

THE DEMOCRACY, STRAIGHT-UP! PROJECT

The Democratic Ownership of Law

Legislative Alienation, Political Agency, and Equal Sovereignty

— CHAPTER ELEVEN —

Democracy, Constitutionalism, and Non-Closure

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AUTHOR'S NOTE

This work was developed collaboratively by Dahlia Hart and Tiffany Engels. Tiffany Engels is a fictional research collaborator representing the use of artificial intelligence as a partner in research, analysis, drafting, and editorial development. All interpretations, arguments, and conclusions presented in this work remain the responsibility of the authors.

CHAPTER ELEVEN

Democracy, Constitutionalism, and Non-Closure

11.1 The democratic problem of self-limitation

Democratic sovereignty presents a problem the moment it is stated clearly. If the people possess the authority to make law, they may use that authority unjustly. A majority may burden a minority, extinguish a liberty, manipulate the conditions of future participation, punish opposition, entrench its present advantage, or transfer power to a leader who promises to govern without further public interference. The people can use sovereignty to damage sovereignty.

This possibility is not hypothetical. Constitutional democracy has always been shaped by fear of faction, majoritarian passion, demagoguery, exclusion, and the conversion of temporary electoral victories into durable domination. Madison's theory of an extended republic, the separation of powers, bicameralism, federalism, independent courts, bills of rights, and difficult amendment procedures all reflect efforts to prevent public power from being exercised too quickly, too narrowly, or too permanently (Hamilton, Madison, and Jay 1788; Bickel 1962). Contemporary theories of constitutionalism continue the project through rights review, procedural safeguards, minority protections, militant-democracy doctrines, and limits on constitutional amendment.

The Straight-Up account of legislative sovereignty cannot avoid this problem by repeating that the voters are sovereign. Sovereignty identifies the location of authority; it does not guarantee the justice of its exercise. To say that citizens should retain ownership of the legislative decision is not to say that every decision they make is morally permissible, factually informed, constitutionally valid, or institutionally wise.

The problem is therefore not whether democracy should be constrained. Every functioning political order contains constraints: rules of jurisdiction, procedures for decision, rights against government, requirements of notice and evidence, limits upon office, standards of review, and inherited commitments that cannot be changed by an ordinary vote. The question is what those constraints are, who interprets them, how they may be revised, and whether their operation preserves or displaces the equal political agency they are meant to protect.

Two opposite mistakes must be avoided.

The first is **democratic absolutism**: the view that whatever a current majority enacts is legitimate simply because the majority enacted it. This collapses democratic authority into numerical victory and leaves no conceptual space for equal standing, rights, due process, or the conditions under which a vote can count as democratic.

The second is **constitutional guardianship**: the view that the danger of democratic error justifies transferring ultimate political authority to a body presumed to stand above ordinary conflict. This mistake treats the fallibility of citizens as a reason to empower another class of fallible people whose judgments are more difficult to correct.

A theory of democratic ownership must instead explain how equal sovereignty can coexist with constitutional restraint without imagining that restraint abolishes the problem of authority. Constitutionalism can organize judgment, distribute finality, delay harmful action, require reasons, protect standing, and provide routes of appeal. It cannot make political judgment disappear.

The central proposition of this chapter is:

A democratic constitution should constrain the use of public power without converting its interpreters into the owners of that power.

That proposition requires a theory of non-closure. No constitution can anticipate every future conflict, specify the correct resolution of every collision among values, or guarantee that its own institutions will never be used against its purposes. The aspiration to make democracy safe must therefore be reformulated. The aim is not a perfect or self-sealing order. It is a resilient and corrigible order in which errors can be detected, contested, reversed, and learned from by people who retain equal standing within it.

11.2 Ownership of power is not permission to do anything

The language of ownership can invite a dangerous misunderstanding. Private ownership is often associated with broad discretion: the owner may use, alter, transfer, or destroy the thing owned, subject to law. If citizens democratically own legislative authority, does that imply an unrestricted collective license to make any law they please?

It does not.

The theory developed here uses ownership to identify a relationship of control, not a moral immunity. It asks who retains the decision-right, who may authorize its exercise, who may withdraw that authorization, and whether the authority remains traceable to equal members. Those questions concern the title to govern. They do not settle the morality of every governing act.

This distinction is familiar outside politics. A parent may possess legal authority without possessing a moral right to abuse a child. A board may control an institution while remaining bound by fiduciary duties. An owner may control property while being prohibited from using it to poison a neighbor. Authority and permission are connected, but they are not identical. The person entitled to decide may still decide wrongly, exceed jurisdiction, violate a duty, or incur a duty of repair.

The same applies to collective self-government. The people may possess legislative authority while being bound by principles of equal standing, non-subordination, due process, liberty, and constitutional right. A vote cannot transform injustice into justice merely by counting heads. Nor can a public call itself sovereign while excluding recognized members from the vote, suppressing opposition, falsifying the tally, or preventing future revision. Those actions damage the relationship that gives democratic authority its legitimacy.

The distinction between **ownership of authority** and **permissible use of authority** allows the Straight-Up philosophy to remain institutionally specific without becoming morally empty. The theory does not prescribe a complete catalogue of just laws. It does not resolve every dispute about property, punishment, religion, speech, family, taxation, migration, or welfare. But it does identify constraints that follow directly from its account of agency. A person cannot be treated as an equal owner of legislative authority while being denied the standing, access, security, or practical capacity required to exercise that authority.

This creates a constitutional floor rather than a comprehensive moral code. The floor includes, at minimum, equal standing among recognized members, reliable access to decision, protection against coercion and retaliation, auditable procedures, routes of challenge and appeal, and the continued possibility of institutional revision. Beyond that floor, citizens will disagree deeply about the content and priority of rights.

The distinction also clarifies why constitutionalism cannot be reduced to an external restraint upon democracy. Some constitutional commitments are constitutive of democracy itself. Rules that protect voting access, opposition, association, speech, procedural fairness, and future elections do not merely limit a preexisting sovereign. They help create the conditions under which a collective decision can be attributed to equal political agents at all.

Yet even constitutive conditions require interpretation. Equality can conflict with liberty; public safety can conflict with privacy; the right to participate can conflict with rules against intimidation; protection of the constitutional order can conflict with political dissent. No list of rights applies itself. The effort to distinguish

legitimate self-limitation from guardianship therefore leads immediately to the institutional questions constitutionalism was designed to organize.

11.3 The majority is a decision rule, not a sovereign person

Political discussion often speaks of “the majority” as if it were a continuing corporate person with a will of its own. This language is convenient, but it can obscure the moral structure of democracy.

A majority is normally the result produced by an aggregation rule at a particular time, on a particular question, among a defined set of participants. Its composition changes from issue to issue. A citizen may belong to the majority on taxation, the minority on religion, and no active camp at all on agricultural regulation. The majority does not exist prior to the decision as a unified moral agent entitled to rule everyone else. It is a temporary relation among votes.

This matters because the democratic ownership of law is held by equal members, not by an abstract majority. Majority rule is one possible procedure for converting equal decision-rights into a collective act. Its legitimacy depends upon the equality of those rights, the fairness of the agenda and procedure, and the continuing standing of those who lose. The minority is not expelled from the political community when it loses. Its members retain the same authority in the next decision, the same right to criticize, organize, propose revision, and challenge the conditions under which the decision was made.

This conception differs from both unanimity and majoritarian absolutism. Unanimity gives each participant a veto, which can protect individuals but can also preserve domination by making reform impossible. Simple majority rule avoids universal veto but may permit stable blocs to impose repeated losses on the same people. Constitutional democracy therefore surrounds majority decision with rights, divided institutions, time, public justification, and opportunities for reconsideration.

The Straight-Up approach adds another protection: the decision is not alienated to a fixed class of representatives. Members who lose one vote remain co-owners of the institution. They can recover proxies, change groups, form new coalitions, produce counterevidence, propose amendments, and vote directly. The persistence of equal standing matters more than the fiction that every outcome expresses a unified general will.

This view also changes how we understand majority tyranny. The danger is not merely that more people may defeat fewer people. Every non-unanimous decision rule permits defeat. The deeper danger arises when temporary numerical advantage is converted into durable asymmetry: when winners restrict the standing, voice, security, or future organizational capacity of losers. A tax rate that a minority opposes is not equivalent to a law that disenfranchises the minority. Both are exercises of public power, but only the latter attacks the conditions under which disagreement remains democratic.

Constitutional protections should therefore be especially concerned with **political remaindership**: the ability of those who lose to remain full members of the decision-making community. Freedom of speech, association, due process, equal protection, access to information, and the right to seek revision preserve this status. They ensure that losing a decision does not mean losing one's standing as a co-author of future law.

The majority, then, is neither morally infallible nor politically irrelevant. It is a practical device for acting under disagreement. Its authority is legitimate only within a structure that keeps the decision rule subordinate to the equal status of the persons whose votes it aggregates.

11.4 Constitutionalism as the organization of judgment

Constitutionalism is often described as government limited by higher law. That description is useful, but incomplete. A constitution does not merely announce limits. It organizes the production, interpretation, application, and revision of authoritative judgment.

A constitutional order allocates powers among institutions, defines jurisdictions, prescribes procedures, entrenches rights, specifies offices, regulates succession, and establishes methods of amendment. It determines who may act, under what conditions, with what evidence, through which form, subject to what review. Its achievement is not that it removes judgment from politics. It distributes judgment across time and institutions.

This can be seen in ordinary constitutional disputes. A legislature judges that a law falls within its authority and respects protected rights. An executive judges how the law should be administered. A court judges whether the legislature and executive acted constitutionally. Later courts may revise the interpretation. Legislatures may alter the statute. Citizens may organize for an amendment. Officials may resist, comply, or exploit ambiguity. Public opinion may transform the practical meaning of a rule without changing its text.

No single judgment exhausts the constitution. Constitutional meaning is produced through a sequence of decisions, reasons, challenges, precedents, and revisions. Even in systems of strong judicial review, courts do not control every constitutional question. Many disputes never reach them; others are treated as political questions, resolved through conventions, or made practically moot by public action. Conversely, systems of parliamentary sovereignty still contain legal interpretation, procedural limits, electoral accountability, and constitutional norms that shape what legislators can do.

The contrast between “constitutionalism” and “democracy” can therefore be misleading. Constitutionalism is not an external substance poured over democratic politics. Democracy itself requires constitutional organization: rules identifying members, counting votes, protecting opposition, allocating authority, and preserving continuity. At the same time, constitutionalism can become anti-democratic when the organization of judgment hardens into a permanent transfer of political ownership.

The relevant question is not whether constitutional judgment will occur, but whether its structure is consistent with equal agency. Several criteria follow.

First, constitutional decisions should be reason-giving. Authorities must explain how a decision relates to text, principle, evidence, precedent, and the interests affected.

Second, constitutional authority should be contestable. People affected by an interpretation need practical routes to challenge it before an independent forum or through a recognized political process.

Third, constitutional judgments should be bounded by role. A court deciding a case, an election administrator certifying a tally, and a legislature drafting an amendment perform different functions. None should convert a limited task into general political ownership.

Fourth, constitutional systems should preserve revision. Some decisions may need temporary finality, but no interpreter should be treated as incapable of error or insulated from all lawful correction.

Fifth, constitutional procedures should protect the standing of those who challenge the system itself. A regime that criminalizes every proposal for constitutional change has confused stability with closure.

Constitutionalism, understood this way, is the disciplined organization of disagreement. It provides forms through which a community can act without pretending that its foundational questions have been resolved once and for all.

11.5 Rights without rulers

Rights present the strongest case for constitutional constraint. If a majority may abolish freedom of conscience, imprison opponents without trial, seize property arbitrarily, or deny equal protection, democratic ownership seems to turn into collective domination. Many theories therefore entrust rights to courts or other guardians presumed to stand apart from majoritarian pressure.

The impulse is understandable. Rights protect interests that should not rise and fall with every political mood. They mark limits upon the treatment of persons and secure conditions under which citizens can participate as equals. But the language of rights does not eliminate disagreement. People dispute which rights exist, what they require, how they conflict, whose interests they protect, and which institution should interpret them.

Jeremy Waldron's critique of strong judicial review begins from this condition of good-faith disagreement. Citizens and judges alike may be committed to rights while reaching different conclusions about abortion, speech, punishment, welfare, privacy, equality, and religious liberty. Entrusting the final decision to judges may change the forum, but it does not transform disagreement into knowledge (Waldron 1999, 2006). Ronald Dworkin, by contrast, argues that democracy should be understood as a partnership among equals rather than as bare majority rule, and that judicial enforcement of rights can protect the conditions of equal membership (Dworkin 1996).

The Straight-Up philosophy shares something with both positions. It agrees with Dworkin that democracy cannot be defined by counting alone. Equal membership imposes substantive demands. It agrees with Waldron that the existence of rights does not identify a uniquely infallible interpreter or erase the democratic cost of transferring decisions to a judicial elite.

A theory of rights without rulers therefore begins with functional differentiation. Courts may provide impartial hearings, protect individuals who cannot command a majority, demand reasons from government, enforce procedural regularity, and create a record that makes abuse visible. Legislatures can gather broader information, revise general rules, allocate resources, and respond to patterns courts encounter only case by case. Citizens and associations can identify harms that neither institution initially perceives. Administrative bodies can supply expertise. Constitutional amendment can alter the framework when ordinary interpretation becomes inadequate.

The protection of rights should emerge from the interaction of these functions rather than from the fiction that one institution owns moral truth.

This does not imply weak rights. A right can be strongly protected through multiple layers: entrenched text, independent adjudication, supermajority requirements, public reporting, direct standing, automatic review, and difficult amendment. What must be resisted is the inference that strong protection requires an uncorrectable guardian.

The decisive distinction is between **protecting rights** and **owning the constitutional order**. Judges may invalidate a statute without acquiring general legislative sovereignty. A constitutional court may be final for purposes of a particular case while remaining subject to later precedent, amendment, appointment rules, jurisdictional limits, and public criticism. Finality can be local and provisional rather than absolute.

Rights without rulers are possible only when rights are embedded in a system of contestation. A person must be able to invoke them, receive a hearing, obtain reasons, appeal error, and mobilize politically for broader change. Rights become democratic not because majorities can override them at will, but because their meaning and enforcement remain connected to a constitutional community of equals rather than the private property of any interpretive caste.

11.6 Courts, judicial review, and the allocation of finality

Courts occupy an ambiguous position in democratic theory. They are designed to be independent of immediate political pressure, yet their decisions shape political life. They can protect unpopular minorities, but they can also entrench the values of socially narrow elites. They can force government to provide reasons, but their own reasoning may conceal contestable moral choices behind technical doctrine.

The debate over judicial review is often framed as a contest between democracy and rights. A more precise approach asks what kind of finality courts possess, in which domain, for how long, and subject to which routes of correction.

Strong-form judicial review gives courts authority to refuse enforcement of legislation they deem unconstitutional, often without an ordinary legislative override. Weak-form systems may permit legislative response, declarations of incompatibility, or dialogic reconsideration. Some constitutions centralize review in a constitutional court; others disperse it among ordinary courts. Some allow abstract review before a law takes effect; others require a concrete case. These variations reveal that “judicial review” is not one institutional object.

The classic American difficulty is the counter-majoritarian problem: unelected judges can invalidate decisions made by elected institutions (Bickel 1962). John Hart Ely answered by proposing representation-reinforcing review. Courts should be most active when political channels are blocked or when durable minorities are excluded from the processes by which law is made (Ely 1980). That approach is especially relevant to democratic ownership. Review can protect the conditions of authorship without treating judges as superior policy-makers.

But process protection cannot be entirely separated from substance. Deciding whether a political channel is meaningfully open requires judgments about equality, coercion, speech, and the practical burdens imposed on participation. A formally available vote may be useless if districts are manipulated, information is suppressed, or a class of citizens is intimidated. Courts must interpret what democratic standing requires.

The Straight-Up framework therefore does not offer a simple abolition or celebration of judicial review. It proposes several limits on its moral interpretation.

First, judicial independence is a means of enabling contestation, not evidence of a natural judicial title to rule.

Second, courts should be understood as one part of a distributed constitutional process. Their distinctive strengths include case-specific attention, reasoned opinions, evidentiary procedure, and the ability to hear claims that political majorities neglect. Their weaknesses include social and professional homogeneity, limited fact-finding about complex systems, dependence on litigants, delay, and difficulty supervising implementation.

Third, the authority of courts should be matched to their function. A court may prevent an immediate violation, require reconsideration, or invalidate a rule without becoming the final source of all constitutional meaning.

Fourth, constitutional correction must remain possible. Appointment, tenure, precedent, amendment, legislative response, institutional redesign, and public interpretation all form part of the system through which judicial error is addressed.

Fifth, the public must retain the right to criticize courts without threatening adjudicative independence. Treating judicial decisions as sacred undermines the same constitutional accountability that courts are meant to secure.

The democratic question is not whether someone must sometimes have the last word. Every case eventually requires closure for action. The question is whether the last word in one case becomes ownership of the language in which all future cases must be decided.

11.7 Due process as constitutionalized contestability

Due process is sometimes treated as a technical legal guarantee, but its democratic significance is deeper. It institutionalizes the right of a person subject to power to challenge the grounds, procedure, and application of that power.

At its core, due process requires that government not act against a person through unexplained command. The details vary by context, but the familiar elements include notice, an opportunity to be heard, access to relevant evidence, an impartial decision-maker, reasons for judgment, and some avenue of review. These requirements recognize the affected person as an agent rather than an object of administration.

Due process therefore links constitutionalism to the theory of equal political agency. A citizen does not cease to be an equal merely because a general law has been validly enacted. Administration and enforcement can produce new forms of domination. Officials interpret categories, decide facts, allocate benefits, impose penalties, and exercise discretion. If those decisions cannot be contested, legislative sovereignty at the top coexists with bureaucratic subordination below.

The constitutional protection of agency must extend through the full chain of government. Democratic ownership of law does not justify arbitrary execution of democratically enacted rules. Nor does a direct public vote remove the need for individualized judgment. A statute may be general, but its application to a person can be mistaken, biased, or disproportionate.

Due process also illustrates why rights and institutions cannot be separated. A declaration that everyone has a right to a fair hearing is ineffective without accessible forums, independent adjudicators, records, deadlines, counsel or assistance, translation, and enforceable remedies. Conversely, procedure without a meaningful right can become ritual. A hearing is not protective if the decision-maker may ignore evidence without explanation or if the affected person cannot obtain the information necessary to respond.

This suggests a broader principle of **constitutionalized contestability**. Any exercise of public power that significantly affects rights, status, liberty, or access to political agency should leave a trace and a route of challenge. The trace may be a recorded vote, an administrative reason, an audit log, a disclosed source, or a written judgment. The route may be appeal, review, petition, direct override, recall, amendment, or public investigation.

Contestability does not mean that every decision remains open forever. Government must act, and legal relations require stability. Time limits, standards of review, exhaustion requirements, and final judgments can be legitimate. But finality should be justified by the need for order, not by a claim that the authority-holder cannot be wrong.

In a Straight-Up system, due process has an additional institutional dimension. Members must be able to challenge not only state action but the internal processes through which legislative authority is aggregated: identity errors, duplicate votes, proxy misuse, exclusion from a Circle, delegate misconduct, tally discrepancies, agenda suppression, or unauthorized software changes. Constitutionalized contestability must reach the infrastructure of self-government itself.

11.8 Minority protection and the preservation of political remaindership

A democratic constitution must protect people who cannot prevail by ordinary numerical power. The term “minority” includes many different conditions: a stable ethnic or religious group, a geographically concentrated community, a political opposition, a temporary coalition of dissenters, an unpopular individual, or a class whose interests are systematically discounted. These groups do not all require the same protection.

Traditional constitutional strategies include individual rights, anti-discrimination rules, federalism, territorial autonomy, group rights, bicameralism, proportional representation, supermajority requirements, and judicial review. Each can protect minorities under some conditions and entrench privilege under others. A veto designed to protect a vulnerable group can become a weapon for a dominant minority. Territorial autonomy can preserve culture or empower local oppression. Judicial enforcement can open political channels or freeze an elite interpretation of equality.

The Straight-Up philosophy begins from the equal standing of individual members. This guards against assigning sovereignty to groups as corporate persons independent of their members. Small groups, parties, religions, unions, and cultural communities may organize, deliberate, and represent interests, but they do not own their members' legislative authority. A member must remain able to dissent, exit, vote directly, or join another association.

Individual standing, however, is not sufficient. People exercise agency through social identities, languages, relationships, and institutions. Formal equality can coexist with systematic exclusion when some citizens lack access to organization, translation, safety, information, or social recognition. Minority protection therefore requires attention to both individual rights and the social conditions under which those rights can be used (Young 2000).

The concept of political remaindership provides a useful test. After a decision, do those who lost remain capable of contesting the outcome, building support, and participating as equals? Or has the decision weakened their future standing? A tax, zoning rule, or budget allocation may impose a loss while leaving political membership intact. A law that suppresses a language, criminalizes peaceful opposition, strips citizenship, or permits targeted violence attacks remaindership itself.

Constitutional protections should be strongest where ordinary political defeat threatens to become permanent subordination. This includes voting rights, candidacy, association, speech, access to courts, equal protection, personal security, and protection against arbitrary deprivation of status. It may also include institutional supports that prevent social disadvantage from becoming political exclusion.

No mechanism guarantees correct protection. Courts may fail minorities; legislatures may ignore them; referenda may target them; administrative agencies may reproduce prejudice. The response cannot be to identify one institution as the permanent owner of minority interests. It must be to multiply points of access, require public reasons, preserve direct standing, enable appeal, and lower the cost of organizing correction.

A minority is safest not when it depends upon the benevolence of a guardian, but when it possesses durable rights and practical routes to make the political system answerable.

11.9 Jurisdiction, membership, and the boundaries of the demos

Every democratic theory eventually encounters a boundary problem: who are “the people” entitled to govern? A vote can be equal among participants while the definition of participants remains unjust. Women, enslaved people, racial minorities, indigenous peoples, workers without property, migrants, and colonial subjects have all been excluded by regimes that described themselves as self-governing.

The theory of democratic ownership does not solve this problem merely by insisting upon equal standing among recognized voters. Recognition itself is a political and constitutional act. Decisions about citizenship, residence, age, territorial boundaries, incarceration, and migration determine who may participate in making the rules.

Jurisdiction has a second dimension. Which political community is entitled to decide which matter? Local, regional, national, transnational, and global problems overlap. A river crosses boundaries; emissions travel;

migration connects multiple states; economic rules affect people beyond the electorate that enacted them. A formally sovereign public may impose costs on people who lack membership in that public.

No single principle resolves all boundary disputes. The all-affected-interests principle is attractive but difficult to specify and may produce shifting electorates for every issue. Citizenship provides continuity but can entrench inherited exclusion. Residence captures subjection to local law but may not address long-term external effects. National self-determination can protect communities from empire while also excluding internal minorities.

The initial Straight-Up Plan therefore works within the legally recognized electorate and jurisdiction of an existing district. This is a practical starting point, not a philosophical declaration that all existing boundaries are just. Voters who gain greater legislative sovereignty can use it to reconsider citizenship, districting, federalism, territorial status, and the rights of nonmembers.

The constitutional implication is humility. A theory of equal agency must acknowledge that the demos is not given by nature. It is constituted through law and history. Rules of membership should be publicly justified, contestable, and open to revision by procedures that include serious consideration of those excluded by them.

This also limits claims of democratic legitimacy. A polity may govern itself democratically in one sense while exercising domination externally or preserving unjust internal boundaries. Democratic ownership of law is therefore a necessary but not sufficient condition of justice. It tells us that recognized members should not be alienated from legislative authority. It does not by itself tell us who ought to be recognized or how overlapping political communities should be arranged.

Still, the theory offers a diagnostic question: who is subject to an authority without possessing a meaningful route to contest, join, exit, or influence the jurisdiction that exercises it? Boundary problems are forms of political non-reciprocity. Constitutionalism must make them visible rather than treating the inherited demos as morally self-validating.

11.10 Constitutional amendment and the authority of generations

A constitution must be stable enough to coordinate expectations and flexible enough to remain governable by people who did not write it. This creates a temporal problem of sovereignty.

If constitutional rules are too easy to amend, temporary majorities can dismantle rights, entrench leaders, or rewrite procedures for immediate advantage. If amendment is too difficult, the dead govern the living. Institutions designed for another era may persist despite sustained public opposition, and judicial interpretation may become the only practical route of change.

Amendment procedures are therefore not neutral technical details. They distribute political power across generations, regions, institutions, and thresholds. Supermajorities slow change and encourage broad agreement, but they also empower blocking minorities. Federal ratification protects territorial units, but it may give unequal weight to citizens. Referenda provide direct authorization, but agenda control and campaign inequality can shape the choice. Constitutional conventions can reopen foundational questions, but they may exceed their mandate.

The distinction between constituent power and constituted power attempts to address this problem. Ordinary institutions act under the constitution; the people, as constituent authority, retain the capacity to create or replace the constitutional order. Yet the distinction raises its own questions. How does constituent power appear? Who may speak in its name? What procedures authenticate it? If it operates outside existing law, how is it distinguished from seizure of power?

Bruce Ackerman's account of constitutional moments describes episodes in which sustained public mobilization and institutional conflict produce higher-law change outside ordinary amendment alone (Ackerman

1991). Other theorists emphasize formal amendment as the safest expression of constituent authority. Both approaches recognize that constitutional legitimacy cannot rest only upon an originating act in the distant past.

The problem becomes especially difficult when constitutions entrench unamendable provisions or courts recognize implicit limits upon amendment. Eternity clauses may protect human dignity, republican government, federalism, or democratic structure. The doctrine of unconstitutional constitutional amendment holds that even a procedurally valid amendment can violate the identity or basic structure of the constitution (Roznai 2017).

Such doctrines may protect a democracy from legal self-destruction. They also place extraordinary power in whoever defines the unamendable core. A court that can invalidate amendments may preserve equal sovereignty or become the final owner of constitutional identity.

A non-closure approach does not resolve this tension by choosing unlimited amendment or absolute entrenchment. It asks whether amendment rules preserve three values simultaneously: continuity, democratic authorship, and correctability. Entrenchment can create time for reflection and require broader consent. It should not be confused with metaphysical permanence. If a people decisively rejects the constitutional order, no clause can physically prevent rupture. The role of law is to organize change so that disagreement need not become force.

11.11 Democratic self-defense and the danger of the guardian

Can democracy defend itself against movements that seek power through democratic procedures and then abolish democracy? The experience of interwar Europe gave urgency to this question. Karl Loewenstein's theory of militant democracy argued that constitutional government could not remain passive while anti-democratic movements exploited its freedoms to destroy it (Loewenstein 1937).

Modern constitutional systems respond through party bans, restrictions on paramilitary organization, disqualification from office, emergency powers, constitutional loyalty requirements, and unamendable democratic principles. These measures recognize that an open political order depends upon conditions that can be attacked from within.

The justification is strongest when a movement uses violence, intimidation, electoral fraud, or explicit plans to eliminate equal political standing. A constitution need not provide the instruments of its own destruction. Freedom of association does not require tolerating an armed organization that prevents others from participating. Electoral competition does not require permitting incumbents to cancel future elections.

But militant democracy contains a structural danger. The power to identify enemies of democracy can be used against radical dissent, minority movements, labor organization, anti-colonial struggle, or proposals that threaten established elites. A government may label its opponents subversive precisely because they seek to democratize institutions.

The guardian problem therefore returns. Who decides when political action crosses from constitutional change into destruction of constitutional agency? Courts, legislatures, executives, and security services all have incentives and blind spots. Emergency powers are especially prone to expansion because the authority-holder defines both the threat and the response.

A democratic theory of self-defense should be guided by several principles.

First, restrictions should target conduct and demonstrable institutional threats rather than unpopular ideology alone.

Second, the burden of justification should rise with the severity and duration of the restriction.

Third, decisions should be reviewable by independent institutions and accompanied by public reasons and evidence.

Fourth, emergency measures should expire automatically unless renewed through demanding procedures.

Fifth, people affected should retain avenues of appeal and peaceful constitutional advocacy.

Sixth, the defense of democracy should be tied to the protection of equal agency, not to preservation of whichever offices or parties currently hold power.

These safeguards do not eliminate risk. A democracy may respond too late or repress too much. Non-closure means there is no formula that mechanically identifies every future threat. The objective is to make self-defense itself contestable, evidence-based, temporary, and answerable to the constitutional public.

11.12 The impossibility of complete political closure

A politically closed system would contain within itself a complete and unambiguous answer to every question about permissible action, institutional authority, interpretation, emergency, succession, and amendment. It would prevent all contradictions, specify every future case, and include a rule that determines how every other rule should be applied. No political order can achieve this.

The reasons are not mysterious.

Language is general and circumstances are particular. Rules written today encounter technologies, conflicts, identities, risks, and social practices their authors did not anticipate. H. L. A. Hart described this as the open texture of law: general terms possess clear applications at the center and uncertainty at the margins (Hart 1961). More elaborate drafting can reduce ambiguity, but it cannot remove the need for judgment.

Constitutional values also conflict. Speech can injure reputation; religious liberty can conflict with equality; privacy can obstruct investigation; security can restrict movement; participation can be undermined by intimidation disguised as expression. A constitution may name each value without supplying a universally accepted ordering for every case.

Rules depend upon institutions, and institutions must interpret their own authority. A court decides whether a matter is justiciable. A legislature decides whether procedure has been satisfied. An election administrator decides whether a ballot is valid. A constitutional convention decides whether it has exceeded its mandate. Appeals can move the question, but eventually action requires a judgment by someone whose jurisdiction may itself be contested.

Amendment creates further self-reference. A constitution establishes procedures for changing itself. Can those procedures be used to abolish the procedures? Can an unamendable clause be amended? Can the body authorized to revise the constitution redefine the limits of its own authority? Legal systems manage these questions through doctrine and political practice, not by escaping them.

Emergency produces another opening. Rules can define foreseeable emergencies, but genuinely novel crises may exceed the categories. Officials must decide whether ordinary law is adequate, while the declaration of emergency itself changes the balance of power. A perfectly closed emergency constitution would have to anticipate the unanticipated.

Finally, enforcement depends upon social acceptance, institutional capacity, and material power. A constitutional text cannot guarantee that officials will obey it, that citizens will defend it, or that coercive institutions will remain loyal. Law guides and organizes power; it does not float above the conditions that sustain it.

Non-closure is therefore not a defect unique to democracy. Autocracies, theocracies, technocracies, and judicial supremacies face the same problem. They merely locate discretionary judgment in fewer hands and often conceal it behind claims of expertise, revelation, necessity, or legal finality.

The relevant constitutional question is not how to eliminate openings for judgment. It is how to make judgment visible, bounded, contestable, and correctable.

11.13 Gödel as analogy, not proof

Gödel's incompleteness theorems are sometimes invoked loosely to suggest that every system is incomplete or that no institution can understand itself. Such claims exceed what the mathematics establishes.

The first incompleteness theorem concerns consistent, effectively axiomatized formal systems capable of expressing sufficient arithmetic. Under specified conditions, there are statements that cannot be proved or disproved within the system. The second theorem establishes limits upon a qualifying system's ability to prove its own consistency. Political constitutions are not formal arithmetical theories of the relevant kind, and Gödel did not prove that democracies must contain undecidable legal questions (Gödel 1931; Raatikainen 2025).

The analogy is nonetheless illuminating if used with discipline.

A constitution is an attempt to establish authoritative rules and procedures that apply to the system itself. It defines offices, allocates powers, sets limits, and prescribes methods of revision. Questions can arise that implicate the authority of the decision-maker, the validity of the procedure, or the consistency of the constitutional order. The system must then use its own institutions to judge the adequacy of its own rules.

The Gödelian analogy reminds us to be suspicious of claims that a sufficiently ingenious constitutional design can make itself complete, contradiction-proof, and self-validating. It encourages intellectual humility about self-reference and internal guarantees. It does not demonstrate that a particular constitutional question lacks an answer, nor does it license the conclusion that law is arbitrary.

Indeed, political non-closure rests upon reasons that are independent of Gödel: open-textured language, conflicting values, unforeseen conditions, institutional discretion, amendment, enforcement, and social change. Those reasons are sufficient. Gödel provides a resonant comparison to the limits of formal self-enclosure, not the foundation of the argument.

This distinction matters because careless mathematical borrowing can lend false authority to political claims. Saying “Gödel proves democracy cannot be perfected” would be rhetorically impressive and intellectually wrong. The responsible formulation is narrower:

Gödel's theorems concern the limits of certain formal systems. Constitutional orders are not such systems. Yet the theorems offer a useful analogy for the broader caution that a rule-governed system should not be expected to contain a complete and internally certified solution to every question generated by its own operation.

The analogy also directs attention away from the fantasy of closure and toward the design of response. Mathematics distinguishes consistency, completeness, decidability, and provability. Political theory likewise benefits from distinguishing perfection, closure, resilience, and corrigibility rather than treating them as one aspiration.

11.14 Perfection, closure, resilience, and corrigibility

These four concepts describe different institutional ambitions.

Perfection would mean that the political system always reaches the morally and factually correct decision. No plausible institution can promise this. Citizens, experts, judges, administrators, and designers are all fallible. Information is incomplete, values conflict, and consequences are uncertain.

Closure would mean that the system contains a determinate rule for every possible conflict and can apply those rules without residual judgment. Political closure is impossible for the reasons already given. More rules can shift uncertainty, delay it, or narrow it, but cannot remove it.

Resilience is the capacity of an institution to preserve or restore its defining relationships under stress. A resilient democracy can withstand misinformation, leadership failure, temporary apathy, attempted capture,

administrative breakdown, or factional conflict without permanently losing equal political standing. Resilience may depend upon redundancy, distributed authority, auditability, succession, and multiple routes of participation.

Corrigibility is the capacity to identify and revise error. A corrigible institution does not merely survive. It can learn. People affected by a decision can expose harm, challenge evidence, withdraw delegated authority, alter procedure, reverse policy, replace personnel, and preserve a record of what occurred.

Resilience without corrigibility can preserve a bad system. An authoritarian regime may be highly resilient. Corrigibility without resilience can produce constant instability: every decision is reversible before it can be implemented or evaluated. Democratic design requires both.

The four parameters of the Straight-Up System are best understood in this light. Voter sovereignty preserves the location of authority. Human-scale association creates channels through which problems can become visible. Layered aggregation enables action at scale. Revocable delegation provides a mechanism for correcting relationships of trust. None guarantees correct policy. Together they are intended to create a system that tends to restore authority toward equal members when disruptions occur.

Constitutional protections add further capacities: rights preserve standing; courts and appeals expose unlawful action; due process creates records and hearings; amendment permits framework change; independent auditing detects procedural failure; succession rules prevent personal indispensability.

The objective is not to build a political machine that cannot make mistakes. It is to prevent mistakes from becoming inaccessible to those who bear them.

This difference should shape how institutional proposals are evaluated. Critics often ask whether a system can guarantee that voters will not enact a harmful law. No system can provide that guarantee without assigning final judgment to someone else who may also enact or preserve harm. The more useful questions are: How quickly can harm be detected? Who may initiate correction? What information becomes available? How concentrated is the power to resist change? What costs do affected people face? Can the system distinguish temporary difficulty from structural failure?

A corrigible democracy treats error as a constitutional problem of access and repair, not as evidence that citizens must surrender sovereignty.

11.15 The symmetry of fallibility

Arguments for guardianship often begin with a true premise: ordinary citizens can be ignorant, prejudiced, impulsive, manipulated, or cruel. The argument becomes defective when it stops there.

Judges can be doctrinaire, socially isolated, politically selected, and mistaken. Experts can be captured by professional consensus, institutional incentives, or the interests that fund their work. Administrators can prioritize organizational survival over public purpose. Legislators can be corrupted or trapped by party discipline. Constitutional founders can misjudge the future. Every proposed guardian is human or dependent upon human institutions.

This is the principle of **fallibility symmetry**: the flaws used to justify removing authority from one group must also be applied to the group that would receive it.

Symmetry does not mean that all institutions are equally competent at every task. Courts may be better than mass electorates at individualized adjudication. Epidemiologists know more about disease transmission than most voters. Election auditors know more about tally systems. Legislatures can coordinate budgets more effectively than scattered individuals. Functional advantage matters.

But functional advantage should justify task-specific authority, not a general title to rule. The expert's superior knowledge supports epistemic weight. The judge's independence supports adjudicative authority. The

administrator's experience supports operational discretion. None establishes ownership of the whole legislative decision.

Fallibility symmetry also changes comparative analysis. The relevant comparison is never an imperfect democracy against an ideal court, expert panel, or representative. It is one fallible institutional arrangement against another. We should compare error rates, biases, transparency, concentration, correction, and the distribution of consequences.

A centralized guardian may make fewer errors in some domain but produce errors that are harder to detect or reverse. A distributed public may make noisier decisions but permit faster correction and broader information. An entrenched right may protect against transient passion but preserve an obsolete injustice. A difficult amendment rule may create stability while allowing a small minority to block widely supported reform.

The theory of democratic ownership adds a moral presumption to this empirical comparison. Because no class is infallible, differences in competence do not create a natural title to govern others. Authority should remain with equal members except where a bounded function requires temporary or specialized decision. Even then, the delegation should be transparent, reviewable, and connected to the people in whose name it is exercised.

Fallibility therefore supports constitutionalism, but not guardianship. We need procedures, rights, expertise, and review because citizens can err. We need those institutions to be bounded and corrigible because their operators can err as well.

11.16 Democratic error detection

Correction begins with detection. A political system cannot repair harms it cannot see or refuses to register.

Errors appear in different forms. A factual prediction may fail. A law may create unintended incentives. An administrative program may exclude eligible people. A delegation chain may concentrate authority. A court may interpret a right too narrowly. A majority may impose a burden whose distribution was hidden. Software may miscount or deny access. An emergency measure may outlive the emergency.

Different errors require different sensors. Elections are coarse sensors: they register broad dissatisfaction but bundle many issues and operate at long intervals. Courts detect harms brought by litigants, but only after standing, resources, and doctrine permit a case. Audits detect procedural and financial anomalies. Journalism exposes concealed conduct. Social movements reveal experiences that official categories ignore. Small groups and local associations transmit weak signals from everyday life. Experts compare outcomes with models. Direct votes and proxy withdrawal reveal loss of trust.

A resilient democracy needs **sensor diversity**. No institution has access to all relevant information. Centralization can create a clean chain of command while suppressing inconvenient signals. Distributed channels may produce noise, duplication, and false alarms, but they reduce dependence upon a single gatekeeper.

Detection also depends upon protected dissent. Whistleblowers, opposition parties, minority reports, investigative media, independent researchers, and affected citizens must be able to raise problems without retaliation. A constitutional order that values unity over contradiction loses the information required for self-correction.

The Straight-Up architecture has potential advantages here. Human-scale Circles can make local experience legible. Delegates can carry concerns upward. Direct override allows members to act when representatives or proxies fail. Public records can reveal concentration and tenure. Multiple summaries and source provenance can expose disagreement rather than presenting one official account.

These advantages are hypotheses, not guarantees. Small groups can conceal abuse. Delegates can filter information. Members can ignore warnings. Platforms can bury inconvenient data. The system must therefore measure whether signals travel, whether dissenters can reach the agenda, and whether corrective action follows.

The capacity to detect error should be treated as a constitutional value in its own right. Rights to information, audit, explanation, appeal, and investigation are not administrative luxuries. They are part of what it means for a public to remain the owner of its law after the vote has been cast.

11.17 Contestation, reversal, and learning

Detection is politically meaningless if affected people cannot initiate correction. A system may know that a policy is harmful while the authority to change it remains concentrated in actors who benefit from the harm.

Corrigibility therefore requires at least four capacities: contestation, reversal, learning, and restoration.

Contestation means that people can challenge a decision, its evidence, its procedure, or the authority through which it was made. Contestation may occur through courts, petitions, legislative proposals, public investigations, direct votes, proxy reclamation, elections, recall, or constitutional amendment. The route must be practical, not merely formal.

Reversal means that a mistaken rule or decision can be changed without requiring institutional rupture. Some decisions cannot be fully undone: imprisonment, displacement, environmental destruction, and death produce irreversible harm. That reality strengthens the case for precaution, due process, and temporary measures where uncertainty is high. But the impossibility of complete repair does not justify making correction harder.

Learning requires more than replacing one decision with another. Institutions should preserve records, compare predictions with outcomes, identify causal mechanisms, and revise procedures. A polity that repeatedly reverses policy without retaining memory is reactive rather than learning.

Restoration concerns the underlying distribution of authority. After capture, emergency, corruption, or procedural failure, can equal standing be restored? Replacing one official may not be enough if the same bottleneck remains. A corrigible system must be capable of redesigning the relationship that produced the error.

These capacities suggest evaluative measures. How long does it take for a credible challenge to reach decision? What does it cost? Who has standing? Are reasons and data available? Can temporary relief prevent ongoing harm? Can the responsible authority be replaced? Does the correction become part of institutional memory? Are marginalized participants able to use the process?

Democratic success should be judged partly by these questions. Good outcomes matter, but no system controls all outcomes. A constitution also succeeds when it creates a reliable path from injury to recognition, from recognition to contestation, from contestation to decision, and from decision to repair.

This is why the question of the eraser is constitutional rather than rhetorical. Someone will possess the practical power to leave an error in place or permit its correction. The distribution of that power determines whether the public remains sovereign between founding moments and elections.

11.18 Objections and limits

A constitution that can be changed by the people cannot genuinely protect rights

Rights protection often requires entrenchment and delay. But no legal protection is literally beyond all human alteration. Even unamendable clauses depend upon institutions willing and able to enforce them. The relevant question is how demanding change should be, who must agree, and what forms of public justification are required. Entrenchment can protect rights without converting constitutional interpretation into permanent guardianship.

Direct voter authority will make constitutional rights plebiscitary

It could, if every right were subject to ordinary majority vote without review, delay, or procedural distinction. The Straight-Up theory does not require that arrangement. It can recognize higher-law procedures, independent courts, supermajority thresholds, multiple readings, waiting periods, and protected rights. Its claim is that these institutions should organize public authority rather than alienate it.

Someone must have the final word

For a particular case at a particular time, yes. Finality is necessary for action. But the final word can be domain-specific and temporally limited. A court may decide the case; a legislature may revise the statute; the public may amend the constitution; later courts may revise precedent. The need for temporary finality does not establish permanent ownership.

Correction after harm is too late

Often it is. Corrigibility cannot replace prevention. Constitutional design should use precaution, rights, review, evidence, and staged implementation to reduce irreversible harm. Yet no preventive system is perfect. The capacity for correction remains indispensable, and institutions that claim preventive infallibility may preserve harm longer.

Strong guardians are necessary because majorities threaten minorities

Guardians can be necessary for specific functions, especially impartial adjudication and immediate protection. The objection becomes overbroad when it treats guardians as reliably aligned with minorities. Courts and elites have often protected exclusion as well as challenged it. Minority security requires multiple access points, durable rights, organization, and correction, not dependence upon one benevolent body.

Non-closure produces relativism

The absence of a complete decision procedure does not mean that all judgments are equal. Constitutional arguments can be better or worse supported by text, principle, evidence, precedent, consequence, and public reason. Non-closure means that judgment cannot be eliminated, not that judgment lacks standards.

A self-amending system can abolish itself

Yes. Any system that recognizes constituent authority faces this possibility. Entrenchment, staged procedures, supermajorities, judicial review, and waiting periods can make self-destruction more difficult and visible. They cannot make political agency physically incapable of rejecting its own order. The challenge is to protect sovereignty without assigning its permanent ownership to a guardian.

Revocability will destabilize constitutional interpretation

Not every constitutional function should be instantly revocable. Judges may need tenure; auditors need independence; rights should not fluctuate hourly. Revocability is one corrective mechanism among others. The deeper principle is recoverability: there must be lawful ways to address entrenched error, even when immediate removal would undermine the function.

The public may not care enough to correct error

That is possible. Corrigibility provides capacity, not motivation. Political apathy, fear, propaganda, and inequality can prevent use. This is why constitutional design must lower participation costs, protect organizers, provide information, and distribute detection. A dormant corrective power is better than none, but its practical use must be measured.

11.19 Who holds the eraser?

No political system can promise that power will always be used justly. Constitutions can entrench rights, divide authority, slow decisions, protect minorities, require evidence, and create independent forums. They can reduce the probability of error and the severity of harm. They cannot remove judgment, conflict, or fallibility from political life.

The democratic ownership of law therefore does not rest upon faith in the wisdom of majorities. It rests upon a judgment about the legitimate location and correction of authority.

When citizens err, the answer cannot be that judges, experts, representatives, founders, or administrators are incapable of error. Nor can constitutional protection consist in moving sovereignty to whichever class currently appears most competent or benevolent. The problem of fallibility follows authority wherever it goes.

A democratic constitution should instead distribute functions according to competence while preserving equal political standing. Courts adjudicate. Experts advise. Administrators implement. Representatives and delegates perform labor. Rights constrain. Procedures slow and structure judgment. Amendments enable framework change. None of these functions should silently become ownership of the legislative decision.

The deepest constitutional test appears after failure.

Can those affected make the harm visible?

Can they obtain information and reasons?

Can they organize without permission from the authority they challenge?

Can they contest the evidence, procedure, and jurisdiction?

Can they replace delegates, reverse policy, revise rules, and preserve what was learned?

Can the system restore authority toward equal members rather than concentrating it farther away?

A constitution that answers these questions well is not perfect. It is not closed. It is resilient and corrigible.

This is the point of the eraser metaphor. The eraser is not the power to pretend harm never occurred. Many consequences cannot be undone. It is the continuing authority to acknowledge error, stop its repetition, repair what can be repaired, and alter the institutions that produced it.

Every political order makes mistakes. The decisive question is whether correction belongs to a protected ruling class, occurs only through institutional breakdown, or remains available to the people who live under the law.

The question is not whether democracy will make mistakes. The question is who holds the eraser.

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