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Immunity, The Undelegated Fraud

Why Government Cannot Lawfully Exempt Itself from Accountability

Publius Custos*

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** Publius Custos is a constitutional scholar and legal theorist writing in the tradition of the Anglo-American common law. The name is adopted in reference to the structural method of Publius in The Federalist Papers, combined with the role of Custos as guardian of the law. The author's work focuses on the restoration of lawful governance through the application of natural law, the maxims of law, and strict constitutional construction.*

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Abstract

This Article examines the constitutional illegitimacy of governmental immunity under the American system of delegated authority. It argues that immunity doctrines, whether judicial, prosecutorial, sovereign, qualified, or administrative, possess no lawful constitutional foundation because the People never delegated authority to government actors to exempt themselves from accountability for violations of rights. The Constitution is a written instrument of limited delegation in which sovereignty remains exclusively with the People and all public office exists only as fiduciary authority exercised conditionally under law.

Drawing from natural law, common-law maxims, founding-era political theory, constitutional structure, and American jurisprudence, this Article demonstrates that accountability is not incidental to delegated authority but its defining condition. Once accountability is removed, delegation itself begins to collapse. Immunity therefore does not merely create procedural protections or institutional safeguards; it structurally alters the constitutional relationship between sovereign and servant by permitting governmental actors to operate beyond the ordinary legal restraints binding the People from whom their authority derives.

The Article further argues that immunity functions as a breach in the constitutional firewall separating lawful delegated authority from administrative supremacy. Through doctrines of judicial insulation, administrative deference, internalized accountability mechanisms, and procedural supersession, modern governmental systems progressively replace externally enforceable constitutional restraints with internally managed systems of institutional self-preservation. The result is a gradual transformation from constitutional government under law into administrative governance sustained through self-ratifying authority.

By tracing the constitutional consequences of this inversion, the Article concludes that immunity doctrines are void ab initio because no branch of government may lawfully assume powers the People never delegated. The restoration of constitutional order therefore requires not the destruction of lawful government, but the restoration of the original constitutional relationship in which sovereignty remains with the People, governmental authority remains strictly delegated, and all public actors remain continuously accountable under law.

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1.0 The Law Before Government and the Source of All Legitimate Authority

Before a single statute was written, before any court convened, and before any officer swore an oath, there was law. This law, referred to by the Founders as the “Laws of Nature and of Nature’s God,” entitled the American people to assume among the powers of the earth a separate and equal station and to form a nation. These laws of nature are supreme. “*Jus naturale est quod apud omnes homines eandem habet potentiam,*” (Natural law has the same force among all men) 7 Coke, *Reports* 12; Blackstone, *Commentaries*, Vol. I, at 41–42.

As William Blackstone affirmed, “*The law of nature being coeval with mankind and dictated by God Himself, is of course superior in obligation to any other. It is binding all over the globe, in all countries, and at all times; no human laws are of any validity if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately and immediately, from this original.*”

From God mankind holds the gift which, as far as we are concerned, contains all others: life, physical, intellectual, and moral. Thomas Paine explained in *Rights of Man* that “*Rights are not gifts from one man to another, nor from one class of men to another... It is impossible to discover any origin of rights other than in the nature of man.*” He who bestowed life entrusted humanity with the duty of supporting it, developing it, and perfecting it. Frédéric Bastiat expressed the same truth in *The Law*, “*Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.*” These rights are not creations of the state. They are pre-state, pre-legal, and pre-political. They exist because man exists. They are woven into creation itself.

“*Quod ab initio non valet, in tractu temporis non convalescit,*” (That which is void in the beginning does not become valid by lapse of time) Co. Litt. 327a; 2 Coke, *Institutes* 292; Broom, *Legal Maxims* (10th ed.), at 169

Accordingly, the Founders declared with clarity that “*all men are created equal and endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.*” Because every individual possesses the natural right to defend these endowments, the People may combine their defensive authority into a collective organization of lawful defense: government. Bastiat articulated this relationship precisely: “*If every man has the right of defending, even by force, his person, his liberty, and his property, a number of men have the right to combine together to extend, to organize a common force to provide regularly for this defense.*” He continued, “*Collective right, then, has its principle, its reason for existing, its lawfulness, in individual right; and the common force cannot rationally have any other end, or any other mission, than that of the isolated forces for which it is substituted.*” From this it follows that, just as an individual may not lawfully destroy the life, liberty, or property of another, the collective force may not lawfully be used to do so.

Because the collective force derives entirely from the equal rights of the individuals composing it, no officer exercising delegated power may claim a superior exemption from the law binding the people themselves. The moment public officials acquire legal privileges unavailable to the sovereign people from whom authority is derived, the relationship between servant and sovereign is inverted. Equality before the law is therefore not merely a moral aspiration, but a structural condition of constitutional government.

This principle was distilled by Bastiat into a single controlling axiom, "*Law is the collective organization of the individual right to lawful defense.*" From this axiom flows an unavoidable conclusion: government has one, and only one, legitimate purpose, to secure rights that existed before government itself. The moment government exceeds that charge, whether through neglect of rights or the assumption of undelegated power, it departs from lawful authority and becomes an instrument of oppression. Because the Constitution is a written instrument of delegated authority, its terms must be interpreted according to their fixed public meaning at the time of adoption, not according to evolving policy preferences, administrative convenience, judicial innovation, or institutional necessity. As the Supreme Court explained in *Mattox v. United States*, the Constitution must be interpreted "*in the light of the law as it existed at the time it was adopted.*" 156 U.S. 237, 243 (1895). Likewise, in *District of Columbia v. Heller*, the Court reaffirmed that constitutional language must be understood according to the "*normal and ordinary*" meaning the words carried to the founding generation, excluding "*secret or technical meanings that would not have been known to ordinary citizens.*" 554 U.S. 570 (2008). Constitutional meaning therefore cannot lawfully be altered through evolving institutional reinterpretation disconnected from the public understanding under which the delegation was originally made. "*A verbis legis non est recedendum,*" (From the words of the law there must be no departure) 5 Coke, Reports 118; 1 Kent, Commentaries 462.

This principle was explicitly codified in the Alabama Constitution, Article I, Section 35, "*That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property, and when the government assumes other functions it is usurpation and oppression.*"

Thomas Paine warned that government, even at its best, is "*a necessary evil,*" and becomes intolerable the moment it exceeds its delegated purpose. When government remains within its defensive sphere, society flourishes with minimal friction; when it exceeds that sphere, Bastiat observed that "*the law becomes perverted,*" transformed into an instrument of plunder rather than protection. Thomas Jefferson expressed the same warning: "*The two enemies of the people are criminals and government; so, let us tie the second down with the chains of the Constitution so it will not become the legalized version of the first.*"

This moral and legal reality is the reason the People reduced their will to writing. They bound government to a fixed, public, written contract, the Constitution. Thomas M. Cooley explained in *Constitutional Limitations* (1868) that a constitution “*grants no rights to the people, but is the creature of their power, the instrument of their convenience.*” Designed solely for the protection of rights that existed before it was written, it is “*the framework of the political government,*” and “*a written constitution is in every instance a limitation upon the powers of government in the hands of agents.*”

Because law precedes government, government cannot stand above law without destroying the very source from which its authority is derived. Authority delegated by the people is necessarily conditional authority. It exists only within the boundaries of the delegation and remains perpetually subordinate to the law that created it.

This principle produces an unavoidable structural consequence: no public office may lawfully exempt itself from accountability to the law under which it operates. A government claiming immunity from legal consequence necessarily claims superiority to the law itself. Immunity is therefore not merely a defense doctrine or procedural accommodation, but a claimed exemption from the ordinary operation of law itself. But if government may place itself above law, then law ceases to operate as law and becomes merely an instrument of discretionary command.

The distinction is foundational. Law is a rule protecting preexisting rights through fixed, equal, and publicly accountable application. Fiat is command grounded in institutional will, preference, or administrative discretion. A system in which rulers remain answerable to law preserves the constitutional order. A system in which rulers possess immunity from accountability progressively converts law into administrative discretion and public authority into sovereign privilege.

The question presented by immunity doctrine is therefore not whether certain officials should receive procedural protections or discretionary latitude in difficult circumstances. The question is far more fundamental: whether a constitutional system founded upon delegated authority may lawfully create offices unanswerable to the very law from which their authority originates.

If lawful authority must remain traceable through an unbroken chain of delegation from the people through the Constitution and into every public act, then accountability is not optional. It is the necessary condition that preserves the chain itself. Once accountability is severed, delegation collapses into self-ratification, and public office ceases to function as fiduciary duty and begins to function not as delegated authority, but as self-originating sovereignty.

1.1 The Unbreakable Hierarchy of Law (The Firewall)

All legitimate governmental action in the American constitutional republic must conform to an immutable hierarchy of law. This hierarchy is not theoretical, nor optional; it is the necessary structure of lawful authority itself. Any act, legislative, executive, or judicial, that violates this order is void from its inception because it lacks a lawful source.

At the apex of this hierarchy stands the law of nature and of nature's God, the supreme and immutable source from which all legitimate human law derives. As Blackstone wrote in his *Commentaries on the Laws of England*, "*The divine law is of infinite authority... the moral precepts which God has given to mankind.*" No human institution possesses authority to amend, suspend, or contradict this law.

Immediately beneath divine law stand the fundamental maxims of law. These maxims are eternal, self-evident, and require no proof. Lord Coke described them as "*Propositions to be of all men confessed and granted without prooffe, argument, or discourse... they are not to be disputed, they are the law of the land.*" (*Institutes*, 67a). These maxims bind all who exercise power and operate as fixed boundaries on governmental authority.

Subordinate to divine law and the maxims are the constitutions of society. A constitution is not a source of rights, but a restraint upon government. Its authority is conditional, existing only so long as it conforms to the higher law above it. As Cooley explained, "*No enactment can rise above the constitution; but the constitution itself must bow to the higher law.*"

At the lowest level of this hierarchy are enactments, statutes, codes, rules, and administrative regulations. These are not the law of the land in themselves, but expressions of legislative will. As Cooley made clear, "*Enactments are not the law of the land; they are but the will of the legislature, subject always to the maxims and to reason.*"

The validity of every governmental act depends upon conformity to this hierarchy at every level. No institution may cure by procedure what is void by source. No statute may override a constitution. No constitution may override the maxims. No judicial opinion may override natural law. Where a conflict exists, the inferior act must fall.

Emer de Vattel articulated the gravity of violations of this hierarchy in *The Law of Nations*, a work so foundational that Congress was expressly delegated power to punish offenses against it in Article I, Section 8, Clause 10 of the Constitution. Vattel wrote, "*To attack the constitution of the state, and to violate its laws, is a capital crime against society; and if those guilty of it are invested with authority, they add to this crime a perfidious abuse of the power with which they are intrusted.*"

1.2 The Principle of Delegated Power and the Exclusion of Immunity

The sole legitimate purpose of creating government is to combine the individual right of self-defense into a collective organization capable of securing those rights. Because collective authority is derivative, it cannot exceed the lawful power of the individual from whom it is drawn. As Bastiat explained, the common force "*cannot rationally have any other end, or any other mission, than that of the isolated forces for which it is substituted.*"

The Constitution demonstrates that the People possessed the authority to grant immunity when they chose to do so, and exercised that authority once, narrowly and expressly, in Article I, Section 6. There, the People conferred a limited parliamentary privilege upon members of the legislature for speech and debate conducted within the legislative sphere. That single, deliberate exception proves that the People knew how to grant immunity when they intended to do so. Their failure to grant it elsewhere was intentional. "*Casus omissus pro omisso habendus est*," (A case omitted is to be held as intentionally omitted) 4 Coke, Institutes 425; Dwarris on Statutes, p. 185.

Under the settled maxim *casus omissus pro omisso habendus est*, what is omitted is excluded. Under a system of enumerated and delegated powers, omission is prohibition. Powers not granted are withheld. The absence of any constitutional provision granting immunity to executive officers, judges, prosecutors, or administrative agents is therefore conclusive proof that the People reserved the power of accountability to themselves.

No public servant may lawfully claim exemption from accountability absent an express constitutional grant because delegated authority contains no latent sovereignty. Public office conveys duty, not superiority; obligation, not exemption. Any assertion of immunity beyond the narrow privilege expressly delegated by the People constitutes an assumption of undelegated power and therefore a usurpation of constitutional authority.

1.3 Immunity as Usurpation and Forfeiture of Trust

A claim of immunity is not a policy preference; it is an act of usurpation that violates the fiduciary trust upon which all government legitimacy rests. Officers are trustees. Their authority exists only within the scope of the powers entrusted to them. The moment an officer claims a power the People deliberately refused to grant, the trust is broken.

John Locke explained the consequence with clarity, "*Whensoever therefore the legislative shall transgress this fundamental rule of society... and endeavour to grasp themselves, or put into the hands of any other, an absolute power over the lives, liberties, and estates of the people; by this breach of trust they forfeit the power the people had put into their hands.*" (*Second Treatise*, § 155).

Modern doctrines of immunity are precisely such a grasping of absolute power. Locke framed the question directly: whether it is better that the people be "*always exposed to the boundless will of tyranny*," or that rulers "*be sometimes liable to be opposed when they grow exorbitant in the use of their power.*" (*Second Treatise*, § 229). A system that requires injury first and denies remedy afterward answers that question in favor of tyranny.

This is the condition Locke warned against when he wrote that such a system bids the people "*first be slaves, and then to take care of their liberty.*" (*Second Treatise*, § 220). The People never consented to broad immunity. Any act or judicial opinion that shields officials from the consequences of violating the people's fundamental rights is void *ab initio*. The servant who claims the power the master refused to grant has dissolved his trust.

The People's covenant requires accountability. The creature that claims sweeping immunity has already dissolved itself.

2.0 Delegated Authority: The Immutable Rules of Delegation

Any Power Beyond Delegation Is Usurpation Against the People's Sovereignty

The American system of governance is founded upon popular sovereignty. The People are the sole source of legitimate governmental authority. Public power is not inherent in office; it is trust conferred by delegation. The Constitution is therefore not a document of general inclusion, but of limited exclusion. It does not grant power broadly. It defines power narrowly. As James Madison stated in *Federalist No. 45*, "*The powers delegated by the proposed Constitution to the federal government are few and defined.*" What is not granted is withheld. What is withheld remains with the People.

This structure is not parliamentary. Under British constitutional theory, Parliament is sovereign and may alter or override constitutional principles by legislative will. The American system rejects that model entirely. In the United States, unlimited power is unknown. Every legislature is the creature of the Constitution and strictly subordinate to it. Constitutional principles are not advisory norms subject to legislative convenience; they are fixed law until altered by the People themselves through the formal amendment process. Any attempt to exercise power beyond constitutional limits is void. Bl. Comm. 160; Austin, *Lectures on Jurisprudence*; Fischel, *English Constitution*, bk. VII, ch. VII; *Loan Association v. Topeka*, 87 U.S. (20 Wall.) 655, 663 (1875); *Campbell's Case*, 2 Bland Ch. 209; 20 Am. Dec. 360.

This principle is not aspirational. It is legally binding. "*Actus me invito factus non est meus actus*," (An act done against my will is not my act) Bracton, *De Legibus et Consuetudinibus Angliae*, lib. II, c. 16; 2 Coke, *Institutes* 482. Delegation in the American system is governed by absolute constraints drawn from the common law of agency and the foundational rules of political authority. No officer, branch, court, legislature, or administrative body may lawfully act outside those constraints. Where power is exercised without valid delegation, the act is void from its inception, and the actor proceeds as a usurper.

Thomas Paine stated the controlling rule of delegation with finality: "*All power exercised over a nation must have some beginning. It must either be delegated or assumed. There are no other sources. All delegated power is trust, and all assumed power is usurpation.*" This maxim admits no exception. Every governmental act must be accountable to its source. Authority must be traced directly to the written charter. Where the trail ends, the power ends.

The Constitution codifies this rule in the Tenth Amendment: "*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*" Congress possesses no inherent legislative authority. The executive possesses no inherent enforcement authority. The judiciary possesses no inherent supremacy over the Constitution itself. Each branch operates only within the scope of powers expressly delegated by the People through the constitutional instrument.

From this follows an unavoidable rule of construction: there is no presumption of governmental authority. There is no implied consent. There is no constructive grant. Every asserted power must be demonstrated, line by line, to arise from constitutional delegation. Where such delegation cannot be shown, power does not exist. Where power is nevertheless exercised, the defect is not mere error, policy disagreement, or good-faith interpretation. It is usurpation.

This rule governs every claim of immunity. Because immunity removes accountability, and because accountability is the defining condition of delegated authority, immunity must itself be expressly delegated to be lawful. Where no such delegation exists, the claim is void. Any branch that asserts immunity absent constitutional warrant acts against the sovereignty of the People and outside the lawful structure of government.

2.1 Void Acts and Jurisdictional Nullity

No Right, Duty, Protection, or Authority Can Arise from an Unconstitutional Act

Under the American constitutional system, delegated authority is the sole lawful source of governmental power. Where no delegation exists, no lawful authority exists. Any exercise of power beyond constitutional delegation is therefore not merely erroneous or voidable, but void from its inception. “*Quod ab initio non valet, in tractu temporis non convalescit,*” (That which is void in the beginning does not become valid by lapse of time) Co. Litt. 327a; 2 Coke, Institutes 292; Broom, *Legal Maxims* (10th ed.), at 169.

This principle was established at the foundation of American constitutional jurisprudence. In *Marbury v. Madison*, the Supreme Court declared: “*A law repugnant to the Constitution is void.*” 5 U.S. (1 Cranch) 137, 180 (1803). The Constitution is the superior law from which all delegated governmental authority derives. Any act inconsistent with that delegation possesses no lawful force because no branch may exceed the authority entrusted to it by the People.

The rule was stated with even greater precision in *Norton v. Shelby County*: “*An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.*” 118 U.S. 425, 442 (1886). This principle admits no exception. Void acts cannot become valid through repetition, institutional acceptance, procedural enforcement, or judicial approval. Where constitutional delegation ends, lawful authority ends.

The consequence is jurisdictional. Jurisdiction cannot arise from acts performed outside lawful delegation because jurisdiction itself is a creature of lawfully delegated authority. A governmental actor exercising undelegated power acts without lawful jurisdiction regardless of title, office, or institutional position. “*Delegatus non potest delegare,*” (A delegate cannot further delegate) 2 Coke, Institutes 597; Story, *Commentaries on the Law of Agency* § 13.

Void acts are not cured by administrative procedure, judicial precedent, legislative repetition, institutional custom, claims of necessity, or assertions of good faith. Procedure cannot supply authority where delegation is absent. Institutional acceptance cannot convert usurpation into

lawful power. “*Cessante ratione legis, cessat ipsa lex,*” (*When the reason for the law ceases, the law itself ceases*) Broom, *Legal Maxims* (10th ed.), at 97; 7 Coke, Reports 7a.

The doctrine of immunity therefore encounters an insurmountable constitutional barrier. Because no constitutional delegation authorizes governmental actors to exempt themselves from accountability to the People, immunity doctrines possess no lawful jurisdictional foundation. Courts may pronounce them. Legislatures may reference them. Administrative systems may enforce them. But undelegated authority cannot become lawful merely because institutions repeatedly invoke it.

The absence of delegation is dispositive. Immunity doctrines attempting to extinguish accountability for violations of rights operate outside the constitutional chain of authority and therefore lack lawful force from inception. No office, privilege, protection, or exemption may arise from powers the People never delegated. “*Nemo potest plus juris ad alium transferre quam ipse habet,*” (*No one can transfer to another a greater right than he himself possesses*) 4 Coke, Institutes 206; 1 Blackstone, *Commentaries* 43.

Once this principle is recognized, the structural defect becomes unavoidable. Immunity doctrines do not merely misapply constitutional authority; they attempt to create protection from accountability through powers never delegated at all. Such acts are not exercises of lawful constitutional government. They are assertions of authority beyond constitutional jurisdiction and therefore void *ab initio*.

2.2 Jurisdiction and Power Are Not the Same

Power Exercised Without Lawful Delegation Is Not Jurisdiction

One of the most destructive confusions in modern jurisprudence is the conflation of power with jurisdiction. Power is merely the capacity to act. Jurisdiction is the lawful authority to act. The two are not synonymous. Governments, courts, agencies, and officers may possess the physical ability to compel obedience, impose penalties, issue orders, or exercise force, but the existence of power does not establish the existence of lawful jurisdiction. Under the American constitutional system, jurisdiction exists only where authority has been lawfully delegated through the Constitution and exercised within the limits of that delegation.

This distinction is foundational because every governmental act derives legitimacy not from possession of force, but from lawful authority traceable to the sovereign People. The Constitution is therefore not merely a grant of operational power; it is a jurisdictional boundary instrument defining where authority begins and where it ends. Any act beyond those boundaries is not merely mistaken. It is jurisdictionally void.

Chief Justice Marshall recognized this principle in *Marbury v. Madison* when he declared: “*The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written.*” 5 U.S. (1 Cranch) 137, 176 (1803). Written constitutions exist precisely to prevent raw governmental power from masquerading as lawful jurisdiction.

The distinction was equally recognized in *Norton v. Shelby County*, where the Court held: “*An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection.*” 118 U.S. 425, 442 (1886). A void act therefore cannot create jurisdiction because jurisdiction itself must arise from lawful authority. Where the source is void, the resulting exercise of power is void also. “*Ex nihilo nihil fit,*” (*Nothing comes from nothing*) 1 Blackstone, *Commentaries* 43.

Modern governmental systems increasingly obscure this distinction by treating institutional assertion as equivalent to lawful authority. Courts presume jurisdiction because proceedings exist. Agencies presume authority because regulations exist. Officers presume legality because commands issue from superiors. Yet none of these conditions establish lawful jurisdiction absent constitutional delegation. “*Delegatus non potest delegare,*” (*A delegate cannot further delegate*) 2 Coke, *Institutes* 597; Story, *Commentaries on the Law of Agency* § 13.

This confusion becomes most dangerous in the context of immunity doctrine. Immunity permits governmental actors to continue exercising power even where accountability, the essential condition of delegated authority, has been removed. Once officers become insulated from legal consequence through undelegated doctrines, the governmental system progressively substitutes institutional power for lawful jurisdiction. The appearance of authority remains, but the constitutional chain connecting the act to the sovereign People has been severed.

Jurisdiction cannot survive the destruction of accountability because delegated authority itself depends upon answerability to the sovereign source from which the delegation arose. An officer who cannot be called to account no longer operates fully as a fiduciary under law, but increasingly as an autonomous institutional actor exercising power through self-ratifying structures. “*Nemo iudex in causa sua,*” (*No one may be judge in his own cause*) 8 Coke, *Reports* 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91.

The distinction between jurisdiction and power therefore marks the dividing line between constitutional government and administrative supremacy. Constitutional government requires every exercise of authority to remain traceable through an unbroken chain of lawful delegation from the People through the Constitution and into the particular act itself. Administrative systems increasingly operate upon a different principle: that institutional assertion, procedural regularity, or judicial approval may substitute for lawful delegation.

But procedure cannot create jurisdiction where delegation is absent. Repetition cannot legitimize usurpation. Institutional continuity cannot transform undelegated power into lawful authority. “*Quod ab initio non valet, in tractu temporis non convalescit,*” (*That which is void in the beginning does not become valid by lapse of time*) Co. Litt. 327a; 2 Coke, *Institutes* 292; Broom, *Legal Maxims* (10th ed.), at 169.

Once power is permitted to operate independent of lawful jurisdiction, constitutional limitation becomes illusory. Government no longer functions as delegated authority restrained by law, but as institutional force restrained only by its own discretion. That transformation marks the transition from constitutional government to administrative fiat.

2.3 Administrative Supersession and the Replacement of Constitutional Accountability

When Procedure Replaces Delegation

The modern administrative state increasingly operates through a process of supersession in which constitutional accountability is displaced by institutional procedure. Under the constitutional design, all governmental authority must remain traceable through an unbroken chain of delegation from the People through the Constitution and into every official act. Administrative systems progressively alter this structure by substituting internal process, regulatory discretion, and institutional self-management for direct constitutional accountability.

This transformation rarely occurs openly. Constitutional language, forms, and procedures are often retained while their operational substance is gradually replaced. Offices continue to invoke constitutional authority, courts continue to reference constitutional principles, and agencies continue to operate under statutory frameworks, yet the practical mechanisms of accountability become increasingly internalized within the same institutional structures exercising the challenged power. The outward appearance of constitutional government remains while the operational chain connecting authority to the People progressively weakens.

The defining characteristic of constitutional government is not merely the existence of institutions, but the continued subordination of those institutions to externally enforceable limits derived from delegated authority. Administrative supersession alters this relationship by transferring effective control over accountability into the institutions subject to restraint themselves. Complaints against officers are redirected into internal review systems. Judicial misconduct is processed through judicial councils. Prosecutorial misconduct is evaluated within prosecutorial structures. Administrative agencies adjudicate disputes arising from their own regulatory actions. In each instance, the institution exercising power increasingly supervises the limits of its own accountability.

This structural shift transforms constitutional restraints into administrative procedures. Accountability becomes conditional rather than inherent. Rights become subject to process rather than secured by law. Remedy becomes dependent upon institutional permission rather than constitutional guarantee. *“Ubi jus ibi remedium,”* (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23.

The administrative model further expands through doctrines of deference and immunity. Courts defer to agency interpretations of law. Agencies promulgate regulations carrying practical force equivalent to legislation. Administrative tribunals exercise quasi-judicial authority while remaining embedded within executive structures. Simultaneously, immunity doctrines shield the officials operating these systems from ordinary legal accountability. The cumulative effect is the progressive concentration of legislative, executive, and judicial functions within interconnected administrative frameworks insulated from direct constitutional restraint.

This arrangement departs fundamentally from the constitutional separation of powers. The Constitution divides governmental authority precisely to prevent the consolidation of power within self-ratifying institutional systems. Administrative supersession reverses this design by allowing institutions to generate rules, enforce rules, adjudicate disputes arising under those rules, and limit accountability for abuses occurring within the same operational structure. “*Nemo iudex in causa sua*,” (No one may be judge in his own cause) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91.

The result is not merely bureaucratic expansion, but a gradual transformation in the source of practical authority itself. Under constitutional government, authority originates in the People and flows downward through delegated limitation. Under administrative supersession, authority increasingly originates within institutional systems that justify power through precedent, procedure, expertise, necessity, and internal regulation rather than direct constitutional delegation.

This transformation explains the modern expansion of immunity doctrine. Immunity is not an isolated procedural protection operating independently from the administrative state. It is one of the principal mechanisms through which administrative systems preserve themselves from external constitutional restraint. Without immunity, administrative actors remain directly answerable to the People for violations of rights. With immunity, accountability becomes increasingly dependent upon the discretion of the institutional structures accused of wrongdoing.

Procedure therefore replaces delegation. Institutional continuity replaces constitutional limitation. Administrative discretion replaces publicly accountable law. “*A verbis legis non est recedendum*,” (From the words of the law there must be no departure) 5 Coke, Reports 118; 1 Kent, *Commentaries* 462.

Once this transition occurs, constitutional government persists increasingly in form while operational authority migrates into systems of internally managed power insulated from meaningful external restraint. The People retain nominal sovereignty, but the practical mechanisms necessary to enforce constitutional limitation become progressively subordinated to the institutions exercising the challenged authority themselves.

2.4 Equality Before Law and the Destruction of Constitutional Order

Immunity Creates a Ruling Class Unknown to the Constitution

The American constitutional system rests upon the principle that law applies equally to all persons exercising authority within the jurisdiction of the Republic. Equality before law is not merely a moral aspiration or political preference. It is a structural necessity arising from the doctrine of delegated authority itself. Because all governmental power originates in the People and is delegated conditionally through the Constitution, no officer may lawfully claim exemption from the law binding the sovereign from whom that authority derives.

At common law, the rule was universal. Public office did not elevate an individual above accountability; it imposed greater responsibility. The sheriff, magistrate, judge, constable, and minister remained subject to the same law governing the People themselves. The existence of office altered duty, not legal equality. “*Commodum ex injuria sua nemo habere debet*,” (No one may profit from his own wrong) 2 Coke, Institutes 388; 1 Blackstone, *Commentaries* 135.

The Constitution presupposes this equality at every level of its structure. No clause establishes a governing class exempt from accountability to the People. No provision grants judges, prosecutors, executive officers, or administrative officials superior legal status beyond the narrow and expressly delegated legislative privilege contained in Article I, Section 6. The omission is decisive. Under a system of enumerated powers, what is not granted is withheld. “*Casus omissus pro omissis habendus est*,” (A case omitted is to be held as intentionally omitted) 4 Coke, Institutes 425; Dwarris on Statutes, p. 185.

Immunity doctrine fundamentally alters this constitutional arrangement by creating two operational classes within the legal system: those bound fully by law and those partially insulated from its ordinary consequences. Citizens remain answerable for violations of law regardless of motive, misunderstanding, or institutional necessity. Governmental actors, however, increasingly receive protections unavailable to the sovereign People themselves. This asymmetry transforms delegated authority into institutional privilege.

Such privilege is incompatible with republican government. In constitutional systems founded upon popular sovereignty, officers remain servants exercising limited authority under law. Once officials acquire protections unavailable to the People from whom authority derives, the relationship between sovereign and servant begins to invert. The law no longer operates equally upon all persons within the system, but selectively according to institutional status and governmental function.

The danger of this transformation was historically understood. William Blackstone described the equal administration of justice as essential to lawful government itself. Magna Carta likewise declared: “*To no one will we sell, to no one deny, to no one delay justice or right*.” This command contained no exemption for governmental office. Equality before law was not understood as procedural convenience, but as a foundational restraint preventing public power from becoming hereditary privilege or institutional supremacy.

Modern immunity doctrines progressively erode this equality by introducing legal asymmetries unknown to the constitutional structure. Judges receive immunity for judicial acts. Prosecutors receive immunity for prosecutorial functions. Officers receive immunity for discretionary enforcement. Administrative actors receive deference for institutional determinations. In each case, the official receives legal protections unavailable to the People against whom governmental authority is exercised.

The cumulative effect is structural rather than isolated. Immunity does not merely protect individual officials from liability. It alters the constitutional character of the legal system itself by establishing practical superiority of governmental actors over ordinary citizens within the operation of law. “*Nemo potest plus juris ad alium transferre quam ipse habet*,” (No one can

transfer to another a greater right than he himself possesses) 4 Coke, Institutes 206; 1 Blackstone, *Commentaries* 43.

This transformation marks the gradual replacement of constitutional equality with administrative hierarchy. Rights remain nominally universal, but remedies become contingent upon institutional status. Accountability remains rhetorically affirmed, but practically restricted. Sovereignty remains theoretically vested in the People, while operational privilege increasingly attaches to the governmental institutions acting in their name.

Once equality before law is abandoned, constitutional government begins to dissolve into a system of managed privilege in which public officials exercise powers insulated from the ordinary legal restraints binding the citizenry. At that point, the distinction between servant and sovereign becomes progressively obscured, and delegated authority begins to operate less as fiduciary trust and more as institutional supremacy protected from external accountability.

2.5 From Law to Fiat: How Immunity Converts Constitutional Government into Administrative Command

When Accountability Disappears, Law Ceases to Operate as Law

Law and fiat are not the same thing. Law operates through fixed rules publicly binding upon both the governed and those exercising governmental authority. Fiat operates through discretionary command imposed by institutions insulated from ordinary accountability. The distinction is foundational because constitutional government can survive only so long as governmental power remains subordinate to law rather than exempt from it.

Under the American constitutional system, law derives legitimacy from delegation. Authority is lawful only when exercised within fixed constitutional limits and subject to external accountability enforceable by the People themselves. Public officers therefore do not govern through personal will, institutional preference, or discretionary supremacy. They govern only through authority conditionally delegated under law. “*A verbis legis non est recedendum,*” (*From the words of the law there must be no departure*) 5 Coke, Reports 118; 1 Kent, *Commentaries* 462.

Immunity doctrine fundamentally alters this arrangement. By insulating governmental actors from ordinary legal consequence, immunity progressively removes the defining condition that distinguishes lawful authority from arbitrary power. Once officials become exempt from meaningful accountability, law ceases to function as a fixed restraint equally binding upon all persons. It instead becomes an instrument selectively applied according to institutional status, governmental function, and administrative discretion.

This transformation rarely occurs through direct abolition of constitutional forms. Courts continue issuing opinions. Legislatures continue passing statutes. Agencies continue promulgating regulations. Elections continue occurring. Yet the operational substance of law changes because accountability no longer functions as an enforceable external restraint upon those exercising power. The governmental system increasingly determines for itself: what

authority exists, how far that authority extends, when accountability applies, and whether remedy may be permitted at all.

Under such conditions, law gradually yields to fiat. Rights remain nominally recognized but become procedurally contingent. Constitutional limitations remain rhetorically affirmed but operationally subordinated to institutional necessity, governmental efficiency, judicial deference, or administrative convenience. “*Ubi jus ibi remedium,*” (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23. Once remedy disappears, rights increasingly persist only as abstractions lacking enforceable substance.

The danger is structural rather than episodic. Fiat does not require open dictatorship or formal suspension of constitutional government. It emerges wherever institutions exercising power become capable of redefining the limits of their own accountability independent of external constitutional restraint. The outward forms of legality remain while operational authority migrates into internally managed systems of discretionary control.

This process explains the progressive expansion of immunity doctrines throughout the administrative era. Immunity preserves institutional continuity by shielding governmental actors from direct accountability for violations committed under color of authority. At the same time, judicial deference doctrines, procedural barriers, administrative tribunals, and internal review mechanisms reinforce the same insulation. Together, these systems transform constitutional restraints into managed procedures supervised by the institutions subject to restraint themselves.

The common law rejected such arrangements because lawful authority and accountability were understood to be inseparable. “*Nemo judex in causa sua,*” (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91. Where institutions determine the scope of their own accountability, law no longer functions as an external limitation upon power. It becomes an internal instrument of institutional self-preservation.

The result is the gradual replacement of constitutional government with administrative supremacy. Delegated authority gives way to procedural management. Equal law gives way to discretionary enforcement. Public accountability gives way to institutional self-regulation. The sovereign People retain theoretical authority while the practical operation of power increasingly rests within systems insulated from meaningful external correction.

At that point, governmental acts may continue to possess force, but they no longer possess the defining characteristics of law under the constitutional order. They operate instead as administrative fiat: commands enforced through institutional power rather than authority lawfully delegated and publicly accountable under the Constitution.

2.6 Public Policy Cannot Create Delegated Authority

Administrative Convenience Cannot Supersede the Constitution

Modern immunity doctrine is frequently justified not through constitutional text or lawful delegation, but through appeals to public policy. Courts and governmental institutions repeatedly argue that immunity is necessary to preserve judicial independence, encourage decisive executive action, protect prosecutorial discretion, prevent excessive litigation, or ensure administrative efficiency. These arguments share a common premise: that governmental convenience may justify exemption from ordinary constitutional accountability.

The constitutional structure rejects that premise entirely.

Under the American system, governmental authority does not arise from institutional necessity, efficiency, expediency, or policy preference. It arises solely through delegation from the People expressed within the constitutional instrument. No branch possesses authority to enlarge its own powers because broader authority would produce more efficient administration or institutional convenience. “*Delegatus non potest delegare,*” (*A delegate cannot further delegate*) 2 Coke, Institutes 597; Story, *Commentaries on the Law of Agency* § 13.

The distinction is critical because policy arguments inherently operate outside the constitutional chain of delegation. Public policy may influence legislative choice within the sphere of delegated authority, but it cannot create authority where delegation is absent. The Constitution establishes the boundaries of lawful power precisely to prevent governmental actors from redefining the limits of their own authority according to perceived necessity or institutional preference.

This principle was recognized early in American constitutional jurisprudence. In *Marbury v. Madison*, Chief Justice Marshall explained that the Constitution was written so that the limits of governmental power “*may not be mistaken or forgotten.*” 5 U.S. (1 Cranch) 137, 176 (1803). If appeals to institutional necessity could override constitutional limitation, then written constitutional boundaries would possess no operative force at all. Government would determine the extent of its own authority according to convenience rather than delegation.

Immunity doctrine increasingly reflects precisely this transformation. Courts routinely acknowledge that constitutional injuries may occur while nevertheless concluding that institutional concerns outweigh the need for direct accountability. Prosecutorial immunity is justified to preserve prosecutorial independence. Judicial immunity is justified to protect judicial decision-making. Qualified immunity is justified to prevent hesitation by officers acting under difficult circumstances. Administrative deference is justified to preserve bureaucratic expertise and operational continuity.

In each instance, constitutional accountability yields to institutional functionality.

The problem is not merely doctrinal inconsistency. It is structural inversion. Once institutional convenience becomes capable of superseding constitutional limitation, delegated authority ceases to function as a fixed restraint upon governmental power. Public officials no longer operate

under law equally binding upon all persons, but under flexible doctrines adjusted according to administrative necessity and institutional preference.

The common law rejected such reasoning because rights were understood to precede government itself. Government existed to secure rights, not to suspend remedies whenever accountability became inconvenient to those exercising power. “*Ubi jus ibi remedium,*” (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23. A system permitting rights without remedy transforms law into aspiration rather than enforceable restraint.

The danger is especially acute where the institutions invoking necessity are themselves the beneficiaries of the protections being created. Courts justify judicial immunity. Prosecutors justify prosecutorial discretion. Agencies justify administrative insulation. In each circumstance, the institution claiming protection also participates in defining the scope and necessity of the protection claimed. “*Nemo judex in causa sua,*” (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91.

Constitutional government cannot survive upon such a foundation because delegated authority becomes subordinate to institutional self-preservation. What began as limited government restrained by externally enforceable law progressively transforms into administrative governance restrained primarily by internal discretion.

The Constitution does not authorize government to suspend accountability whenever accountability becomes operationally burdensome. The People delegated limited powers, not discretionary supremacy. Administrative convenience cannot create authority the Constitution withheld. Institutional necessity cannot legitimize undelegated power. And public policy cannot convert usurpation into law.

2.7 When Accountability Ends, Delegation Ends

Immunity Breaks the Constitutional Chain of Authority

Delegated authority can exist only so long as the delegation remains subject to accountability. Accountability is not an external feature attached to constitutional government as a matter of preference or policy. It is the indispensable condition that preserves the lawful relationship between the sovereign People and the officers exercising authority in their name. Once accountability is removed, delegation itself begins to collapse.

Under the American constitutional structure, every exercise of governmental power must remain traceable through an unbroken chain of lawful authority originating in the People, passing through the Constitution, and extending into the particular governmental act being performed. This chain is what distinguishes constitutional government from autonomous institutional rule. Public officers possess no independent sovereignty. Their authority exists only conditionally and only within the limits of the trust delegated to them.

The preservation of this chain depends entirely upon answerability to the sovereign source from which the delegation arose. Officers remain lawful fiduciaries only so long as the People retain the practical ability to examine, challenge, restrain, and remedy abuses of delegated power. Accountability therefore functions as the operational mechanism preserving constitutional limitation itself.

Immunity severs this chain.

Once governmental actors acquire the ability to exempt themselves from ordinary legal consequence, authority no longer remains fully dependent upon the continuing consent and supervision of the sovereign People. The institution exercising power increasingly determines: the scope of its own authority, the extent of its own accountability, the procedures governing review, and the availability of remedy for abuse.

At that point, delegation begins transforming into self-ratification.

This transformation is structural rather than episodic. The problem is not merely that particular officials avoid liability in isolated cases. The deeper defect is that the governmental system progressively acquires authority to define the limits of its own restraint independent of external constitutional enforcement. The sovereign People remain nominally supreme, but the operational mechanisms necessary to enforce that supremacy become subordinated to the institutions subject to restraint themselves.

The common law recognized the impossibility of lawful fiduciary authority without accountability. Trustees remained answerable to beneficiaries. Sheriffs remained answerable to the community. Magistrates remained answerable to law. "*Fiducia est stricti juris,*" (*A trust is of strict right; strictly construed*) Story, *Equity Jurisprudence* § 321; Broom, *Legal Maxims*, at 567. A trust from which accountability has been removed ceases to function as trust and progressively assumes the character of autonomous control.

This explains the constitutional danger posed by immunity doctrines. Immunity does not merely protect individual officers from litigation. It alters the source from which practical authority is derived. Authority no longer flows entirely from the People through constitutional delegation. It increasingly flows from institutional continuity, judicial precedent, administrative procedure, and internally managed systems of self-preservation.

The result is a progressive inversion of sovereignty. Officers originally created as servants of the constitutional order become partially insulated from the sovereign authority that created them. The People retain theoretical sovereignty while institutions exercising power progressively acquire operational independence from meaningful external accountability. "*Qui facit per alium facit per se,*" (*He who acts through another acts himself*) 4 Coke, Institutes 317; 1 Blackstone, *Commentaries* 429.

Once accountability becomes conditional upon institutional permission, constitutional government survives increasingly as form while delegated authority loses its defining limitation. Government no longer functions fully as fiduciary power restrained by law, but as administrative power restrained primarily by internal discretion.

The transition is subtle but decisive. The Constitution does not contemplate institutions possessing authority to determine the boundaries of their own accountability independent of the sovereign People. The moment such authority is assumed, the constitutional chain begins to fracture. Delegation yields to self-ratification. Fiduciary office yields to institutional supremacy. And public power progressively detaches itself from the lawful source from which alone it may legitimately arise.

2.8 The Constitutional Firewall and the Structural Breach of Immunity

Immunity Operates as a Breach in the Architecture of Lawful Government

The Constitution functions as a structural firewall separating lawful delegated authority from arbitrary power. Its purpose is not merely to organize government, but to restrain it. Every constitutional limitation, separation of powers provision, jurisdictional boundary, and reservation of rights exists to preserve the supremacy of law over the institutions exercising governmental force. The constitutional system therefore depends not simply upon written guarantees, but upon operational mechanisms capable of enforcing those guarantees against the government itself. Accountability is one of those mechanisms.

Without accountability, constitutional limitations become advisory rather than binding. Rights become declaratory rather than enforceable. Separation of powers becomes procedural rather than substantive. The firewall fails because the institutions subject to restraint progressively acquire the ability to determine the limits of their own obedience to law. Immunity doctrine operates precisely at this point of failure.

By insulating governmental actors from ordinary legal consequence, immunity creates openings through which undelegated power bypasses the constitutional structure while preserving the outward appearance of lawful government. Constitutional forms remain visible. Courts continue operating. Statutes continue issuing. Agencies continue regulating. Elections continue occurring. Yet the practical capacity of the People to enforce constitutional restraint against governmental actors becomes progressively obstructed. The structural danger is cumulative.

Judicial immunity shields judges from accountability for judicial acts. Prosecutorial immunity shields prosecutors for conduct associated with prosecution. Qualified immunity shields officers acting under color of authority unless prior case law has established sufficiently identical facts. Sovereign immunity shields governmental entities from suit absent consent. Administrative deference doctrines shield agency interpretations from meaningful judicial scrutiny. Internal review systems redirect complaints back into the institutions accused of wrongdoing. Each doctrine, standing alone, appears procedural. Together, they create an interlocking structure of insulation separating governmental power from direct constitutional accountability.

This insulation fundamentally alters the constitutional balance. The People retain nominal sovereignty, but the practical mechanisms necessary to restrain governmental abuse become increasingly controlled by the same institutions exercising the challenged power. Accountability becomes conditional upon institutional permission rather than secured as a retained constitutional right. “*Ubi jus ibi remedium,*” (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23.

The common law understood that lawful authority could survive only where external restraints remained enforceable against public power. “*Nemo judex in causa sua,*” (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91. Immunity doctrines progressively erode this principle by allowing institutions to supervise, define, and limit accountability for their own conduct through internally managed processes.

The result is not merely doctrinal inconsistency, but structural breach.

The constitutional firewall depends upon the continued separation between: law and power, delegation and assumption, accountability and immunity, servant and sovereign.

Immunity collapses those distinctions. Institutions originally created as fiduciary servants progressively acquire practical independence from the sovereign authority that created them. Delegated authority becomes partially self-ratifying. Constitutional restraint becomes increasingly procedural rather than enforceable. Public accountability yields to administrative self-preservation.

This transformation does not usually occur through open abolition of constitutional government. It occurs gradually through accumulated exceptions, procedural barriers, deference doctrines, jurisdictional evasions, and immunity structures that collectively permit governmental actors to operate outside ordinary legal consequence while continuing to invoke constitutional legitimacy.

The Constitution was designed precisely to prevent this condition. Written limitations exist because power naturally seeks expansion beyond its delegated boundaries. The firewall of constitutional government therefore survives only so long as accountability remains real, external, and enforceable by the sovereign People themselves.

Once immunity permits governmental actors to place themselves beyond ordinary accountability, the breach is no longer isolated. It becomes systemic. The constitutional structure remains outwardly intact while operational authority progressively migrates into institutions insulated from meaningful external restraint. At that point, constitutional government persists increasingly as form while administrative supremacy governs in substance.

2.9 The Final Constitutional Distinction: Government Under Law or Government Above Law

Immunity Determines Which System Exists

At its foundation, the controversy surrounding immunity is not a dispute about policy, efficiency, or administrative practicality. It is a constitutional question concerning the nature of government itself. The issue is whether public officials remain subordinate to law, or whether governmental institutions may place themselves beyond the ordinary legal restraints binding the People from whom their authority derives. No middle ground ultimately exists between these two conditions.

Under constitutional government, public officers exercise limited authority delegated by the sovereign People and remain continuously accountable for violations of law and breaches of trust. Rights remain enforceable because remedies remain available. Jurisdiction remains lawful because authority remains traceable through an unbroken constitutional chain of delegation. Equality before law remains real because no officeholder acquires superior legal status exempting him from accountability to the sovereign source of authority itself.

Under systems of administrative supremacy, the outward forms of constitutional government may continue while practical accountability progressively disappears. Institutions exercising power determine the scope of their own restraint. Courts define the limits of judicial accountability. Prosecutors define the limits of prosecutorial accountability. Agencies supervise the legality of their own conduct. Administrative procedures replace direct constitutional enforcement. Immunity doctrines shield public actors from ordinary legal consequence. The law continues to exist in form, while institutional self-protection increasingly governs in operation.

This distinction determines whether sovereignty remains with the People or migrates into the institutions exercising governmental power. The Constitution answers the question directly. Governmental officers are not sovereigns. They are fiduciaries exercising delegated authority under law. The Massachusetts Constitution states that magistrates and officers are merely the substitutes and agents of the People and remain “*at all times accountable to them.*” Accountability is therefore not optional, procedural, or discretionary. It is the defining condition preserving the constitutional relationship between sovereign and servant.

Immunity alters that relationship fundamentally. Once governmental actors may violate rights while remaining insulated from ordinary legal consequence, constitutional restraints become increasingly dependent upon institutional willingness to police itself. Delegation yields to self-ratification. Public accountability yields to administrative management. Law yields to internally controlled systems of procedural discretion. “*Nemo judex in causa sua,*” (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91.

The structural consequences extend beyond isolated cases or individual abuses. Immunity changes the source from which practical authority derives. Instead of authority flowing exclusively from the People through constitutional delegation, governmental institutions progressively derive operational power from internally generated doctrines, judicial precedent,

administrative procedure, and institutional continuity. Constitutional limitation becomes secondary to institutional preservation.

The common law rejected such arrangements because lawful authority could not coexist with unaccountable power. “*Ubi jus ibi remedium,*” (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23. A right without enforceable remedy ceases to function as a practical restraint upon governmental action. Similarly, delegated authority without enforceable accountability ceases to function as constitutional government in substance, regardless of whether constitutional forms remain outwardly intact.

The constitutional question therefore resolves into a simple but unavoidable proposition. Either governmental actors remain fully subordinate to the law through continuous accountability to the sovereign People, or the institutions exercising power progressively assume a form of practical sovereignty for themselves. Both conditions cannot coexist simultaneously.

The American constitutional system was established upon the first principle. Sovereignty resides in the People. Government exists only by delegation. Accountability preserves the delegation. Immunity severs it.

Once that severance becomes normalized, the constitutional order persists increasingly as appearance while operational power migrates into institutions insulated from meaningful external restraint. At that point, the transition from constitutional government to administrative supremacy is no longer theoretical. It is complete in operation, even if not yet acknowledged in name.

2.10 Restoration of Constitutional Order Requires the Restoration of Accountability

No Constitutional Republic Can Survive the Permanent Separation of Power from Responsibility

The preservation of constitutional government depends upon the continued union of authority and accountability. The Constitution does not merely distribute power among branches of government; it conditions every exercise of power upon lawful restraint enforceable by the sovereign People themselves. Once power becomes permanently insulated from accountability, the constitutional structure begins to dissolve regardless of whether its outward forms remain intact.

The American system was designed upon the assumption that public officials would remain answerable for abuses of delegated authority. The separation of powers, the jury system, the grand jury, due process, judicial review, petitions for redress, and the reservation of rights to the People all operate upon the same foundational premise: no governmental actor may stand above the law. “*A verbis legis non est recedendum,*” (*From the words of the law there must be no departure*) 5 Coke, Reports 118; 1 Kent, *Commentaries* 462.

Immunity doctrine progressively dismantles these safeguards by severing responsibility from authority. Judicial immunity permits judges to exercise power without ordinary legal exposure. Prosecutorial immunity permits prosecutorial misconduct without direct civil accountability. Qualified immunity shields executive officers from liability unless prior judicial precedent has already condemned nearly identical conduct. Sovereign immunity places governmental institutions beyond ordinary suit absent consent. Administrative systems further obstruct accountability through procedural barriers, internal review mechanisms, and institutional gatekeeping.

The cumulative effect is structural. Accountability becomes exceptional rather than continuous. Remedy becomes discretionary rather than inherent. Constitutional restraints become dependent upon institutional self-regulation rather than enforceable external limitation. "*Ubi jus ibi remedium*," (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23.

No constitutional republic can long survive such a condition because delegated authority cannot remain legitimate once the sovereign loses the practical ability to enforce the terms of the delegation. A fiduciary relationship from which accountability has been removed ceases to function as fiduciary authority. The same principle governs constitutional government. "*Fiducia est stricti juris*," (*A trust is of strict right; strictly construed*) Story, *Equity Jurisprudence* § 321; Broom, *Legal Maxims*, at 567.

The restoration of constitutional order therefore cannot occur merely through procedural reform while immunity doctrines remain intact. Structural breaches cannot be cured by administrative adjustment. The underlying constitutional relationship between sovereign and servant must itself be restored. Governmental actors must once again remain fully subordinate to the law binding the People from whom all authority derives.

This does not require abolition of government. It requires restoration of constitutional limitation. Officers may continue exercising delegated authority, but only under conditions preserving external accountability enforceable through lawful process. Courts may continue adjudicating disputes, but not while possessing authority to define the limits of their own immunity independent of constitutional delegation. Prosecutors may continue exercising prosecutorial discretion, but not while insulated from accountability for deliberate violations of law. Administrative agencies may continue performing delegated functions, but not while combining legislative, executive, and judicial powers within internally protected institutional systems.

The Constitution already supplies the governing principle. Public office is fiduciary office. Governmental power is delegated power. Delegated power remains subordinate to law. And law remains enforceable only where accountability survives as a practical reality rather than a ceremonial abstraction.

The alternative is the continued migration of sovereignty away from the People and into administrative institutions exercising practical supremacy through procedural insulation and internally managed accountability. Such a system may continue invoking constitutional language while progressively abandoning constitutional operation.

The distinction ultimately becomes unavoidable. Either law governs the institutions exercising power, or the institutions exercising power govern the law. The American constitutional order was founded upon the first principle. Immunity doctrine progressively establishes the second.

2.11 The Constitutional Consequence of Immunity: The Dissolution of Republican Government

A Republic Cannot Exist Where Public Power Is Above the Law

The American constitutional system was founded upon a single governing premise: that law is supreme over those entrusted to execute it. Every structural protection within the constitutional order, including separation of powers, due process, trial by jury, reserved rights, limited delegation, and public accountability, exists to preserve this principle. The moment public officials become structurally insulated from ordinary legal consequence, the character of government itself begins to change. A republic cannot survive where public power exists beyond the reach of law.

Under republican government, officials remain fiduciaries exercising temporary and limited authority on behalf of the sovereign People. Their authority is derivative, conditional, and revocable because it originates entirely through delegation. Public office therefore conveys responsibility rather than privilege. The officer possesses duties, not superiority. “*Qui facit per alium facit per se,*” (*He who acts through another acts himself*) 4 Coke, Institutes 317; 1 Blackstone, *Commentaries* 429.

Immunity doctrine progressively dissolves this relationship by insulating governmental actors from the ordinary operation of law while preserving their ability to exercise coercive power over others. Once this condition becomes normalized, the practical distinction between constitutional servant and institutional sovereign begins to disappear. Government no longer functions entirely as delegated authority restrained by externally enforceable law. It increasingly functions as administrative power restrained primarily by internal discretion and procedural self-management.

This transformation alters the nature of citizenship itself. Under constitutional government, the citizen remains sovereign and the officer remains accountable. Under systems insulated by immunity, the citizen increasingly encounters government not as a fiduciary servant operating under law, but as an institution possessing practical superiority over the ordinary legal restraints binding the public. Equality before law becomes conditional. Remedy becomes uncertain. Accountability becomes procedural rather than substantive.

The danger is cumulative because immunity does not operate in isolation. Judicial immunity, prosecutorial immunity, qualified immunity, sovereign immunity, administrative deference, procedural exhaustion requirements, internal review systems, and institutional gatekeeping collectively create a structure in which governmental actors exercise expanding power while external mechanisms of correction progressively weaken. Constitutional restraints remain formally acknowledged while practical enforcement becomes increasingly dependent upon institutional consent.

The common law recognized the impossibility of preserving liberty under such conditions. Magna Carta declared: *“To no one will we sell, to no one deny, to no one delay justice or right.”* The principle was universal because the supremacy of law depends upon the ability of the governed to obtain remedy against those exercising public power. *“Ubi jus ibi remedium,”* (Where there is a right, there must be a remedy) 1 East 220; 3 Blackstone, *Commentaries* 23.

Once remedy disappears against governmental actors, law loses its essential character as an enforceable restraint upon power. Rights continue to exist in theory, but governmental institutions increasingly determine whether those rights may be vindicated in practice. At that point, constitutional limitation survives primarily as language while operational supremacy migrates into the institutions exercising authority themselves.

This condition marks the dissolution of republican government in substance even where republican forms formally remain. Elections may continue. Courts may continue functioning. Legislatures may continue convening. Constitutional provisions may continue to be cited. Yet where governmental actors stand partially above the law through institutional immunity, sovereignty no longer fully resides in the People in operational reality.

The Constitution does not permit such a condition. Public officials were never delegated authority to redefine the limits of their own accountability or to elevate themselves beyond the ordinary operation of law. *“Nemo potest plus juris ad alium transferre quam ipse habet,”* (No one can transfer to another a greater right than he himself possesses) 4 Coke, *Institutes* 206; 1 Blackstone, *Commentaries* 43.

The constitutional consequence is therefore unavoidable. Either governmental actors remain fully subordinate to law through continuous accountability to the sovereign People, or republican government progressively gives way to administrative supremacy operating beneath constitutional form but beyond constitutional restraint. Immunity doctrine accelerates that transformation because it severs the indispensable connection between delegated power and enforceable responsibility.

Where power and accountability permanently separate, the republic does not merely weaken. It ceases to operate according to the constitutional structure from which its legitimacy originally arose.

2.12 The Final Breach: When Government Becomes the Author of Its Own Authority

Immunity Converts Delegated Government into Self-Originating Power

The ultimate constitutional danger of immunity is not merely that public officials avoid liability for unlawful acts. The deeper danger is that immunity progressively transforms government from a system exercising delegated authority into a system generating authority from itself. Once institutions acquire the power to define the limits of their own accountability independent of the sovereign People, government ceases to operate fully through delegation and begins operating through self-ratification.

Under the constitutional design, governmental authority originates outside government itself. The People are sovereign. The Constitution is the written instrument through which limited powers are delegated. Every officer, court, legislature, and agency derives authority only through that chain. No branch possesses inherent sovereignty, and no institution may lawfully enlarge its own powers beyond the delegation received. “*Delegatus non potest delegare,*” (*A delegate cannot further delegate*) 2 Coke, Institutes 597; Story, *Commentaries on the Law of Agency* § 13.

Immunity doctrine disrupts this structure by allowing institutions to determine the extent to which they may be held accountable for abuses of delegated authority. Courts define judicial immunity. Prosecutors define prosecutorial discretion. Agencies define administrative deference. Legislatures create procedural barriers limiting access to remedy. Internal disciplinary systems supervise the legality of their own institutional conduct. In each case, the institution exercising power participates directly in defining the limits of its own restraint. This is the precise condition the constitutional structure was designed to prevent.

The separation of powers exists because concentrated power naturally seeks expansion beyond its delegated boundaries. Trial by jury exists because officers cannot be trusted as the sole judges of their own conduct. Due process exists because rights cannot depend upon administrative discretion. Judicial review exists because unconstitutional acts must remain subordinate to superior law. The entire constitutional architecture presupposes that lawful authority requires external restraint enforceable against government itself. Immunity progressively removes those restraints.

Once institutions possess authority to define the scope of their own accountability, constitutional limitation becomes increasingly internalized within the same structures exercising power. Accountability survives only to the extent the institution permits it. Remedy exists only where procedural systems allow it. Rights become operationally contingent upon administrative tolerance rather than constitutionally secured guarantees. “*Ubi jus ibi remedium,*” (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23.

At that point, the source of practical authority begins to change. Government no longer derives operational legitimacy exclusively from the People through constitutional delegation. It increasingly derives authority from internally generated precedent, procedural frameworks, institutional continuity, and self-validating doctrines enforced through administrative systems insulated from direct external correction.

This transformation marks the transition from constitutional government to autonomous institutional governance. The outward forms of republican government may remain intact, but the operational source of authority has shifted. Public power increasingly sustains itself through institutional self-reference rather than continuous accountability to the sovereign People.

The common law recognized that no lawful system could survive such inversion. “*Nemo iudex in causa sua,*” (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91. A system in which institutions define the boundaries of their own accountability inevitably transforms accountability into discretion and delegation into supremacy.

This is why immunity represents more than doctrinal error or policy imbalance. It constitutes a structural breach in the constitutional order itself. The issue is not merely whether officials should possess protection from suit under difficult circumstances. The issue is whether the servant may become the author of the limits governing his own obedience to law.

The Constitution answers that question in the negative. Sovereignty remains with the People. Government exists only by delegation. Delegated authority remains subordinate to law. And law remains meaningful only where the sovereign retains the practical ability to hold public power accountable through enforceable remedy.

Once government acquires authority to determine the limits of its own accountability independent of the People, the constitutional chain of delegation is no longer merely weakened. It is replaced by a system in which institutional power increasingly justifies itself through its own internally generated authority. At that point, government no longer functions primarily as fiduciary power under law. It functions as administrative sovereignty sustained through self-ratification and protected from meaningful external restraint.

2.13 The Constitutional Remedy: Restoration Through Reassertion of the People's Authority

The Constitution Already Contains the Means of Restoration

The structural breach created by immunity doctrine does not require abandonment of constitutional government to correct it. The Constitution already contains the principles necessary to restore lawful order because the constitutional system was designed upon the assumption that power would naturally seek expansion beyond its delegated limits. The remedy is therefore not the invention of new authority, but the restoration of existing constitutional restraints.

The first principle of restoration is recognition that sovereignty remains with the People and has never lawfully departed from them. Government possesses no independent existence separate from the delegation through which it was created. Every office, court, agency, and institution remains subordinate to the constitutional limits imposed by the sovereign People themselves. "*Qui facit per alium facit per se,*" (*He who acts through another acts himself*) 4 Coke, Institutes 317; 1 Blackstone, *Commentaries* 429.

The second principle is the restoration of accountability as a continuous and enforceable condition of delegated authority. Accountability cannot remain dependent upon institutional permission, internal review systems, procedural obstruction, or administrative discretion. Rights become meaningful only where remedy remains practically accessible against governmental actors who violate constitutional limitation. "*Ubi jus ibi remedium,*" (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23.

The third principle is the restoration of jurisdictional discipline. Governmental institutions must once again operate within clearly defined constitutional boundaries rather than through implied powers justified by institutional necessity, administrative convenience, or judicial expansion.

The Constitution is a written limitation upon power precisely so that governmental actors may not redefine the scope of their own authority through evolving procedural doctrines. “*A verbis legis non est recedendum,*” (*From the words of the law there must be no departure*) 5 Coke, Reports 118; 1 Kent, *Commentaries* 462.

The fourth principle is the restoration of the jury and the People’s direct supervisory role within the administration of justice. The common law never contemplated a system in which judges, prosecutors, and administrative actors would exercise practical supremacy over accountability while simultaneously controlling the procedural mechanisms through which their conduct is reviewed. The jury historically functioned as the People’s final constitutional restraint upon institutional abuse because no officer could lawfully become the exclusive judge of his own authority. “*Nemo judex in causa sua,*” (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91.

The fifth principle is the rejection of administrative supersession as a substitute for constitutional government. Procedure cannot replace delegation. Internal regulation cannot replace externally enforceable accountability. Institutional continuity cannot replace constitutional legitimacy. Public policy cannot create authority withheld by the People. “*Delegatus non potest delegare,*” (*A delegate cannot further delegate*) 2 Coke, Institutes 597; Story, *Commentaries on the Law of Agency* § 13.

These principles are not revolutionary. They are constitutional. They do not require the destruction of lawful government, but its restoration to the structure originally established by the People. Public officers may continue exercising delegated authority, but only under conditions preserving the supremacy of law over office and accountability over institutional self-protection.

The constitutional system cannot remain stable where governmental actors possess practical authority to determine the limits of their own accountability independent of external constitutional restraint. Such a condition inevitably converts delegated power into self-ratifying power and transforms constitutional government into administrative supremacy operating beneath republican form.

The restoration of constitutional order therefore depends upon restoration of the original chain of authority itself. Sovereignty must remain with the People. Government must remain subordinate to law. Accountability must remain enforceable against every public actor without exemption unsupported by express constitutional delegation. And constitutional rights must once again operate as enforceable restraints upon governmental power rather than procedural abstractions contingent upon institutional consent.

Only under those conditions can delegated authority remain lawful rather than self-originating, fiduciary rather than sovereign, and constitutional rather than administrative in operation.

2.14 The Final Constitutional Question

Whether the American System Still Recognizes Law as Supreme Over Power

Every constitutional controversy ultimately resolves into a question of first principles. The controversy surrounding immunity is no exception. Beneath the procedural doctrines, judicial formulations, administrative structures, and institutional justifications lies a single constitutional question: whether the American system still recognizes law as supreme over those entrusted to exercise governmental power.

The Constitution was established upon the premise that no public office could lawfully exist above the law. The People delegated limited authority to governmental institutions while reserving sovereignty to themselves. Public officers were intended to remain fiduciaries bound by constitutional limitation, answerable for abuses of delegated power, and continuously subordinate to the law they were entrusted to administer. *“The powers delegated by the proposed Constitution to the federal government are few and defined.”* *Federalist No. 45.*

Immunity doctrine alters this arrangement fundamentally. Once governmental actors acquire insulation from ordinary legal consequence, the relationship between law and power begins to reverse. Law no longer functions entirely as an external restraint upon public authority. Instead, governmental institutions increasingly determine: the scope of their own powers, the availability of accountability, the limits of remedy, and the conditions under which constitutional restraints may be enforced against themselves.

At that point, constitutional limitation becomes increasingly dependent upon institutional discretion rather than sovereign enforcement by the People.

This transformation explains the cumulative pattern examined throughout this article. Judicial immunity permits courts to define the limits of judicial accountability. Prosecutorial immunity permits prosecutors to operate beyond ordinary civil consequence. Qualified immunity permits executive officers to avoid liability absent prior judicially approved factual specificity. Sovereign immunity elevates governmental entities above ordinary legal process absent consent. Administrative systems redirect accountability into internally managed procedures supervised by the same institutions exercising the challenged authority.

Each doctrine operates differently. Yet all produce the same structural effect: the progressive separation of governmental power from direct constitutional accountability.

The common law recognized the danger immediately because lawful government depends upon the supremacy of law over office. *“Nemo iudex in causa sua,”* (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91. *“Ubi jus ibi remedium,”* (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23. *“A verbis legis non est recedendum,”* (*From the words of the law there must be no departure*) 5 Coke, Reports 118; 1 Kent, *Commentaries* 462. These maxims were not procedural preferences. They were structural safeguards preventing delegated authority from transforming into autonomous institutional supremacy.

The constitutional danger emerges when those safeguards cease operating in practice while continuing to exist in theory. Rights remain formally recognized while remedies disappear. Accountability remains rhetorically affirmed while institutions supervise the limits of their own restraint. Sovereignty remains nominally vested in the People while operational authority progressively migrates into systems insulated from meaningful external correction. Under such conditions, constitutional government persists increasingly as form while administrative supremacy governs in operation.

The issue therefore extends beyond immunity itself. The deeper question is whether the Constitution remains a binding limitation upon governmental power or whether constitutional language now functions primarily as ceremonial legitimacy surrounding institutions increasingly capable of defining the scope of their own authority independent of the sovereign People.

The American constitutional system answers that question clearly. Sovereignty resides in the People. Government exists only through delegation. Delegated authority remains subordinate to law. And law remains supreme only where accountability survives as a real and enforceable condition upon every exercise of public power.

Once immunity permits institutions to place themselves beyond ordinary accountability, the constitutional order encounters its final contradiction: government continues invoking the authority of the People while simultaneously insulating itself from the People's practical ability to enforce the limits of that authority. No constitutional republic can permanently survive that condition.

2.15 The Point of Irreversibility

When Institutions Become Self-Protective Systems

Constitutional systems do not ordinarily collapse through sudden abolition. They deteriorate through gradual inversion. The outward forms of lawful government often remain intact long after the operational structure has fundamentally changed. Elections continue. Courts continue issuing opinions. Legislatures continue enacting statutes. Constitutional language continues to be invoked. Yet beneath these forms, the relationship between the People and their government progressively transforms.

The decisive point occurs when institutions exercising delegated authority acquire the practical ability to protect themselves from meaningful external accountability.

At that stage, constitutional restraint no longer operates primarily through the sovereign People enforcing limitations upon government. It operates through institutions supervising themselves. Judicial systems determine the extent of judicial accountability. Prosecutorial systems regulate prosecutorial misconduct. Administrative agencies oversee administrative abuse. Internal procedures replace external constitutional restraint. Accountability becomes conditional upon institutional consent rather than guaranteed as a retained right of the sovereign People.

This transformation alters the source from which governmental authority derives in practical operation. Under constitutional government, authority flows from the People through the Constitution and remains continuously dependent upon enforceable accountability. Under self-protective administrative systems, authority increasingly flows from institutional continuity, procedural control, judicial precedent, and internally managed mechanisms of self-preservation.

The transition is subtle because constitutional language frequently survives after constitutional operation has weakened. Rights continue to be acknowledged while remedies become procedurally inaccessible. Accountability continues to be affirmed rhetorically while immunity doctrines progressively insulate governmental actors from ordinary legal consequence. Sovereignty continues to be attributed to the People while institutions increasingly exercise practical supremacy over the enforcement of constitutional limitations.

The danger becomes irreversible once the mechanisms historically capable of restraining governmental power are themselves subordinated to the institutions they were designed to restrain. The jury loses independent authority. Grand juries operate under prosecutorial supervision. Judicial review becomes intertwined with judicial self-interest. Administrative agencies adjudicate disputes arising from their own regulatory actions. Internal disciplinary structures replace direct public accountability. At that point, the constitutional firewall no longer functions as an external restraint upon power. It functions increasingly as an internal management system preserving institutional stability.

The common law recognized that no free government could survive indefinitely under such conditions. "*Nemo judex in causa sua*," (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham's Case*); 1 Blackstone, *Commentaries* 91. Once institutions become the primary judges of the legality and limits of their own authority, delegated power begins transforming into autonomous institutional sovereignty.

Immunity doctrine accelerates this transformation because it separates power from consequence while preserving the appearance of lawful authority. Public officials continue exercising coercive governmental power while progressively escaping the ordinary legal restraints binding the sovereign People themselves. The law remains externally enforceable against the citizen while becoming internally negotiable for the institution. This marks the point at which constitutional government persists increasingly in form rather than operation.

The final danger is not merely corruption, abuse, or isolated misconduct. The deeper danger is normalization. Once institutional self-protection becomes accepted as a legitimate substitute for constitutional accountability, the inversion ceases to appear exceptional. Future expansions of immunity, deference, procedural insulation, and administrative supremacy no longer appear as departures from constitutional structure, but as ordinary features of governance itself. At that point, the constitutional breach is no longer episodic. It becomes systemic.

The People continue to possess sovereignty in theory while the operational mechanisms necessary to enforce that sovereignty progressively disappear in practice. Government continues invoking constitutional legitimacy while functioning through internally managed systems increasingly insulated from meaningful external restraint.

The constitutional order can survive isolated abuses. It cannot indefinitely survive the permanent normalization of unaccountable power.

3.0 Immunity as a Direct Violation of Delegated Rights

The claim of immunity constitutes a direct assault upon the People's reserved authority to enforce the constitutional compact against their own agents. Accountability is not incidental to delegated power; it is the condition that distinguishes delegated authority from sovereign rule. Any mechanism that obstructs the People's ability to hold public officers answerable operates as a breach of the delegation itself. "*Ubi jus ibi remedium,*" (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23. Immunity breaches this principle by erecting structural barriers between the sovereign People and those exercising power in their name, thereby severing the direct fiduciary relationship upon which constitutional government depends.

The People's retained right of accountability is neither implied nor uncertain. It is expressly declared in constitutional text. "*A verbis legis non est recedendum,*" (*From the words of the law there must be no departure*) 5 Coke, Reports 118; 1 Kent, *Commentaries* 462. The Massachusetts Constitution, Part the First, Article V, declares that all power resides originally in the People and that the several magistrates and officers of government "*are at all times accountable to them.*" This command admits no exception. Accountability is continuous, universal, and mandatory. Article XVIII of the same Declaration of Rights further secures the People's right to require of their legislators and magistrates "*an exact and constant observance of the laws.*" These provisions recognize accountability not as a privilege granted by government, but as a sovereign right retained by the People themselves.

The same rule appears throughout the American constitutional tradition. Article 6 of the Maryland Declaration of Rights provides that all persons entrusted with governmental power "*are the trustees of the public, and as such, accountable for their conduct.*" Trusteeship is incompatible with immunity. A trustee who cannot be called to account ceases to function as trustee and instead assumes the position of sovereign. Immunity therefore inverts the constitutional relationship between servant and master by transferring practical supremacy from the People to the officeholder.

Despite these express constitutional commands, modern governmental systems have progressively constructed institutional barriers designed to obstruct accountability. Commissions, boards, disciplinary councils, administrative tribunals, procedural immunities, and judicially created exemptions are interposed between the People and their agents, transforming what was designed as a direct fiduciary relationship into an opaque structure of administrative insulation. These mechanisms do not regulate accountability. They progressively nullify it. Procedure becomes a substitute for duty. Institutional process becomes a substitute for lawful answerability. Administrative discretion becomes a substitute for constitutional obedience.

The right retained by the People is simple and absolute: the right to hold their agents accountable at all times for violations of law and breaches of trust. Government's response has been the progressive construction of immunity doctrines designed to shield officials from precisely that

accountability. Such acts are not exercises of delegated authority, because no delegated authority exists to exempt public officers from the law binding the People themselves. The assertion of immunity therefore constitutes an undelegated act of usurpation operating against the sovereignty of the People.

This systematic obstruction of accountability produces the condition historically recognized as tyranny. Where the People are prevented from enforcing the law against their own agents, government progressively elevates itself above the law, above the Constitution, and ultimately above the source from which all lawful authority is derived. Once accountability is extinguished, delegation collapses into self-ratifying power, and constitutional government ceases to exist except as form without substance.

4.0 Historical & Common-Law Precedents Against Immunity

The common law rejected the proposition that public office could operate as a shield against accountability for unlawful acts. This principle was not discretionary, procedural, or policy-based. It arose from the structure of the common law itself and from the historical supremacy of the People's jury as the final guardian of liberty and lawful restraint upon power.

At common law, sheriffs were not immune from liability for misconduct committed under color of office. The sheriff was understood to be the People's officer, entrusted with the execution of law on behalf of the community and answerable for abuses of that trust. Where a sheriff committed a wrong, he answered personally. No doctrine existed insulating him from liability for unlawful acts committed under pretense of public authority. "*Fiducia est stricti juris*," (*A trust is of strict right; strictly construed*) Story, *Equity Jurisprudence* § 321; Broom, *Legal Maxims*, at 567.

The same principle governed all public officers. No class of governmental actor stood above the law or beyond the reach of judicial remedy. The proposition that an officer might violate rights while escaping personal accountability is foreign to the common-law tradition. "*Commodum ex injuria sua nemo habere debet*," (*No one may profit from his own wrong*) 2 Coke, *Institutes* 388; 1 Blackstone, *Commentaries* 135.

The institution that preserved this accountability was the jury. Under the Anglo-American constitutional tradition, juries operated not merely as finders of fact, but as structural restraints upon governmental power. The allocation of adjudicative authority to the People ensured that no officer, prosecutor, or judge could become the exclusive arbiter of the legality of his own conduct. "*Nemo judex in causa sua*," (*No one may be judge in his own cause*) 8 Coke, *Reports* 118a (*Dr. Bonham's Case*); 1 Blackstone, *Commentaries* 91.

The progressive reduction of the jury's authority altered this constitutional balance. By confining juries to factual determinations while reserving all questions of law exclusively to the judiciary, courts progressively centralized interpretive authority within the same institutional structure benefiting from immunity doctrines themselves. This inversion weakened the People's final operational check upon governmental self-protection. "*Delegatus non potest delegare*," (*A*

delegate cannot further delegate) 2 Coke, Institutes 597; Story, *Commentaries on the Law of Agency* § 13.

The common law did not tolerate arrangements by which public officers became insulated from legal accountability through their own institutional processes. Magna Carta declared: “*To no one will we sell, to no one deny, to no one delay justice or right.*” This command admitted no exemption for office, rank, or governmental function. “*Ubi jus ibi remedium,*” (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23.

Sir Edward Coke reaffirmed that no man may be judge in his own cause, a principle directly implicated whenever immunity doctrines permit judges or officers to determine the extent of their own legal exposure. William Blackstone likewise recognized accountability for wrongful acts as a universal principle of law, not one limited by governmental office. “*A verbis legis non est recedendum,*” (*From the words of the law there must be no departure*) 5 Coke, Reports 118; 1 Kent, *Commentaries* 462.

Emer de Vattel articulated the ultimate constitutional limitation: “*The sovereign can make no law which shall destroy that end,*” meaning the preservation of rights for which government itself was formed. A doctrine extinguishing accountability for violations of rights undermines the very object for which lawful government exists. “*Cessante ratione legis, cessat ipsa lex,*” (*When the reason for the law ceases, the law itself ceases*) Broom, *Legal Maxims* (10th ed.), at 97; 7 Coke, Reports 7a.

Where accountability is obstructed, immunity expands. Where immunity expands, the common-law structure of equal accountability before law is progressively displaced by institutional privilege. Once public officers become structurally insulated from the ordinary operation of law, constitutional government persists increasingly as form while accountability, the essential condition of delegated authority, recedes in substance.

5.0 Statutory and Judicial Self-Grant of Immunity as Usurpation

Modern immunity doctrines do not arise from constitutional delegation. They arise from institutional self-assertion. Whether created through statute, administrative procedure, or judicial precedent, immunity represents the assumption of power by governmental actors who possess no lawful authority to exempt themselves from accountability to the People. Because no branch may lawfully exercise powers not delegated to it, the creation of immunity constitutes an act of usurpation operating outside the constitutional chain of authority.

The Constitution contains no general delegation authorizing any branch of government to suspend accountability for violations of rights. No clause authorizes legislatures to create broad exemptions from liability for public officers. No clause authorizes courts to construct doctrines insulating governmental actors from the ordinary operation of law. No clause authorizes administrative bodies to erect procedural barriers extinguishing the People’s retained right to remedy. Under a system of delegated and enumerated powers, authority omitted is authority withheld. “*Casus omissus pro omisso habendus est,*” (*A case omitted is to be held as intentionally omitted*) 4 Coke, Institutes 425; Dwaris on Statutes, p. 185.

The judiciary's role in the construction and preservation of immunity doctrines presents the most acute structural violation. Courts have progressively developed and expanded doctrines from which the judiciary itself directly benefits, including judicial immunity, quasi-judicial immunity, prosecutorial immunity, and broad deference doctrines insulating governmental actors from ordinary accountability. In doing so, the judiciary ceases to function as neutral adjudicator and instead becomes institutional beneficiary of the rules it creates and applies.

This condition violates one of the oldest and most fundamental maxims of law: "*Nemo judex in causa sua*," (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham's Case*); 1 Blackstone, *Commentaries* 91. A court that determines the legality, extent, and applicability of protections shielding itself or its institutional counterparts from accountability necessarily acts within a structure of self-ratification incompatible with the common-law requirement of impartial judgment.

The danger is not merely theoretical. Under immunity doctrine, the same institutional system accused of violating rights frequently determines:

- whether the violation occurred,
- whether a remedy exists,
- whether the officer may be sued,
- whether the action may proceed,
- and whether the institution itself possesses authority to define the limits of its own accountability.

Such a structure progressively converts delegated authority into self-validating power. Procedure replaces accountability. Institutional continuity replaces constitutional limitation. Judicial precedent replaces lawful delegation. What emerges is not the rule of law, but a system increasingly operating through circular ratification, where authority justifies itself by reference to internally generated doctrines rather than express constitutional source.

The common law rejected such arrangements because accountability is the indispensable condition of fiduciary authority. A trustee cannot lawfully define the limits of his own accountability to the beneficiary whose interests he was entrusted to protect. Public officers stand in the same relation to the People. The moment governmental actors claim authority to exempt themselves from legal consequence absent constitutional delegation, they cease acting as fiduciaries under law and begin acting as sovereigns unto themselves.

Immunity doctrine therefore represents more than doctrinal error. It constitutes a structural inversion of constitutional government itself. Instead of public servants remaining subordinate to law, law becomes subordinate to the institutional self-preservation of public servants. Where this inversion becomes normalized, constitutional government persists increasingly in form while undelegated power governs in operation.

5.1 Statutory Evasion and Administrative Shielding

Usurpation does not arise solely through judicial doctrine. It is reinforced through legislative enactments, administrative procedures, and institutional architectures that progressively interpose barriers between the People and the officers exercising power in their name. These mechanisms operate not merely to regulate accountability, but to condition, delay, redirect, or extinguish it through procedural insulation.

Title 42 U.S.C. § 1983 contains no constitutional delegation authorizing the immunization of public officials from liability for violations of rights. Congress possesses no enumerated authority to suspend accountability for constitutional injuries inflicted under color of law. The use of § 1983 as a vehicle for judicially constructed immunity doctrines therefore represents an assumption of undelegated power rather than an exercise of delegated authority. “*Delegatus non potest delegare*,” (*A delegate cannot further delegate*) 2 Coke, Institutes 597; Story, *Commentaries on the Law of Agency* § 13.

The same structural defect appears whenever legislatures attempt to extinguish liability for injuries otherwise actionable at law. The 1986 statutory immunization of vaccine manufacturers illustrates the principle. Congress possesses no general power to abolish remedies for violations of rights or to exempt favored entities from ordinary legal accountability absent express constitutional delegation. Because the authority to destroy remedy was never delegated, the assertion of such authority operates outside constitutional limitation.

Administrative shielding further expands this insulation. Judicial councils, disciplinary boards, commissions, and internal review structures are increasingly positioned between the People and the officers whose conduct is challenged. These institutional bodies frequently function not as direct mechanisms of accountability, but as procedural filters through which complaints are redirected, delayed, absorbed, or terminated within the same institutional framework from which the alleged misconduct arose. The effect is the progressive replacement of direct public accountability with internal administrative self-regulation. “*Quod ab initio non valet, in tractu temporis non convalescit*,” (*That which is void in the beginning does not become valid by lapse of time*) Co. Litt. 327a; 2 Coke, Institutes 292; Broom, *Legal Maxims* (10th ed.), at 169.

The same structural inversion has affected the grand jury. Historically, the grand jury operated as the People’s independent accusatory body and as a direct restraint upon governmental abuse. Over time, however, prosecutorial control over grand jury proceedings has progressively displaced that independence. Prosecutors determine presentation of evidence, draft proposed indictments, define legal framing, and control procedural access to the tribunal itself. As a consequence, the People’s historic instrument for investigating abuses of public power increasingly operates within the supervisory structure of the same governmental system subject to investigation.

This transformation weakens one of the People’s most important structural checks upon governmental misconduct. A grand jury dependent upon prosecutorial control cannot fully operate as an independent restraint upon the institutional power directing its proceedings. “*Fraus et jus nunquam cohabitant,*” (*Fraud and law never dwell together*) 3 Coke, Institutes 78; Broom, *Legal Maxims* (10th ed.), at 630.

Across these systems, the structural pattern remains consistent. Direct accountability is progressively replaced by procedural mediation. Constitutional restraint yields to institutional self-management. The People retain nominal sovereignty while operational control over accountability mechanisms migrates into the same governmental structures subject to restraint. Once accountability becomes dependent upon the permission of the institution being challenged, delegation begins to collapse into administrative self-preservation rather than fiduciary obedience to law.

5.2 Judicial Self-Dealing and the Subjugation of the Jury

Judicial immunity presents the clearest example of institutional self-protection within the modern structure of government. Courts develop, interpret, expand, and apply doctrines from which the judiciary itself directly benefits, while simultaneously exercising primary authority over the mechanisms through which those doctrines are reviewed and enforced. A judiciary benefiting from immunity cannot fully function as a disinterested adjudicator concerning the legality or scope of that immunity. The structural conflict is inherent.

“*Nemo iudex in causa sua,*” (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91.

The historical constitutional safeguard against this concentration of power was the jury. Under the Anglo-American tradition, the jury operated not merely as a fact-finding body, but as the People’s independent tribunal within the judicial process itself. By vesting adjudicative authority in the People, the common law ensured that judges, prosecutors, and officers could not become the exclusive arbiters of the legality of their own conduct or powers.

This understanding was widely recognized at the founding. John Adams affirmed the jury’s duty to exercise independent judgment concerning both law and fact. The Supreme Court acknowledged the same principle in *Georgia v. Brailsford* (1794), where Chief Justice John Jay instructed jurors that they “*have a right to take upon yourselves to judge of both, and to determine the law as well as the fact.*”

Modern judicial practice progressively departed from this structure. Contemporary juries are routinely instructed that they must accept the law exclusively as provided by the court, regardless of the jurors’ own understanding of constitutional limitation, lawful authority, or the justice of the application presented. Jurors are commonly instructed: “*You must follow the law as I explain it.*” This instruction substantially alters the historical balance between bench and jury by centralizing interpretive authority within the judiciary itself. “*A verbis legis non est recedendum,*” (*From the words of the law there must be no departure*) 5 Coke, Reports 118; 1 Kent, *Commentaries* 462.

The transformation is not merely theoretical. Modern jury instructions increasingly formalize the subordination of the jury to judicial direction. The *Texas Uniform Jury Handbook* (2023), for example, instructs jurors that verdicts must be based solely upon the law provided by the judge and the evidence admitted under judicial supervision. The cumulative effect of such practices is the progressive reduction of the jury from an independent constitutional restraint into a body operating within judicially controlled parameters.

As the jury’s historic authority recedes, institutional power correspondingly consolidates within the bench. The same judicial structure benefiting from immunity doctrines increasingly exercises exclusive authority over:

- interpretation of law,
- admissibility of evidence,
- scope of remedy,
- procedural access,
- and the boundaries of governmental accountability itself.

This concentration weakens one of the principal structural protections against institutional self-ratification embedded within the common-law tradition. Immunity doctrines persist not merely because they are asserted, but because the institutional mechanisms historically capable of independently scrutinizing governmental power have been progressively subordinated to the same structure benefiting from those doctrines.

Where juries cease functioning as independent restraints upon governmental power, accountability becomes increasingly dependent upon institutional self-regulation rather than direct constitutional supervision by the People themselves. Once that transition occurs, delegated authority progressively transforms into internally managed power insulated from meaningful external restraint.

6.0 The Sovereign Immunity Paradox: Linguistic Fraud and the Inversion of Power

The doctrine commonly described as “sovereign immunity” rests upon a fundamental inversion of the American constitutional structure. The doctrine does not arise from express constitutional delegation, but from the relocation of sovereignty away from the People and into the governmental institutions created to serve them. This inversion is sustained in substantial part through language that obscures the true source of lawful authority within the constitutional order.

Modern governmental discourse frequently employs the phrase “sovereign citizen” as a pejorative characterization directed toward individuals asserting limits upon governmental power or invoking principles of popular sovereignty. The phrase functions rhetorically to associate claims of constitutional accountability with irrationality or extremism, thereby discouraging examination of the underlying constitutional premise from which such claims arise. Yet the foundational proposition itself remains beyond dispute: under the American constitutional system, sovereignty resides in the People.

This principle is not ideological. It is structural. Sovereignty does not originate in offices, agencies, courts, or legislatures. Government possesses no independent sovereignty separate from the People from whom its authority is delegated. As Thomas M. Cooley explained, “*The state is but another name for the people collectively... the sovereignty resides in the people, not in any office.*” The Constitution presupposes this arrangement at every level of delegated authority.

If sovereignty remains with the People, then governmental agents cannot possess sovereign immunity against the sovereign from whom their authority is derived. An agent cannot become sovereign over the principal who delegated the authority being exercised. “*Nemo potest plus juris ad alium transferre quam ipse habet,*” (*No one can transfer to another a greater right than he himself possesses*) 4 Coke, Institutes 206; 1 Blackstone, *Commentaries* 43.

The resulting contradiction exposes the structural paradox. If the “state” is sovereign, and the state is merely the People acting collectively through constitutional delegation, then sovereign immunity would amount to immunity of the People from themselves. If, however, sovereign immunity is claimed by governmental officers, agencies, or branches as protection against accountability to the People, then sovereignty has necessarily been relocated from the People to their agents. Such relocation appears nowhere within the constitutional delegation.

The Massachusetts Constitution resolves the matter explicitly. Part the First, Article II declares that all power resides originally in the People. Article V further provides that magistrates and officers are merely the substitutes and agents of the People and remain “*at all times accountable to them.*” Accountability and delegated authority are therefore inseparable. Once accountability is removed, sovereignty progressively migrates from the People into the institutions exercising power in their name. “*Qui facit per alium facit per se,*” (*He who acts through another acts himself*) 4 Coke, Institutes 317; 1 Blackstone, *Commentaries* 429.

The continued invocation of “sovereign immunity” thus performs a dual inversion. First, it implicitly attributes sovereign status to governmental institutions lacking independent sovereignty under the constitutional structure. Second, it reframes demands for constitutional accountability as aberrational or illegitimate, despite the fact that such accountability is expressly embedded within the constitutional design itself.

This inversion is not merely semantic. In constitutional systems, language defines institutional relationships and allocates authority. Where the language of sovereignty is reassigned, the practical operation of power follows. Immunity doctrines normalize the gradual transformation of delegated authority into institutional self-protection while preserving the outward forms of constitutional government. “*Verba chartarum fortius accipiuntur contra proferentem,*” (*The words of an instrument are construed most strongly against the one who asserts them*) 2 Coke, Institutes 36; 2 Blackstone, *Commentaries* 379.

The constitutional premise nevertheless remains unchanged: the People never delegated sovereign immunity to their agents. No constitutional provision authorizes governmental officers to stand above accountability to the sovereign from whom all delegated authority derives. A government asserting sovereign immunity against the People therefore asserts a form of authority inconsistent with the foundational structure of delegated constitutional government itself.

The paradox ultimately resolves into a binary constitutional proposition: either sovereignty resides in the People, or it resides in governmental institutions claiming immunity from them. Both conditions cannot coexist simultaneously. The American constitutional system answers the question directly. Sovereignty resides in the People. Immunity claimed by their agents therefore lacks lawful constitutional foundation and operates as an assertion of undelegated power.

7.0 Landmark Cases: The Creature Self-Immunizes

The history of judicial immunity is not the history of neutral interpretation; it is the history of the servant shielding the servant. The modern doctrine did not arise from constitutional texts, lawful delegation, or common law necessity. It arose from courts acting as suitors in their own cause, constructing exemptions from accountability for themselves and their institutional allies. The following cases do not merely illustrate error; they demonstrate fraud in operation.

In *Stump v. Sparkman* (1978), the Supreme Court held that a judge who authorized the sterilization of a minor without her knowledge or consent was entitled to absolute judicial immunity. The act was not adjudicative in any lawful sense; it was administrative, coercive, and destructive of fundamental rights. Yet the Court insulated the judge from all consequence by declaring the act “judicial” for immunity purposes. In doing so, the Court transformed immunity from a narrow procedural protection into a license for irreversible injury. “*Actus me invito factus non est meus actus*,” (An act done against my will is not my act) Bracton, *De Legibus et Consuetudinibus Angliae*, lib. II, c. 16; 2 Coke, *Institutes* 482. The maxim was ignored. Intent and harm were rendered irrelevant because the actor wore a robe.

In *Imbler v. Pachtman* (1976), the Court extended absolute immunity to prosecutors, even where the prosecutor knowingly suppressed exculpatory evidence and framed an innocent man. The Court acknowledged the injustice but concluded that accountability must yield to institutional convenience. This holding severed the ancient bond between wrongdoing and remedy and elevated prosecutorial office above the law it was sworn to enforce. “*Ubi jus ibi remedium*,” (Where there is a right, there must be a remedy) 1 East 220; 3 Blackstone, *Commentaries* 23. The Court openly abandoned the maxim, admitting the wrong while denying the remedy.

In *Pierson v. Ray* (1967), police officers who arrested ministers under a statute later declared unconstitutional were nevertheless granted immunity. The unconstitutional law provided no lawful authority at the time of arrest, yet immunity was preserved on the theory of “*good faith*.” This decision severed legality from liability, allowing officers to enforce void laws without consequence so long as they claimed reliance on authority later determined to be unlawful. “*Ignorantia legis neminem excusat*,” (Ignorance of the law excuses no one) 4 Coke, *Institutes*

27; 1 Blackstone, *Commentaries* 44. The maxim was inverted: ignorance excused officials, while citizens remained bound.

Most recently, in *Trump v. United States* (2024), the Court declared that a President enjoys absolute immunity for “official acts,” even where those acts may involve grave constitutional violations, while refusing to define with precision what constitutes an “official act.” This deliberate ambiguity confers immunity first and invites abuse later. By divorcing immunity from clear constitutional boundaries, the Court effectively placed the executive beyond judicial reach for any conduct plausibly characterized as official. “*Certum est quod certum reddi potest*,” (That is certain which can be made certain) Co. Litt. 96b; Broom, *Legal Maxims* (10th ed.), at 99. The Court refused certainty precisely where certainty is required to restrain power.

Taken together, these cases reveal a consistent pattern. Judges define their own acts as judicial. Prosecutors define their misconduct as advocacy. Officers define unconstitutional enforcement as good faith. Executives define power as official. In every instance, the beneficiary of immunity is the one who declares its scope. “*Nemo iudex in causa sua*,” (No one may be judge in his own cause) 8 Coke, *Reports* 118a (Dr. Bonham’s Case); 1 Blackstone, *Commentaries* 91. The maxim is not merely violated; it is nullified.

These cases do not interpret the Constitution. They amend it by decision. They convert delegated authority into assumed supremacy and replace accountability with institutional self-preservation. The result is not lawful government, but a closed system in which the People may be injured without remedy and power answers only to itself.

The doctrine of immunity, as revealed through these landmark cases, is therefore not law. It is a structural fraud, one that inverts sovereignty, dissolves trust and elevates the creature above the Creator. Any system that permits such results has departed from constitutional government and entered the domain of usurpation.

Quod ab initio non valet, in tractu temporis non convalescit,” (That which is void in the beginning does not become valid by lapse of time) Co. Litt. 327a; 2 Coke, *Institutes* 292; Broom, *Legal Maxims* (10th ed.), at 169.

8.0 Analogy to Seal the Argument: The Principal–Agent Relationship

The structural contradiction inherent in immunity doctrine may be understood through one of the oldest and most universally recognized relationships in law: that of principal and agent. Under the American constitutional system, governmental officers function as agents exercising authority delegated by the People, who remain the sovereign principals. This relationship is not metaphorical. It is the operational structure of delegated constitutional government itself.

Under ordinary principles of agency, an agent may exercise only the authority entrusted by the principal and remains accountable for acts performed within or beyond that delegation. The existence of delegated authority does not extinguish accountability; it creates it. An employee,

trustee, or fiduciary does not become immune from liability merely because he acts under color of employment or authority. To the contrary, the existence of entrusted power imposes heightened obligations of fidelity, restraint, and answerability.

No rational system of agency permits an agent to unilaterally define the limits of his own accountability to the principal whose authority he exercises. An employee who abuses entrusted authority, violates fiduciary obligations, or causes injury through misuse of delegated power does not acquire exemption from consequence by virtue of the position itself. The agency relationship aggravates responsibility rather than extinguishing it.

Immunity doctrine reverses this foundational principle. Under modern immunity structures, governmental agents may invoke office itself as protection against accountability for acts committed while exercising delegated authority. The result is not merely protection of official function, but the progressive transformation of delegated power into institutional insulation from ordinary legal consequence.

This inversion alters the constitutional relationship between principal and agent. Where the agent possesses authority to define or avoid the consequences of his own misconduct, the principal no longer exercises ultimate control over the delegation. Accountability becomes dependent upon the consent of the very institution subject to restraint. At that point, delegated authority begins to separate from the sovereign source from which it was derived.

Thomas Paine identified the distinction with precision: “*All delegated power is trust, and all assumed power is usurpation.*” Immunity cannot arise from delegation where no such delegation exists. The assertion of immunity therefore represents not the exercise of entrusted authority, but the assumption of authority beyond the limits of the trust itself.

No constitutional system preserving genuine popular sovereignty can permanently sustain a structure in which agents determine the scope of their own accountability to the principals they serve. Once the servant acquires authority to decide whether he may be judged, the practical relationship between sovereign and agent has already begun to invert.

9.0 Conclusion: The Constitutional Firewall and the Voidness of Immunity

A Government Above the Law Is No Longer Operating Under the Constitution

The fundamental danger posed by immunity is not limited to individual injustice or isolated official misconduct. The danger is structural. Immunity alters the constitutional relationship between the sovereign People and the institutions exercising delegated power in their name. Once governmental actors acquire protection from ordinary legal accountability, the constitutional chain of delegation begins to fracture. The servant progressively separates from the sovereign. Delegated authority progressively transforms into institutional self-preservation.

The American constitutional system was founded upon the opposite principle. Sovereignty resides in the People alone. Government possesses no independent sovereignty, no inherent authority, and no lawful powers except those expressly delegated through the Constitution. Public office therefore exists as fiduciary office, conditional upon continuous accountability to the sovereign source from which all lawful authority derives. Immunity reverses that structure.

When governmental actors claim exemption from accountability for violations of rights, they do not merely misapply delegated authority. They assume authority never delegated at all. The constitutional order does not permit public institutions to determine the limits of their own obedience to law independent of the sovereign People. “*Nemo iudex in causa sua*,” (*No one may be judge in his own cause*) 8 Coke, Reports 118a (*Dr. Bonham’s Case*); 1 Blackstone, *Commentaries* 91.

The cumulative effect is the gradual replacement of constitutional government with administrative supremacy operating beneath constitutional form. Rights continue to be acknowledged while remedies disappear. Accountability continues to be affirmed rhetorically while institutions increasingly supervise themselves through internally managed procedures, immunity doctrines, and systems of administrative insulation. Sovereignty remains nominally vested in the People while practical authority migrates into institutions progressively shielded from meaningful external restraint. The constitutional breach occurs precisely at this point.

Under the American system, lawful authority can exist only where accountability remains real, external, and enforceable against every exercise of public power. Once accountability becomes conditional upon institutional permission, delegated authority ceases to function as true constitutional delegation and increasingly operates through self-ratification. “*Ubi jus ibi remedium*,” (*Where there is a right, there must be a remedy*) 1 East 220; 3 Blackstone, *Commentaries* 23.

For this reason, any legislative, executive, judicial, or administrative act purporting to exempt governmental actors from accountability absent express constitutional delegation lacks lawful constitutional foundation. Such acts operate outside the constitutional chain of authority and therefore possess no lawful force. “*Quod ab initio non valet, in tractu temporis non convalescit*,” (*That which is void in the beginning does not become valid by lapse of time*) Co. Litt. 327a; 2 Coke, *Institutes* 292; Broom, *Legal Maxims* (10th ed.), at 169.

The remedy for this condition is not abolition of lawful government, but restoration of constitutional order itself. The Constitution already supplies the governing principles: sovereignty remains with the People, governmental authority remains delegated and limited, and public officers remain continuously accountable under law. The restoration required is therefore not revolutionary. It is constitutional.

Where accountability returns, delegated authority regains legitimacy. Where delegated authority regains legitimacy, constitutional government again operates through law rather than administrative fiat. And where law again becomes supreme over public power, the constitutional firewall separating lawful government from arbitrary rule is restored.

The People do not recover sovereignty because they never lawfully surrendered it. The constitutional question is whether the institutions exercising power will again be required to operate within the limits of the delegation from which alone their authority may legitimately arise.