and between the advisors and government officials. There is often a disconnect between external advisors and government officials, in part because external advisors may lack the practical knowledge needed to formulate legislatively effective policy, and government officials may lack the conceptual knowledge needed to formulate substantively effective policy. Repeated interactions allow the advisors and officials to clarify issues and understand each other. These interactions also allow for the construction of trust and the weeding out of untrustworthy advisors. Trust is another key factor in policy advising.

Policy advising in a federal system can be somewhat complicated by the need to obtain the acceptance and implementation of policy by different orders of government – federal, regional, and local. This calls for requesting input from all relevant stakeholders. Policy advising in a federal system also can be more complicated than in a unitary system because it is not sufficient to appeal to the sentiments of a simple national majority that might share a common ideological orientation; instead, it is usually necessary to appeal to a super-majority that encompasses multiple regional and local majorities of different ideological hues and socio-economic circumstances. The ability, and right, of minorities to exercise vetoes in a federal arrangement is an important policy-making consideration as well.

Alternately, a federal system offers policy entrepreneurs multiple points of access. If frustrated in the federal-government arena, policy advisors can shop their ideas among the state and provincial governments. Adoption by even one constituent government can produce a diffusion of policy innovation across the states and provinces, eventually effecting even federal policy. Encouraging the states and provinces to function as laboratories of democracy allows for actual demonstrations of policy successes and failures. Here, though, there are limits on the capacity of some states and provinces to solicit and digest policy advice and incorporate it into policy decisions. If this capacity is constrained by scarce resources and the like, it can be enhanced by federal assistance, but if this capacity is constrained by a provincial political culture insufficiently cosmopolitan to embrace diverse policy advice, federal assistance might be perceived as federal intrusion. The same is true of federal departments and agencies that have varying capacities and cultures.

It also is important for government to solicit advice from experts who have expertise relevant to the policy under consideration. This requires extensive networking and consultation to identify the most appropriate experts. Another

challenge is to help government officials to recognize good advice when it comes their way.

In a democratic polity, experts should be entirely free to assume an advocacy role and engage citizens directly. Whether they should do so from a normative perspective depends on their values, but an expert who feels strongly about a policy issue relevant to her expertise is likely to use the policy advising process as a public platform for advocacy or to use advocacy as a vehicle for entering the policy advising process. Whether an expert should engage in advocacy for a political expediency perspective is a different question. Experts who do so risk losing their connections to government officials and being left outside the policy advising process. If they succeed in capturing sufficient public support, however, they might have a significant influence on policy making, even from the outside. Timing is important for advocacy success because every polity has policy cycles that intermittently open and close windows of opportunity for action. Decades may elapse between the initial advocacy of a policy and the adoption of that policy.

Unless an external expert commits plagiarism, perjury, or libel; discloses confidential information; or violates an official secrets act, it is virtually impossible in a democratic polity to hold an expert accountable for policy advice other than to publicize the bad advice and exclude the advisor from future policy advising processes. In principle, moreover, other than shunning the advisor for non-criminal behaviour, it would be inappropriate to hold experts accountable for their advice because the responsibility for determining the utility of advice lies with government officials. If government officials make use of bad advice or make poor use of good advice, they are to be held accountable by the voters. Here, again, diversity comes into play. It is the responsibility of government officials to seek a diversity of views, which, interacting with each other, can increase the probability of screening out bad advice before it finds its way into policy.

ROLE OF THE EXPERT ADVISOR IN THE FORMULATION OF POLICY

Cheryl Saunders

PRELIMINARY OBSERVATIONS

At the outset I would like to make two preliminary observations about the topic, before proceeding to the specific issues on which we were asked to comment.

The first preliminary observation concerns the need for caution in generalizing about the role of expert advisors in the formulation of policy. Much will depend upon the political sensitivity of the issue on which advice is sought and the level at which the advice is introduced into the policy-making process. Differences between countries in terms of political culture may also affect the way in which experts are used and the role that they are expected and able to play.

Against that background, I should make the context of my own experience clear. Australia is a country in which scholars are not held in particularly high regard; in which pragmatism and efficiency trump conceptual coherence and principle, at least where these are likely to matter only in the longer term; in which the public service is the principal source of advice to government; and in which the two opposing sides of politics are deeply antagonistic towards each other and inclined to be suspicious of all except their own declared supporters. The field in which my colleagues and I work (constitutional law/intergovernmental relations/structures of government) is prone to raise questions about which governments are particularly sensitive. These circumstances complicate the role of an expert advisor. The complications are fewer where the advice is given at a lower level of political visibility or in circumstances where an expert is one among many.

The second preliminary observation concerns the nature of expert advice itself. Even where an expert seeks to be entirely objective, there will often be room for differences of expert opinion. In some circumstances it therefore may be useful to establish a decision-making process that draws on more than one, or on a range, of expert views. If a range of views is sought, there may be a further question about whether it should reflect extremes of expert opinion or should be confined to views around the middle of the range. The former may satisfy a wider political constituency. The latter may be more credible and will enhance the prospects of achieving a consensus view.

More important still is the question of whether and when experts should seek to be entirely objective or whether they should tailor their advice to political reality, to enhance the chances of its acceptance. Ideally, it might be argued that the latter blurs the roles of expert and policy maker and detracts from the accountability of both. On the other hand, experts whose advice is not accepted lose credibility and thus effectiveness in the longer term. The issue should not arise in cases where the expert is asked to give technical legal or scientific advice. Where the advice itself is more policy oriented, however, an expert may need to decide how best to blend purity and realism while still adding value to the decision-making process.

An example may be helpful. In Australia, several state and territory governments have asked experts to advise them on the design of legislative bills of rights. The impact of a bill of rights on parliamentary sovereignty in Australia is a politically sensitive issue. These experts have had to face the question of whether to recommend limitations on the scope of rights protection, in order to enhance the acceptability of the proposal to governments and parliaments, whatever their own views about the need for these limitations may be. When these experts, in addition, are required to consult with the public in formulating their final recommendations, the task of disentangling expert advice from political considerations is complicated further still.

THE ISSUES IN THE BRIEF

I.

In considering the questions posed about the role of experts, it is useful to distinguish between expert advice that is provided on a continuing basis and covering multiple issues over a period of time, from advice that is provided on a single specific issue, over a period that is relatively confined. An ongoing advisory body that is publicly funded is likely to be conscious of the need to maintain its credibility by offering advice that is regarded as acceptable, if not on every occasion, then at least often enough. On the other hand, the credibility of such a body also depends on the quality of the advice that it gives from an expert point of view, thus adding value to the decision-making process.

How and where this balance is struck may depend on the type of advice involved. In what follows, I draw on my own experience with an Australian advisory body, the Administrative Review Council (ARC), established to advise on a newly integrated administrative review system and its extension over time. The ARC was an effective advisory body over a period of several decades. The advice that it gave in the course of monitoring existing arrangements was influential and generally respected. Its advice on extension of the system was usually, if not always, accepted. The expert quality of the advice that it gave was widely acknowledged.

Features of this expert advisory body that contributed to the effective performance of its role include the following:

- First, the ARC was institutionalized. It was established by legislation, which set out, in broad terms, its constitution and role. This gave it a degree of protection and may have contributed to its acceptance by policy makers.
- Second, the ARC got off to a good start. There was goodwill towards it from the outset; its initial membership was impressive and highly regarded; its advice in the early years was both useful and prudent; it created a secretariat of its own that was independent of the general public service. In this way it set a culture on which its ongoing effectiveness could be built.
- Third, the composition of the ARC was particularly appropriate for the type of advice that it was required to give. Its membership enabled a range of different types of expertise to be brought to bear on questions about administrative review, while at the same time ensuring that the Council had influence within the public sector. Its members included representatives of administrative review bodies (tribunals, ombudsman); representatives of line departments and central agencies; practising lawyers with an administrative law practice; legal scholars with expertise in administrative law; and representatives of community groups whose members were major users of the system. Importantly from the standpoint of the influence of the ARC, most of its members held senior positions in their own organizations; the representatives of line departments, for example, were invariably the heads of the selected departments.
- Constituted in this way, it was inevitable that the advice of the ARC would reflect conflicting interests and would not stray too far from a position that policy makers were prepared, ultimately, to accept. On the other hand, it was also highly likely that the advice would be distinctively expert in character, enabling the body to perform the function for which it was established. This latter feature was significantly enhanced by the Council's practice of making all its advice publicly available through its own reports, which were tabled in Parliament. The practice of publicly releasing all advice contributed to its quality and to the likelihood of its acceptance by government.

II.

Short-term advice on a single issue is likely to raise challenges of a different kind. I do not think that it is possible to be prescriptive about the format through which such advice is given. Clearly this is likely to depend on the policy need that prompts the request. One of the questions asked in the brief may nevertheless be considered in this context.

That question concerns the format through which advice is sought: in particular, the choice between a consultancy and an inquiry or a think tank. There will be circumstances in which a consultancy is the only efficient means of obtaining advice. Where it is otherwise suitable, however, an inquiry or "think tank" has advantages of several kinds, from the standpoint of the appropriate use of expert advice. Most obviously it enables more than one expert to be involved and thus caters to the fact, to which reference was made earlier, that on many matters there is likely to be a range of expert views. Even where the inquiry itself is constituted

by a single person, other experts may appear before it, or be involved in “think tank” arrangements, enabling a spectrum of views to feed into the process. In addition, the fact that the advice that is obtained through this format is public adds to the transparency of the process and assists in disentangling expert advice from other decisions that must inevitably be made in a policy-making process.

III.

As the brief acknowledges, expert advice is not obtained solely through a formal commission, in which advice is sought by governments or agencies concerned. Experts themselves may seek in various ways to inject their views into the policy-making process. This may take place, for example, through evidence to parliamentary committees; expert advice to opposition parties; contributions to the print or electronic media; assistance and advice to community groups. Generalization about success or failure is not possible in the abstract; initiatives of this kind depend on timing, as well as on the quality and clarity of the expert contribution.

IV.

A further query in the brief concerns the provision of expert advice to policy makers in federal systems. Federalism both complicates and facilitates the role of experts. The complication lies in the fact that there are multiple legitimate decision makers. Other governments may be reluctant to accept expert advice that has been provided to one jurisdiction, for reasons of either inter-jurisdictional or political rivalry. The problem may be ameliorated in circumstances where the expert has the authority to deal with more than one government. In these circumstances, the expert should bear in mind that other jurisdictions also have a legitimate role in policy making in areas of shared or overlapping responsibilities.

An extreme illustration of failure to observe this requirement is provided by the Australian Constitutional Commission, 1985–88. The Commission was established by the Commonwealth government to advise on possible changes to the Commonwealth Constitution in the approach to the bicentennial of European settlement in Australia. The decision to appoint such a commission was a bone of contention between the Commonwealth and most of the Australian States. An already difficult situation was exacerbated when the Commission wrote to the state premiers, seeking their views on constitutional change, in much the same way as it wrote to any other interest group.

Federalism enhances the capacity of experts to contribute to the policy-making process by offering multiple points of access into the system. Further, a government that anticipates the emergence of a policy problem affecting other jurisdictions or the federation as a whole may have a significant influence on the outcome by obtaining timely and high quality expert advice that is made available to other governments in an appropriate way.

V.

One final question raised by this session concerns accountability for expert advice. The question applies to policy makers with as much force as it does to experts. Responsibility for policy decisions can be blurred by manipulative choice of experts or by influencing the expert advice that is given. While transparency is not always possible, in commissioning experts it is desirable for policy makers to be as clear as possible about the role that they are expected to play and to make the terms of reference public. As far as experts are concerned, careless or negligent advice may expose them to general legal sanctions. Otherwise, the sanctions are social and political. Experts whose advice does not meet quality standards are likely to suffer in their reputation and are less likely to be used again.

THE ROLE OF THE EXPERT IN THE FORMULATION OF POLICY ON FEDERALISM ISSUES

Nico Steytler

VEHICLES FOR POLICY INFLUENCE

Needless to say, the impact an expert may have on a policy process is subject to many factors. One of them is obviously the vehicle through which expertise is brought to bear on policy choices. The most common vehicle in South Africa is the direct consultancy.

The essential feature of a consultancy is that it is a private relationship between the instructing department and the expert. The immediate advantage of the privacy is, first, that the expertise is not part of the public domain. A government department can explore issues not in its own name but through the writing of an expert. At one level, the expert's views can have no influence because the department can distance itself or even repudiate the research as the musing of an individual. On the other hand, think pieces that articulate the political unthinkable can, in the long haul, profoundly shape policy.

In contrast to a private consultancy, whose policy outcome is inherently uncertain, the commission of inquiry is the public face of expert advice. Because it is public process (the report and its recommendations are made public), the government is bound to engage in public on the reasons why it fails to accept and implement recommendations. Given the public nature of deliberations, the government has not been prone to solicit expertise along this route. Commissions often flow from public pressure rather than an internal desire for policy review.

The think tank option is probably the least challenging form of seeking expert advice. On the basis of a tentative policy position, national departments have on occasion held closed one-day roundtables, inviting a number of experts to respond to a policy position. It works as a testing ground for an idea, where the experts' views are canvassed as a group, rather than seeking individual inputs. The impact of individual views could, per force, be limited.

There is no best way of engaging with experts. All depends on the context, a context determined in the end by political considerations. At times, a roundtable is needed, while a larger research project may require a commission of inquiry.

Take a recent example from South Africa. How is the government going to review the policy on provinces and local government? The long-standing undercurrent of unease about provinces bubbled to the surface at the ANC's recent policy conference where three options were presented: first, retain the status quo, second, abolish provinces, or third, reduce their number with a new role description. The issue had the potential to split the party, as the proponents and detractors of provinces could easily be aligned to the upcoming succession contest for the presidency of the ANC. The government response was pragmatic: a divisive political battle should be avoided by opting for a research-based review of the past 13 years that could form the basis of a formal white paper process on provinces. The aim is to depoliticize the process and to let the past predict the future. Thus enter the experts who are asked to review the past practices.

What factors or considerations influence the ability of the government to accept expert advice? Again the answer is contextually bound. The following could be factors:

- First, there must have been a broad political affinity between the department and the experts in order to have been asked to participate in the exercise in the first instance.
- Second, the paradigm used by the experts must more or less resonate with the current political discourse.
- Third, the language used must be the language of the time.

THE CHALLENGES OF GIVING EXPERT ADVICE IN FEDERAL SETTINGS

There are some general challenges any expert faces when called to provide advice. Some of them will also have particular relevance in a federal setting.

The first challenge is often the nature of the brief. Clarity and specificity are usually most welcome guidance in the terms of reference. But often, little clarity of thought is forthcoming from an instructing department. Calling in the expert is precisely to assist in getting through muddled thinking. What the end product should be is not clear and it is often a case of the department saying, as a Supreme Court justice once defined pornography: *I know it when I see it*. An official or politician would reject draft after draft without much guidance, but through trial and error the expert may eventually arrive at what the politician or official really would like to think.

The second challenge is timing; all government work is urgent. And we, academic experts suffering from an inflated belief that our knowledge somehow does matter and the fatal attraction of getting close to power (not to mention the filthy lucre that may supplement modest academic salaries), are often required to radically reschedule work commitments.

In the federal setting, particularly where the very concept of federalism is contested terrain, the challenge is that of paradigm alignment. Once engaged, the object is to stay on the same page. The expert may then explore the outer reaches

of what is possible within the prevailing political paradigm. The expert should see the bigger, comparative picture and has then the difficult task of bringing that learning to an audience. What makes advice difficult is that the issues addressed float within a contested area, presenting a mix of politics, finance and law.

The very nature of multi-level government suggests that there are many more entry points for influence. At lower levels, a greater appetite for experimentation is often encountered. With a healthy competition for innovative programs, the scope for external influence through new ideas is promising. In contrast, engagement with national departments is much less open, subject to more bureaucracy for the sign-off on policy changes.

In both cases, a high level of trust between the expert and the department is essential. The trust comes pertinently to the fore when the expert gives advice the client does not like. True to its own discipline, the expert must steer a careful line between being the hired hand, saying what the client wants to hear, and providing independent advice.

TYPES OF ISSUES ON WHICH EXPERTISE IS SOUGHT AND THE LIKELY IMPACT OF SUCH EXPERTISE

The types of issues on which advice is sought cover the field of governance. The issues on which outside experts may be the most influential are the matters that deal less with macro-policy and more with technical matters. Where a matter is closely circumscribed, the expert may be able to provide the “correct” answer. On matters political, a lot of learning may not, at the end of the day, provide the final word. Politicians themselves may claim adequate or appropriate experience to come to a decision.

INFLUENCING GOVERNMENT POLICY OUTSIDE CONSULTANCIES

There are numerous academic policy institutions which would claim as one of their functions the influencing of government policy for the better. The first prize is, of course, where such an institution is directly asked by a government department to develop a policy position. Such a consultancy has naturally its own restrictions; the institution per force works within the policy framework and political discourse of the instructing department.

Outside formal consultancies, there are two broad strategies to impact on policy – barking inside the tent or howling from the outside. An institution can adopt strategies at different times or even at the same time on different issues. At the Community Law Centre we have sought both strategies, but they remain in tension; the more one engages the state aggressively from the outside, the less likely is one’s chances to be invited to contribute to policy from the inside.

From a legal advocacy perspective, one outside strategy has been test case litigation. Where there is a human rights case pending before an appellate court, we seek admission as *amicus curiae*, to assist the court by placing our learning at

its disposal. We do not represent the claimants against the government but would like to assist the court in coming to the appropriate decision through submission of argument and evidence.

A more cordial approach is the holding of roundtables. The roundtable is distinguishable from a conference in that it is not a public event where papers are presented followed by a two-way discourse with the presenter and the audience. Rather, it is a closed session of discussions between experts and senior politicians and officials. The discussion is loosely structured by a background paper, setting clear policy issues and options (or recommendations). After a short introduction, the floor belongs to the participants, not the presenter. A key success factor is who is sitting around the table. And the trick is to get decision makers to spend a day or more of their time, talking. For government it is a useful mechanism to get an immediate feel of the water and whether or not a new idea will sink or swim.

After such an exercise, the question is (and the donors or sponsors want to know), what is the impact? How can one measure the impact on policy of a given research output? Policy formation is a complex process influenced by a myriad of factors, of which only one is the expert's advice. In the last three years the European Union provided funding to South African research institutions to do research on matters that would have high policy impact. The organization administering the funds on behalf of the South African government and the EU got caught in a logical framework where the outcomes were to be measured by the policy impact of the supported research. Within the three-year life cycle of the grants, it soon became obvious that the organization set itself up for failure. The period of measurement was far too short, and not all researchers would muster the audacity to claim their thumbprints on government policy. The organization settled in the end with the more measurable outcome: placing research findings at the disposal of decision makers.

Expert advice may or may not have an impact. The impact may be immediately observable, or its value may only become apparent years later when the time is right for a policy change. The question makes, however, the assumption that they are right in their advice. This brings to the fore the issue of accountability for the advice given. The single most important accountability mechanism is the judgment of one's peers. In the competition of ideas, it is scrutiny of the peers that can assess the appropriateness of methodology, the theoretical underpinnings and the overall coherence and logic of the advice. The immediate difficulty with this mechanism is that it assumes that the advice is in the marketplace of ideas. In most cases it is not. Government departments first claim copyright of the research and hold on to it lest the publication of the research embarrasses or compromises their policy options. While the embarrassment can be avoided, the integrity of the research is not assessed. While it is recognized that the immediate release of research could be counterproductive to policy formation, the long-term placement of the research in the public domain should not be precluded. It is essential for the integrity of the advice offered.

Part 2

DISCUSSING THE ISSUES AND RAISING QUESTIONS

HIGHLIGHTS OF THE DISCUSSION

As indicated in the introductory chapter, an insightful and thought provoking discussion followed the presentation of the papers. Responding to the issues raised by the panellists, members of the audience focused mainly on three issues: first, advising and the political environment; second, advising and federalism; and third, advising and democracy. Following are some of the thoughts and arguments raised during the discussion.

ADVISING AND THE POLITICAL ENVIRONMENT

Looking at the issue of accountability and stressing the importance of ethics and independence, Thomas Fleiner offered this advice to policy advisors:

I would start with accountability. I think none of you would ever go to a dentist simply because he or she is elected and accountable. You would go to a dentist who is professional and I think that is the same with regard to experts. You would go to an expert who is professional, and what is important with regards to his professionalism is his transparency. Several times that has been mentioned. The second point I would make concerns what you expect from an expert, namely, that he is ethical. I consider ethics very important; that you have experts who are independent based on their view of what they consider as a just issue or as a truth. Of course, there are several possibilities and several concepts of truth and of justice, but at least it should be consistent with ethics, justice, and independence. The third issue which I would mention in this case is the need for realism. You should never take up an advisory role on issues where you think you cannot provide expertise. In this context, I think an expert is only independent if he is always able to step down from his contract. But I say also the government has to be able to step down as soon as they think the expert is not the expert they expected. I mean, this kind of double independence is absolutely necessary.

Enric Fossas responded to this comment and pointed out that policy advisors must also consider their client. Thus advisors must be aware of the politics involved and possibly may have to be political themselves:

I wonder if it is possible to be a professional and politically biased in advising. I mean, it's not compatible. Thomas Fleiner mentioned that advisors must be professional, transparent, ethical, and so on. But, to advise in policy making in a political system, it seems to me that it is really difficult to have an objective position. I mean,

if a political party called you for advice it's because they expect something, they expect not just objectivity or a scientific point of view. In that sense, I ask if you agree with the point that you could be professional but at the same time aware of whom your client is.

Gisela Farber, adding to this, pointed out that policy advisors are responsible for the advice they give to governments. She also stressed the point of trust between the client and the policy advisor:

That means we are all involved in political processes and we are responsible for what we advise governments. I think the most important instrument of governance in the role of expertise is trust. You only get in the position to be an expert for political advice because you have a reputation. John, you mentioned that, sure; but if you are nominated you can do what you want, you can even be against something. You are dangerous in that moment but you should note you'll only be re-nominated if you are useful.

Rudolf Hrbek, responding to the points on accountability and objectivity, stressed the need for diversity. This need was also stressed by John Kincaid both in his presentation paper and during the discussion:

Hrbek: I fully agree with Thomas Fleiner. An expert should be professional. He or she should be independent, should be, as you just said, objective. On the other hand, what does this mean, objective? I doubt that anybody would have asked me to give advice if this institution would have thought "well, we are interested in some argument against introducing the euro?" because everybody knows Rudolf Hrbek's position on this particular issue. So, I think the question, who selects which people, is important. Well, it is more or less well known that there is a range of different views. And, you have a relatively clear idea where to locate individuals who then could give advice and I think, therefore, it is very important that different positions are presented. In this respect, I think media, giving this opportunity, plays a very important role in this whole business.

Kincaid: I think another issue that has been underlying some of these comments about objectivity is [that] ideally an expert or an intellectual is supposed to speak truth to power. The problem is, many of them want to be close to power and they are not willing to speak the truth to power because they want to be close to it and they feel that it does embellish their reputation, even if they do have to be senior officials to do it – to be involved in these activities. So, it's another reason to look for diversity in policy advisors.

ADVISING AND FEDERALISM

The issue of federalism and the competitive nature faced by the policy advisor was one that was raised by John Allan where he questioned how policy advising is affected by a competitive federal environment:

The issue that you tended to speak about was one where a government is confronted with a policy dilemma and, to try to resolve it, they seek the advice of experts. But in a federal setting, what we frequently have is a problem/dilemma where the interests of one level of government are decidedly different from those of the other level of government and in consequence both sides may then seek the advice of experts but in a competitive setting. I wonder if the panel would comment on the situation in which that sort of situation arises. Does the role of the expert advisor change when the advice is being sought in what is quite clearly a competitive situation?

Nico Steytler, in response to this inquiry, stressed the importance of an open process:

Just two points: One, on giving advice in a competitive setting [as] John Allan was referring to. I think it's quite an interesting question, because being asked by various levels to provide advice ... which suggests that you should really then sing the same song. There is then, in that competitive environment, a possibility for a unity of integrity of your own advice based on your research. [The] second point I think that you do make is quite important in Africa – the emphasis on the private consultancy. The need for the open process – I think we would want to emphasize the need for the parliaments and the joint commissions to be much more prominent because there is openness then in who is selected and then there is openness in what is produced and then the possibility of checking whether this is truly a professional piece of work.

ADVISING AND DEMOCRACY

Jutta Kärmer raised the issue of the relationship between parliament and advising and the potential effects of policy advising on democracy:

I would like to come to a point where we might have a look at the relationship between the requirement for expertise and democracy. And maybe Germany is a good example to show the negative side of it. We, on the one hand, have as Leonardy and Hrbek elaborated upon, quite a culture where parliament itself requires expertise in an open manner where we have commissions, hearings, and so on. This is where all interest groups, NGOs, can bring in their special expertise as well as their interest. So this is like a very open process and parliament can take certain advice and knowledge from that. On the other hand, we, especially under the chancellorship of Gerhard Schröder, have seen a growing or an increasing formulation/creation of expert bodies and private consultancy which did have a clear tendency of disempowerment of parliament. Parliament had to cope with the outcomes, and it is very difficult for parliament to challenge those outcomes if parliament hasn't been involved in the opinion making during these expertise commissions. All of us would certainly like to have influence on politicians and make our scientific knowledge become practical reality. One has to be always careful how experts are misused by politics to delegitimize parliament and also, create an external legitimization for certain political decisions which might be unpopular. One thing which strikes me,

and Rudolf Hrbek also mentioned it, is that in Germany we do not normally have this tradition of private consultancy. And that struck me very much in South Africa, which has a very flourishing consultancy-business atmosphere. I wonder whether there is a link between the Anglo-Saxon understanding of parliamentary reason and this consultancy. And, well, I struggle to get this together because from my point of view, the sovereignty would even encourage Parliament to get in-house commissions, in-house expertise, instead of giving this to private consultants. Maybe one of you can give me a handle on that.

Cheryl Saunders, in response to this inquiry, focused on the idea of how a particular parliament in a particular country works:

I'd like to pick up on Jutta's point also about parliament and say just a couple of things. One: I think that the way in which experts can feed into the public process through parliament does overcome a range of problems that we've been talking about around the room. If governments are prepared to accept that the respective roles of the policy makers and the experts are clear, and the advice is public, you can get a range of views that can be an interaction between the expert and the policy maker and so on. But, I wanted to particularly respond to Jutta's question about Anglo-Saxon parliaments because when she opened up her remark and juxtaposed democracy and public ... private consultancy, I actually wrote in the margin that [it] depends on how your parliament works. And then she asked that question about Anglo-Saxon parliaments and I just want to emphasize it because it comes back to the point I made at the outset about the political culture. I don't want to speak for everybody else's Anglo-Saxon parliament but in our particular one, we have a fairly classical electoral system that produces two strong political parties and there isn't that clear juxtaposition that parliament will do the policy making or else there is a democratic problem. You can start moving towards that if you have some mix in your electoral process, as the experience in New Zealand shows. But, it's an interesting question, I think.

Due to time constraints, not all of the questions raised by members of the audience were explored in any significant manner. This, however, does not minimize the importance of such questions and the necessity of exploring the issues in more detail. Following are a few questions that remain important when analyzing and attempting to understand the role of policy advisors in the policy-making process:

Doug Brown: I have a question about the media. Not all instances of providing advice involve the triangular relationship with the media, but often they do, and I'm just wondering if you're talking about going from objective to – what was the phrase Cheryl used? But it seems to me [that] to prepare your messages for the media, you know, exert some broader public influence, is a very big part at least in the Canadian context of what experts are forced to do to make sure that their message is heard and I was wondering if the panellists have any comment on that role?

David Gordon: Simple question for the panel. How does the role of experts change if you need truly short term advice, emergency advice, a national disaster, a natural

disaster, an act of violence, Category 5 hurricane bearing down on the coast, or something truly unexpected and exceptional with immediate consequences? It seems to me that commissions of inquiry and advisory councils are not terribly helpful under those circumstances.

Hamish Telford: I was wondering if the panel may take a few minutes to perhaps reverse the arrows of causation to look at the impact on universities from engaging in the policy process. In an ideal sense, I suppose the universities are supposed to be engaged in the production of new knowledge which would be published in peer-reviewed journals. But I think from the standpoint of a young academic, if you spend your time writing government reports you're not going to get tenure. So, this is a luxury that is done by senior faculty members, but are they really engaged in the production of new knowledge when they are doing this?

CONCLUSION

COMMENTS AND CLOSING REMARKS

Ronald L. Watts

I found the discussion very interesting and I shall pick out seven general points that I drew out of the discussion. The first was clearly the recognition by the many of the panellists about the need to take account of the variety of forms and circumstances in which advice is given. Rudolf Hrbek talked about the institutional forms in which advice is given in Germany; Isawa Elaigwu about the different roles, depending on the issues, the contexts and so on; Cheryl Saunders about the variables affecting advice, in particular the difference between long-term advice and short-term advice; and Enric Fossas about the difference between legal and political advice. So, all of those are elements that need to be taken into account. We can't just generalize about advice; we need to take account of that variety.

A second important point that I thought was made was the distinction between public and private advice. Just about everybody touched on that. Private advice in the form of consulting or being an advisor to a government or a minister provides a situation in which the government has the advantage of obtaining the advice without having to take ownership of that advice, and where the advisor can act frankly in terms of what he or she thinks is the appropriate advice. But equally important is public advice, particularly that given through commissions, because that advice affects the public domain. And I've observed this on many occasions in my own activities when one has been involved in a public committee, task force, or Royal Commission. The recommendations may not get adopted, but many of the ideas in the public report of a commission, nevertheless, enter into the public domain and may continue to reverberate down the years. I think of the Pepin-Robarts Commission impact, for instance, or, at the Ontario level, the Bovey Commission. In the latter case, the government that was prepared to take its advice was defeated before it could act, but ultimately many of its points of advice got adopted subsequently because they entered into the public domain. The significance of these two different kinds of advice, therefore, needs to be taken account of.

A third point is the particularly important one made by John Kinkaid in distinguishing between technical experts and advocates (my terminology for the distinction). Even technical experts, who supposedly are speaking in terms of what they believe is the truth, will be affected in their views by their assumptions

and their value bases. This means that it is important for governments to seek a range of advice and not to simply rely on one source.

A fourth point that struck me and which, strangely enough, not many made very forcefully but that is dear to my heart, is the value of comparative information provided by experts. But one must be aware of both its benefits and its limitations. Here, I think it was Cheryl Saunders who did touch upon the position of foreign experts and the role that they should play. It seems to me that it is absolutely crucial for any foreign expert advisor to try to be sensitive to and to understand the local political culture and circumstances, and to free himself or herself as much as possible from just the circumstances of their own country.

I remember being very struck once in South Africa in walking into the office of an American advisor, who had an office right in the parliament buildings, and there on the wall, section by section, was the American Constitution, and that was what he was advocating the South Africans should adopt. Not surprisingly, that didn't go over very well with the South Africans. It seems to me that it is absolutely crucial for foreign advisors to try to understand the point of view and the issues that prevail locally. Having said that, I think there is a real value in having experts who are able to bring advice about what is done elsewhere. It's often sought. The Indians, when they established their independence constitution in the 1950s, published three volumes of what they called "constitutional precedents" taken from other countries, examples from which they could learn. South Africa certainly also relied very heavily on external experts and sought them. I think the advantage of these external experts is that they can identify options, especially options that might not have been thought about, or they can identify the positive and negative lessons from elsewhere. In addition, they can also point to unintended consequences of a proposed solution that might not be obvious to someone who had not studied another system. I am therefore a strong believer in the value of comparative experience, while at the same time emphasizing the need to be aware of its limitations – that is, the need for it to be relevant to the particular circumstances of the specific country.

Fifth, the panellists were all asked to comment on the accountability of experts. It seemed to me there was pretty general agreement that formal procedures for such accountability are rare. Isawa Elaigwu emphasized the importance for advisors to recognize that they are advisors and not the policy makers. I think that is important for advisors to bear in mind. The real accountability comes from the impact that such advice has on the reputation of the advisors themselves. If they give bad advice, or fail to take into account the consequences of the advice they are giving, in the end, it will reflect on the reputation of the advisor himself or herself. It seems to me that is where accountability indirectly comes into play.

Sixth, Thomas Fleiner threw out an interesting question, which was the role of universities in dealing with experts giving advice. I am a strong believer that university scholars should be free to make their expertise available to the governments of their country or the governments of other countries as individual scholars. At the same time, I think it is crucial that they do not pretend to speak for the university as a whole. They are not spokespersons for the university, unless the

university has arrived at some formal position through the deliberative processes of the Senate or appropriate body. I worry often when people write letters to the editor and sign their names putting "Professor So-and-So of Such-and-Such University," as if they were speaking for the university and not for themselves. On the other hand, I think a university benefits from having their scholars participating in giving advice because professors can themselves learn an enormous amount about the way real politics works from being involved in the process of advising. I have learned an enormous amount myself, certainly, from participating in processes of government and in giving advice to governments. This makes our work as scholars that much more valuable when we are sensitive to those issues.

Finally, a very important point that George Anderson provoked and that I think John Kincaid and Cheryl Saunders particularly addressed but others have also referred to, is the role of expert advisors in federal systems, given the range of governments involved. I think it's important to recognize that one of the advantages of the federal system, as some have pointed out, is that they provide multiple points of entry, and therefore there is an opportunity for expertise to be brought in at various levels and at various points. And I think it is important when governments establish commissions or committees that they should in the process try to take account of other governments, or what are likely to be the positions of other governments. This reinforces John Kincaid's emphasis on the need for diversity in policy advisors.

John Allan raised the question about the competitive setting of governments seeking their own advisors in competing with each other. That certainly often happens, but it seems to me that that assumes that all relations between governments must be competitive. They often are not. Indeed advisors may actually help governments to arrive at cooperative positions in relation to each other by giving advice that is not simply echoing what the government seeks. I recall here, and it may amuse you for me to make this personal recollection of the time when I was personally put on the hot seat during the Charlottetown negotiations. I was Assistant Secretary to the federal Cabinet on constitutional development. I was attending a meeting with the premiers of the provinces when Joe Ghiz, the Premier of Prince Edward Island, suddenly came out and said, "Well, we have here someone that is an expert on federal systems. Mr. Clark, can we ask him what *he* thinks should be the solution to this particular problem?" Here I was, at that time, a salaried official of the federal government being asked by a provincial premier to state *my* views rather than that of the federal government. I asked Joe Clark what I should do, and he told me to go ahead. So I did. It seems to me that is an illustration of the sort of situation where independent advisors can help in a federal situation to try to reach compromise and consensus.

Institute of Intergovernmental Relations

Recent Publications

Available from McGill-Queen's University Press (<http://mqup.mcgill.ca/ordering.php>):

Comparing Federal Systems, Third Edition, Ronald L. Watts, 2008 ISBN 978-1-55339-188-3

Canada: The State of the Federation 2005: Quebec and Canada in the New Century – New Dynamics, New Opportunities, vol. 19, Michael Murphy (ed.), 2007
Paper ISBN 978-1-55339-018-3 Cloth ISBN 978-1-55339-017-6

Spheres of Governance: Comparative Studies of Cities in Multilevel Governance Systems, Harvey Lazar and Christian Leuprecht (eds.), 2007
Paper ISBN 978-1-55339-019-0 Cloth ISBN 978-1-55339-129-6

Canada: The State of the Federation 2004, vol. 18, *Municipal-Federal-Provincial Relations in Canada*, Robert Young and Christian Leuprecht (eds.), 2006
Paper ISBN 1-55339-015-6 Cloth ISBN 1-55339-016-4

Canadian Fiscal Arrangements: What Works, What Might Work Better, Harvey Lazar (ed.), 2005
Paper ISBN 1-55339-012-1 Cloth ISBN 1-55339-013-X

Canada: The State of the Federation 2003, vol. 17, *Reconfiguring Aboriginal-State Relations*, Michael Murphy (ed.), 2005 Paper ISBN 1-55339-010-5 Cloth ISBN 1-55339-011-3

Money, Politics and Health Care: Reconstructing the Federal-Provincial Partnership, Harvey Lazar and France St-Hilaire (eds.), 2004
Paper ISBN 0-88645-200-7 Cloth ISBN 0-88645-208-2

Canada: The State of the Federation 2002, vol. 16, *Reconsidering the Institutions of Canadian Federalism*, J. Peter Meekison, Hamish Telford and Harvey Lazar (eds.), 2004
Paper ISBN 1-55339-009-1 Cloth ISBN 1-55339-008-3

Federalism and Labour Market Policy: Comparing Different Governance and Employment Strategies, Alain Noël (ed.), 2004 Paper ISBN 1-55339-006-7 Cloth ISBN 1-55339-007-5

The Impact of Global and Regional Integration on Federal Systems: A Comparative Analysis, Harvey Lazar, Hamish Telford and Ronald L. Watts (eds.), 2003
Paper ISBN 1-55339-002-4 Cloth ISBN 1-55339-003-2

Canada: The State of the Federation 2001, vol. 15, *Canadian Political Culture(s) in Transition*, Hamish Telford and Harvey Lazar (eds.), 2002
Paper ISBN 0-88911-863-9 Cloth ISBN 0-88911-851-5

Federalism, Democracy and Disability Policy in Canada, Alan Puttee (ed.), 2002
Paper ISBN 0-88911-855-8 Cloth ISBN 1-55339-001-6, ISBN 0-88911-845-0 (set)

Comparaison des régimes fédéraux, 2^e éd., Ronald L. Watts, 2002 ISBN 1-55339-005-9

Health Policy and Federalism: A Comparative Perspective on Multi-Level Governance, Keith G. Banting and Stan Corbett (eds.), 2002
Paper ISBN 0-88911-859-0 Cloth ISBN 1-55339-000-8

Comparing Federal Systems, 2nd ed., Ronald L. Watts, 1999 ISBN 0-88911-835-3

**The following publications are available from the Institute of Intergovernmental Relations, Queen's University, Kingston, Ontario K7L 3N6
Tel: (613) 533-2080 / Fax: (613) 533-6868; E-mail: iigr@qsilver.queensu.ca**

Open Federalism, Interpretations Significance, collection of essays by Keith G. Banting, Roger Gibbins, Peter M. Leslie, Alain Noël, Richard Simeon and Robert Young, 2006
ISBN 978-1-55339-187-6

First Nations and the Canadian State: In Search of Coexistence, Alan C. Cairns, 2002
Kenneth R. MacGregor Lecturer, 2005 ISBN 1-55339-014-8

Political Science and Federalism: Seven Decades of Scholarly Engagement, Richard Simeon, 2000
Kenneth R. MacGregor Lecturer, 2002 ISBN 1-55339-004-0

The Institute's working paper series can be downloaded from our website www.iigr.ca

