

Module 11 Study Guide: Accountability vs Immunity: The Binary of Law

Why Immunity Cannot Exist Within a System of Law

Lesson Summary

This module examines the fundamental structural requirements of a legal system, contrasting the principle of accountability with the doctrine of immunity. It posits that law is a mechanical, closed system composed of a continuous sequence: the rule of right, the identification of injury, and the provision of remedy. If this chain is broken at any point, specifically by granting immunity to government actors, the system ceases to function as law and transforms into a system of discretionary power or a "circular system" where the authority becomes its own judge. The analysis draws on foundational constitutional provisions and the political philosophy of John Locke, Emer de Vattel, and St. George Tucker to argue that immunity is structurally impossible within a delegated authority framework. Since individuals do not possess the power to violate the rule of right without consequence, they cannot delegate such a power to their agents in government. Therefore, the assertion of immunity is classified not as a legal variation, but as a departure from law, leading to conditions defined as tyranny, usurpation, and the dissolution of lawful government.

Key Maxims

The following maxims serve as the "bones of reason" and structural constraints within the architecture of law:

Law as a Rule of Right	A standard that distinguishes just from unjust, binding ruler and ruled equally.
Mandatory Remedy	Whenever a man is wronged or endamaged, he shall have a remedy; "shall" implies a mandatory duty.
The Non-Delegation Principle	No one can delegate a power they do not possess; immunity cannot be delegated because individuals lack it.
Government as Instrument	Government is an agent/trustee with no inherent rights, only delegated and limited authority.

Quiz: Short-Answer Questions

1. What are the three "House Rules" required to evaluate the structure of law accurately?
2. How is law measured within this framework, and how does this differ from institutional persistence?

The Rule of Law: Power, Authority and Accountability

3. Explain the metaphor of law as a "mechanical system."
4. What is the "single condition" or "test condition" used to determine if a system operates as law?
5. At what specific point in the legal sequence does immunity operate, and what is the structural result?
6. Why is the distinction between "appearance" and "function" critical in a legal system?
7. What is the "Non-Delegation Principle," and how does it relate to the concept of immunity?
8. According to the Massachusetts Constitution, Article V, what is the frequency and nature of official accountability?
9. How does a "circular system" eliminate the distinction between law and will?
10. Define "perfidious abuse" as described by Emer de Vattel.

Answer Key

1. The three rules are *Veritas Potissimum* (truth above all), *Mutua Observantia* (focus on structure over personality), and *Conlationem Gratuiti* (objective understanding over victory). These constraints ensure that the analysis follows logical necessity and evidence rather than personal comfort or preferred narratives.
2. Law is measured by whether the rule of right is consistently applied, injuries are recognized, and remedies are provided. It is not measured by the persistence of institutions, procedures, or the stability of outcomes, as these can exist even when the function of law has been abandoned.
3. The mechanical system metaphor posits that law is composed of interdependent components—law, injury, and remedy—that must operate in a precise sequence. If one component is removed or altered, the system does not adapt; it fails to function as designed, even if the parts remain in motion.
4. The test is: "Can an agent be bound by a rule and, at the same time, be exempt from the consequence of violating that rule?" If the answer is yes, the system has transitioned from law to discretion, as the rule no longer governs all conduct universally.
5. Immunity operates at the point of remedy by suspending the obligation to provide redress for a recognized injury. This breaks the chain of law, meaning the rule of right remains in language but ceases to function as a governing condition in operation.
6. The appearance of law (courts, procedures, written rights) can persist indefinitely even after the function of law (enforcement of the rule of right)

The Rule of Law: Power, Authority and Accountability

has ceased. Without this distinction, any deviation from the structure of law could be justified as long as the institutional activity continues.

7. **The principle states that no one can delegate a power they do not possess.** Since individuals do not have the lawful power to violate the rule of right without consequence, they cannot transfer a power of immunity to government agents.
8. **Article V states that those entrusted with authority are accountable to the people "at all times."** This absolute requirement eliminates the possibility of discretionary exemptions, situational adjustments, or partial accountability for officials.
9. **In a circular system, the same body defines the rule, interprets its meaning, determines if a violation occurred, and decides if a consequence follows.** This eliminates the external standard required for law, allowing the actor to become the judge of their own obligations.
10. **Perfidious abuse occurs when those invested with public authority violate the constitution or act outside the laws.** It is a betrayal of trust because the authority given for the protection of the people is used in violation of its original purpose.

Essay Format Questions

1. **The Closed Mechanism vs. Discretion:** Discuss the structural implications of a "closed" legal system. Why does the introduction of discretion at the point of remedy fundamentally alter the nature of the entire mechanism?
2. **Locke's Classifications of Systemic Failure:** Analyze how John Locke's definitions of a "State of War," "Tyranny," and the "Dissolution of Government" apply to a system that acknowledges injuries but grants immunity to the actors responsible.
3. **The Fiduciary Nature of Public Office:** Using the Maryland Constitution and the writings of Vattel, evaluate the argument that immunity is a violation of the trust relationship between the people and their agents.
4. **The Role of the Jury as a Functional Barrier:** Explain how the doctrine of immunity displaces the constitutional function of the jury. How does this displacement interrupt the sequence that connects injury to remedy?
5. **The Sovereignty of the People and Usurpation:** Explore St. George Tucker's assertion that exceeding prescribed power is "usurpation." How does this classification challenge the legal validity of immunity doctrines created by the judiciary or legislature?

The Rule of Law: Power, Authority and Accountability

Glossary of Key Terms

- **Accountability:** The functional requirement that an actor's conduct is evaluated under the rule of right and produces consequences when that rule is violated.
- **Circular System:** A self-referential system where the authority that exercises power also defines the rules and exempts itself from them, removing any external standard of law.
- **Dissolution of Government:** A condition described by Locke where a government departs from its delegated purpose and structure, losing its substance and legitimacy while potentially retaining its form.
- **Immunity:** A doctrine asserting that an agent of government may be exempt from the consequences of an act contrary to the rule of right, specifically by suspending the obligation to provide a remedy.
- **Injury:** Any act that is contrary to the rule of right, regardless of the identity or title of the actor.
- **Mechanical System:** A framework of interdependent parts (law, injury, remedy) that must operate in a continuous sequence; the failure of one part results in the failure of the whole.
- **Perfidious Abuse:** A betrayal of trust where delegated power is used in violation of the purpose for which it was granted.
- **Remedy:** The mandatory response required to restore the balance disrupted by an injury; the necessary completion of the legal sequence.
- **Rule of Right:** An objective standard that distinguishes just from unjust conduct and binds all individuals and officials equally.
- **State of War:** According to Locke, the condition that arises whenever force is exercised without right, occurring when power is no longer constrained by law.
- **Tyranny:** The exercise of power beyond right; power operating without being bound to the rule of right or subject to consequence.
- **Usurpation:** The exercise of power that has not been granted or delegated; an offense against the sovereignty of the people.

Homework Assignment

Objective: Apply the structural framework of law to a real-world scenario to determine the validity of an assertion of immunity.

1. **Selection:** Identify a specific case, statute, or government action where a public functionary has asserted or been granted immunity.
2. **Structural Analysis:**
 - Identify the **Rule of Right** that governed the conduct.

The Rule of Law: Power, Authority and Accountability

- Determine if an **Injury** was alleged and if it constitutes a violation of that rule.
 - Examine the **Sequence**: Does the system allow for a remedy, or is the chain interrupted by an immunity doctrine?
3. **Delegation Check**: Evaluate if the authority to grant or receive immunity can be traced to a valid delegation from the people (the source of power).
 4. **Classification**: Based on the structure provided in Module 11, classify the result. Does the system currently operate as **Law** (connected to consequence) or as something else (broken connection)?
 5. **Reporting**: Present your findings in terms of structural consistency rather than personal opinion or institutional preference.

IN THE SUPREME COURT OF THE UNITED STATES

[NAME OF PETITIONER],

Petitioner,

v.

[NAME OF RESPONDENT],

Respondent.

PETITION FOR DECLARATORY RELIEF, MANDAMUS, AND OTHER APPROPRIATE RELIEF

TO DECLARE THAT IMMUNITY, INSOFAR AS IT PURPORTS TO PLACE GOVERNMENTAL ACTORS ABOVE LEGAL ACCOUNTABILITY FOR UNLAWFUL ACTS, IS VOID AB INITIO BECAUSE IT IS STRUCTURALLY INCOMPATIBLE WITH THE CONSTITUTION, THE LAW OF THE LAND, AND THE SETTLED MAXIMS OF THE COMMON LAW

INTRODUCTION

This case presents a structural question, not a policy dispute. The question is whether a constitutional republic can remain a government of law while permitting its own agents to violate law without legal consequence. It cannot. The American legal order was framed on the premise that rights preexist government, that government is instituted only to secure those rights, that all official power is delegated and limited, and that where law creates duty the courts must supply remedy. That premise is visible in the founding declarations of rights, in the common-law maxims received into American law, and in this Court’s earliest decisions. When immunity is asserted not merely as a rule about forum or party naming, but as a rule that extinguishes accountability for unlawful official conduct, it contradicts each layer of that structure.

The point can be stated simply. **Law without remedy is not law governing officials; it is advice given to them.** Marbury held that the United States is a “government of laws, and not of men,” and warned that it would cease to deserve that name if the laws furnished no remedy for the violation of a vested legal right. It also held that where a specific duty is assigned by law and individual rights depend on its performance, the injured individual may resort to the laws of his country for a remedy. Little v. Barreme then rejected the excuse of superior orders, holding that executive instructions cannot legalize what would otherwise be “a plain trespass.” Wise v. Withers held that when a tribunal acts clearly without jurisdiction, the tribunal and the officer executing its command are trespassers. Osborn preserved suits against officers even where the State itself could not be named. Kendall rejected the claim that enforcing ministerial duty violates separation of powers. Murray’s Lessee rejected the proposition that Congress may make any procedure “due process” by mere will. Milligan declared that the Constitution is a law for

rulers and people alike, in war and peace, and that no more pernicious doctrine exists than that constitutional restraints may be suspended by expediency. Taken together, those authorities make the structure unmistakable: **there is no American doctrine of lawful wrongdoing without accountability.**

This Petition does not deny that certain historical doctrines limited suits against sovereigns as named defendants. It denies something narrower and more fundamental: that any such doctrine can be enlarged into a principle that **illegal acts by officers become legally unanswerable.** Antebellum law says the opposite. Even where the sovereign could not be named, officers remained suable when they exceeded law. That distinction is not incidental; it is the entire difference between constitutional government and arbitrary power.

JURISDICTION AND NATURE OF THE ACTION

Petitioner seeks declaratory and mandamus relief insofar as this Court deems appropriate to declare that doctrines of immunity cannot constitutionally be applied to extinguish accountability for unlawful official acts, to bar remedy where law creates right and duty, or to place rulers above the same law that binds the people. This Petition arises under the Constitution of the United States, the settled law-of-the-land tradition incorporated into American constitutionalism, and the foundational rule that unconstitutional acts are void. Marbury states the core rule: a law repugnant to the Constitution is void, and it is emphatically the province and duty of the judicial department to say what the law is.

GOVERNING PREMISES OF AMERICAN LAW

At the founding, the States repeatedly declared that rights are inherent, power is derived from the people, magistrates are trustees and servants, and government exists for the common benefit and security of the people. Virginia declared that all men possess inherent rights; that all power is vested in and derived from the people; that magistrates are “at all times amenable to them”; and that government exists for the common benefit, protection, and security of the people. It also declared that no man may be deprived of liberty except by the law of the land or the judgment of his peers. Pennsylvania and Vermont likewise treated jury trial, lawful process, and recurrence to fundamental principles as structural safeguards, not discretionary gifts. Massachusetts declared a right to a “certain remedy” for injuries and wrongs, to justice “freely” and “without any denial,” and made separation of powers serve the end of “a government of laws and not of men.” Alabama later expressed the same underlying principle in direct terms: the “sole object and only legitimate end of government” is to protect life, liberty, and property, and when government assumes other functions, “it is usurpation and oppression.”

Those constitutional declarations track the received maxims of the common law. Coke recorded the maxim that no one ought to be judge in his own cause, because it is against reason that the wrongdoer should be his own judge. He also identified the common law with “common right” and linked it to Magna Carta’s command that right shall not be sold, denied, or delayed. Blackstone described the law of nature as superior in obligation to any human law and treated the existence of remedy as a necessary incident of legal right. Marbury itself adopted Blackstone’s remedial principle, stating that every right, when withheld, must have a remedy and every injury

its proper redress. These are not decorative quotations. They are the inherited premises from which the early American cases were decided.

Petitioner's attached materials frame the same structure as a mechanical chain of lawful authority, **SOURCE → DELEGATION → LIMIT → EXECUTION → ACCOUNTABILITY**, and correctly identify a break in accountability as a break in legality itself. That formulation is consistent with, not contrary to, the older authorities cited above.

ARGUMENT

I. IMMUNITY THAT EXTINGUISHES ACCOUNTABILITY FOR UNLAWFUL OFFICIAL ACTS IS STRUCTURALLY IMPOSSIBLE IN A GOVERNMENT OF LAWS

Marbury forecloses the foundational premise of such immunity. The Court did not merely say that some remedies exist sometimes. It said the nation would cease to deserve the title "government of laws" if the law furnished no remedy for the violation of a vested legal right, and it distinguished between discretionary political acts and legal duties specifically assigned by law. Once law assigns duty and an individual's rights depend on its performance, the courts are open. That proposition is irreconcilable with any doctrine that nullifies remedy precisely where official power has been abused.

Any response that tries to limit Marbury to mandamus misses the point. The principle is broader than the writ used there. Marbury supplies the constitutional grammar of American legality: right, duty, remedy. Little v. Barreme proves the same structure in damages; Wise proves it in trespass against tribunal officers; Osborn proves it in equitable restraint against state officers; Kendall proves it in coercive relief against an executive officer; and Milligan proves that convenience, danger, and emergency do not dissolve constitutional restraint. The mode of action changes; the principle does not.

II. THE SOVEREIGN-IMMUNITY OBJECTION DOES NOT SAVE OFFICER IMMUNITY FOR ILLEGAL ACTS

Respondents may argue that sovereign immunity is deeply rooted and that this Petition therefore fails at the threshold. That argument equivocates between two distinct propositions. One is a rule about whether the sovereign, as sovereign, may be named without consent in a particular form of action. The other is a rule that **officers who violate law are personally or officially unanswerable for that illegality**. Early American law did not treat those as the same thing.

Chisholm is important not because every aspect of its holding survived the Eleventh Amendment, but because it captured the American premise that at the Revolution sovereignty devolved upon the people. The Eleventh Amendment then corrected the forum question in suits against States by certain plaintiffs; it did not transform unconstitutional official conduct into lawful conduct. Osborn makes that distinction explicit. It recognized that while the State itself could not, according to the Eleventh Amendment, be made a defendant, a suit could still be maintained against the officers and agents entrusted with enforcing unconstitutional laws. That is fatal to any claim that state-related immunity entails officer nonaccountability.

Nor can respondents answer that Osborn was only about prospective relief. That answer also concedes the essential point. If officers may be enjoined because their threatened acts are unlawful, then the Constitution does not treat illegality as cloaked merely because the actor holds office. And Wise and Little go further, recognizing liability where official action exceeded lawful authority. The true antebellum rule is not that officers are immune when connected to sovereignty; it is that sovereignty does not legalize an officer's unlawful act.

III. THE “SUPERIOR ORDERS,” “GOOD FAITH,” AND “PUBLIC NECESSITY” OBJECTIONS FAIL UNDER LITTLE, KENDALL, MURRAY’S LESSEE, AND MILLIGAN

Respondents may argue that officials must be protected when acting under orders, in good faith, or under perceived necessity. Little rejects that claim in terms. Chief Justice Marshall acknowledged an initial inclination to excuse the officer because the orders came from the President, but the Court concluded that those instructions “cannot change the nature of the transaction, or legalize” what would otherwise be a plain trespass. That is not a modern balancing test. It is a categorical rejection of executive instructions as a source of legality.

If the answer shifts from orders to necessity, Milligan closes that door. The Constitution, the Court said, is a law for rulers and people equally, in war and in peace, and no doctrine has more pernicious consequences than the notion that its provisions may be suspended during exigency. Necessity may explain why officials acted; it does not alter the legal character of an act that law forbids.

If the answer shifts again to legislative redefinition, that Congress or a legislature may declare certain injuries nonactionable or redefine procedure to make the deprivation “due process”, Murray’s Lessee rejects that move as well. Congress, the Court held, cannot make any process “due process of law” by its mere will; due process must be measured against the Constitution and the settled usages and modes of proceeding inherited from the common law. The legislature therefore cannot convert unconstitutional unaccountability into law simply by naming it immunity.

If respondents finally say that separation of powers forbids judicial correction, Kendall answers that. Enforcement of a legal duty against an executive officer performing a ministerial act does not invade executive power, because neither the officer nor the President has authority to deny or control a duty the law has fixed. Separation of powers bars one department from taking over another’s lawful functions; it does not authorize any department to violate the law without judicial consequence.

IV. JUDICIAL IMMUNITY, TO THE EXTENT ASSERTED, CANNOT EXCEED JURISDICTION AND CANNOT EXTINGUISH THE CONSTITUTIONAL PREMISE OF REMEDY

Respondents may invoke judicial immunity and rely on decisions such as Bradley v. Fisher. Even taking that doctrine at its highest historical formulation, it does not rescue the broader claim at issue here. First, Bradley itself is not a pre-1880 authority establishing that judges are

beyond all legal accountability; it concerned damages for judicial acts within the scope of jurisdiction. Second, the older cases show the opposite rule once jurisdiction is absent. Wise held that where a tribunal acts in a case clearly beyond its jurisdiction, its decision cannot protect the officer who executes it; indeed “the court and the officer are all trespassers.” That principle cannot be reconciled with absolute impunity for void acts.

More fundamentally, a doctrine crafted to preserve decisional independence cannot be transmuted into a charter of constitutional nonaccountability. The Constitution did not create judges as a caste above law. Massachusetts’ separation-of-powers clause exists “to the end it may be a government of laws and not of men,” not to allow the judicial department to decide the extent of its own immunity from the law. Coke’s maxim that no man may be judge in his own cause remains directly relevant here. A system in which the judiciary both invents the immunity and declares itself its beneficiary offends the maxim at the root.

V. THE REMEDY CLAUSES OF THE STATES CONFIRM THAT ACCOUNTABILITY IS NOT OPTIONAL; IT IS PART OF THE CONSTITUTIONAL DESIGN

The state constitutions did not merely enumerate rights. They built remedial access into the constitutional structure. Massachusetts guarantees a “certain remedy” for injuries and wrongs and justice “without any denial.” Virginia declares magistrates amenable to the people. Pennsylvania and Vermont preserve jury trial and insist on adherence to fundamental principles. Alabama states that government’s sole legitimate end is the protection of life, liberty, and property, and that deviation is usurpation and oppression. Those texts all point in one direction: official authority is fiduciary and conditional, and the legal system must remain open to redress wrongs committed under color of office.

Respondents may answer that state constitutional remedy clauses do not bind the federal government as such. That misses the role these clauses play in this Petition. They are not cited as independent sources of jurisdiction over federal officers in every circumstance; they are cited as powerful evidence of the founding-era legal meaning of republican government, accountability, law of the land, and legal remedy. Murray’s Lessee itself told courts to look to settled usages and modes of proceeding from the common and statute law of England as received and practiced here. Founding-era state constitutions are among the best evidence of what Americans understood lawful government to require.

VI. IMMUNITY FAILS THE BASIC CHAIN OF AMERICAN LEGALITY: SOURCE, DELEGATION, LIMIT, EXECUTION, ACCOUNTABILITY

The attached materials describe a binary test of legitimacy: source, delegation, limit, execution, accountability. That formulation reflects the old law. Source: the people possess inherent rights and are the source of civil authority. Delegation: magistrates are trustees and servants. Limit: government exists for the common benefit and to secure rights, not to negate them. Execution: officers may act only within law and jurisdiction. Accountability: where rights are violated contrary to duty, the law must provide remedy. Break any link, and the act is not a lawful act of government but a naked exertion of force.

Immunity breaks the chain at the last link, and by doing so breaks the whole. A system that recognizes injury, duty, unlawfulness, and lack of jurisdiction, yet denies legal consequence because the wrongdoer wore official robes, has replaced law with status. That is precisely what the founding constitutions and early cases rejected. Massachusetts' phrase "government of laws and not of men" is not rhetoric. It is a structural prohibition on legal regimes in which the actor's office changes the juridical character of a wrong.

VII. WHAT THIS PETITION DOES NOT SEEK

This Petition does not ask the Court to abolish every distinction in remedial law, erase jurisdictional limits, or deny that some suits may require congressional authorization as to the sovereign itself. It asks for the narrower and easier proposition: **no doctrine may be applied to convert unlawful official conduct into legally nonanswerable conduct merely because it was performed under color of office.** That proposition is the one most clearly established by the older authorities.

It also does not depend on modern substantive-due-process theory, implied-cause-of-action doctrine, or post-1880 innovations. The argument can be decided on much older and firmer ground: Marbury's remedy principle; Little's rejection of superior-orders legality; Wise's trespass rule for acts without jurisdiction; Osborn's preservation of suits against officers; Kendall's rejection of the separation-of-powers excuse; Murray's Lessee's refusal to let mere will define due process; Milligan's refusal to let expediency suspend constitutional restraint; and the founding constitutional texts that define magistrates as amenable servants, not privileged sovereigns.

PRAYER FOR RELIEF

For the foregoing reasons, Petitioner respectfully prays that this Court:

1. **Declare** that no doctrine of immunity may constitutionally be construed or applied to place governmental actors beyond legal accountability for unlawful acts performed under color of office.
2. **Declare** that where law creates right and assigns duty, the Constitution requires the availability of judicial remedy sufficient to preserve the government as one of laws and not of men.
3. **Declare** that official orders, policy, emergency, convenience, asserted good faith, or separation-of-powers objections do not legalize conduct otherwise unlawful, do not create due process by mere will, and do not extinguish redress for acts taken beyond lawful authority.
4. **Declare** that officers, judges, and other public actors remain bound by jurisdictional limits and by the rule that acts clearly without jurisdiction or contrary to law are void and cannot be shielded by office.
5. **Grant** such further relief as may be necessary to restore the supremacy of the Constitution and the law of the land over all claims of official exemption.

CONCLUSION

The issue is easier, not harder, than modern doctrine often makes it appear. The old law already supplied the answer. The people are sovereign; magistrates are servants. Rights are antecedent; government is instrumental. Law assigns duty; courts supply remedy. Unconstitutional acts are void. Orders do not legalize trespass. Lack of jurisdiction makes officers trespassers. The Constitution restrains rulers in peace and in war. A legislature cannot make mere will into due process. A State's inability to be named does not transmute its officers' unlawful acts into lawful ones. Those propositions are not radical. They are the bedrock. And once they are put together, the conclusion follows by necessity: **immunity, insofar as it claims nonaccountability for unlawful official acts, is not a lawful doctrine of constitutional government at all. It is a contradiction in terms.**

Respectfully submitted,

[Name]

[Address]

[Telephone]

[Email]

Pro Se / Counsel for Petitioner

Dated: [Insert Date]