The State of the Union under a failed Constitution
March 31, 1995

Rebuttal to the legal profession's arguments against exclusion from elective office in the legislative and executive branches of government. Part 1

The Federalist 86 (February 8, 1995), identified the underlying cause of a substantial number of the nation's problems[1] as the failure of the US Constitution, resulting from the unconstitutional control of all government by members of the legal profession. To restore the constitution, Federalist 86 called for the removal from elective office in the legislative and executive branches of all states and the federal government, of all persons who are members of the legal profession, on the basis of the following argument:

*The effective control by members of the legal profession[2] of all government violates the principles of representative government and separation of powers of the US Constitution. Therefore, the necessary remedy to restore constitutional government requires the exclusion, through the courts or the ballot box, of members of the legal profession from elective office in both the legislative and executive branches of government.*That position affirms the principle that: ***The constitutional rights of the people to representative government free from single interest "same hands" control, or from control by the members of a favored class, supersedes the rights of the members of any single profession or favored class, to collectively acquire that control*** Opponents deny the validity of this constitutional interpretation. If they are right, the underlying problem caused by the harm of single interest control would remain in place. That would indicate that the Constitution as written was defective. The remedy would then lie with the ballot box, a constitutional amendment, or if all else failed, another revolution. It is fortunate for all that the legal profession's opposing position is without merit. Let us examine it carefully. In general, an argument is either valid or invalid. A valid argument has a premise that provides conclusive evidence for the conclusion. An invalid argument fails in one of three ways: 1. Through a misstatement of facts; 2. Incorrect use of terms; or 3. In its defective "form," through the use of an improper process of inference.[3] "Defective form" arguments are invalid because they are based on "fallacies" also known as sophistry. These false or fallacious "arguments" were first developed by the Sophists and classified by Aristotle, the father of logical thought, as "Sophistical Refutations".[4] All arguments that have surfaced so far, are invalid for one or other of the aforementioned reasons. Here are the profession's arguments: *(1) Members of the legal profession do not control government; (2) nor do they constitute a*

Madisonian "same hands" control group; (3) nor should they be prohibited from running for any public office for that would be unfair, discriminatory and unconstitutional; (4) it is in the nation's best interest that lawyers control government because government is about laws and that is their training; (5) lawyers have historically been disproportionately represented in government and yet have served the nation well; (6) constitutional interpretations by non-lawyers are invalid on their face; (7) proponents of excluding lawyers from any elective office are "lawyer bashers" and/or are otherwise flawed human beings whose views are unworthy of consideration. Here are the rebuttal arguments:
1. **Members of the legal profession do not control government.** (A false argument based on a *misstatement of fact.*) The fact that members of the legal profession are either a majority or significant plurality of virtually every legislative body in the land, is not disputed. Neither is the fact that a large number of state executive branches are headed by lawyers. Occasionally however, a semantic argument is made, that the word "control" is applicable only where the actual number of seats occupied by lawyers in a particular elected body exceeds 50%. However the language of Federalist 86 is "effective control." Effective control in a democracy is achieved by the largest substantial plurality if no majority exists, and if the next largest plurality is significantly smaller than the first. Since those conditions prevail virtually everywhere in the nation the argument is without merit, for it misstates fact. It is true that where the executive branch is headed by a non lawyer the "control" may be less effective, but remains nevertheless. 2. **Members of the legal profession do not constitute a Madisonian "same hands" control group**. (A false argument based on a *misstatement of fact*). Some lawyers argue that members of the legal profession are not the "same hands" identified in Madison's statement whereby: '..the accumulation of all powers ... in the **same hands**.., may justly be pronounced the very definition of tyranny.'[5] They argue that because lawyers will often differ in gender, ethnicity, race, religion, political views and other ways, characterizing them as "same hands" is inaccurate. However, it was not the differences between elected officials that concerned Madison when he spoke of "same hands", it was the possibility of the existence of a particular "same hands" similarity of interest that might serve to unite elected officials against the public interest. Thus the test is whether or not there exists among the elected members, the sharing of such a "same hands" interest. The answer is that the members of the legal profession, just like the members of every other organized profession, constitute "same hands" special interest groups. This is because every organized profession's purpose is to advance the interests of its members above the interests of all others. Conclusive evidence is supplied by Madison's definition of what is and what is not republican government under the US Constitution: 'It is ***essential*** to such a (republican)

government that it be derived from the great body of society, not from an inconsiderable proportion, or a favored class of it." (Emphasis original).[6] Since the legal profession is "an inconsiderable proportion" of society (less than 1 in 300 people), and constitutes "a favored class," it is twice barred from being in control of what Madison defined as: "republican government." That definition confirms that Madison meant to include groups such as members of the legal profession in his "same hands" statement. 3. **Members of the legal profession should not be prohibited from running for any public office because to do so would be unfair, discriminatory and unconstitutional**. (A false argument classified by Aristotle as *"secundum quid"*[7]). This is an argument against the concept of "unconstitutional exclusion." We are a democratic society forever seeking to be "inclusive". How then do we justify excluding lawyers from public office at all? The justification is found in the following reasons: Except for jury service, the legal profession has already used its power to exclude 259,000,000 citizens, or 99.7% of the nation, from any position of power in the judiciary, though the Constitution does not require it. Since the profession has entirely taken over one of three branches of government, without constitutional requirement or discernible authority, it is certainly fair and reasonable to require that their representation be limited to the judiciary only. *Such representation alone, would be equivalent to 100 times their proportion in the population.* The good of society sometimes requires that a choice be made by individuals. As one example, judges are not permitted to speak publicly on political matters or endorse candidates for certain public offices. While that is a limitation of their free speech first amendment rights, it does serve society's best interests. Thus it is fair and reasonable that a person choosing to enter the legal profession, which enjoys 100% control of one branch of government should, in exchange, give up the right to run for public office in the other two branches. Excluding lawyers from elective office outside the judiciary involves the balancing of the rights of the people to constitutional government free of any "same hands," and/or "favored class" control, against the rights of lawyers to be freely elected to effective control of all government. If the Declaration of Independence was right in affirming that the rights of the people to: *"institute a new government laying it's foundation on such principles and organizing it's powers in such form*, as to them shall seem most likely to effect their safety and happiness",[8] then it follows that the right of the people to exclude lawyers from both the executive and legislative branches supersedes the rights of lawyers to control all government. Prior to 1832, the British faced a similar problem. The nobility,[9] which by law exclusively controlled one of their three branches of government, the House of Lords, also controlled the second branch, the House of Commons. (The monarchy being the third.) The Great Reform Act of 1832, passed to prevent violent revolution against the nobility, stripped them of their

control of the House of Commons. The historical legal precedent was thus created where our own law originates, for restoring constitutional government, *without the necessity for doing violence to an elitist group unconstitutionally exercising power under color of law*. 4. **Lawyers are the proper people to control government because that is their training**. (A false argument classified by Aristotle as *secundum quid*[10]). Lawyers argue that government is about laws and that is their training. Therefore they say, it is right and proper that they should be running things because "those who are trained for the task, should make the decisions." That is a false argument known as *secundum quid*. Thus, while it is true that as a rule decisions are made by the people best trained to do so, that is not true in all cases. This is one such exception to the rule, because constitutional prohibitions exist to make certain those decisions are NOT made by any single "same hands," and/or favored class group. In such cases the technically trained are limited to advising and recommending For example, the US Constitution designates the President of the United States, Commander-in-chief of the armed forces, regardless of any previous military experience. The most experienced and knowledgeable military minds are constitutionally limited to the power of advising. The Constitution makes representatives drawn from all walks of life, not the technical experts, collectively responsible for all public policy decision making. 5. **Members of the legal profession have historically been disproportionately represented in government and yet have served the country well**. (A false argument classified by Aristotle as *non sequitur*[11]). It does not follow that what may have once been historically true is therefore true now. These are the days of Watergate, "Operation Court Broom" in Miami and Greylord in Chicago, not the days of Thomas Jefferson, Alexander Hamilton, and Abraham Lincoln. The nature of the practice of law and the integrity of lawyers has changed dramatically for the worse commencing after the Civil War.[12] Before that time the law was a highly respected profession, attracting individuals of integrity who sought first to do justice, not make money. The opposite is often true today. The presumption of integrity once granted to lawyers as to all professionals, is no longer applicable. All too often the opposite presumption is the rule. The American Bar Association's own surveys indicate that lawyers are viewed as the most dishonest of all professional groups. To make matters worse, the survey indicates that those who know lawyers best, trust them least, and vice versa. In this context the attempt by the profession to cover itself with a cloak of honor earned by noble predecessors long gone, has no logical validity. 6. **Constitutional interpretations by non lawyers are invalid on their face**. (A false argument classified by Aristotle as *ad verecundiam*[13]). This position ignores the issues completely. It argues that one lacks the qualifications to speak at all, absent the advantage of a formal

legal education. A sort of "father knows best" argument, logically invalid except against little children. James Madison, a non lawyer, wrote the Constitution. It is therefore not logical to assert that lawyers alone are qualified to interpret it. 7.**Proponents of excluding lawyers from any elected office are flawed human beings unworthy of consideration**. (A false argument classified by Aristotle as *ad hominem*[14]). This argument is totally unrelated to the issues. It consists of personal attacks against proponents of views with which lawyers disagree. However, personal attacks do not constitute a substitute for logical argument. Instead they are persuasive evidence that little or none exists. Subsequent articles will address the consequences of the unconstitutional control by lawyers in detail, outlining the connective links between that control and the harm to the nation.

PUBLIUS II
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1. The problems identified include problems in health care, education, crime, access to the courts, the moral decline of the nation, and the loss of essential liberties. The estimated cost to the nation in dollars ranges between $300 billion and $1 trillion per year.
2. Control by any single interest "same hands" group, such as the members of any profession and/or professional organization is unconstitutional.
3. Encyclopedia Britannica, (page 280, Vol. 23, 15th edition, 1988), *Logic*, The history and Kinds of, The critique of forms of reasoning, Correct and defective arguments.
4. See footnote 3.
5. Federalist 51, (1788) by James Madison.
6. Federalist 39, (1788) by James Madison
7. *Secundum quid*: according to it's truth as holding only under special provisos. "applying a general proposition as a premise without attention to the tacit restrictions and qualifications that govern and invalidate its application in the matter at issue." See footnote 3.
8. Declaration of Independence 1776.
9. The British example of the "same hands", "favored class", "inconsiderable proportion" minority in effective control of all government at that time.
10. See footnote 7.
11. *non sequitur*: It does not follow. See footnote 3.
12. *The American Lawyer* by John R. Dos Passos, 1907, Rothman & Co. publishers (1986)
13. *ad verecundiam*: an appeal "to awe" on the grounds that seeks to secure acceptance of the conclusion on the grounds of its endorsement by persons whose views are held in general respect. See footnote 3.
14. *ad hominem*: speaking "against the man" rather than to the issue, in which the premises may only make a personal attack on a person who holds some thesis, instead of offering grounds showing why what he says is false. See footnote 3.