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**Consoling Thoughts about Tyranny
at the end of the Age of Experts**

Presented at the Workshop
“Guiding Societies: Experts and public choices in the 19th and 20th century,”
(European University Institute, June 1st, 2002)

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Introduction

Martin and his friends were missing one person today who felt ill, in Paris, at short notice. That was somewhat inconsiderate since the working group had gone through a great deal of trouble to put together a stellar cast. Then Martin had an idea. Already familiar with the writings of Ivan Illich on Disabling Professions and knowing Illich was in town he proposed that Ivan speak instead of the missing speaker. What they did not know is that he was traveling en masse with some of his collaborators and friends. What they did not expect is that he would command me to do their bidding. It is true that I am younger than Professor Illich and also much less wise. Therefore, I thank Martin and his friends for graciously accepting less than what they bargained for. In recompense, I can assure them that though the argument I offer here today is entirely my fault, whatever merits it contains are due to my conversations with Professor Illich and friends. Of necessity my argument today is stripped bare of most, if not all, of the usual academic flourishes. The footnotes and qualifications are few, which demand that the key steps of the argument carry the full burden of proof. At the end of 6 such steps I hope to lead you to consoling thoughts about tyranny.

The argument aims at a political analysis of bureaucracies and professional associations. It unfolds as follows: first, I comment on the definition of tyranny given by James Madison in the Federalist papers. Second, using this definition as a criterion, I show that the administrative apparatus of the state, by the late 19th century in America, can be understood as tyrannical. Third, the same accusation of tyranny can be made of the professional associations that sprung up within American civil society during the late 19th century. It is widely accepted that experts, whether in the administrative apparatus of the state or in professional associations, comprise the bureaucratic technocracy of contemporary polities. At the end of the third step therefore, I hope to have proved that they are minions in a tyranny. The fourth step will be to comment on the challenges to the rule of experts that reached a high pitch during and after the 1960's. The singular consequence of that challenge was that civil servants and professionals lost their moral authority, founded as it was on their reliance on scientific objectivity, political neutrality, and superior know-how. Ordinary citizens grew suspicious of expert claims to the exclusive prerogative to guide society on their behalf. The end of the age of experts in this sense ushered in the age of the autonomous decision-maker. In the fifth step, I sketch the figure of the 'decision-maker,' which is what ordinary people are increasingly trained to become. The science of decision-making transforms what was once common sense and practical reason into a technique based on administrative procedures and scientific categories. It is by now well known that experts encourage people make their own decisions. However, an all-important fact is being drowned out in this rediscovery of autonomous decision-makers: while experts have lost their moral authority they still retain their legally enforced tyrannical powers. In the last step of my argument, I suggest that the end of the age of experts should not be mistaken for the age of freedom. Autonomous decision-makers are not free citizens. Rather they free themselves from the rule of experts by expertly managing themselves. If therefore,

the legal power of experts is ignored since their moral authority has waned, then the hope for a legitimate constitutional democracy must also be laid to rest.

Tyranny

Today, the word ‘tyranny’ evokes images of Louis XIVth, Sultans, Stalin, Pol Pot and, perhaps Saddam Hussein, and other minor despots. The word ‘tyranny’ has a banal use as well: just the other day, an article published in the Economist carried the phrase “the tyranny of cell-phones in Italy”. Given these as the range of its use, it seems safe to say then that ‘tyranny’ is a word that does not mean much to citizens of liberal democracies today.

‘Tyranny’ however was a staple of political thought from its very beginning. One might recall Plato’s visit to Sicily in the attempt to educate the tyrant Hiero or of Montesquieu’s Spirit of the Laws. That tyranny does not carry much political currency may suggest one of three possibilities: the first possibility is that liberal democracies have been so successful in rooting out tyranny that the term is no longer useful except as a word which refers to ancient history or foreign rulers. The second possibility is that inhabitants of liberal democracies, fully assured of their freedom, no longer feel the need to exercise vigilance against threats to their liberty. The third possibility is that the original thinkers of liberalism understood something about liberty that people today have forgotten. I take this last possibility seriously and will speak to it later in this talk.

The founders of modern liberal political thought were understandably explicit about what constituted tyranny because it was what they most feared—the tyrannical or absolutist monarch. For liberal thought, the legitimacy of state power was rooted in the proper functioning of two institutional mechanisms: i) the exercise of a more or less popular vote; and ii) the separation of governmental powers. This was, roughly speaking, the judgment of John Locke, Montesquieu and the founding fathers of the American Constitution. While voting as the first condition of a legitimate state is all too obvious to merit further comment, except perhaps that a good number of modern citizens do not do it, the second requires some clarification. The requirement that there be a separation of powers between distinct departments or branches of government as a condition for the rule of law reflected the fear, common to all these modern political philosophers and thinkers, of the “king who stood as a judge in his own cause.” The phrase is due to Locke but it refers to a condition that is easily grasped even today: if the law giver were also judge of its applicability then there is no guarantee that the ordinary citizen can be protected against the arbitrary rules. This theorem of institutional design to ensure the legitimacy of rule is of the first importance. That fact is obvious when the legitimacy of EU administrative committees these days is cast in terms of the separation of powers.

Be that as it may, in designing the proper institutional conditions for the rule of law, modern political thinkers insisted that the three powers of government had to be exercised by separate and distinct departments or branches. These three powers of government are well known as the legislative; the executive; and the judicial.¹ The federalist papers were some 85 articles appea-

¹ In passing, I note that it is sometimes now claimed in political science that the three branches of government need only check and balance each other to ensure the legitimacy of rule. That is mistaken, since the notion of checks and balances presupposes the pre-democratic division of society into heterogeneous

ring in the New York papers at the rate of about 2 a week for a year between 1787 and 1788. They were all signed by Publius; the pen name for three men: James Madison, Alexander Hamilton and John Jay. The federalist papers constitute the written record of the reasoning supporting the American constitution—which unlike any other before it, was a blueprint for the invention of a nation created by ‘deliberation and choice’ rather than by ‘error and habit.’ Consider then the definition of tyranny proposed by James Madison in the Federalist paper #47:

“The accumulation of all powers, legislative, executive, and judiciary, in the same hands whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.”

I want to briefly make three points regarding this definition. First, by this very clear definition of tyranny, it is not, in principle, confined to Turkish sultanates or cell-phones. Moreover, such a definition is not peculiar to the American constitution, since both Locke and Montesquieu, in one way or another support it. Indeed, it is unquestionably one of the two pillars by which rule is legitimated in liberal polities. Second, tyranny is a political condition resulting from the abuse of the functions of the state. Legitimacy is a matter of how the powers of government are exercised. Accordingly, a tyranny may well be an elected majority or a private association that captures public powers; for what is at issue is the accumulation of governmental powers in the same hands, regardless of whether such hands are private or public. That is, by deliberately designing institutional to safeguard against tyrants, liberal democracies are made vulnerable to tyrannies without tyrants. The third point is that the trivial observation that governmental functions cannot be sharply and neatly divided between different agencies or departments does not offer a sufficient objection to the scheme proposed by Madison. The necessary and sufficient condition for a tyranny is not whether the three powers are more or less shared between different agencies, but rather if a single body holds a monopoly over all three powers. The consequences of such a monopoly for liberty can be well-imagined. To paraphrase Montesquieu, “Wherever the three powers are united in one body or agency, there the people will groan under the most dreadful oppression.”

Administrative Agencies

I have spent some time on the question of tyranny since it is unfamiliar to most people who come about 5 generations after that of Madison. Since the remaining 5 points are, I suppose, more or less familiar to this audience, I will not dwell as long on each. In about 1868 or so, while the first transcontinental railway lines were being built in America, a question came up to the law courts. The question was based on the following fact: railway cars powered by coal-fired steam would occasional cause the fields of corn through which they passed to catch fire. A fiery piece of coal or a spark resulting from the striking of iron wheels on rails would set the farm of a gawking farmer ablaze. The question posed to the law courts concerned how much money, if any, should be owed the farmer for his loss? A related question was whether the railway companies, if held liable for the damages caused to the farmer, could charge its passengers by changing the railway rates. Within 5 years or so, a new commission was for-

classes—a condition that is manifestly not the founding assumption of liberal democracies--viz. the equality of all men in nature and a fortiori before the law.

med in the United States: called the Interstate Commerce Commission, it was charged with setting reasonable rates and formulating rules regarding the laying of railway lines, the purchase of fields surrounding such lines, the minimum distance between cultivable land and the lines and so on. The commission was staffed by experts, so called—men of science and learning—soon to be trained civil servants, what we loosely call bureaucrats--trained in law and the then emerging field of economics-- who relied on financial and operational calculations of the reasonable rates of return to investors for determining appropriate rates.

What is critical about the ICC is that it was one of the earliest, if not the first administrative agency in North America to establish administrative rules that carried the force of law, to oversee the implementation of these rules, and crucially, to serve as the *de facto* court of last appeal to which the ordinary citizen could turn to be heard for grievances against its rules. A more germane example today is the Securities and Exchange Commission—because of the financial scandals that have rocked Wall Street and the bourses in Europe. The SEC is the agency that is authorized to stipulate the standards of accounting followed by public companies and to enforce these standards by administrative tribunals and judgments. Now to a whole bunch of constitutional lawyers and of course to me as well, such an administrative agency that holds all three powers in the same hands, sounds suspiciously like a tyranny as stipulated in the Federalist papers.² Let me emphasize three points about administrative agencies:

First, they comprise the essential bureaucratic infrastructure of any advanced industrial liberal democracy. The envied smoothness and ease of daily life in advanced industrial democracies is due to a technical infrastructure that is expertly ruled and managed. From agricultural produce to industrial products, from the network of highways to that of sewers underground and airplanes routes in the sky; from telephones and bread to restaurants and factories; the production, regulation, standardization, and distribution of all these fall under the supervision of administrative commissions or committees. For those of you in Europe, according to the 1997 Financial budget of the EU, there were over 400 expert committees largely responsible for administrative rulemaking (known as “comitology”).

Second, the rules and regulations flowing from these administrative agencies comprise what can now properly be called scientifically based public policy: these are expertly devised instruments that take into account the latest scientific findings, and based on supposedly carefully calibrated costs and benefits. They are cast in and use what Peter Berger of the EIU and his friends call “the little tools of knowledge and power.”

Third, the independence of administrative agencies is rooted in the logic of promoting the public interest.³ This justification is consonant with their administrative character: like minis-

² Gary Lawson, “The rise and rise of an administrative state”, *Harvard Law Review*, v.101, 1994; See also Henry Friendly, “The Federal Administrative Agencies,” *Harvard Law Review*, v.76, 1962 (a three part essay).

³ The idea of the public interest is relatively modern. Its history can be contrasted with the notion of the ‘public health’ that oriented public decisions until the mid-18th century. Contemporary society is guided by regulations that appease the public interest. For example, “The Regulatory Philosophy: Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people. In

ter of old, they supposedly serve the public to increase its health, security and happiness. Experts who protect people from themselves run these agencies, commissions, and committees. Experts are apparently necessary because they know more on a given issue and therefore cannot be directly controlled by relatively ignorant legislatures acting on behalf of the common man. Finally, though I cannot develop this point further, the scientific nature of administrative rulings is not independent from the expert façade of the civil servant. His self-effacement is in accord with the objectivity of his task and the neutrality of the manner of his undertaking.

Professional Associations

For my third point, I will not speak of individual professionals. Rather, I address the political status of professional associations. Now, it is clear that the so-called professionalization of society that sociologists and historians have long claimed for the 20th century is mirrored by the explosive growth of professional associations. Professional associations are neither guilds that protect the monopoly rights of professionals through licensing laws nor organizations that fashion professional codes of ethics to protect the public from the hubris of its members. Rather, the professional association is to be understood, functionally, as an administrative agency within civil society. That is, professional associations fulfill the Madisonian and therefore liberal criterion of a tyranny. That I claim such a thing may be both offensive and/or incredible to some. But let us consider the matter closely though not at length.⁴

Let us consider the accounting profession as an exemplar because I know something about it. The SEC has delegated its powers to the professional association of accountants who is now responsible for setting the accounting standards that economic entities must adhere to.⁵ This power is comparable to laying down the law since setting standards also entails defining what is permissible and what is not. Moreover, it is a criminal offense for publicly traded corporations to publish non-standard statements. The accounting profession then through its licensing laws permits only certified accountants to audit these financial statements. This is equivalent to the executive power of government. Since the accountant is certified at the pleasure of the accounting association it follows that the same hands that legislates the accounting standards exercise the executive power. Finally, should there be any challenge to the adequacy of the audit done by some accountants, only other accountants can appear as expert witnesses to

deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.” (Executive Order #12866, Regulatory Planning and Review)

⁴ For a lucid introduction to the political significance of professional associations, see Ivan Illich, Disabling Professions (Marion Boyars 1977) and Jethro Lieberman, The Tyranny of Experts (Walker and Co, 1970)

⁵ There are the inevitable qualifications that I would insist on in an academic paper. For example, the much discussed antagonistic relation between the administrative agency (SEC) and the professional association (accounting association) overlooks the questionability of delegated powers and the structural similarity between the SEC and the profession. Therefore, in general, the central argument on which I focus here would not be fundamentally affected by such academic clarifications.

attest to the facts. Now, an expert witness is a hearsay witness in this and related cases, since as expert he simply confirms what he has been taught to say is the case. Finally, if some concerned citizen should challenge the standards that were set up in the first place, the charge to revise or otherwise modify the rules, once again, falls fundamentally upon the profession itself. This is the judicial function of government exercised by private associations. As Madison as pointed out, just because all powers of government are accumulated in one hand that happens to be self-appointed or nominated does not make it any less of a tyranny.

What I have described about the accounting professional association is true, by and large, of all professional associations whether or not they are fronts for administrative agencies. For example, the medical association prescribes what constitutes sickness and health; it authorizes its members to provide medical services and finally stands in judgment over whether a particular medical intervention has led to death or cure or if a particular definition of illness must be changed. I leave it to your imagination to figure out how this argument applies to architects, engineers, social workers, podiatrists and beauticians.

What is central to this analysis of professional associations is to notice its parallels to administrative agencies. Both have the adopted the same institutional design that Madison has warned against. The questionable legitimacy of both is rooted in their claims to scientific management—professionals and civil servants are applied scientists. Professionals like civil servants can be thought of as the lubricants that maintain the engine of advanced industrial liberal democracies. Professionals and civil servants and *a fortiori*, professional associations and administrative agencies justify their existence by claiming to service human needs and to solve social problems. Unlike bureaucrats, the professional gestures to the public interest is somewhat feeble since the public interest is often too abstract for the kindly hearted professional who deals directly with far smaller segments of the population. Children at risk, the underclass, the illiterate and so on are the staples on which professionals feed—in contrast, administrative agencies concern themselves with electricity, water, agriculture and industry. The professional however, is just as self-effacing as the civil servant: he wears his white coat propped up by the objectivity of his science, the neutrality of his nostrums, and the methodological indifference to persons.

We are at the end of the third step, where I had promised you a glimpse of tyrannical institutions in contemporary liberal democracies. If you agree that the term experts can be applied to both civil servants and professionals, and you agree that experts in this limited sense govern contemporary society, and finally that administrative agencies and professional associations meet the criterion of tyranny as described in modern liberal thought, then you will agree with me that modern rule is, for the most part, tyrannical. Or more precisely, that the virus that liberal democracies nurtured from its beginning now infests them: that of tyranny without tyrants.

The Challenge to Expert Rule

I am now on point four of my argument, which is about the challenge to the rule by experts. You will notice that each point gets progressively shorter. Now they get positively brief. I have one eye on the clock and one on what you are familiar with already. You are fully aware

of this point for as one of the friends who invited me today said, “who can believe a doctor today?”

A number of forces are at work in diluting the stature of the professional and civil servant. Perhaps most significant of these that affect the professional and the bureaucrat is the rediscovery of the market as a beneficial, and as usual, invisible force. Not only is the state and concomitantly, the bureaucrat under ideological threats but equally, the professional has lost his sheen. That the welfare state is on the run is too well-known to comment on after Thatcher-Reagan and their political progeny. That there is little in the way of a systematic critique of neo-liberalism is perhaps best evident in the prize announced in the Le Monde Diplomatique some years ago for an essay offering an alternative language of politics. I do not know if that prize was ever handed out and I'm not holding my breath. As for professionals, the story is much the same, if less evident. Doctors nowadays pay obeisance to actuaries and accountants. Teachers and university professors fear for their tenure and independence to research and teach what they think relevant. Lawyers are advertising their services and accept fees on the contingency that they make a buck for the client. Those in the ministry are dancing to rock and rap music as a way to increase the flock and the continued flow into the coffers.

The market is king, the client has mutated into a consumer, and the professional increasingly sells not only his labor in the marketplace but also accepts the right to be commanded, just like a common laborer. Indeed, it used to be said of professionals that they do not work to receive a pay, but are paid to work. That was perhaps true some three or four decades ago. Today, they are workers barely one rung above on the social ladder from the ordinary guy on the street.

It seems fair to say that, these days, the expert has been replaced by generalized expertise. Where once the expert commanded moral authority by virtue of his learning-- though long since not liberal or classical-- and by virtue of his rectitude and self-effacing stance, this is no longer the case. An abiding suspicion of the motives of the professional combined with the open market in professional certificates to have permanently tainted the experts' claim to moral authority. Experts are no longer automatically allowed to prerogative to decide for us— even if they say it is for our own good. This sea-change in the attitudes towards the expert— whether professional or bureaucrat—is perhaps the one lasting result of the cultural revolutions of the sixties and following. It appears that the struggles for civil rights, for women's rights, for rolling back the power of disabling professions have coalesced into the figure of a decision-maker—a designed chooser.

The decision-maker.

I am now at the fifth point of my argument. So far I have tried to convince you that administrative agencies and professional associations are tyrannies in the sense specified in the political theory of liberalism. I have further suggests that, however, bureaucrats and professionals have lost their moral authority to guide society as all-knowing experts. To speculate about what may happen in the future is an idle and profitless task. Instead, I here draw your attention to an emerging figure that I call –‘the decision-maker’ as one that fills in the political void left by the absconding expert. In liberalism and, despite the intention of Edmund Burke and his fellow travelers, the expert was never well-liked. He was tolerated so long as his claims to

neutrality and objectivity bore fruits in the way of progress. The expert was always susceptible to the charge of being undemocratic --though very few have charged them as I do as being minions of tyrannical institutions. Nowadays, there is a widespread belief that ordinary citizens can and should make decisions for themselves. The autonomy of the citizen is a staple of liberal thought. That autonomy also implies the political maturity to be decisive is a staple as well of enlightenment philosophy. Yet, in the light of the contemporary decision-maker, one might be forgiven for looking back with nostalgic fondness at the innocence with which at least one philosopher of the 18th century boldly announced that man was by then mature enough to gain knowledge of the world and himself without the aid of intermediaries.

The decision-maker cuts a curious figure because it is a bastardized amalgam of philosophical maturity and technical immaturity. Consider the following examples: the contemporary student who is called an active learner (no longer merely told what courses to take etc); the patient without whose informed consent medical procedures would come to a standstill; the criminal who is thought of as deliberating rationally on the costs and benefits of his potential crime; the empowered worker and employee who decides how best to increase the profits of the company; and so on. You get the drift I'm sure, --people are no longer told what to do; they make their own decisions. Yet to make these decisions, they must be taught to think in scientific categories and to use bureaucratic procedures. That is, the decision-maker is mature enough to make autonomous decisions but requires to be trained, like a child, to that task.

Now, a careful attention to this rather widespread phenomenon would begin by noting that the terms 'decision-making' and 'decision-maker' imply that decisions can be made, much like a chair is made by a carpenter. Instead of acting decisively, people are taught to make decisions. If decisions are constructed, it might be reasonable to ask, What are the materials used for this particular construction? There is a technical and, dare I now say, scientific field called decision-theory. In that field, the materials used for making decision are statistical constructs like risk, economic constructs like utility, accountants' concepts like costs and benefits, scientific constructs such as pregnancy, target populations, poverty, environment, and so on.

A vivid example of such decision-making is the subject of my friend Silja Samerski who shows what an ordinary pregnant woman must undergo to decide whether or not to have a child. Measures of the assorted risks of diverse genetic and other diseases of the unborn child comprise the statistical profile of a sample of pregnant women that is professionally imputed to her innards. She is now the unwitting recipient of an object to which she must attach the value of her own preference for deformed and abnormal children. The doctor, the geneticists, the counselors and all the kings professionals cannot tell her what to do—that she must decide for herself.

I hope that the general point is clear: decisions, a term that emerged from the managerial, military-industrial complex in the post war years, is what people are now encouraged to make for themselves. No wonder experts can rest easy with their supposed decline in moral status: true they do not make decision for the people, true they are no longer credible guardians of society. But, ordinary people are increasingly trained to treat themselves as civil servants and professionals once did. What experts did to you, you now do to yourself. This sociological event has many other forces that crystallize it: a schooling that trains people into being decision-makers, the popularization of science, the endless propaganda of financial and economic

categories and so on. Be that as it may, what concerns me here is that the coming together of the liberal political category of the autonomous individual and the techniques of decision-making, has forged a seemingly iron cage around the minds of ordinary people: they believe that their freedom lies in transforming common sense and practical reason into a technical act whose components are only too willingly sold to them by the experts of old.

So the autonomous decision-maker may well replace the expert who has lost his moral authority. People may well come to believe that they are free because they increasingly make their own decision. And those do-gooders who promote participatory forms of decision-making may well bask in the glow of supporting the little man in the crowd that experts once conditioned. But it could be equally possible that the autonomous decision-maker further entrenches, in an unprecedented way, the hold of a heteronomous way of life: heteronomous because riven through and through by the scientific categories and administrative procedures of experts. If this last is true, then celebrating the end of experts because they have lost their moral authority may be a case of breaking out the champagne too soon. Of course, many argue, and especially post-modern types, that there is no difference between those who make decisions and those who are decisive. Facing this argument or shall I say assertion, I cannot say much more than to repeat Plato who spoke of two kinds of measurement: arithmetical and proportionate. Recognition of the latter cannot be programmed or enumerated as that of the former. But it is entirely possible that programmed reason can destroy the sense for what is appropriate. If this sad event comes to pass, then nothing more can be said.

Consoling Thought about tyranny at the end of the age of experts

Now you gather why I titled my talk the way I did. The recognition of experts as the minions of a tyranny without tyrants presupposes democracy and the possibility of the liberal citizen. When experts are forgotten as such, particularly in the current celebration of autonomous decision-makers, it may not only deepen the hold of expertise and destroy the hope for a constitutional democracy, but desiccate the ground for liberty. The end of the age of experts does not necessarily usher in the age of freedom. It may well bring forth masked experts and bureaucrats. The citizens of old now wear the mask of experts or executives who manage themselves.