

21 October 2014

The Role of Experts in Decision-making and the Council of Europe

Sources: Philip Coggan, *'The Last Vote: the Threats to Western Democracy'*, Penguin, September 2013¹; Matthew Thomas and Luke Buckmaster, *'Expertise and Public Policy: a Conceptual Guide'*, Parliament of Australia, October 2013; and other sources.

"The tensions between professional expertise and democratic governance are an important political dimension of our time."

Frank Fischer².

Overview

The recent economic crisis in Western Europe highlighted the increasing role of experts in decision-making. Indeed, over the last few decades, experts have gained much political influence in Western democracies by helping, and sometimes even replacing, elected representatives in an increasing number of decision-making tasks. Consultants **have been appointed to take over entire portions of decision-making**. It first became common already long ago in policy-areas where science and technology had a central role such as health, industry, food production and transportation. In recent decades, however, leaders' reliance on experts has spread widely from those areas to more political fields, boosted by the increasing appeal of the managerial sciences.

The successes and failures of such a transfer of executive power have now been assessed and scepticism is soaring among analysts and policy-makers about its consequences. Likewise, the electorate is questioning to a greater extent a way of doing politics that is widening the gap between the people and their representatives. As a consequence, reliance on experts has become a source of mistrust of institutions and the political class. Experts are perceived as unaccountable. The massive recourse to their skills has devalued the role of governments and spread the idea that any political issue – however complex it may be – can be sorted out through technical expertise. Expertise as such has been depreciated.

Hence, troubling questions arise. Can we really rely on experts' advice for any sort of decision? Can experts actually free political leaders from uncertainty and risk-taking? Can they be politically neutral? And, more importantly, is democracy threatened by this shift in policy-making duties?

An All-purpose Reliance on Experts

These developments are not new. Already in the early 20th century, John Dewey wrote extensively about the **tensions arising between expertise and democracy**. Recently, these tensions have intensified the perception of unfairness and a deterioration of social justice. As the public perception of the role of the Council of Europe (CoE) can be distorted by such developments, it seems sensible to analyse the consequences of this "role swap" between political decision-makers and experts on future strategies.

¹Philip Coggan, *"The Last Vote: the Threats to Western Democracy"*, Penguin Books Ltd., September 2013.

²Frank Fischer, *"Citizens, Experts, and the Environment: the Politics of Local Knowledge"*, published in 2000.

The grounds for this new distribution of roles are manifold. The pervasive presence of **science and technology** in modern society is the most obvious. In the hands of technologists and engineers, governance has become a stack of management problems. Practitioners and policy-makers operating in medium and low-tech fields, including finance, the economy, education, social and cultural policy, justice and migration, have faithfully adopted technocratic methodologies. Governments have created all kind of semi-independent agencies – called quangos – for almost every specialised purpose. The non-governmental sector has also witnessed a similar intrusion. Such change has benefited the whole sector, which has been professionalised thanks to the introduction of technocratic objectives on “excellence” and “client-oriented services”. Yet, this shift of methods has been carried out without carefully considering its political and social consequences. The long-term benefits of “service outsourcing” or “rationalising supply chains” have resulted in outcomes that are at best unconvincing, at least on a social level. We currently realise that, from an initial quest for **ability and competence, we are now trying to avoid control and dominance.**

Experts have thrived, likewise, because modern society has become **growingly complex**. As there is more to be known than anyone can learn, an ever growing specialisation has been emerging. Similarly, political representatives have also been pushed to **legislate across an ever-wider spectrum of areas**, many of which are substantially technical. In retrospect, a comparative account of any member state’s legislative production – let alone the European Union as a whole – shows the unfeasibility for any individual to handle that many issues and massive amount of rules on its own. Consequently, the demand for advice has grown, especially in the fields of the economy and justice.

Public confidence in the role of experts in public policy-making is decreasing also because **global information** is now available everywhere and always – i.e. internet and the media – and such an abundance has undermined expert knowledge. Similarly, **ever-growing constituencies**, a **rising division of labour** and an **accelerated pace of action** have continued to facilitate the power shift from decision-makers onto experts.

The Last Vote

In his book, Philip Coggan (who is also a columnist at The Economist) describes this drift as one of the most serious **threats faced today by democracy**. In his view, the problem is political and goes beyond practical issues such as the effectiveness of expertise, lack of opposing views, identification of experts or their impartiality.

Historically, arguments in favour of the use of experts in the public sphere have prevailed in political science. From ancient Greek philosophers to modern political scientists, many have defended an ultimate “epistocracy”, where the knowledgeable would rule the state. Yet, today’s **massive presence of experts in public decision-making, and the way expertise is used, appears to miss the democratic mark.**

Philip Coggan also points out that the delegation of power to the experts is a **double delegation**. Power passes from citizens to representatives and from those to the experts. This cascade of entrustment, added to other factors such as the increasing doubts on politicians’ ability to provide prosperity, has blurred ordinary control of the people over

decision-making³. Consequently, it has become increasingly difficult to **point out any wrongdoing**. The impression has grown – and facts tend to confirm it – that consultants are one of the new unaccountable elites usurping people’s power and corroding representative democracy.

Some problems do indeed derive from this state of play, perhaps the most important one is that in a democracy **decisions having a direct impact on people’s everyday lives must be debated**, if they are not directly consulted. Yet, experts have a natural preference to avoid public discussions because they have important stakes in political decisions. These individual interests have ended up creating a marketplace and a lobbying task-force in a politically sensitive sector. Furthermore, the demand for expertise has become artificial because “claims of expertise and expert claims produce both demands for expertise”⁴. The fact that this rationale creates the conditions for conflicts of interest to emerge is increasingly noticed by the public and drives the populist agenda. Democracy is *inter alia* determined by its ability to check authority and this ability is lessened by the technocratic approach.

Supported – not always on purpose – by the media, politicians are **spreading narratives about public affairs** that are increasingly successful at hooking public opinion. Helped by general public assumptions about the robustness of scientific and technological expertise, experts have created flaws in the economy. As some authors argue, “the analytical foundation for much of the global financial system is now built on the paid-for opinions of just seven firms – the Big Three rating agencies and the Big Four accounting firms. Ultimately, the extent of the widespread reliance placed on those seven firms is a product of human nature. [But] as recent events have demonstrated, that has been a very dangerous reliance.”⁵

Politicians do not call upon experts solely because of a lack of knowledge, as courts do. When measures to be taken are unpopular or simply when a societal problem goes far beyond any common-sense solution, the response of politicians has become to request expert advice. However, implementing such a decision involves at least some arbitrary aspects which must be considered: the possibility of finding an expert in the market-place, the profession specific rules and the skills of the buyer. It becomes therefore obvious that in particularly difficult fields and in certain circumstances, **expert opinions are not superior to non-expert ones**⁶.

Obviously, these are not arguments against using expert advice. Expertise has become truly crucial in today’s world. Complexity is a real factor. An outside expert analysis, oblivious to institutional struggles, does indeed facilitate decision-making and consensus-reaching. Innovation and technology are fundamental aspects of economic growth, and being well-off seems a crucial condition for democracy. However, although the technocratic innovative approach had an impact, it seems to have reached its limits.

³See United Nations Research Institute for Social Development (UNRID), *Technocratic Policy Making and Democratic Accountability*, UNRISD Research and Policy Brief 3, 2004, Geneva.

⁴See S. Turner in “Liberal Democracy 3.0: Civil Society in an Age of Experts”, 2003.

⁵Bert ELY, ‘Bad Rules Produced Bad Outcomes: Underlying Public-Policy Causes of the US Financial Crisis’, published in 2009.

⁶Examples are numerous in literature. See, for example, the enjoyable description of financial experts effectiveness by Nassim Nicholas Taleb in ‘*The Black Swan*’; the chronicles about the notable miscalculation made by two Harvard world-wide experts about public-debt limits to growth; or the example of development expertise flaws.

Global Governance

An area of concern regarding the growing influence of experts in public affairs is international and European governance.

Analysts point out that the widening gap between technocrats in Brussels and the general public is the major reason for the low turnout to European Parliament (EP) elections. Voters' trek to the ballot-box has been constantly decreasing: from 67% in 1980 to 42% in 2014⁷. International Organisations (IOs) too, it is argued, undertake action on a rationale that people do not understand and upon which they are not expected to have an opinion.

For the political extremes and the Eurosceptic parties, the European Commission and other IOs such as the Council of Europe are undemocratic bodies, cut-off from the concerns of the public. Actually, tackling this perception of **European policy being "fabricated" by unelected, unaccountable civil servants and expert committees by themselves** will be one of the main challenges facing the new EU leaders. The lack of accountability and transparency of the international institutions, given the size of their jurisdictions, is not surprising. The new concern is that it instigates a populist rhetoric with an increasing numbers of adherents.

The legitimacy of the IOs comes from the fact that transnational problems require international solutions, in particular concerning global problems. Even justice seems to be increasingly global. But when, for example, an executive cannot deport a terrorist because of their fundamental rights, many voters' standpoint is that their own democratic right is being overruled. Disturbingly though, the trend to denounce the lack of legitimacy in global decision-making is mounting despite the many efforts undertaken to show the link between the IOs and the people's concerns and despite a growing need of global governance.

As Philip Coggan states "the voters' fear is that power passes to a kind of permanent technocracy, consisting of bodies of permanent civil servants working in IOs and state agencies, making public opinion meaningless and emptying their vote of any possible influence". In such an environment it appears obvious that the technocratic approach will not ensure on its own a stable support for global institutions.

Is the Council of Europe Affected?

Expertise has deep implications on what the CoE does and how it does it. Like in other IOs, its core business is highly specialised. Its standards, mechanisms and programmes were, and still are, created by experts. Their added-value for the member states is difficult to explain simply, as its nature is highly abstract. It is impossible to make it evident through an image: when illustrations have to be found, the task is utterly frustrating. Some of its decisions are not broadcast – mostly because very few would listen – or cannot be explained solely by common sense. Additionally, its pronouncements do not serve a majority, but rather protect a minority, thus making them sometimes unpopular. This is especially true in a national political environment where quick satisfaction of the electorate's demands has become the leader's bottom line and where governments are made from super-majorities. Moreover, the CoE is trapped by the public regularly confusing it with the EU. For better or worse it would be classified by organisational analysts as an "Expert Organisation", due to its internal

⁷See www.idea.int.

“divisionalisation”⁸ and the uniqueness of its expertise, which makes it difficult to evaluate. For this same reason its future has appeared relatively secure, so it has developed a strong reluctance to change. Naturally, it has also developed a marked professional bias⁹.

Bearing all that in mind, a **reflection on how the CoE uses expertise should be undertaken**, on the positive and negative consequences this practice incurs. Of course specialised knowledge is central to the CoE: without it the whole European Human Rights Protection System would not exist. Nevertheless, likewise the European Court of Human Rights adapts its interpretation of the European Convention on Human Rights (ECHR) to cultural and societal changes, **assessing and readjusting the Organisation’s action should be a matter of routine**. An example of creative measures to be considered regarding **experts would be to track their networks** in order to map those who influence the CoE and its institutions¹⁰. An example of the consequence of being an expert organisation is strategic: **the CoE has neither executive mandates nor is it action-prone**, it has thus obvious reasons to increase co-operation with executive bodies – national but also international – to carry on implementation.

The current change in society’s perception of how human rights and democracy should be developed must trigger a revision of the way insiders envisage future human rights developments. The CoE’s **campaigning strategy** could, for example, be shifted from an awareness-raising approach – for which the Organisation has limited critical-mass – to an outreach strategy aimed at selling “Human Rights Advocacy by the CoE” to those listening with scepticism or persistent opposition. How people understand the Organisation’s outcomes, its political neutrality and its core principles is of the utmost strategic importance for the future of the Organisation. And it may also become important for Europe at a time when a prolonged economic stagnation has eroded public support for human rights, democracy and the rule of law.

As a result of the magnitude of the problem, not much can be done to change the perception the general public has of the CoE. However, it seems crucial to integrate a transversal objective to **“Connect with the People”** in every single delivery of expertise made by the different sectors of the Organisation.

The Organisation relies on external expertise, as well as its own staff. In 2011, for example, the Organisation employed around 9,000 experts, consultants and specialists who carried out 16,000 missions on behalf of the Organisation. The Parliamentary Assembly (PACE) Resolution 1923, setting up the criteria for the selection of experts in a number of key monitoring mechanisms shows where the Organisation stands in terms of expertise management. **Should a strategic document be proposed for debate in the CM?**¹¹ The answer should be yes, although the correct approach to the discussion must still be defined. It would be desirable to include ways to make apparent the link between the specialised

⁸See, for example, the seminal book by Henry Mintzberg, *Power In and Around Organizations*, 1983.

⁹See http://en.wikipedia.org/wiki/Law_of_the_instrument.

¹⁰See the work developed by www.alter-eu.org. Although it would be worthwhile to consider, a discussion on lobby activities in the CoE is left for a future paper.

¹¹Except for the matter of tenders, see Committee of Ministers Resolution Res(2004)25, and administrative procedures, the CoE has no political strategy on experts.

intergovernmental work and society – increasing therefore the CoE’s accountability and inherent legitimacy.

What Can Be Done?

The request from PACE, made in the above-mentioned Resolution, to be more closely involved in the selection of experts in the monitoring bodies is a step in the right direction, although it further complicates procedures. At the heart of the legitimacy of the CoE are the choices made since 1950 by the Committee of Ministers (CM) about which specific rights should be protected and when. These choices have been legitimised, politically by the member states and legally by the Conventions. Yet, the Organisation has only been accountable for the above-mentioned choices to the CM, whose members are both beneficiaries and supervisors in the name of elected governments. Member state consensus and the tacit approval of the population have provided a robust legitimacy for the Organisation’s mission.

However, these decisions have an inevitable arbitrary core aspect – which rights were developed when, and by which interpretation of the ECHR – that can be misunderstood and are today distorted for electoral ends. On making such decisions, the internal and external experts have surely had an influence on the CM, although this has remained unexamined.

The role played by experts in the development of standards, monitoring mechanisms and assistance is certainly being shaped by the decisions taken on **what should and should not be disclosed and whose voice should be heard**. Re-assessing this important political factor could also be crucial in the future.

There is no urgent action to be taken from this analysis. However, a reflection on the **credibility of CoE actions** and an assessment of the **leeway left to experts in decision-making** appears to be a consistent future line of action. In addition, an assessment of the possible unwanted **side-effects and strategy errors made by experts** would be relevant. **Activities aimed at raising the administrators’ and delegates’ awareness** could also be proposed at the appropriate time.

The problem of the democratic deficit in the recourse to expertise has been addressed in societies through improving public education and the right to access relevant information. Similarly, democracies resort to **expert contestation procedures** to attempt to take the best decision possible, especially when the issues discussed are normative or evaluative. This could inspire proposals for such processes to be adopted by governments and institutions.

As far as we know, the CoE has never carried out direct consultation in order to evaluate public support for its activities. Yet, nothing prevents it from doing such a thing. As the weight of public opinion on the future of the Organisation seems increasingly important, an **agreement with a polling research agency** could offer options for enhanced impact.

It seems important – beyond the usual creation of *ad hoc* working groups, good-practice documents, reviewed regulations and complementing the reforms already undertaken – that the CoE **defines an ambitious goal for the assessment of expertise**.

A deeper reflection on the use of expertise and the CoE as an expert organisation is totally relevant. But it will not be an easy task. It has been said that “Expertise poses a problem that goes to the heart of liberalism. But it also goes to the heart of every ‘participatory’

alternative to liberalism and, particularly, to the normative ideas of ‘civil society’ and democratic participation¹²”. An increased awareness of all CoE policy-makers is crucial.

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¹²See Turner above.