The State of the Union under a failed Constitution.

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The need for public opinion to recognize that control by lawyers of all government does grievous harm to the Nation, in addition to being unconstitutional.[1]

The legal case on the unconstitutional control by lawyers of government.

Federalists 86 through 95 by this writer, conclusively established that as a matter of law the legal profession exercises unconstitutional, tyrannical control over the government and the people of the United States. The papers identified the areas of the life of the Nation where the most harmful effects of that tyranny are felt. Most people who have read the Papers agree with the conclusions presented.[2] That information is sufficiently widespread that legal proceedings against lawyers in elected office should have been started by the appropriate government authorities.[3] However, that has not happened. One reason is that effective legal action in a democracy often awaits the support of public opinion.

The need for public opinion to agree that lawyer control of government is harmful.

In a democracy, majority public opinion is by definition 'right'.[4] Earlier Federalists by this writer identified many areas of the Nation's life harmed by the legal profession's tyrannical rule. ***However on major national issues, success in the courts or at the ballot box, is often dependent on agreement by public opinion that there is a need for change.***[5] ***To that end evidence must be provided that material harm flows from lawyer control of government, in addition to having shown that such control is unconstitutional***. For public opinion to recognize that harm is being done, there is a need to show that:

1. A case on harm can be made to a standard of proof acceptable to the Nation, and
2. The action called for will provide good results for the Nation.

1. The availability of evidence and the appropriate standard of proof.

Evidence of harm will be less absolute than the evidence provided on the legal issue of the unconstitutional control by lawyers of government. Much of the evidence is anecdotal, and becomes persuasive as a result of its quantity, consistency and the absence of any material rebuttal evidence. The standard of proof must be appropriate to the circumstances. *In any case the profession as a whole*[6] *can be expected to*

attack both the evidence offered and the adequacy of the standard of proof. Thus the following questions are appropriate:

1. Is proof of harm necessary to make the legal case against the profession?
2. If not, what standard of proof is reasonable for public opinion to agree on the issue of harm to the Nation?
3. In how many areas of the Nation's life is evidence of harm required for public opinion to achieve agreement?
4. **Is proof of harm necessary to make the legal case against the profession?**

   Societies make laws to control behavior. Before specific concepts become laws they are debated and discussed. After they become laws no proof of harm is necessary on the issue of violation. For example, a motorist who drives in excess of the speed limit is guilty of violating the speed laws, regardless of whether or not any harm occurred. Thus the legal case on the issue of the unconstitutionality of the legal profession as a 'same hands' faction controlling all government, does not require ***any evidence of harm***.[7] However such evidence seems necessary in order for public opinion to achieve agreement on enforcement of the law.

5. **What standard of proof is reasonable for public opinion to agree on harm?**

   B-1 General Standards of proof in law.

   There are five standards of proof in use in law. They are in order of decreasing degrees of difficulty: 1. Beyond a reasonable doubt; 2. Clear and convincing evidence; 3. Preponderance of the evidence; 4. Probable cause; and 5. Reasonable suspicion.

   1. Beyond a reasonable doubt.

   This is the standard of proof required in criminal trials and is the highest burden of all. The quantification of standards of proof into 'percentages of certainty' is somewhat arbitrary , but still useful for purposes of comparison between standards. This particular standard is viewed as a requiring a level of certainty of 75% to 95% or more.

2. Clear and convincing evidence.
This standard of proof is sought in cases in which the law requires proof that is higher than *preponderance of the evidence* (over 50%), but not as high as *beyond a reasonable doubt*. Many people consider this to require a level of certainty of about 75%.

3. Preponderance of the evidence.
This is the standard of proof in civil cases. Here the law requires only that over 50% of the evidence favor one party, thus requiring a level of certainty of anything over 50%.

4. Probable cause.
This is the standard of proof required to make a preliminary determination only. For example it is applied to policemen to inquire into their justification for arresting or detaining a suspect. This level of certainty is often considered to be between 25% and 30%.

5. Reasonable suspicion. This is the standard of proof required to determine whether a policeman acted reasonably or arbitrarily when stopping someone for questioning. It is lower than probable cause. It requires only that an individual appear to the policeman as suspicious by some reasonable, objective standard. The level of certainty required is less than 25% and perhaps as low as 10%. Standards of proof in law are a function of the severity of the potential penalty to the defendant, whether civil or criminal, and of whether the decision is final in nature. In a criminal trial where a defendant's life or liberty may be at stake, the law requires a very high standard of proof. In civil matters where lesser issues are involved, the law requires lesser standards for *final determinations*. Where the decision is *not of a final nature* standards of proof are lower still, dropping to probable cause or reasonable suspicion. ***Thus the law's intent is that the lower the potential harm to the defendant, the lower is the standard of proof required to make the case***

. ***B-2. Standards of proof in the Court of Public Opinion.***
In the Court of Public Opinion minimum standards of proof

tend to prevail. Other factors such as *expediency* and *minimum harm to the party affected* sometimes play a part. **Expediency**, or the ease with which the Nation can make a decision, is a factor here. For example, even a mere rumor of a problem with a consumer product may be enough to hurt sales substantially, *if the public can easily replace the product with another*. Since the people can easily vote competent non-lawyers into office, *expediency is applicable in this matter*.

Minimum harm to the party affected requires scrutiny into two matters: A. The potential harm to the legitimate interests of the impacted party, and B. Any potential benefits to the affected party.

A. What harm to the legitimate[8] interests of the legal profession might occur?

There are almost one million lawyers in the land. At this time lawyers constitute about 50% of the US Senate, 35% of the US House of Representatives and 100% of the elected members of the Executive Branch. (Both President Bill Clinton and Vice President Al Gore are lawyers). That is a total of less than 200 people. State governments are smaller in size. Extrapolating to the whole country would result ***quantitatively***, in a maximum of ten thousand lawyers excluded at any one time from senior elective offices[9] they might have occupied.

What then ***qualitatively*** is the nature of the impact? Some lawyers will lose the opportunity to earn an elected official's salary, to enjoy a position of power and perhaps to fulfill a sincere desire to serve their country. But these lawyers should suffer no loss of income, because elected officials are usually able to earn more in the private sector than in government. Lawyers who have a sincere desire to serve their country can be provided with unlimited opportunities to do so outside elected office. Job satisfaction, prestige, public respect and honor for lawyers will increase materially. Even the profession's power base will only be diminished, not eliminated. Because the profession's total control over the Judiciary, regarded by

many as the most powerful of the three branches of government[10] will remain.

B. <u>The potential benefits to the affected party.</u>
If the action taken will provide benefits to the affected party, the public is more likely to require a lower standard of proof. It is well known that *Power tends to corrupt and absolute power corrupts absolutely. (Lord Acton)*. Power has corrupted the legal profession as a result of its unconstitutional control of government. Abundant literature exists, *<u>written by lawyers</u>*, expressing grave concerns about the ethics of the profession. This distress arises in part from peer pressure forcing lawyers to systematically 'overbill'[11]their clients, and which then results in an enormous discomfort some lawyers feel about belonging to so corrupt a profession. So much so that many honest lawyers leave the profession. The removal of the power that has caused the profession to become so corrupt will result in restoring the legal profession's integrity and 'soul', thus providing it with significant benefits.

*Therefore the general legal considerations, as well as the people's ability to act expediently with minimal harm to the profession, all support the adoption of minimum standards of proof, which are either **reasonable suspicion or probable cause***.

C. <u>In how many areas of the Nation's life is evidence of harm necessary?</u>
It has been established that the loss of absolute political power will have very little effect on the profession's *legitimate* interests and that simultaneously benefits will accrue to the profession. That should produce a net effect favorable to the profession's legitimate interests. *<u>Therefore evidence of material harm to any single area of the Nation's life should be sufficient to provide public opinion agreement</u>*. That is the goal.[12]

2. <u>The potential effects of the action on the Nation.</u>
A final consideration affecting Public Opinion on the decision to act, is the potential effect of the proposed action on the Nation. *In the matter at hand, the effect would be the substantial reduction of the harm inflicted on the Nation by*

the legal profession, and the moral certainty that the Republic would be saved from its present slide into chaos and the loss of its democratic form of government. Yet all of the Nation's legal talent would remain available to Government on an advisory basis, as paid consultants or staff members. Therefore, except for the dubious proposition that the Nation would lose the services of one or more particularly brilliant lawyers who might refuse to serve except in elective office,[13] it is virtually impossible to identify any disadvantage at all.

Conclusion

Public agreement on the need for the removal of lawyers from elective office is required to provide the context for change. Political consensus through public opinion agreement involves the realm of Opinion not *Knowledge*. ***A majority Opinion on political issues is by definition 'right' in a democracy***.[14] To that end evidence will be presented showing that material harm has been done by the profession to the Nation to a standard of proof of reasonable suspicion or probable cause, even though no evidence of harm is necessary to prove the case at law.

PUBLIUS II
(Ronald Bibace)

About the author: *This writer is a constitutional scholar who wrote Federalists 86 - 95, in defense of the Constitution. He is like Madison, a non lawyer and like Hamilton an immigrant and naturalized American.*

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1. *The people are the rightful masters of both congresses and courts - not to overthrow the Constitution but to overthrow the men who pervert it*. **Abraham Lincoln**, notes for speeches in Ohio, Sep 16, 1859. *The instinct of the people is right*. **Ralph Waldo Emerson**.*Power*, Conduct of Life, 1860.
2. Although a substantial majority of those who have read the Papers agree, absolute numbers at this time are small.
3. Private citizens may start legal proceedings also. The late well known constitutional lawyer and scholar, Professor Albert Blaustein, had agreed to prosecute the case at a reduced hourly fee. However, even at the reduced rate, he estimated it would cost $300,000 over 5 years to reach the Supreme Court on the issue. Thus cost considerations make it impossible for all but the rich to act.
4. The philosophers Aristotle, Plato and Hume distinguish between the objects of *knowledge* and *opinion*, as the difference between science and *belief*, and as belonging to altogether distinct realms. Thus scientific controversy is viewed as occurring in the realm of*knowledge*, and political controversy in the realm of *opinion*. In a republican form of government however, since political action requires that decisions be taken, *consensus by majority opinion is the only democratic solution*.
5. The change in segregation laws in 1954, (*Brown v Board of Education*), and the end of slavery (by the Civil War) are examples of unconstitutional laws, erroneous interpretations and bad laws surviving until the Nation reached a consensus to that effect.
6. References to 'the profession as a whole' indicate the position, attitude and actions of the leadership of the profession, as publicly perceived.

7. It is the application of constitutional law. One may dispute the constitutional interpretation that such a statement represents, but not dispute the issue that no evidence of harm is needed.
8. The Nation can only concern itself with the *legitimate* impact on the profession, not with any adverse *illegitimate* impact. The loss by the profession of its illegitimate ability to enrich itself under color of law, and its ability to create and encourage conflict where none exists, will also be materially reduced.
9. i.e. Elective office as State or Federal Legislators, or as State or Federal Chief Executive or other elected Cabinet officer, except Attorney General.
10. The Judiciary branch retains the ultimate power to control the other two branches through its interpretation of the Constitution.
11. A euphemism for stealing. 'Overbilling' through the mail is a federal crime.
12. Evidence will be provided that far exceeds this goal. That should not obscure the fact that such additional evidence is not reasonably required to achieve a national consensus.
13. It could be argued that such a refusal alone would constitute disqualification of any individual. For it would mean that the individual in question would be placing personal pride above his sense of duty to the Nation.
14. Occasionally a democratic majority may be proved ultimately wrong. That is what happened on the issues of slavery and segregation. However since the choice is always between a democratic majority opinion, mistaken or not, and an elitist minority's self proclaiming, often self serving, allegedly 'superior knowledge', the lesser of the two evils will always be to rely on democratic opinion. *It is interesting to note that with respect to slavery and segregation, the members of the legal profession were originally the most responsible for creating and maintaining both oppressive practices. It was lawyers who argued the legality of slavery and segregation , and justices who ruled in their favor*.