



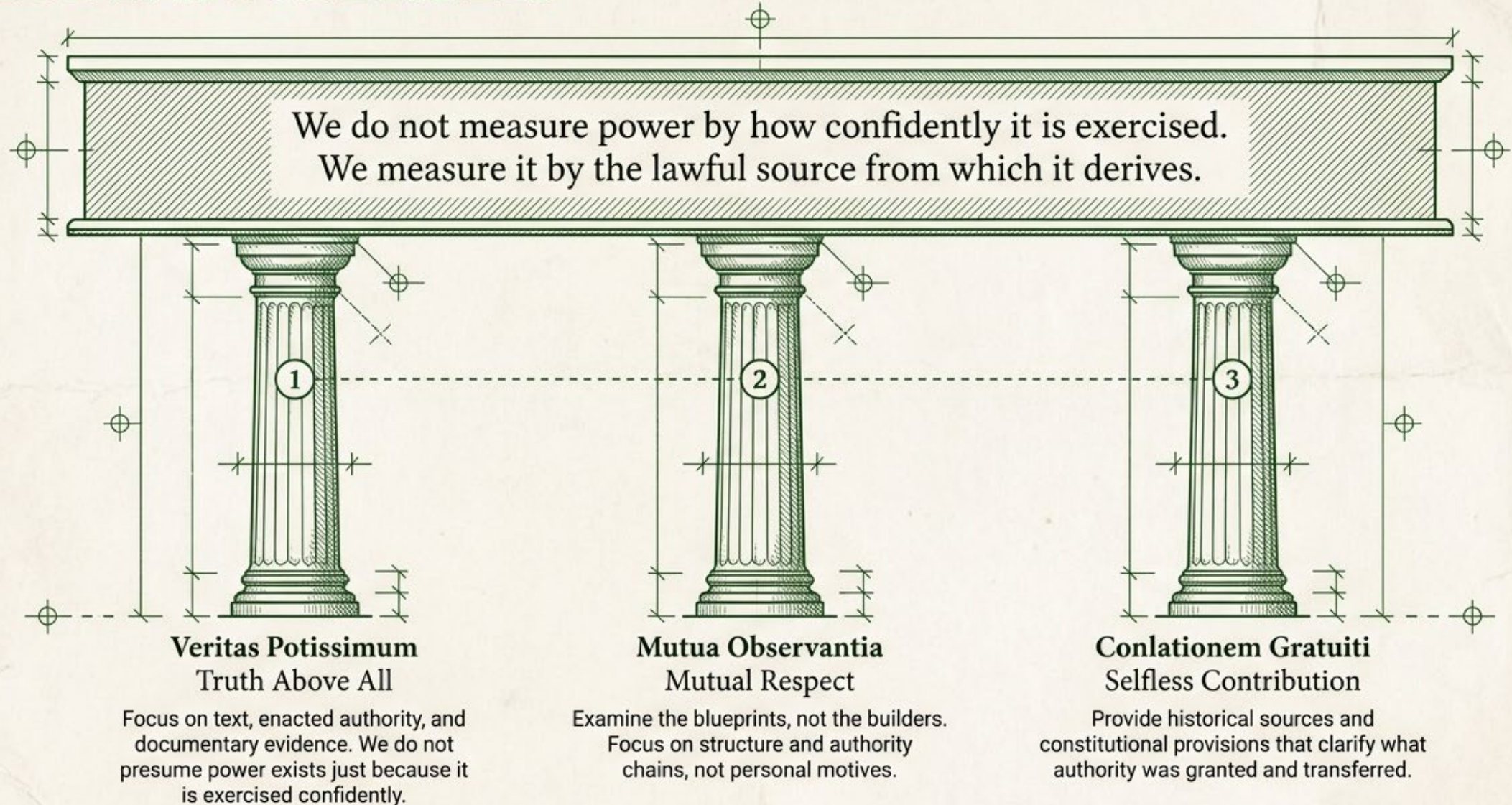
THE RULE OF LAW:

Breakdown, Record and Exposure

Module 19: Delegation And Enumerated Power

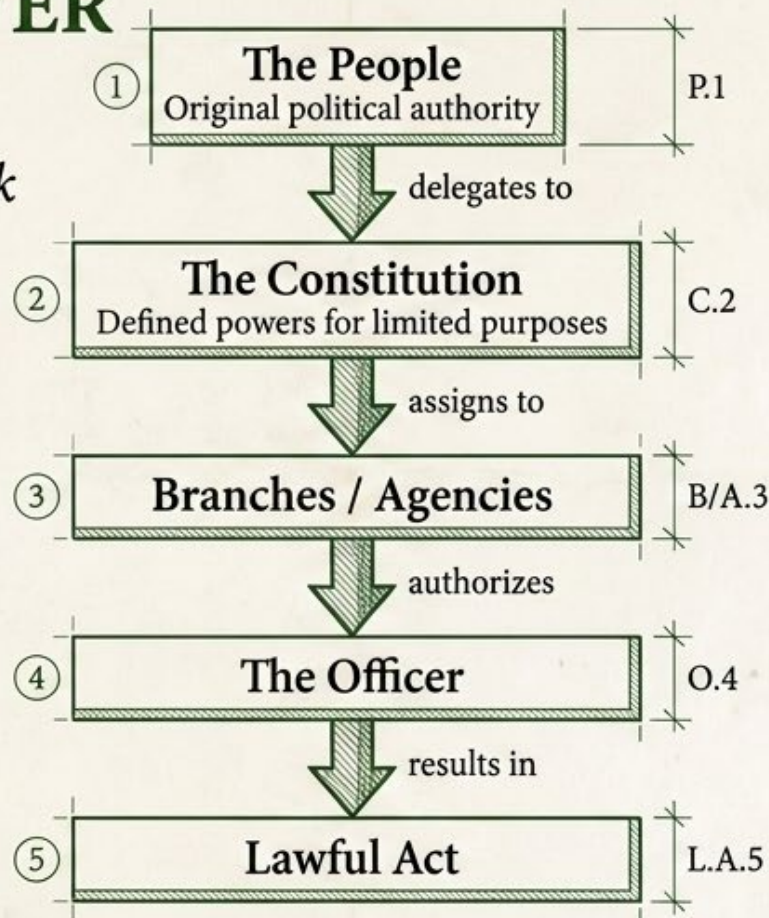
Administrative Expansion, Progressive Theory, and the Drift from Limited Government to Open-Ended Authority

SLIDE 2: HOUSE RULES



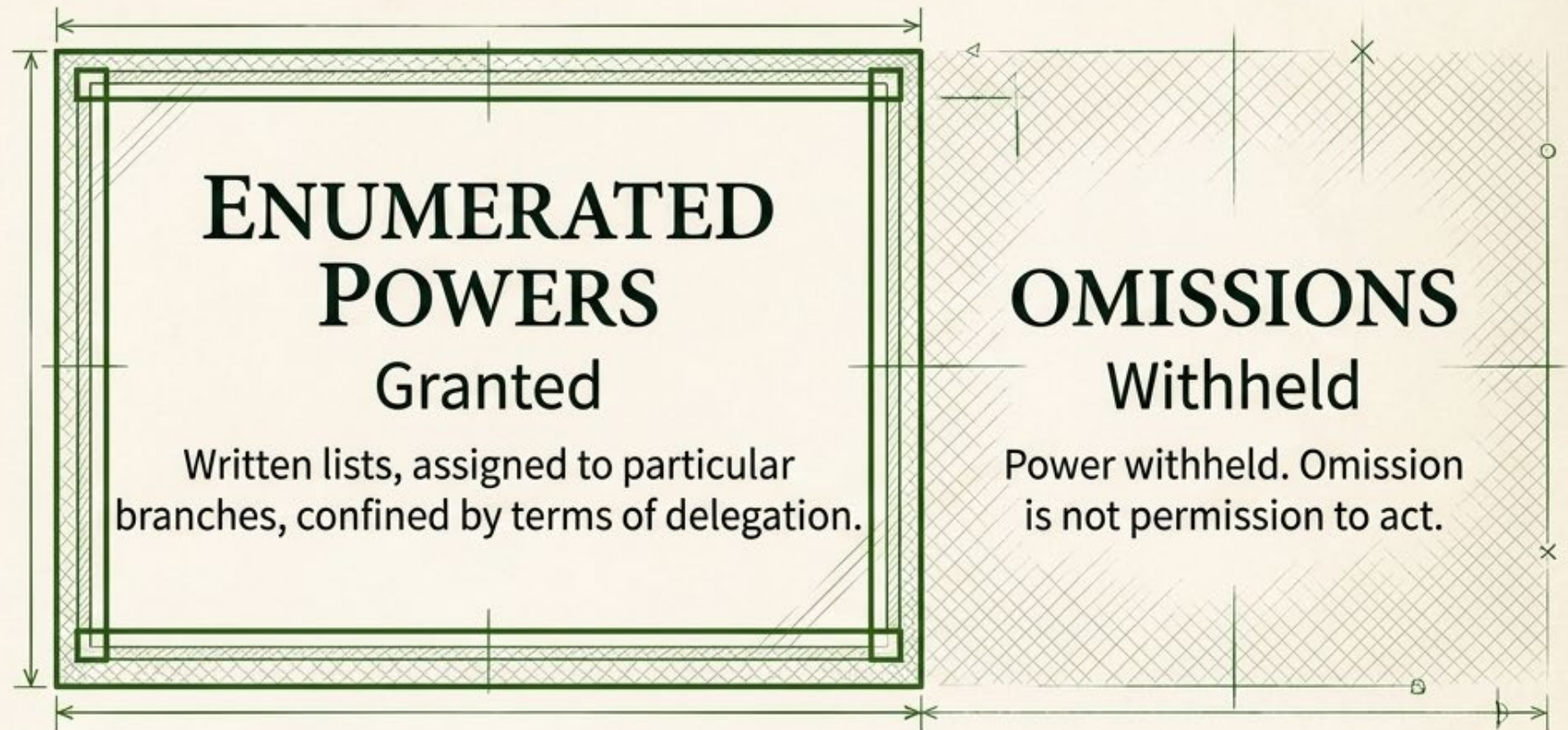
SLIDE 3: THE ORIGINAL RULE OF DELEGATED POWER

Before we argue about the steering wheel, we must open the hood and ask where the engine gets its power.



Government possesses only the power the People lawfully delegated to it.

SLIDE 4: ENUMERATED POWER AS CONSTITUTIONAL LIMIT



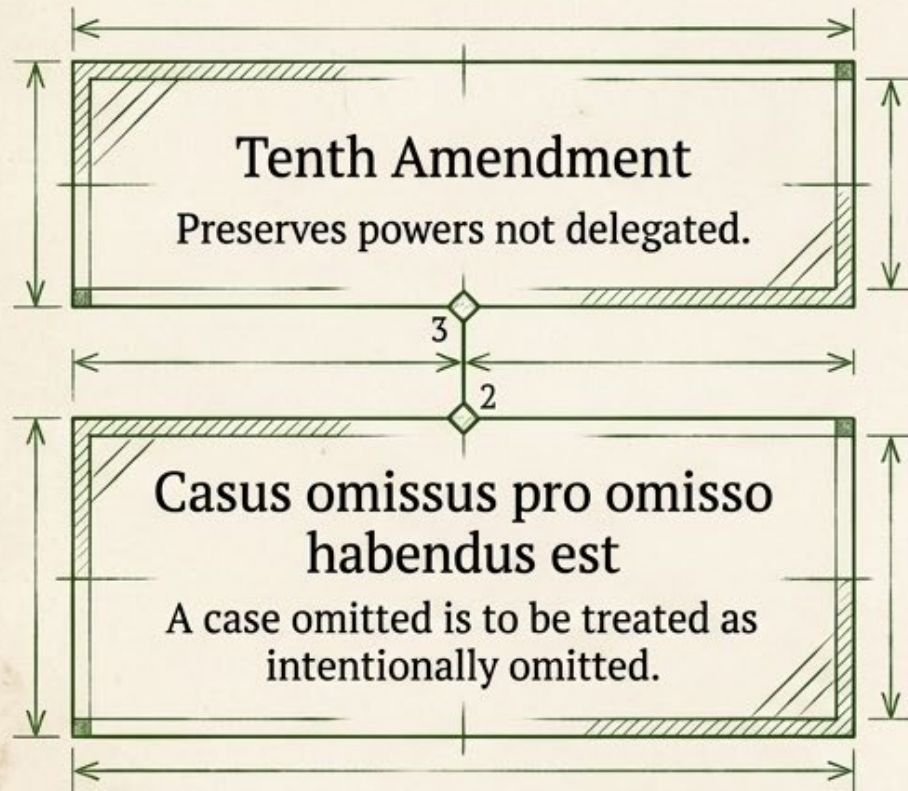
The institution claiming authority must identify the written grant and the lawful chain connecting it. The People are not required to search for prohibitions.

Not: Where does the Constitution forbid this power?

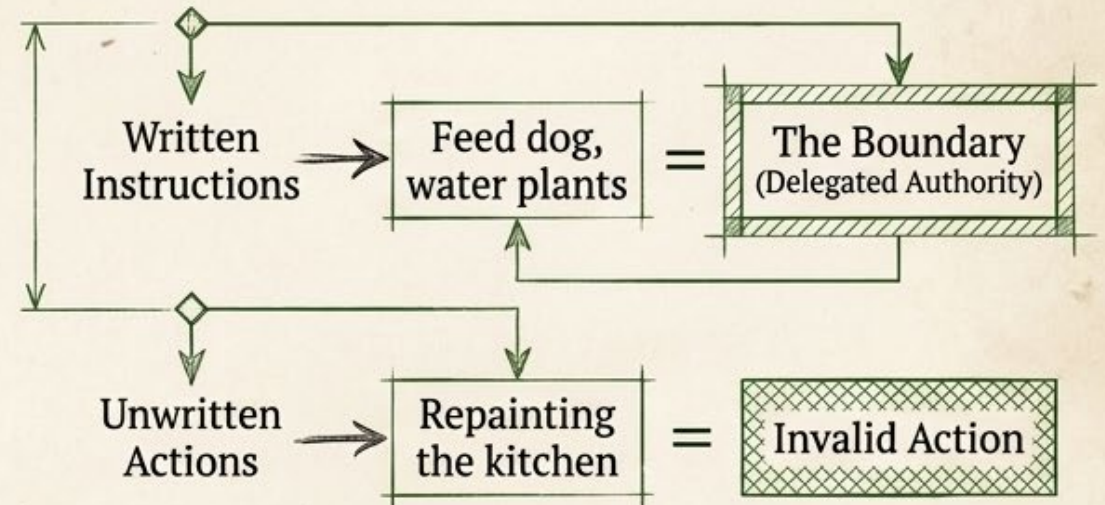
Instead: Where does the Constitution grant it?

SLIDE 5: CASUS OMISSUS AND RETAINED POWER

The Legal Doctrine



The Analogy Map



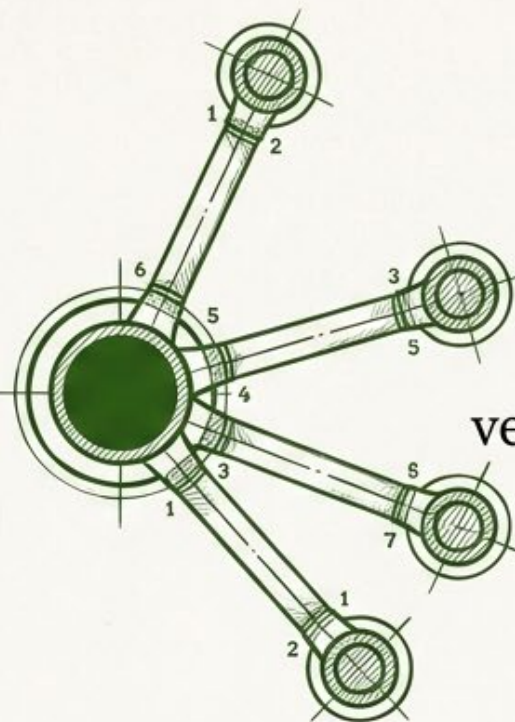
Logical Output

Instructions defined authority.
Silence did not enlarge it.

What the People omitted from the delegation,
government may not supply for itself.

SLIDE 6: EXPRESS DELEGATION AND INCIDENTAL MEANS

Express Power
(e.g., The power to
establish Post Offices)



Incidental Means
(e.g., Mailbags, routes,
vehicles, buildings, employees)

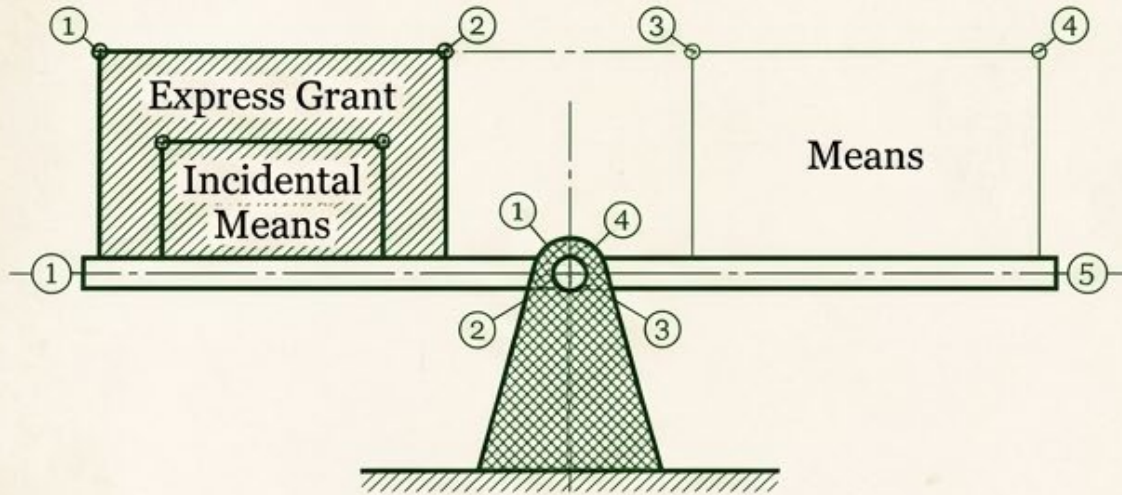
Structural Mechanics

Sequence: The express power comes first. The incidental means comes second.

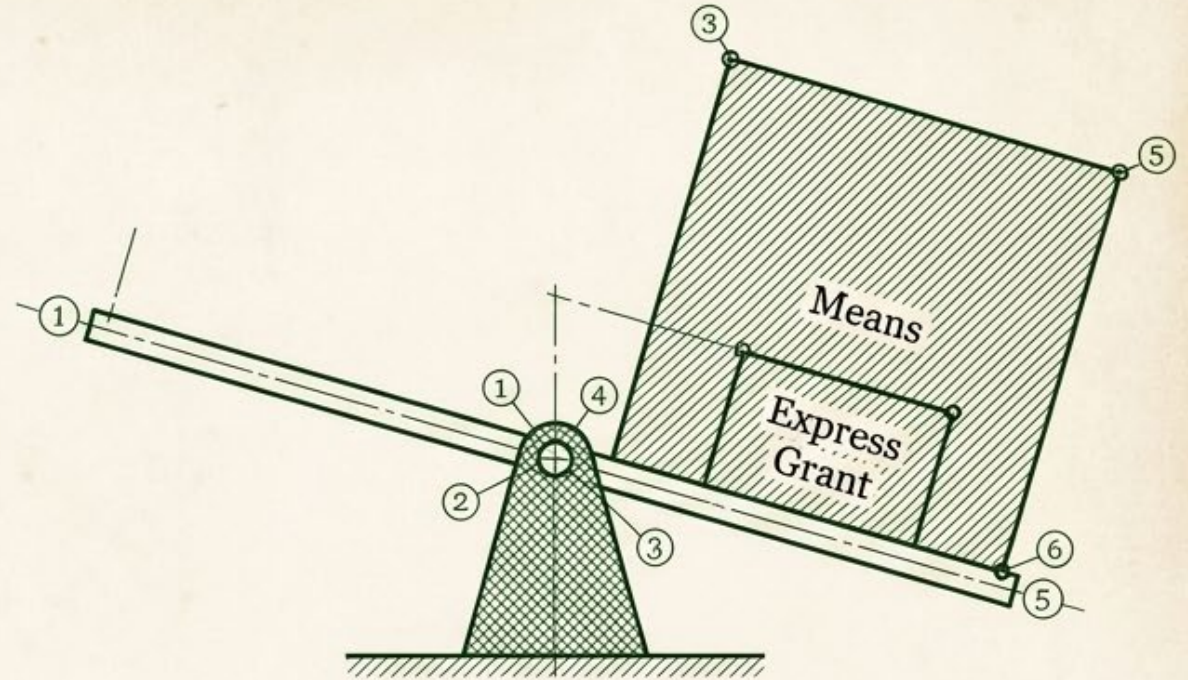
Subordination: Means must stay within the purpose and limits of the original grant. They do not create new, independent powers over unrelated subjects.

An implied means may assist an express power.
It may not replace the need for one.

SLIDE 7: THE FIRST DRIFT, FROM MEANS TO POWER



Phase 1: Original



Phase 2: The Drift

- Tools justified as necessary began taking on the character of independent governmental powers.
- Interpretation enlarged the delegation, rather than merely executing it.
- New sequence: Identify a desired objective -> construe existing powers broadly to reach it.

Implied means began to become implied power.

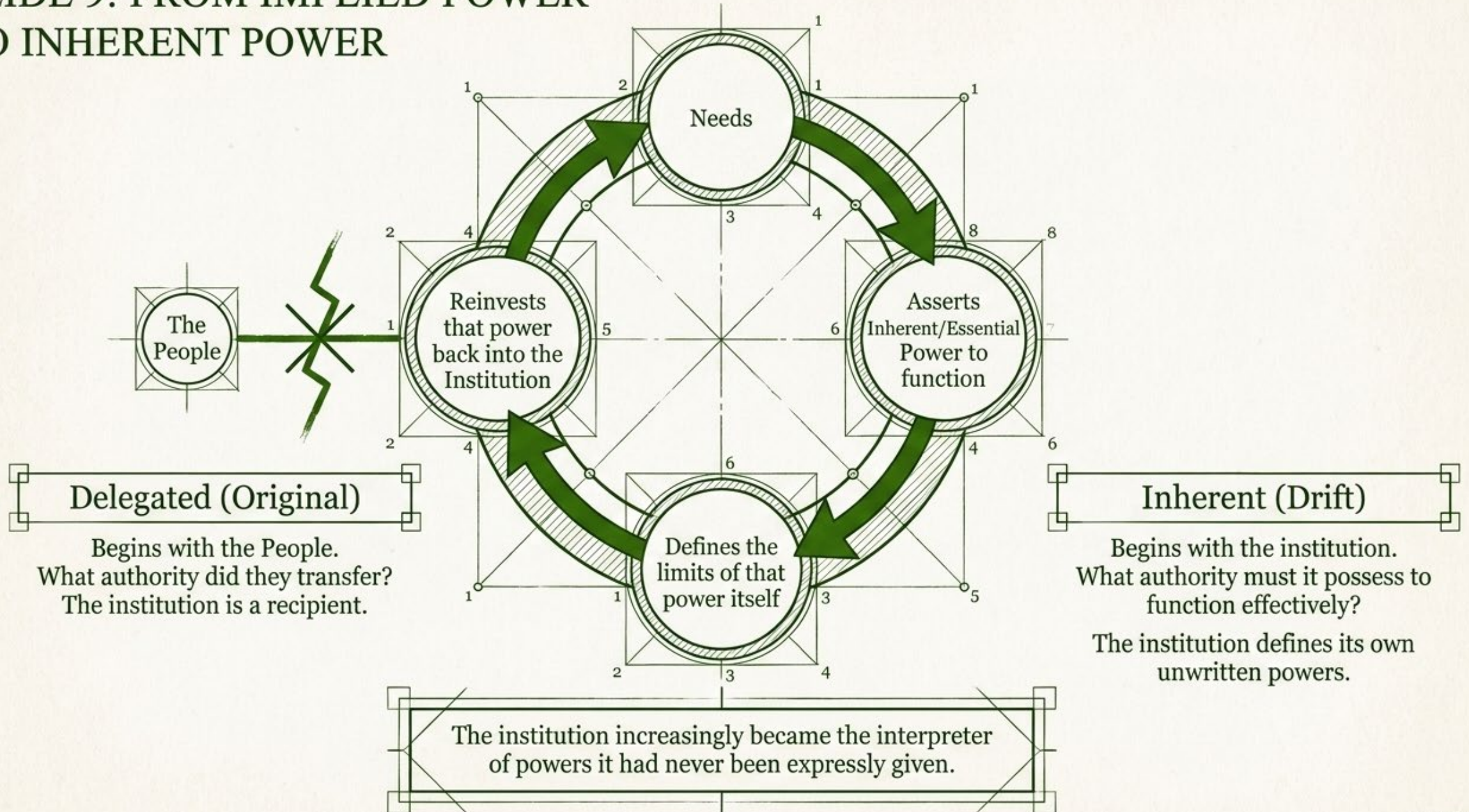
SLIDE 8: IMPLIED POWER



- The Constitution remained part of the explanation, but no longer operated as the fixed boundary controlling the act from the beginning.
- Omitted authority was reconstructed through interpretation, weakening the limiting force of enumeration.

Government began deciding what it wanted to do first and identifying the constitutional justification second.

SLIDE 9: FROM IMPLIED POWER TO INHERENT POWER



SLIDE 10: PROGRESSIVE THEORY AND THE REORDERING OF POWER

Progressive reformers viewed fixed constitutional limits (divided/enumerated powers) not as safeguards against tyranny, but as rigid obstacles to industrial society demanding expertise and continuous administration.

	The Original Blueprint	Progressive Theory
The Starting Question	What power did the People delegate?	What authority does the government need to solve the problem?
View of Constraints	Necessary safeguards against concentrated authority.	Rigid obstacles to administrative efficiency and expertise.
Sequence of Action	Delegated power justifies the action.	The problem to be solved justifies the power.

If government was expected to solve a problem, it was increasingly assumed to possess the authority necessary to manage it.

SLIDE 11: BROAD STATUTORY DELEGATION

The Legislature The Agent



Delegata potestas non potest delegari (A delegated power cannot be delegated again).

Entrusted with legislative power by the People. Exercises a limited commission.

The Executive The Executor



Transferred the practical formation of law via progressive administrative theory.

What authority permitted the legislature to transfer lawmaking power it possessed only by delegation?

SLIDE 12: EXECUTION OR LAWMAKING?

Executive Power	Legislative Power
Determine facts	Establish the governing rule
Perform ministerial duties	Decide required/prohibited conduct
Apply fixed standards	Impose new obligations on the public
Execute the completed rule	

Article XXX of the Massachusetts Declaration of Rights:
The executive shall never exercise legislative or judicial power.
(This cannot be avoided by renaming legislation as regulation or guidance.)

SLIDE 13: THE COMBINATION OF GOVERNMENTAL FUNCTIONS

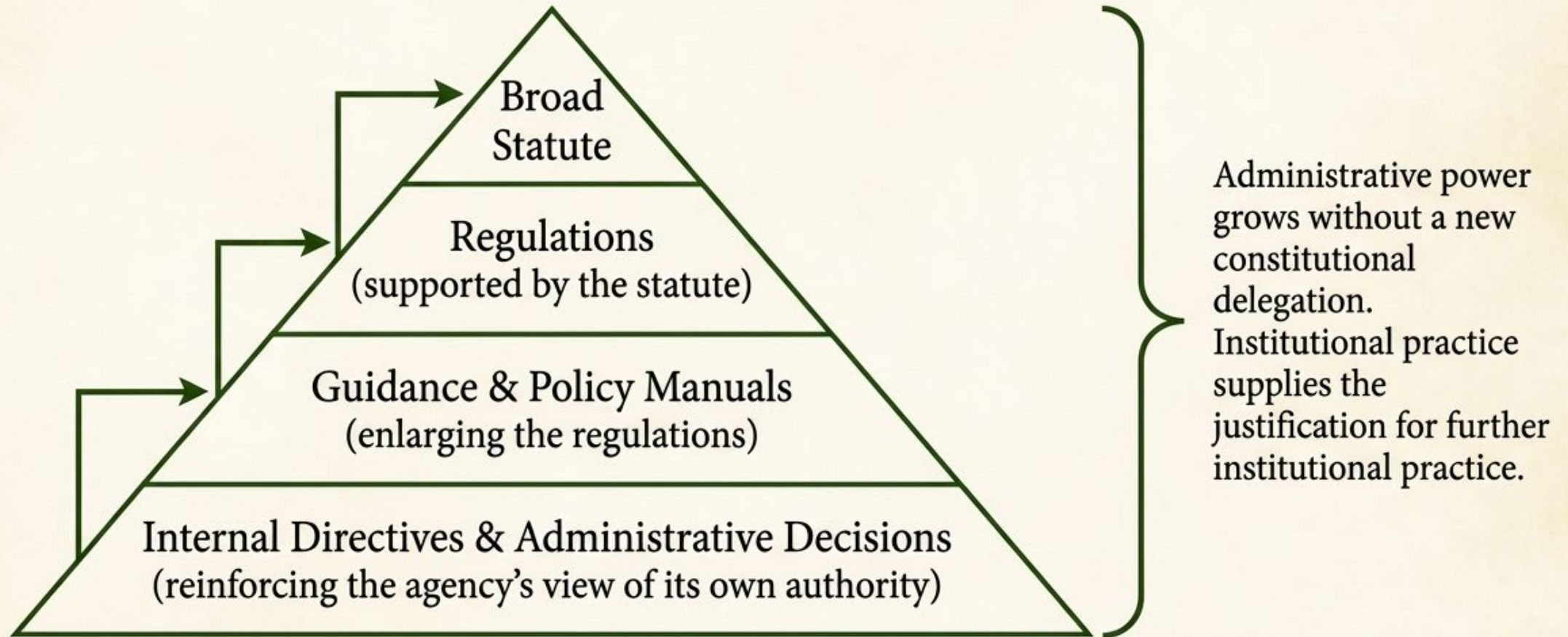
The structural question is not about administrative efficiency. It is whether the People ever delegated authority to combine powers they expressly separated.



“...the accumulation of legislative, executive, and judicial powers in the same hands may properly be called the definition of tyranny.
— James Madison

The controlling inquiry is:
Where did the executive obtain legislative and judicial powers that the Constitution expressly prohibits it from exercising?

SLIDE 14: AGENCY SELF-EXPANSION



The drift became self-reinforcing: The agency no longer merely exercised delegated authority. It increasingly enlarged that authority through its own rules, interpretations, and decisions.

SLIDE 15: PRESUMED AUTHORITY

Appearance (a badge, a title, a rule, a longstanding practice) has replaced the source.

Original Standard

Government must demonstrate the lawful source of the power exercised.

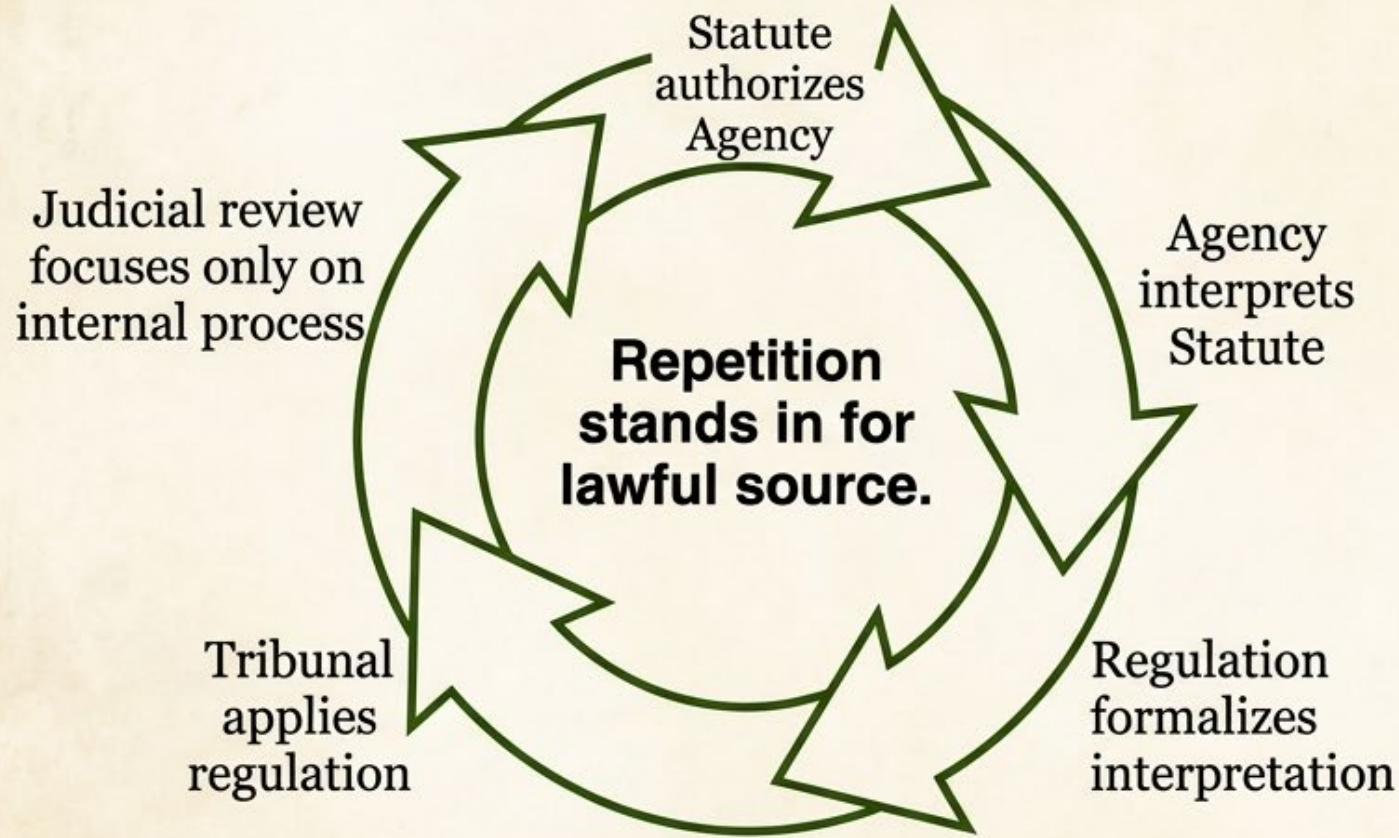


Presumed Standard

Jurisdiction assumed by mere existence. Validity presumed by publication. Constitutional basis ignored due to funding.

The original burden had now been reversed: Government no longer demonstrated the power it claimed. The citizen was increasingly expected to prove that the power did not exist.

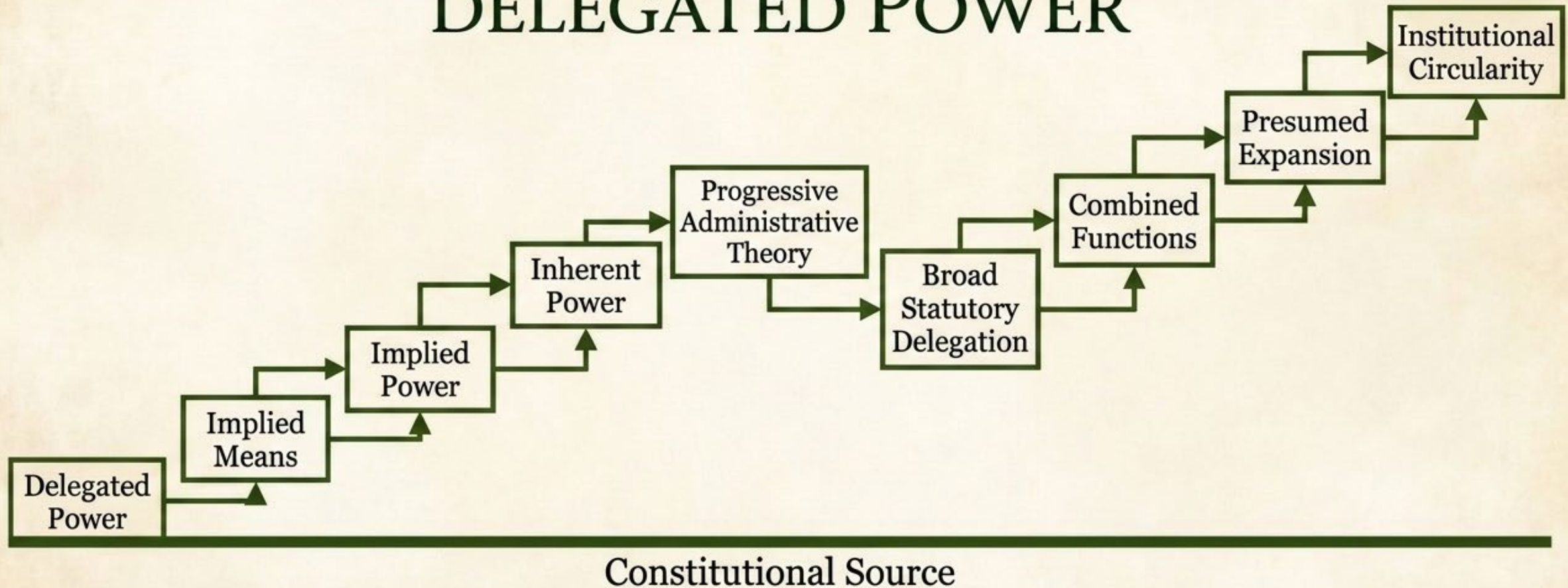
SLIDE 16: INSTITUTIONAL CIRCULARITY



Power is justified by procedure, procedure is justified by practice, and long practice is treated as proof that the power had always existed.

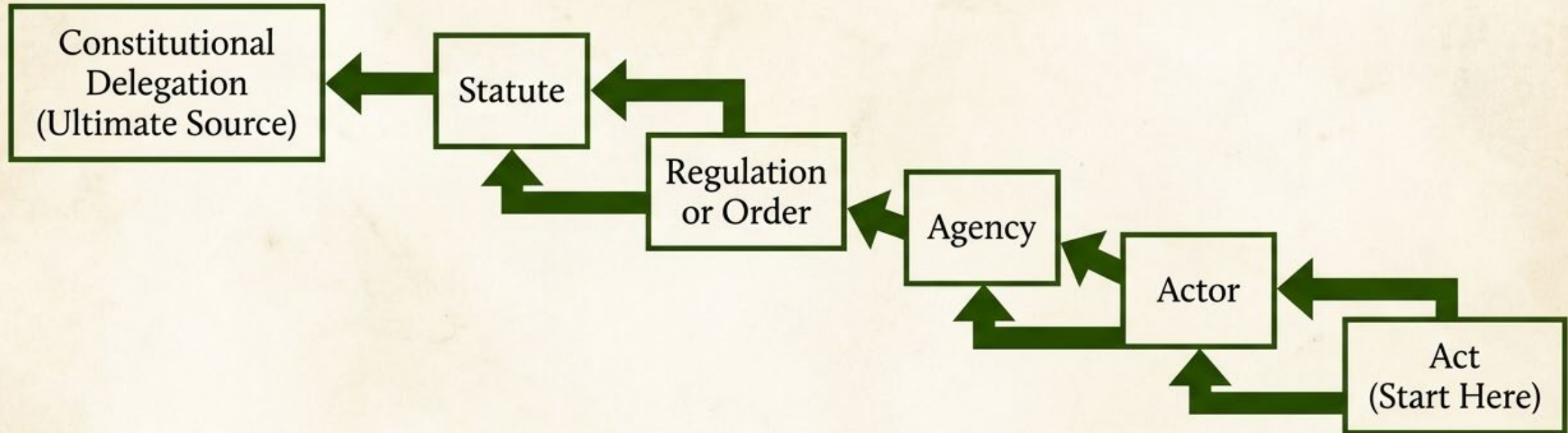
The final stage of the drift: The system increasingly proved its own authority by pointing to the fact that it had already been exercising it.

SLIDE 17: THE COMPLETE DRIFT OF DELEGATED POWER



The controlling question remains: Where did delegated power end and assumed authority begin?

SLIDE 18: FROM HISTORY TO THE RECORD



The Constitutional Audit: History explains how authority became less visible, but the record resolves present claims. If the student argues only about the agency's final decision, they remain trapped inside the agency's own system.

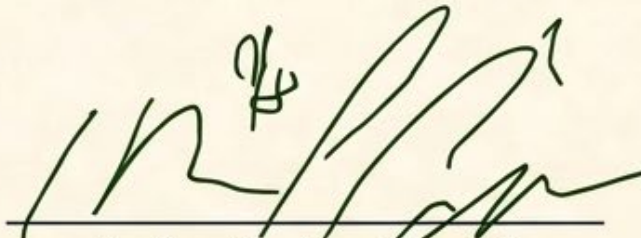
SLIDE 19: EXEMPLAR ONE, THE ENUMERATED POWERS NOTICE

Lawful Notification to the Massachusetts State Legislature

All political power is inherent in the people

(Citing Locke, Sec 220, and Maxim 51o)

Second Amendment defenses assert rights against usurped authority.



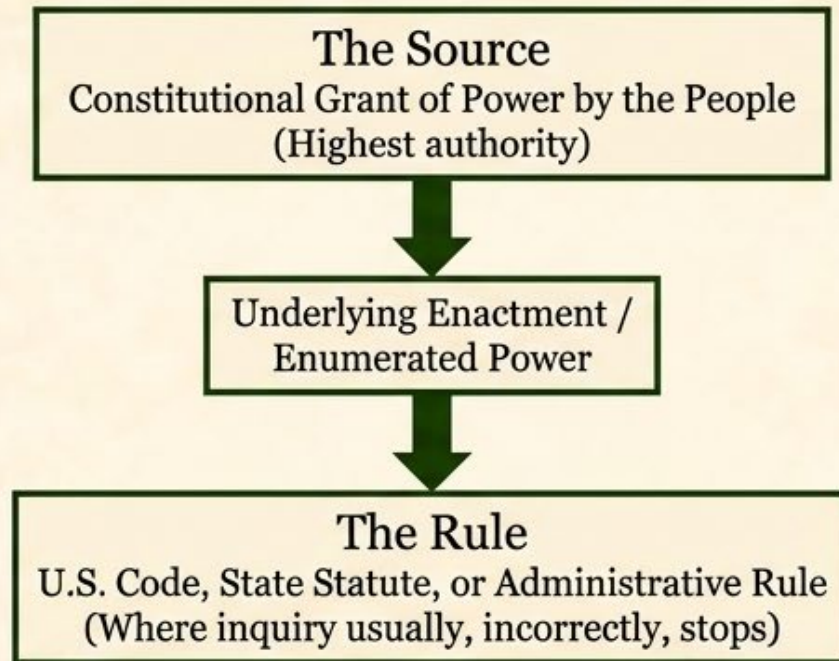
Authentication Record

A strong notice asks government to show the receipt.

A citation explains what the institution is doing, but does **not** prove where the power came from.

What constitutional provision authorizes this specific exercise of power?

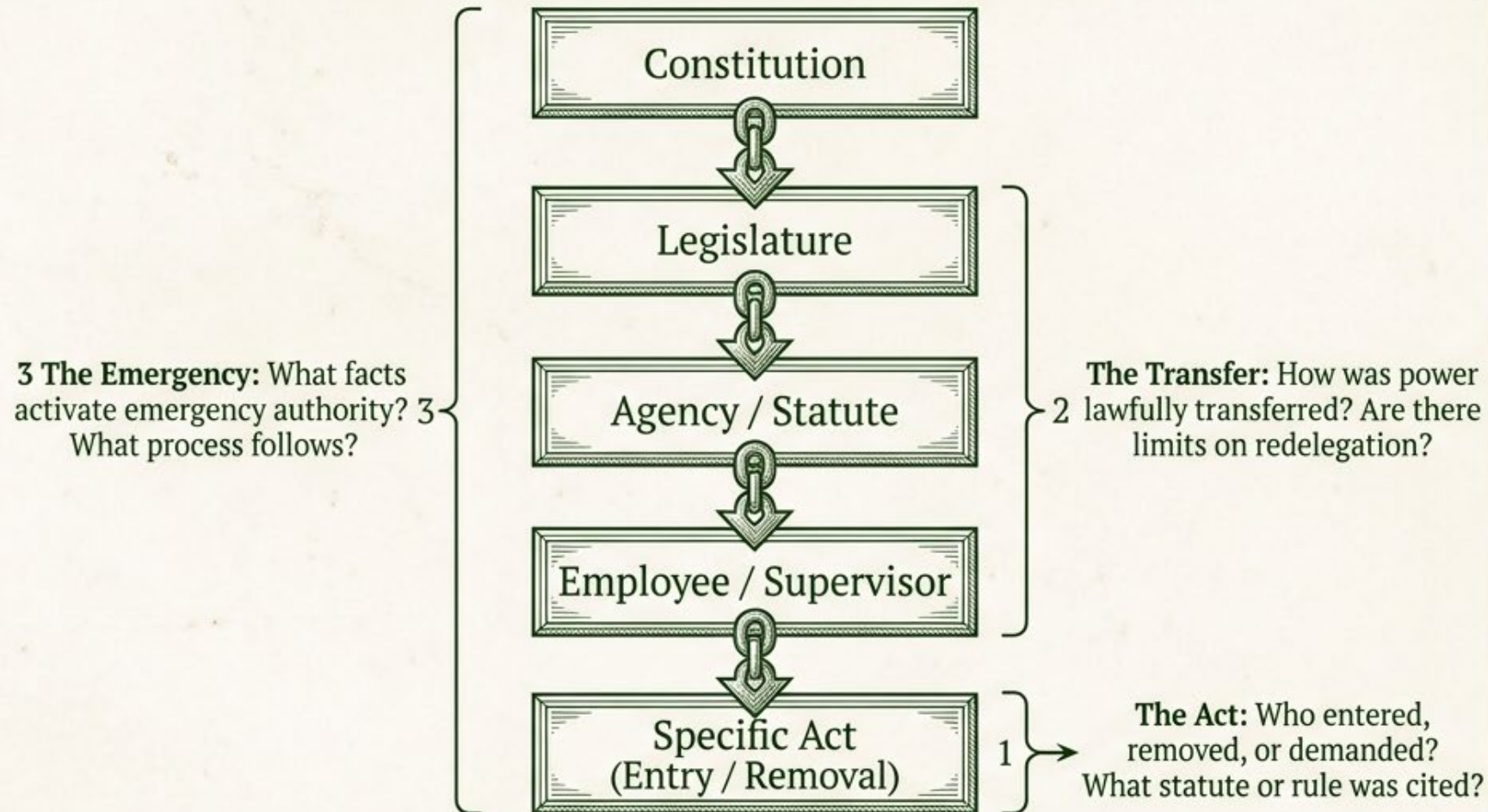
SLIDE 20: EXEMPLAR TWO, STATUTORY CITATION AND CONSTITUTIONAL SOURCE



Citing a printed,
numbered, and enforced
rule merely identifies the
declaration, not the
lawful grant of power
behind it.

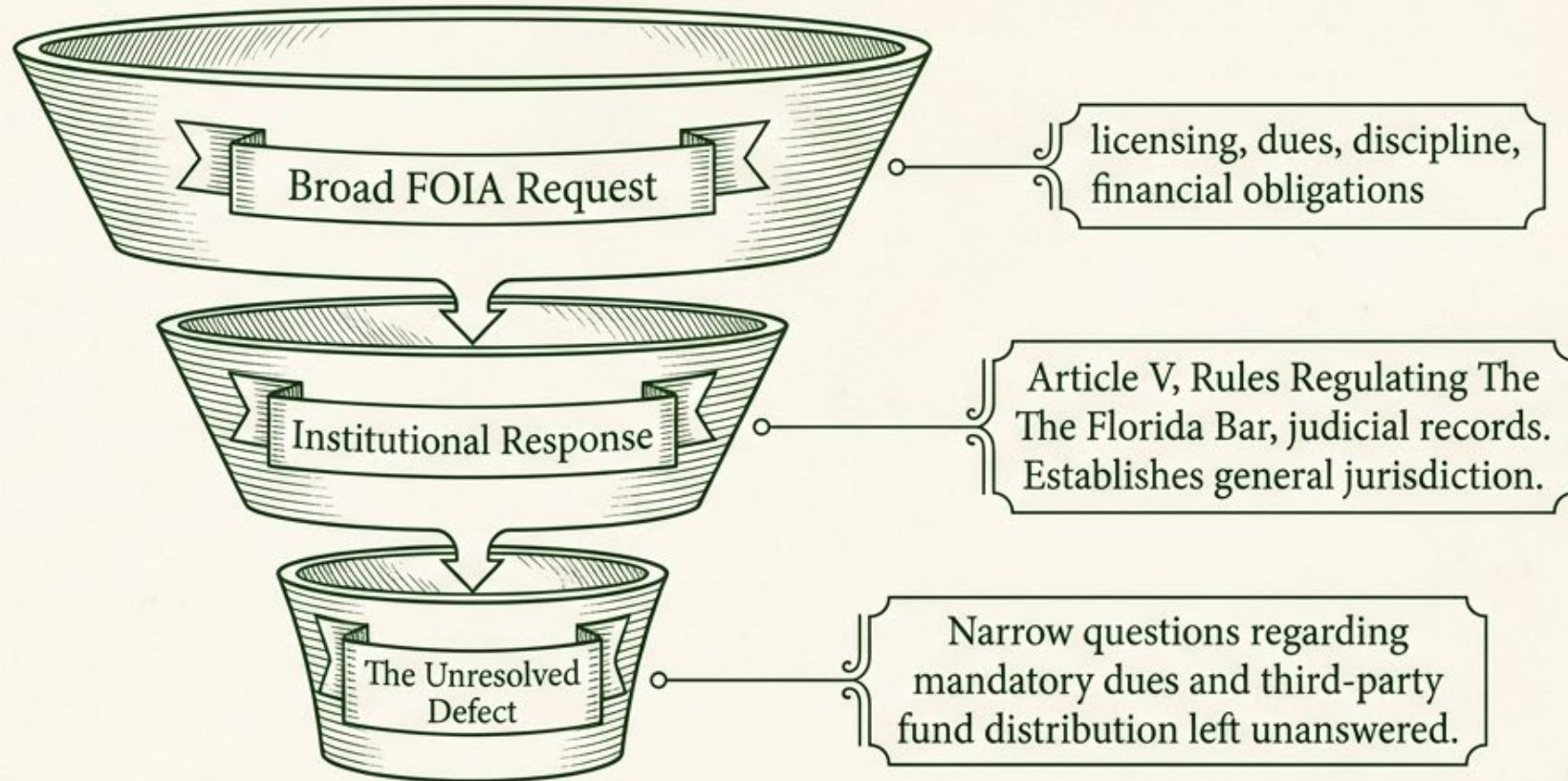
What constitutional power supports the
enactment behind the citation being enforced?

SLIDE 21: EXEMPLAR THREE, CPS AUTHORITY TRACING



Can this specific CPS act be traced through every delegation and redelegation link to a lawful constitutional source?

SLIDE 22: EXEMPLAR FOUR, THE FLORIDA BAR AUTHORITY RECORD



What did the response actually establish, and what specific delegation question remains unanswered by the present record?

SLIDE 23: FROM DELEGATION DEFECT TO WRIT PRACTICE

The Record

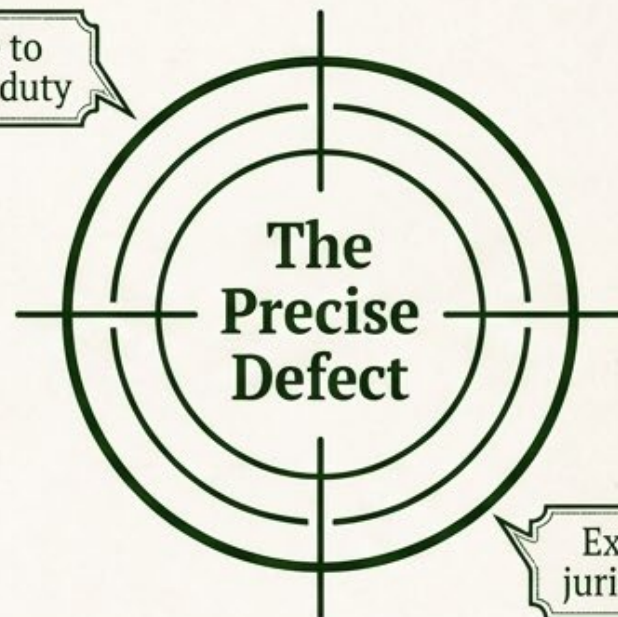
- ☑ Identified Act
- ☑ Requested Authority
- ☑ Produced Documents
- ☑ Unresolved Point

Incomplete answers are not automatic defaults. They are diagnostics.



The Controversy

Failure to perform duty

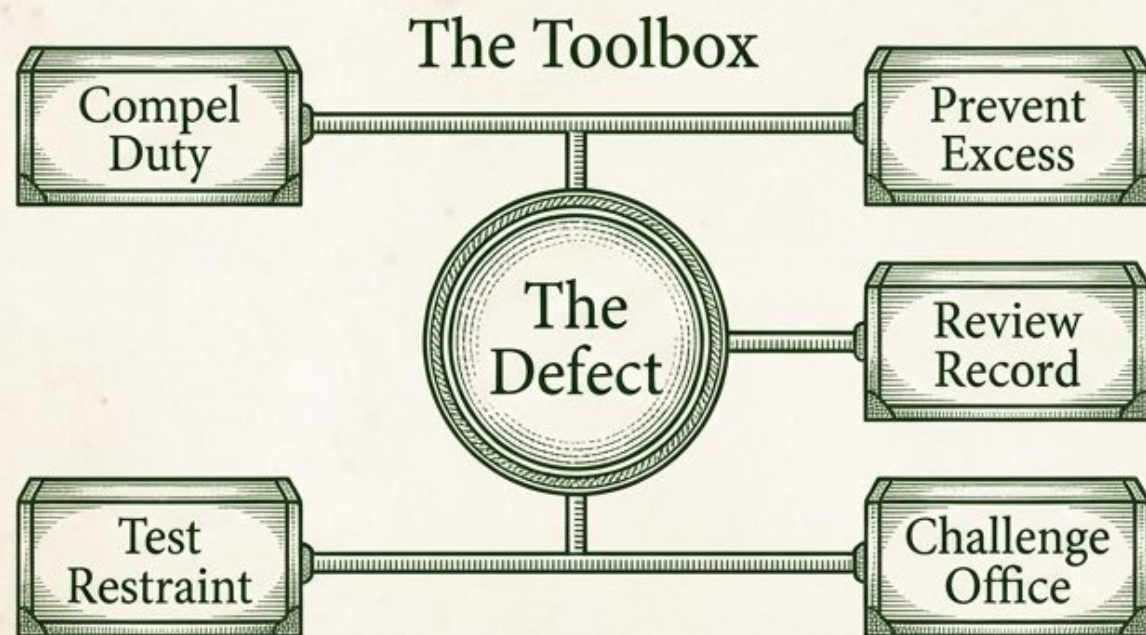


Excess of jurisdiction

**The record defines the controversy.
The remaining defect determines the possible writ.**

SLIDE 24: WHAT IS A WRIT?

“ A **writ** is a formal judicial instrument used to place a defined legal defect before a court with authority to review it.” ”

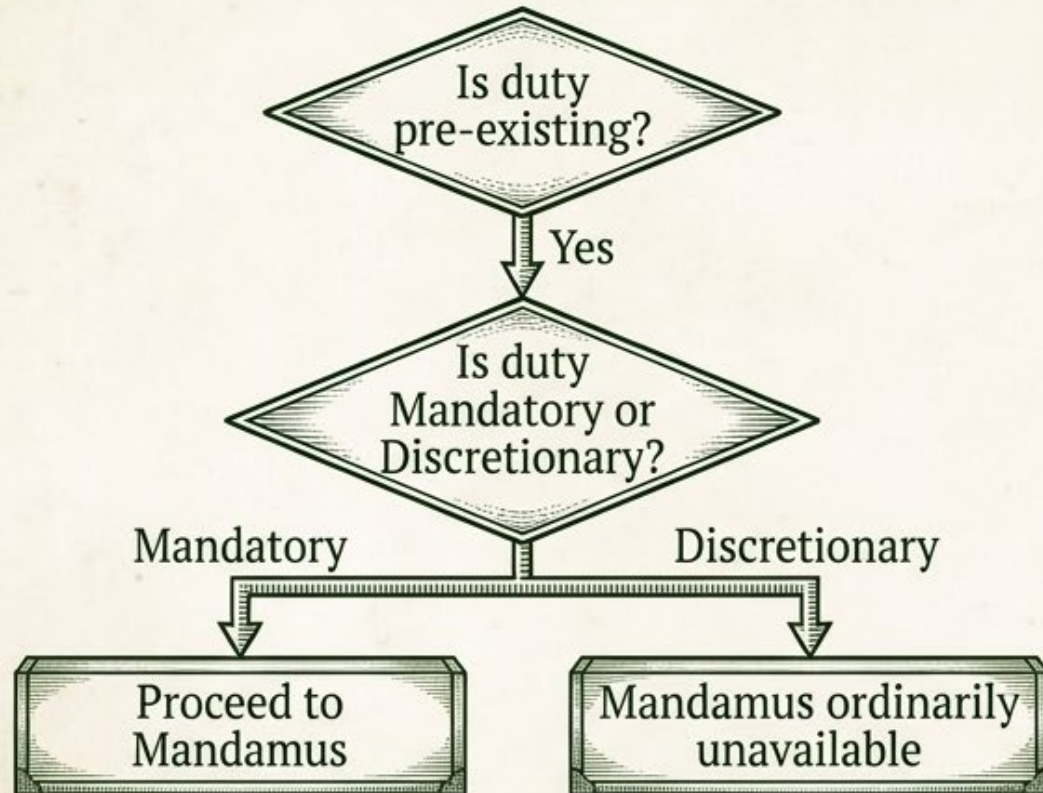


The Mechanic Analogy

- Does not create rights
- Does not supply missing facts
- Do not reach for the heaviest tool; the defect determines the instrument

The record identifies the defect.
The defect determines the writ.

SLIDE 25: MANDAMUS



Required Record Elements

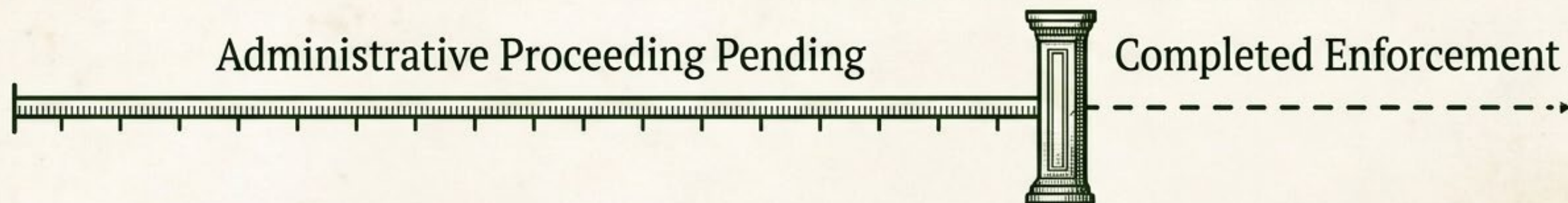
- ☐ Source of duty
- ☐ Responsible official
- ☐ Request for performance
- ☐ Refusal, delay, or failure

Mandamus compels the performance of a **clear legal duty**. It does not create an obligation the law never imposed.

What duty does the law require, who must perform it, and what does the record show about the failure to do so?

SLIDE 26: PROHIBITION

Prohibition:
Prospective Intervention

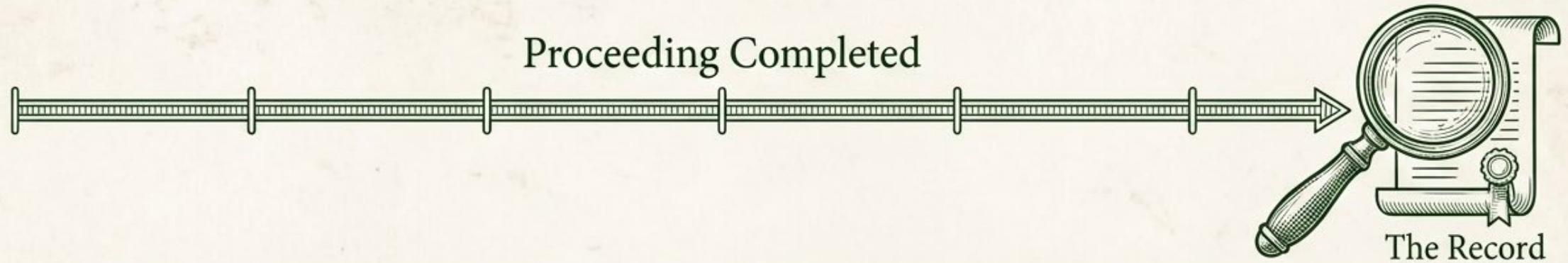


Valid Use	Invalid Use
Absence or Excess of Jurisdiction	Disagreement with a Decision (Not a substitute for appeal)

What proceeding is moving forward, what jurisdiction is being claimed, and where does the lawful grant end?

SLIDE 27: CERTIORARI

Certiorari:
Retrospective Diagnostic



Certiorari is record-centered. It examines what has already occurred to find procedural failures, unsupported decisions, or actions beyond delegated authority.

Contrast with Prohibition: Certiorari is retrospective review; Prohibition is prospective prevention.

What decision was entered, what does the record reveal, and did the lower body remain within its delegated authority?

SLIDE 28: HABEAS CORPUS AND QUO WARRANTO



Habeas Corpus

Focus: The Legality of Restraint

- Who is restrained?
- Who is exercising custody?
- What lawful jurisdiction or order is relied upon?

By what lawful authority is this person restrained?



Quo Warranto

Focus: The Exercise of Public Power

- What office is claimed?
- Method of appointment or election?
- What commission or oath supports the authority?

By what lawful title is this public power being exercised?

Power must be established before it may be enforced.

SLIDE 29: HOMEWORK, UNDERSTANDING THE WRITS

Writ	Function	Act/Omission Addressed	Facts in Record	Relief Provided
Mandamus				
Prohibition				
Certiorari				
Habeas Corpus				
Quo Warranto				

Assignment

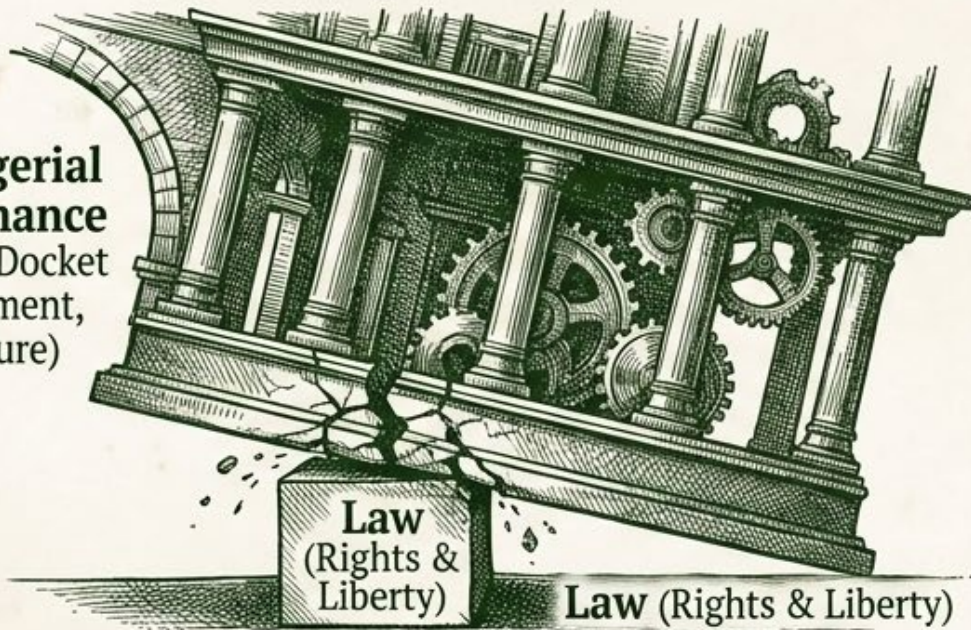
Match the defect to the proper form of review.
Determine local jurisdiction limits (standing, exhaustion, timeliness).

**The record identifies the facts. The defect identifies the possible writ.
The governing law determines whether that writ is available.**

SLIDE 30: INTRODUCTION TO MODULE 20

MODULE 20: LAW AND THE COLLAPSE OF CONSTITUTIONAL STRUCTURE

**Managerial
Governance**
(Efficiency, Docket
Management,
Procedure)



Law
(Rights &
Liberty)

Law (Rights & Liberty)

The Firewall Question

Is the act grounded in actual law, or merely in procedural administration and institutional convenience?

Original framework: Procedure serves the law.
Modern collapse: Procedure, efficient rights.

Modern collapse: Procedure, efficiency, and administrative convenience replace substantive rights.

Are we being governed by law, or merely managed through procedure?