IPANZ Seminar, 12 August 2015:

Free and Frank Policy Advice : some initial observations

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Free and Frank in a different and highly relevant context in 2015

The Melbourne Age, 6 April 2015

- Gallipoli's other casualty: the suppression of frank and fearless advice
- J. R. Nethercote
- Too few military officers and public servants were allowed to speak freely before the disastrous Dardanelles campaign
- Read more: http://www.theage.com.au/national/public-service/gallipolis-other-casualty-the-suppression-of-frank-and-fearless-advice-20150401-1md1sz?skin=dumb-phone#ixzz3iOHEocAB
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extract

- In the aftermath of the debacle, a commission of inquiry into the Dardanelles campaign was instituted. Though the dominions had not been consulted about its establishment, its membership included, along with admirals and generals, former prime ministers of Australia and New Zealand – Andrew Fisher and Sir Thomas Mackenzie – now both in London as high commissioners. The Australian government circumspectly agreed to Fisher's participation but with the stipulation that he was not there as a government representative!
- The commission's report documented the gross inadequacy of decision-making and failures to cope with the enormous and novel demands of World War I. It was suitably severe about Asquith's failure to summons a meeting of the War Council before the April landings; it should have remonstrated a good deal more about the cabinet's failings.
- The report paid close attention to relations between ministers and their professional advisers, principally in the War Council, where they were largely silent. (Their performance would, no doubt, have earned the approbation of the responsiveness school of minister-official relations.) It said too little about Kitchener, who drowned before giving evidence. Even though he was secretary of state for war, he remained a field marshal in every sense. He alone spoke for the War Office. He was rarely seen except in uniform. With other field marshals and generals he had a command, not a constitutional, relationship.

And …

- The report continued: "It has probably happened to most officials who occupy or have occupied high places that they have at times disagreed with the heads of their departments. There may perhaps be occasions when such disagreement justifies resignation. But those occasions are extremely rare. More generally, it is the duty of the official not to resign but to state fully to the head of his department and, should the occasion arise, to other members of the ministry, what are the nature of his views. Then, if after due consideration those views are overruled, he should do his best to carry out the policy of the government, even although he may not be in personal agreement with it."

The story/conversation continues

- Last year, 4 June 2014
- IPANZ series on ‘free and frank’ policy advice
- An excellent resource available at:
- https://www.ipanz.org.nz/Event?Action=View&Event_id=248
- How many attended one or more of those?
- Any attend my session?
- Why the continuing interest?

It is free and frank advice or is the capacity to advise governments of varying philosophical/ideological persuasion?

- The distinction – a disposition to speak truth to power whenever, or
- The maintenance of a catholic (in a policy sense) policy/delivery capacity
- History suggests that the latter becomes an imperative when cabinets resign en masse, or when governments are defeated

A starting point - the essence of Westminster

1. The concentration of political power in a collective and responsible cabinet
2. The accountability of ministers to parliament
3. **A constitutional bureaucracy with a non-partisan and expert civil service**
4. **An opposition acting as a recognised executive in waiting as part of the regime**
5. Parliamentary sovereignty with its unity of the executive and the legislature

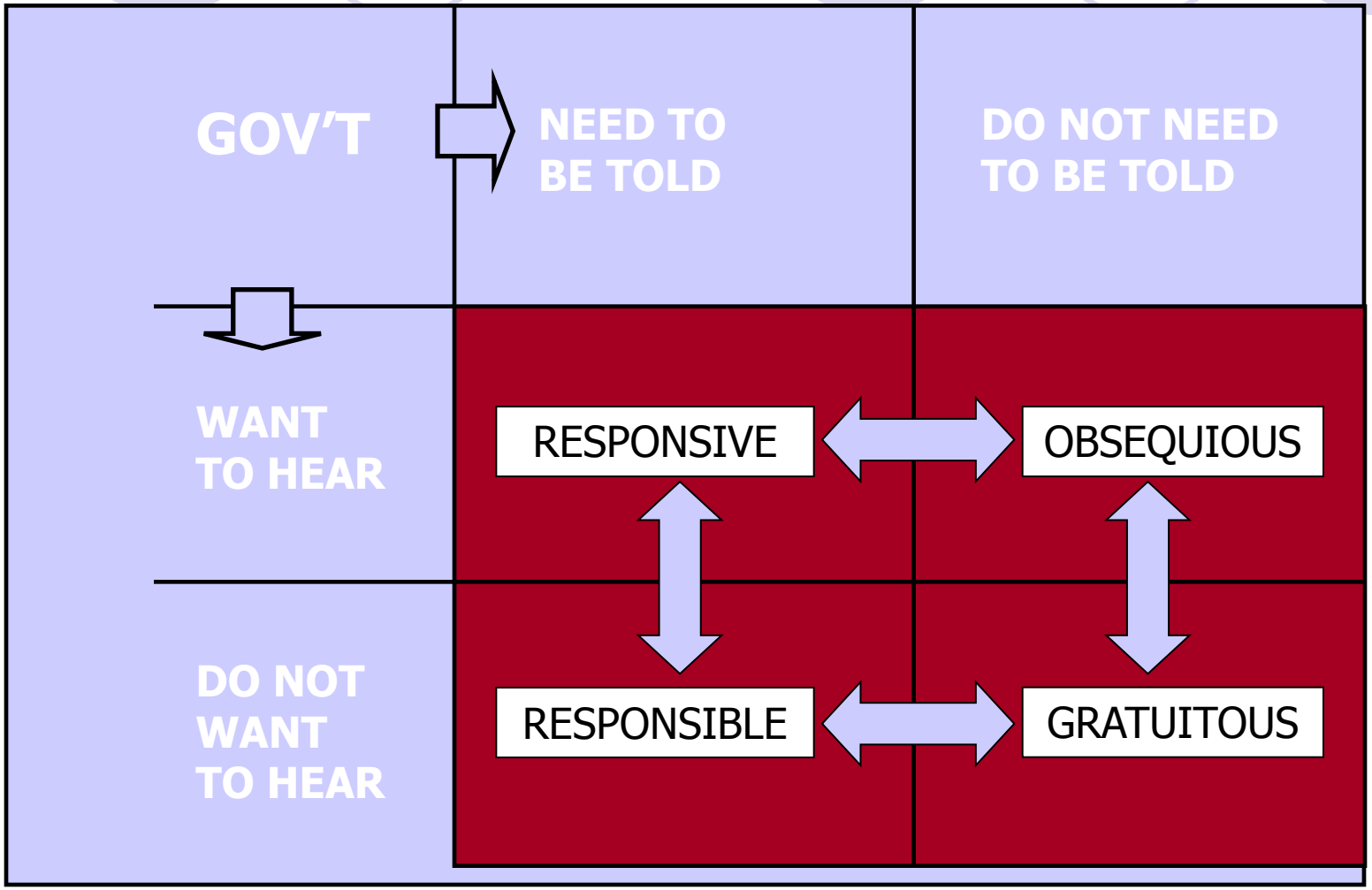
Preliminary comments – don't mention 'free and frank' …

- Plenty of interest in the subject, a good deal of information in the public domain, and plenty of anecdotes
- Lots of 'black ink' as well as rhetorical commitment to the Westminster norm (or normative goal)
- A manifest 'simmering' tension between those who perceive risks, and those who do not (or who see risks as marginal/manageable) – high sensitivity?
- One model – 3 options where we have a problem – "Exit", "Voice" and "Loyalty" or passivity
- How many do exit, how many voice (even sotto voce), how many just keep their heads down ….
- The great contradiction – if all is not well in the state of Denmark, then is it enough to assume that "Heaven will direct it" (because the 'good' public servant will not 'voice')?

2014

- Calls for a Royal Commission – largely on the basis that there has been a serious and dangerous erosion in the provision of free and frank advice (Palmers, Labour Party)
- The Foreign Affairs ‘leak’ debacle and the Rebstock Report (watch this space…)
- But former High Commissioner to London Derek Leask, who was criticised in an inquiry into the leaking of Cabinet papers over a proposed restructuring of the Ministry of Foreign Affairs and Trade, has spoken for the first time about the investigation, saying fall out from it will have a chilling effect on advice to government
- Former Commerce Commission head Paula Rebstock led the investigation and found Mr Leask and another diplomat behaved unprofessionally. The two men developed strategies to oppose the plans and to disrupt or stop the process, she said. They were also admonished for communicating directly with ministers about the restructuring, rather than going through the chief executive.
- In his first interview since the report was released, the now-retired Mr Leask told Radio New Zealand's Insight programme that criticism came as a complete surprise.
- What you have is a lot of public servants who have seen a senior official giving frank views being criticised for indicating his views to the minister. Apparently no one should talk to the minister unless they echo the party line," he said.

Dimensions of advice (from a speech by Australian Treasury Secretary Ken Henry to his staff in 2007)



Another take – Hood and Lodge and Public Service Bargains

‘Sage’ bargains

Statespeople in disguise skills

Provision of intellectual or moral insight

‘Deliverer’ bargains

Skills of (creative) execution

Provision of the ability to get things done

‘Wonk’ bargains

Technical or Fachkompetenz skills

Provision of technical knowledge and judgement

‘Go-between’ bargains

Boundary-spanning skills

Provision of the ability to work across different worlds

the German word *Fachkompetenz* sums up much of the essence of this kind of competency, and that term came into official use as part of an understanding that state competencies in the legal sense—official authority or jurisdiction—should be matched by possession of appropriate technical and subject knowledge to an advanced degree on the part of the state's officials.

Hood and Lodge

- But in contrast to the sort of competency bargains that primarily value public servants' specific or technical knowledge within a specific field, their skills as negotiators or as individual deliverers, are those sorts of competency bargains in which the key qualities required are robust political judgement, steadiness under political fire, ability to read the runes and weigh the policy options, spot possibilities for making and breaking political coalitions, and find the pressure points that will produce responses from an apparently labyrinthine and fragmented structure of executive government. coalitions, and find the pressure points that will produce responses from an apparently labyrinthine and fragmented structure of executive government.

contd

- the knowledge that the ‘sage’ commands tends to be tacit, intuitive, comprising the kind of ‘common sense’ and political judgment that comes from a mixture of innate qualities and experience, but cannot readily be taught in college classes. Indeed, the ‘sage’ provides just what the book-learned, college-crammed public servant with no practical skills in governing cannot provide,

And

- Long before ‘risk management’ became the corporate buzzword that it is today, senior British civil servants traditionally used to describe one of their trademark skills as an ability to assess and handle political risks, typically in the form of having a ‘nose’, or intuitive sense, for what might cause political trouble for ministers and concentrating their activity on that,

And (finally)

- A third and related sage-like skill is the intuitive ability to find the points of leverage or heresthetics* (in the term used by William Riker (1986) and Iain McLean (2001)) in any situation. That is the ability to form political coalitions along different dimensions of political cleavage, and to spot and exploit the possibility for realignmenting an established set of political forces by finding another dimension on which the groups will form into different coalitions. Such skills are not easily distinguishable from those belonging to elected politicians, and they are capabilities that can be argued to come more from experience and insight than from specific technical knowledge of the kind that is gained from orthodox academic study.

- Most public service systems incorporate at least some elements of this kind of competency bargain. **The 'mandarin' view of the public servant as a person with a background that gives them general skills in wise political counsel about ruling, rather than technical knowledge in the orthodox sense, partly approximates to this kind of bargain**. As we noted in Chapter 2, that view is reflected in the Confucian tradition, as in Japan and in the bureaucratic tradition of China (arguably both of the imperial and of the communist era, at least until very recently), where the right to rule as a bureaucrat rests in general political 'soundness' or moral 'grit' as much as in any specific technical knowledge or attainments. The same can be found in the British 'Whitehall mandarin' variant of that tradition that is reflected in Sir Henry Taylor's (1993, orig. 1836) idea of *The Statesman* and developed in much of UK central government in the late nineteenth century.[21]

*

1.a political strategy by which a person or group sets or manipulates the context and structure of a decision-making process in order to win or be more likely to win

Free and Frank (and fearless?)

- Where does it come from?
- Is it constitutional?
- Is it past it's used by date?
- Should we adopt a 'spoils' model (better expressed as appointment of responsive, can-do believers – at least to more senior positions?)
- Are there other options?
- Where did this free and frank business come from – Northcote and Trevelyan?

REPORT

OF THE

ORGANISATION

OF THE

PERMANENT CIVIL SERVICE,

TOGETHER WITH A

LETTER FROM THE REV. B. JOWETT.

Presented to both Houses of Parliament by Command of Her Majesty.

HOUSE OF COMMONS.

LONDON:
PRINTED BY GEORGE E. EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.
FOR THE STATIONERY OFFICE.

1854.

Henderson – consequences of N and T

- “The combination of democratically elected government with permanence of official tenure demanded a civil service ethos of ‘political neutrality’ to successive governments. (This meant not only obedience to lawful instructions, but also the tendering of frank advice – the experience of long-serving officials this provided something of a check on impetuous executive action) 1990: 4 **emphasis added**

Pre-1912

- Bill introduced by Stafford and enacted in 1858
- “Civil servants were disqualified from election to the House of Representatives, provincial councils or provincial superintendencies”
- But, also passage of a Civil Service Superannuation Act – secure the best and offer some advantages …

The 1912 legislation

- Hunt Royal Commission
- Massey Government
- Public Service Bill 1912
- Establishment of a Public Service Commission
- Commissioner control and de-politicisation
- Personnel decision-making removed from Ministerial control – appointments of permanent heads kept outside the authority of Ministers

In 1912, the complaint and the defence:

- “there is political patronage .. There is humbug and dishonesty in the government of the country” (cited in Henderson, 1990: 43)

- “Ministers would be ‘overruled by persons who are practically responsible to no one’ …. Only Ministers had that ‘ripe experience … essential in order to control the various Departments of State’” (Henderson, 1990: 42-3).

THE SWORD OF DAMOCLES—MODERN VERSION.

One of the main planks in the Reform Party's platform is Civil Service Reform. Henceforth promotion in the public services will be by merit only, so that only efficient servants will receive advancement.

But I've gone back to the Hunt Royal Commission, and this is what I found

- Very little indeed relating to the need for a politically independent public service tendering free and frank advice
- Concern over patronage
- Concern over (in) efficiency

1935 election and after

- Henderson, “a new government unsure like most installed after a long period of rule by an opposing party, of the loyalty and prospective responsiveness of the public service” (1990: 144)
- As late as 1939 some in the Labour Party calling for the reintroduction of Ministerial control
- Nash opposed, but did agree will allegations that ‘there appeared to be a large number of Departments who were not sympathetic to the policy of the Government and who were not carrying it out” (Henderson, 1990: 153)
- Peter Fraser in 1939 – “wished to make it clear that he had no complaint to make regarding the officers of the departments under his control” (1990: 154

Official Information Act

- Henderson – about protecting “ the relationship between ministers and officials by sustaining confidentiality in respect of advice tendered to ministers … Probine saw the need to remind public servants of the imperative of political neutrality and ‘loyalty’ to ministers, as the essential corequisite of the continuation of a non-political career public service”

What about the 1962 McCarthy Royal Commission?

- One key take-out is that The New Zealand Institute of Public Administration played a key role in advocating for a Royal Commission
- NZIPA publishes Polaschek's *Government Administration in New Zealand* in 1958
- Issue in 1957 and 1960 elections

McCarthy Commission

- “referred to(but did not specify) evidence that the PSC had not been prepared on certain occasions to proceed with the appointment of a candidate unacceptable to the government [and] recommended that, not only should the Prime Minister be able to veto permanent Heads’ appointments, but he should be able to make appointments himself ..”

- “In other respects the principle of a non-political career service was endorsed, because it ‘improves morale and efficiency’ (1990: 294)

Here is another way of looking at the issue of free and frank advice

- Free and frank advice as a public service **capability**

So what is **capability**?

capacity

+

opportunity

⇩

capability

Capacity?

- Knowledge
- Institutional memory
- Future thinking – not locked into a presentist bias
- A comparativist mind set
- An openness for policy transfer
- **NOT**
- One size fits all
- The world is required to act in a theoretical fashion
- We don’t take risks

opportunity

- **Enablers:**
- Ministers who want responsible and responsive advice
- Ministers who know what stewardship really means
- Ministers who encourage blue-skies thinking
- CEs etc who want to provide them with that advice (“our job Minister is simply to make you look good”)

Dis-enablers

- Ministers who want to be able to propose and have officials who simply dispose (jump! – “how high?”)
- Departments captured by path dependence
- Departments concerned about departments
- Ministers who really do believe that there is only one way and that there is no alternative
- Ministers whose time-frame extends only to the next election
- Ministers who fail to appreciate that public policy involves values and trade-offs
- Ministers who shop around until they get the advice they want to hear
- Ministers who create their own policy shops
- Political staff who funnel advice or who in other ways ‘politicise’ the process

What to do

- ‘Americanise’ of go for Washminster – more political appointments
- Some CE terms expire at the end of the term of government

Extended Ministerial Offices (EMOs) – an option for NZ? Or do we already have them?

- Cabinet has agreed that Secretaries of State and other Ministerial heads of departments may appoint an Extended Ministerial Office (EMO).
- When establishing an EMO, Ministers will, in consultation with their Permanent Secretary, agree the composition of the office, the mix of staff and skills and the budget. EMO proposals will require the approval of the Prime Minister as the Minister for the Civil Service, before any commitments to appoint staff are made. In a coalition government, the Prime Minister will make decisions on whether or not to approve EMO proposals with the Deputy Prime Minister.
- An EMO could include civil servants fulfilling the traditional private office role, special advisers and external appointees. The office could include support for policy formation, implementation, media, correspondence, relations with Parliament and so on, as well as the traditional private office function. As part of the approval process to establish an EMO, the PM and DPM will require that a member of the EMO focuses on implementation reporting also to the Head of the Implementation Unit.
- The success of the office will be dependent on all staff being fully integrated and working as one to deliver the Minister's priorities, as well as working closely with the rest of the department. Advice from officials in the Department must go to the Minister unaltered, although as now staff in the Minister's office will often comment on the advice.

My preference

- Referral to the Office of Auditor General for as inquiry into the current state of the provision of policy advice of a free and frank kind, the extent to which advice is sought and received by ministers, and the extent to which present practices – formal and informal encourage the generation, presentation and receipt of free and advice

Speaking truth to Power

- Speaking truth to power" has become a popular way to describe taking a stand, even when the people speaking truth to power are powerful themselves. Although the origin of the phrase is commonly ascribed to a 1955 book advocating against the Cold War, its appears to have been coined earlier by civil rights leader Bayard Rustin.
- The commonly acknowledged flashpoint for the spread of the phrase "speak truth to power" is the 1955 book, Speak Truth to Power: A Quaker Search for an Alternative to Violence, published by the American Friends Service Committee. As noted in Hot Pacifism and Cold War, this book received significant media attention during the first year of its publication.
- The foreword to Speak Truth to Power states that the phrase is from an old Quaker saying from the 18th century, but according to Paul Lacey, the Committee was not able to identify a specific source. Instead, one of the Committee members, a journalist named Milton Mayer, is said to have simply had the phrase come to mind spontaneously, and the Committee agreed that it sounded authentic to the Quaker tradition.

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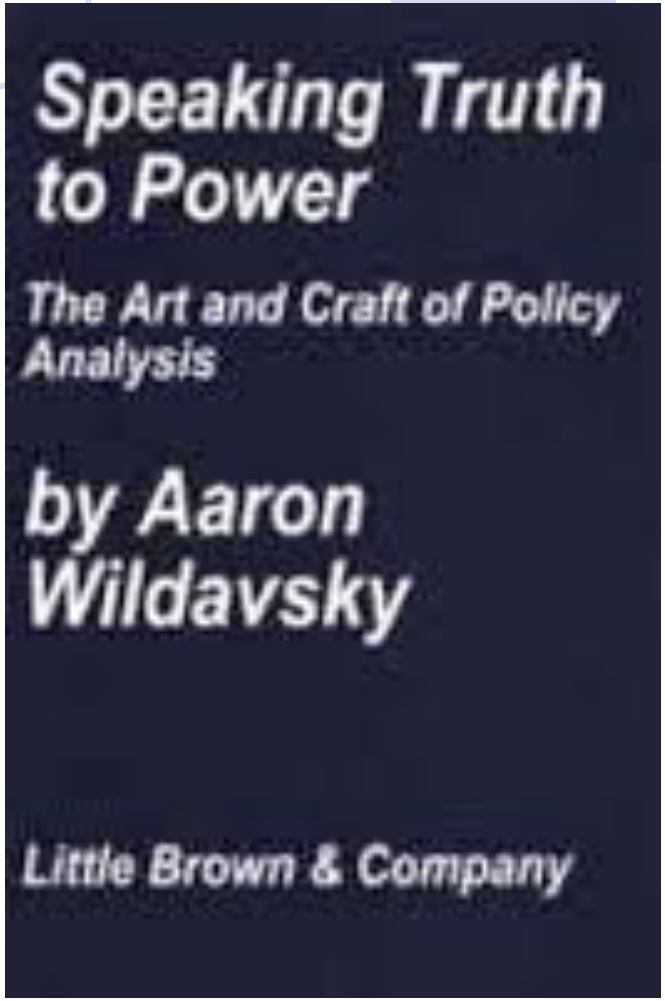
speak truth to power

a Quaker search for an alternative to violence

a study of international conflict

prepared for the American Friends Service Committee


Speaking Truth to Power
The Art and Craft of Policy Analysis
by Aaron Wildavsky
Little Brown & Company