

The state of the Union under a failed Constitution

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A review of Federalists 86 to 100. An explanation of how the legal profession became so corrupt and why it continues to tyrannize the Nation with 'a clear conscience'. A rebuttal to the proposition that the profession's solution of 'educating lawyers' will resolve the problems created by the Nation's legal profession.

In 1995 this writer undertook to continue the writing of the original 1787 Federalist Papers. That was done to bring the following to the attention of the American people: 1. An analysis of why the Constitution was written; 2. An explanation of how the Constitution's *separation of powers principle* was designed to protect the people from tyranny arising from any '*same hands faction*'; and 3. An explanation of why the Constitution failed to protect the people from the '*same hands*' faction known as the legal profession. To that end 15 Federalist Papers (Numbers 86 to 100) have been written. **Summary of Conclusions of Federalists 86 to 100.**

Federalists 86 to 100 argued and concluded the following:

- That the legal profession is the most corrupt profession in the land and unconstitutionally controls all government.
- That there is probable cause to believe that any member of the legal profession who holds elective office in either the legislative or executive branch of government is guilty of treason.
- That as a result of this control and probably treasonous behavior, the Nation has been and continues to be very seriously harmed in virtually all areas of its life,
- That unless the members of the legal profession are removed from this unconstitutional control of the Nation's government it will not be long before the Nation will go down, and its democratic form of government lost.

It is not surprising that such assertions may be regarded with skepticism by many well intentioned and even highly intelligent people.¹ An explanation is required for the seemingly incredible proposition that the men and women who are sworn to protect the people from tyranny by upholding the Constitution, *are themselves responsible for tyrannizing the Nation.* **Enormous power, unfettered ambition and psychological dysfunction as explanations for the legal profession's corrupt and tyrannical behavior.**

Most men are susceptible to the blind pursuit of unfettered ambition. It is

primarily Society, acting in its own collective best interests, which provides brakes to each individual's pursuit of this vice. A just Society also expects each individual's conscience to provide some obstacle to anti-social acts. When an individual or a group attain sufficient power to destroy Society's obstacles to their unfettered ambition, all that remains is each individual's conscience. When the psychological dysfunction of *extreme cognitive dissonance*² in a particular individual is added to unfettered ambition, the obstacle of conscience disappears. Then there is *nothing* left to prevent that person from giving in to the worst of his nature. That is what has happened to many members of the legal profession. Their effective control of all government has provided them with enormous power. That is what began the insidious process. Later, extreme cognitive dissonance surfaced in many lawyers and destroyed in them the last obstacle to corruption. These lawyers became incapable of distinguishing between right and wrong on issues relevant to either justice or their professional obligations to the Nation. Many of these lawyers hold high office. They assert that the disastrous legal system they impose on the Nation is good. Due to their psychological dysfunction they feel neither remorse nor guilt, nor do they see any need for change. At the other end of the spectrum are the more honest lawyers. These lawyers still have functioning consciences. They are not afflicted by *extreme* cognitive dissonance which quiets the soul by transforming the perception of evil into good. They are afflicted with a sufficient level of cognitive dissonance *and the discomfort that brings* to cause many to leave the profession. These are the lawyers who 'run from the law', often at considerable financial sacrifice. Others stay, but pay a heavy price for remaining in the form of higher levels of depression, drug and alcohol abuse, than the members of any other profession. The above explanation shows how a once learned profession has sunk so low. Nevertheless, it is always important to remember that within that profession there remain many honest men and women trying their best to correct the problems they perceive. They are the most likely to come to the aid of the Nation. They need to do so very soon for there comes a time when as Dr. Martin Luther King put it: *Silence becomes betrayal*. **Rebuttal to the legal profession's latest 'solution' to the problems it creates.** Even among the most honorable of those in the profession there remains a need to *accurately perceive the problem*. Otherwise the proposed solutions will not work. There are three types of 'solutions' that can be proposed for any problem. Useful solutions, useless solutions³ and *worse than useless solutions*. A useful solution works. It resolves the problem. A useless solution does not work. It fails to resolve the problem. But at least it fails quickly. *A worse than useless solution* not only fails to resolve the problem, but its failure is slowly perceived. Thus while it is being tried, it provides the false sense of security that a problem is being resolved. Meanwhile the problem continues to fester, sometimes beyond the

ability of *any* solution to resolve. For example a woman suffering from breast cancer is told that a mastectomy is essential to save her life. *That is the only useful solution.* The offer of a liquid 'concoction' that will allegedly cure her cancer in 48 hours if she drinks it is *a useless solution.* But at least she will know within 48 hours⁴ that the 'solution' failed. Her condition will not yet have materially deteriorated. She can still be saved. On the other hand if she is told that the 'concoction' will cure her cancer, but only over an extended period of time, that is a *worse than useless solution.* Because by the time it is clear that the solution is useless, she will either be dead or her condition will have deteriorated beyond the ability of any *useful solution* to save her life. **The legal profession's worse than useless 'solution' to the problem of tyranny.**⁵

Problem resolution involves several distinct aspects. These are: 1. Recognition that a problem exists; 2. Identification of the source of that problem; 3. Identification of a useful solution and 4. Implementation of the solution.

1. Recognition that a problem exists. John Dos Passos in *The American Lawyer*⁶ recognized as early 1907, that government was controlled by lawyers, that lawyers were corrupt and that they used their office primarily for personal gain, that they did not exhibit a sense of duty, that many practiced law only to defeat and evade the legislative intent and public policy, and that if this activity continued the Nation faced grave danger. Harrison J. Sheppard⁷ is an attorney and Fellow of the American Bar Association. In 1997 he expressed a view that appears to be shared by many honorable members of his profession which says much the same thing. So it appears that there is consensus on the fact that *a major problem exists.*

2. Identification of the 'source' of the problem.⁸ Dos Passos identified the following as the 'sources' of the problems. 1. Deficiencies in education and instruction for lawyers; 2. The emphasis in law of form over substance; 3. The excessive numbers of lawyers; 4. Lack of manners among lawyers; 5. The advent of wealth over intellectuality, refinement and literary culture as the sole criterion of social position; 6. The change of law into business; 7. Increased litigation; 8. The lack of impartiality of judges; 9. The creation of contingency fees; 10. The absence of two classes of lawyers, solicitors and barristers; and 11. The absence of gowns or appropriate badges in court. Sheppard identified the source of the problem as a lack of education by lawyers on the need for non adversarial problem solving techniques.

3. Identification of a 'useful' solution. Dos Passos gave up totally on 'reforming' *his own* generation of lawyers. He said: *An old and pernicious system cannot be extirpated, as one would raze a house, and build a new one in its place. Therefore it would be useless to attempt to reform the present*

generation of lawyers, as a whole As a long term solution to correct the problems that he identified, he recommended the following: Specific reforms in the education of lawyers and the greater use of civility; a limitation on the number of lawyers; reform of the contingency fee laws; making law a profession of refinement and culture and not a business; a decrease in litigation; two classes of lawyers; gowns for lawyers in court; and greater scrutiny of judges.

Sheppard's suggested recommendations involve: 1. Promotion within law firms and government agencies of a problem solving model of legal practice; 2. Continuing legal education in negotiation, civility and conciliation skills; and 3. Reform of legal education emphasizing problem solving non adversarial techniques.

Analysis of the legal profession's problem solving approach.

It is clear from Dos Passos' book that all of the problems perceived by the honorable members of the legal profession today were in existence in 1907. The problems have become much more severe since then. Dos Passos' solutions were in *his own view at best not going to work for at least a generation*. It is reasonable to assume that some parts of the solution were at least proposed or tried by the more honorable among the profession. What is clear is that whether or not they were tried, things have become materially worse. Thus the solutions if they were tried, have not worked and may even have delayed effective reform. Sheppard's position appears to be addressing the same problems and proposing essentially the same solutions. The results will be no better. Let us see why. *The proper identification of the source of the problem is essential to discovering its solution*. Confusing the symptom with the source will lead to a *useless or worse than useless solution*. Thus for all the years that AIDS was unidentified, doctors mistook other diseases for the sources of illness of patients who had AIDS. Prevention of AIDS only began occurring after the medical profession became aware of the existence of AIDS. So it is with the problems created by the legal profession. Neither Dos Passos nor Sheppard nor any other published views of the legal profession, correctly identify the problem as *tyranny*. Tyranny specifically identified by James Madison in Federalist # 51 as: *Control by a same hands group of the powers of the Legislative, Executive and Judiciary Branches of government*. Tyranny that is only resolvable through the removal of all lawyers holding elective office outside the Judiciary. Either through the Courts on a Constitutional basis or by the people through the ballot box. The profession suggests education as a solution. Yet the legal profession is arguably the best educated, the smartest and the most erudite of all the professions. Is *more education* likely to make

them *more honorable*? And if it is, why hasn't that happened in the last 90 years since Dos Passos identified the same problems and suggested many of the same solutions? Why have things become dramatically worse? History teaches us that no group that acquired power ever gave it up voluntarily. Yet that is what is being proposed. For the power of the purse possessed by the legal profession is visible to all. Even to those who deny that it was acquired through the unconstitutional control of government. The legal profession's power and its ability to extort enormous wealth from the Nation under color of law is based on its ability to do all the things that Dos Passos and Sheppard would 'educate' it away from. If the 'education' succeeded, demand for legal services would drop materially.⁹ So would aggregate lawyer income and in many cases, individual lawyer income. It is Utopian to suggest that may happen voluntarily. There is therefore no possibility that any of these reforms will ever come to pass as a result of 'education'. **Disastrous Implications of the legal profession's views.**

As an exercise in logic it is interesting to note the disastrous implications for all free people of the possibility that the legal profession's views may be correct. For the profession recognizes the possibility that the legal profession's activities may well lead to the loss of this Nation's freedoms and Republican form of constitutional democracy. Yet the profession is steadfast in its views that the profession has not violated the Constitution in any way.¹⁰ It further asserts that the Constitution is unflawed in its text, its interpretation by the Courts and its enforcement by the Executive. **That means that a Constitution as perfectly written, interpreted and enforced as the mind of man is capable of conceiving, cannot protect the people from the whim, abuse or pleasure of its own legal profession!** That means that **no constitution can be written that will perform that function.**¹¹ That means that the dream of a people being able to write a Constitution to govern themselves which provides the government with *sufficient power to govern but insufficient to oppress* is gone from the Planet forever! That means the eventual loss of freedom for all the people of the Planet. **Conclusion:** The American legal profession's high degree of corruption is explained by the acquisition of unbridled power which created the blossoming of unfettered ambition and eventually resulted in the psychological dysfunction of extreme cognitive dissonance. Serious thinkers in the profession recognize that the Nation is in potentially mortal danger from its activities. Yet the profession's proposed solutions through education are worse than useless. For not only will they not work but for as long as these solutions appear to offer hope, that hope will serve only to delay useful solutions.

PUBLIUS II
(Ronald Bibace)

About the author: *This writer is a constitutional scholar who wrote Federalists 86 through 99, in defense of the Constitution. He is like Madison, a non lawyer and like Hamilton an immigrant and naturalized American.*

1. This is true notwithstanding that many Americans display a strong distrust of lawyers and a powerful sense that lawyers must be responsible for many of the Nation's problems. It is the level of corruption these Papers establish that is so hard to comprehend.
2. *Cognitive dissonance* is the psychological dysfunction that, when taken to extremes, will cause the mind to reverse its perception of good and evil on certain specific issues. On those issues it becomes impossible for the mind to distinguish between right and wrong. (See Federalist 95).
3. Obviously solutions that don't work are not solutions at all. They merely appear to be until they fail.
4. Or as long thereafter as it takes to test her condition.
5. Tyranny is this writer's definition of the problem. The profession defines the same problem in an understated and different manner. However the essential concept that the legal profession is causing the Nation grievous harm now and may potentially bring it down is the common theme.
6. Current publisher: Fred B. Rothman & Co. Littleton, Colorado, 1986 ISBN 0-8377-0524-X
7. *American Principles and the Evolving Ethos of American Legal Practice*, an Article by Harrison J. Sheppard to be published in the Loyola University Chicago Law Journal Winter 1997 issue.
8. In fact only a symptom and not the source.
9. Sheppard suggests that a good part of the drop in legal activity would be replaced by the new 'problem solving' and negotiating activities he recommends lawyers be taught. There is an enormous disproportion of American lawyers to population (1 in about 300) compared to the average for the rest of the world (1 in about 4000). That disproportion arises from the very activities Mr. Sheppard proposed to 'educate' them to avoid. The resulting prospective drop in legal activity and aggregate income will sink the proposal.
10. Primarily because it denies that it is a 'same hands group' within Madison's meaning of the term.
11. For if it could that would mean our Constitution is somehow flawed, which concept is rejected by the legal profession.