



THE RULE OF LAW:

Breakdown, Record and Exposure

Module 23: Rights and the Redefinition of Liberty

Substantive Rights, Civil Rights Expansion, and the Drift from Inherent Rights to Administrative Permissions

SLIDE 2: THE COST OF THE CIRCULARITY



Own land, buy
lumber & nails.



Clear brush,
begin building.



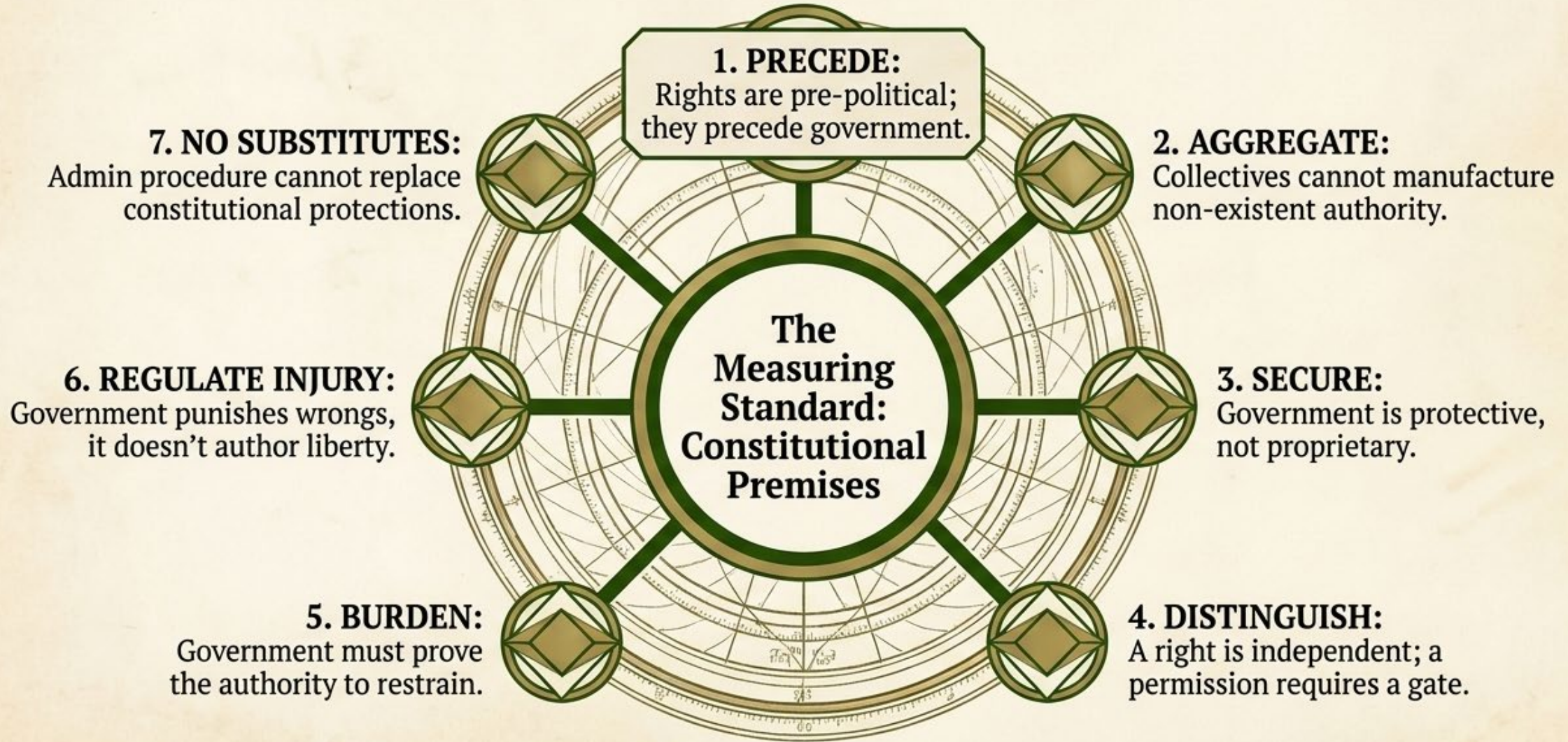
Municipal
inspector says
STOP.



Not for injury,
trespass, or fraud.
But for *lack of prior
permission.*

The Deeper Question: Did government continue securing rights, or did the People become applicants for permission to exercise those liberties?

SLIDE 3: THE RULES OF THE RIGHTS AUDIT



SLIDE 4: RIGHTS WERE ALREADY THERE

Declaration of Independence: *Endowed*. VA Declaration: *Inherent*. 9th Amendment: *Retained*.

Option A: The Founding Reality

Rights existed **before** government.
The constitutional compact created government around these preexisting rights, leaving them with the People.

Option B: The Administrative Claim

Rights came into existence only when government **recognized**, defined, or **granted** them.



THE PROOF BURDEN: If Option B is true, identify the founding instrument where the People transferred ownership of inherent rights to receive them back as permissions.

SLIDE 5: RIGHTS WERE WITHHELD FROM GOVERNMENT

Delegated Governmental Powers

Limited, specific
grants of authority.

Excepted & Retained Rights

Outside the grant.
“Excepted out of the general
powers of government” (PA
Const.). “Retained by the
people” (9th Amend.).

The Constitutional Presumption:

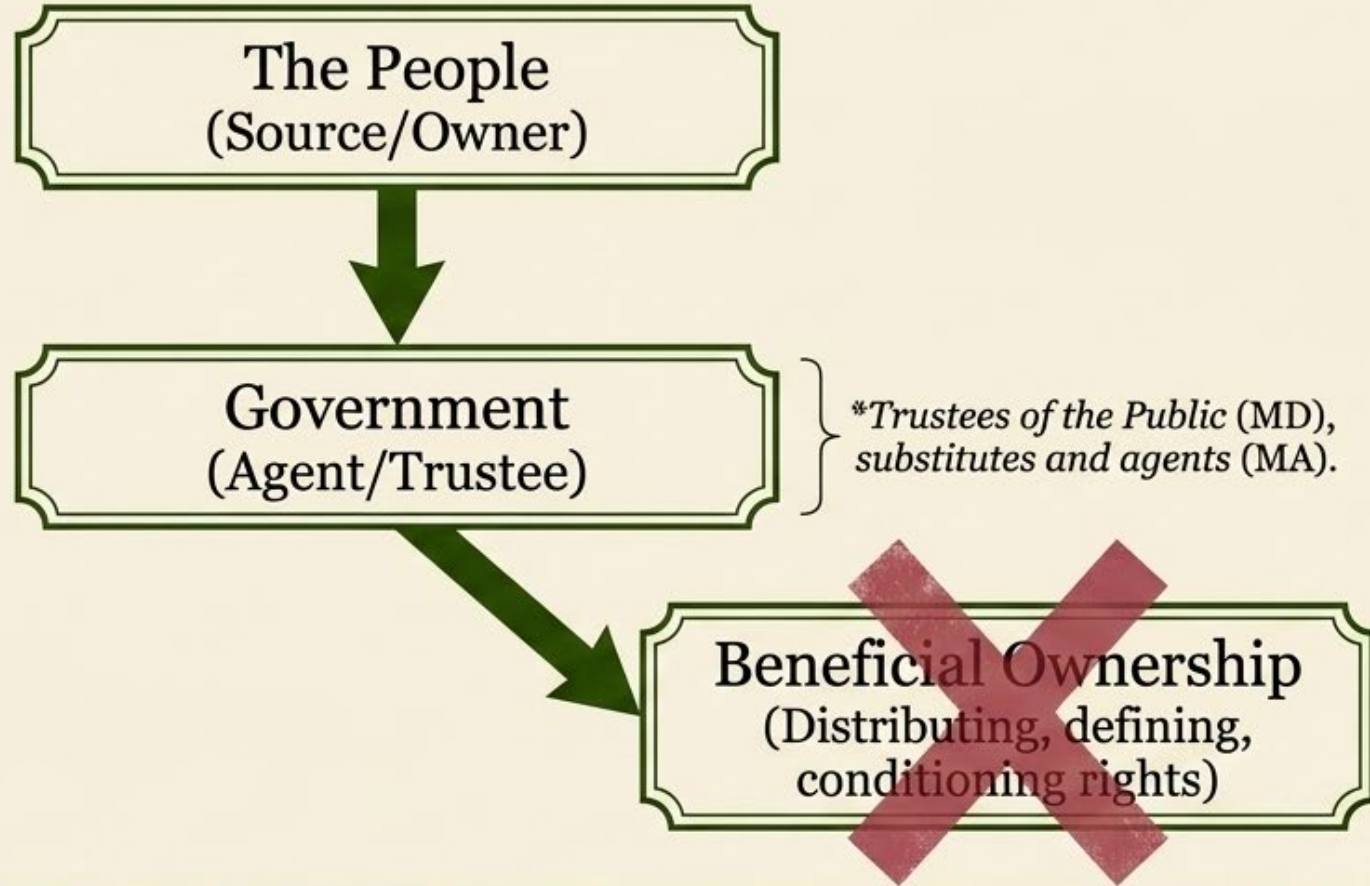
Government must justify intrusion from delegated powers.
Citizens *do not* need to locate an exception to general authority.

Option A: People delegated limited
powers, retained rights.

Option B: Government received general
authority over liberty.

PROOF BURDEN: If Option B is asserted,
identify the constitutional provision that
transferred this total control.

SLIDE 6: GOVERNMENT WAS MADE TRUSTEE, NOT OWNER



Option A: Government receives limited authority as trustee.

Option B: Government converts protective office into ownership.

PROOF BURDEN: Identify the constitutional act where the People transferred beneficial ownership of their inherent rights to the governmental trustee.

SLIDE 7: WHAT IS A RIGHT?

Whose person, labor, property,
or resources must be **compelled**
to satisfy the claim?

Requires only that others
refrain from invading.

PRE-POLITICAL RIGHT
(Boundary Protection).

Requires compelling another
to provide resources/labor.

STATUTORY BENEFIT
(Requires distinct delegated authority).

SYNTHESIS INSIGHT:

Calling a desired outcome a “right” does not magically make it pre-political.

THE PROOF BURDEN: If Option B (Government can create a right by imposing an unchosen obligation on another) is true, identify the antecedent lawful authority for that compulsion.

SLIDE 8: LIBERTY IS NOT LICENSE TO INJURE

The debate is NOT Unrestricted Conduct vs. Total Administrative Control.

Peaceful Exercise of Liberty

Protected sphere. No injury to others.

Demonstrated Injury

Fraud, violence, trespass, theft.

Option A:

Government imposes liability
after demonstrated injury
through lawful process.

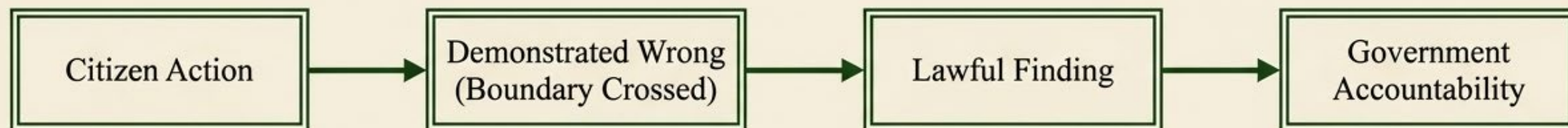
Option B:

Government conditions peaceful
liberty *before* injury due to
potential future misuse.

PROOF BURDEN: Identify the antecedent authority allowing the *possibility* of future misuse to place peaceful liberty behind a prior gate.

SLIDE 9: WHEN PROTECTION BECOMES PRIOR PERMISSION

LIBERTY PRESUMED



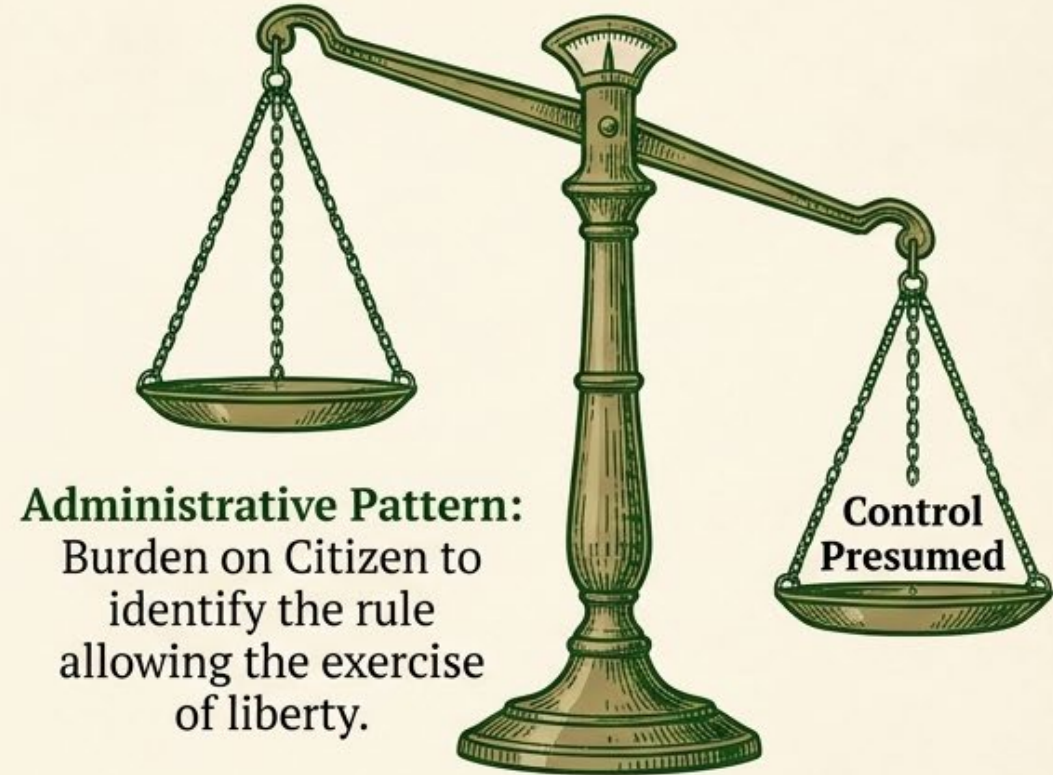
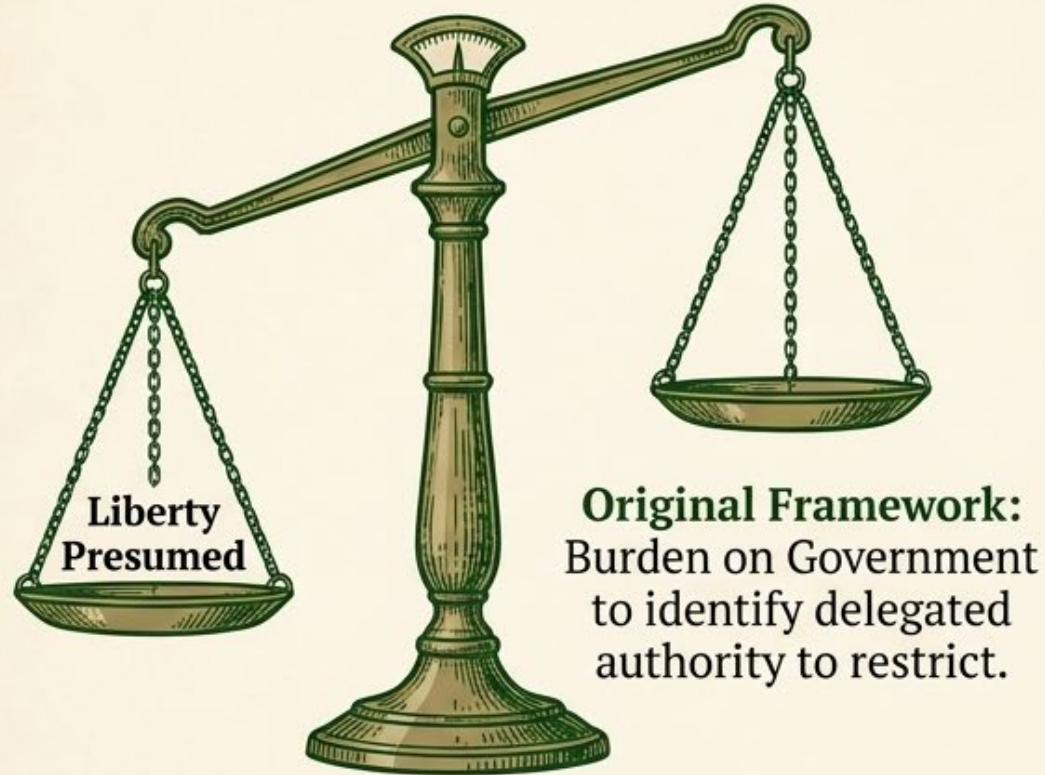
CONTROL PRESUMED



Liability follows a demonstrated wrong. Prior restraint intervenes before the wrong, resting on the mere possibility that liberty might be misused.

THE PROOF BURDEN: Identify the lawful authority that converts a retained liberty into an activity requiring prior permission based purely on potential future injury.

SLIDE 10: THE BURDEN REVERSES



Did the People ever agree that ordinary peaceful conduct would require institutional permission? Familiarity with a procedure does not prove the authority to create it.

SLIDE 11: THE COURTS SAW THE DIFFERENCE

Yick Wo v. Hopkins



San Francisco laundries. The Court struck down discriminatory administration, defining life, liberty, and property as antecedent possessions, not favors distributed at official discretion.

Option A (The Boundary): Government may recognize and protect preexisting liberty without becoming its source.

Meyer v. Nebraska



Foreign language ban. The Court defined liberty as an existing legal inheritance (contract, work, acquire knowledge, raise children) that government must respect, not create.

Option B (The Creation): Once government regulates an activity, liberty becomes whatever permission the institution grants.

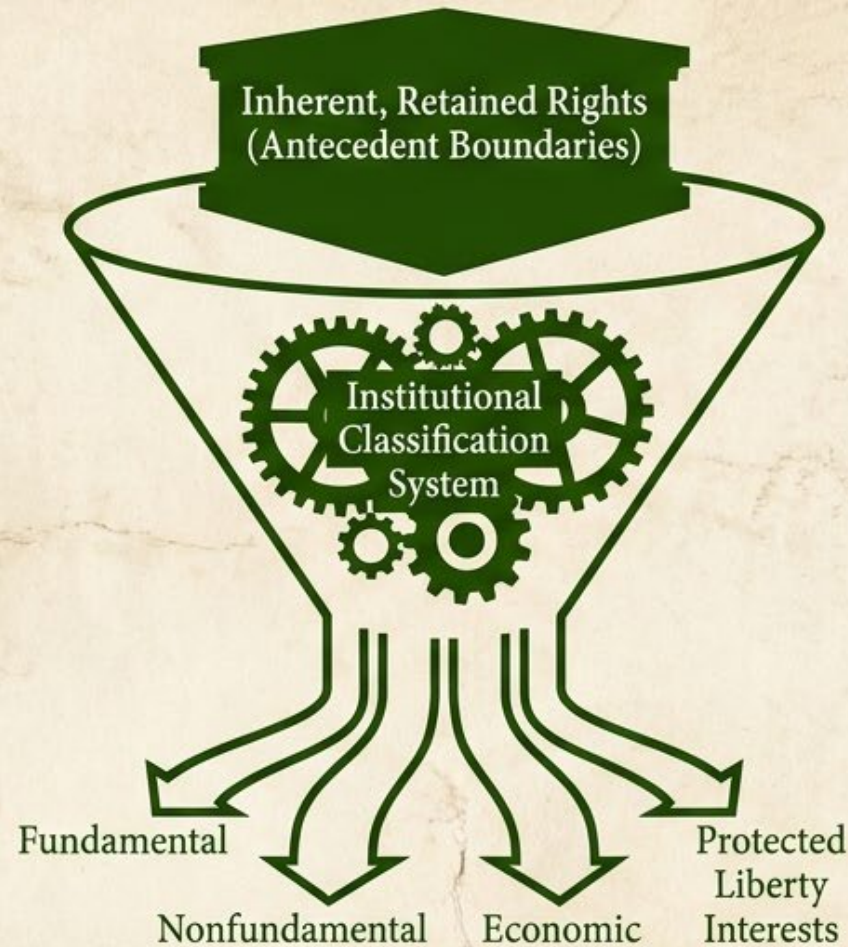
Pierce v. Society of Sisters



Public school mandate. The Court ruled the child is not the mere creature of the State. Parental authority does not exist by administrative permission.

The Proof Burden: Identify the constitutional rule by which regulation transfers ownership of antecedent right from the People to the regulator.

SLIDE 12: RIGHTS BECAME CATEGORIES



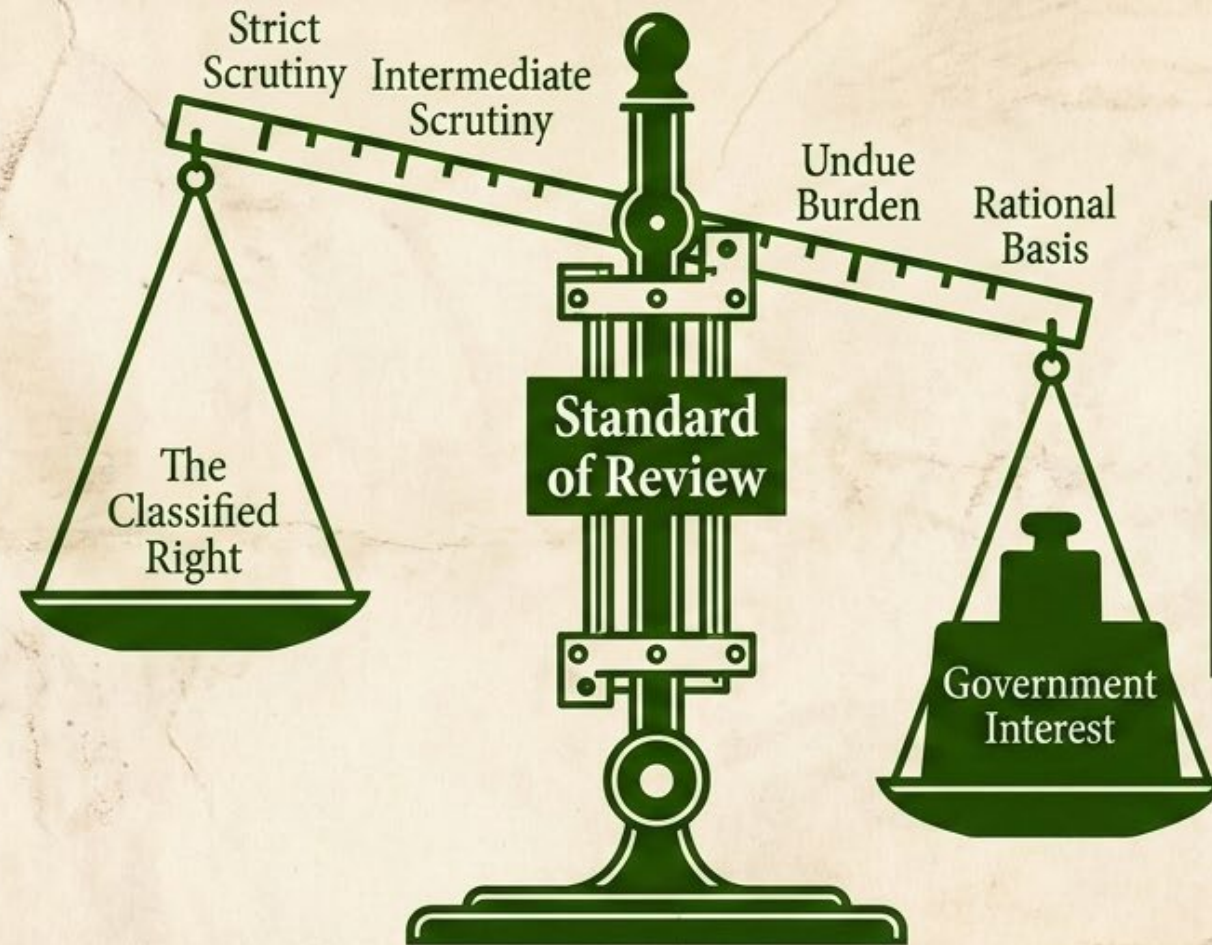
The right no longer enters the analysis as a retained boundary. It enters through a classification system created by the reviewing institution.

Option A (The Boundary): Rights remain antecedent boundaries; government must identify lawful authority before interfering.

Option B (The Creation): Government first classifies retained rights, then determines the degree of protection each category receives.

The Proof Burden: Identify the constitutional delegation authorizing a governmental institution to rank retained rights and dictate their varying degrees of protection.

SLIDE 13: CATEGORIES BECAME STANDARDS OF REVIEW



The Original Question:

Does government possess lawful authority to interfere at all?

vs.

The Modern Question:

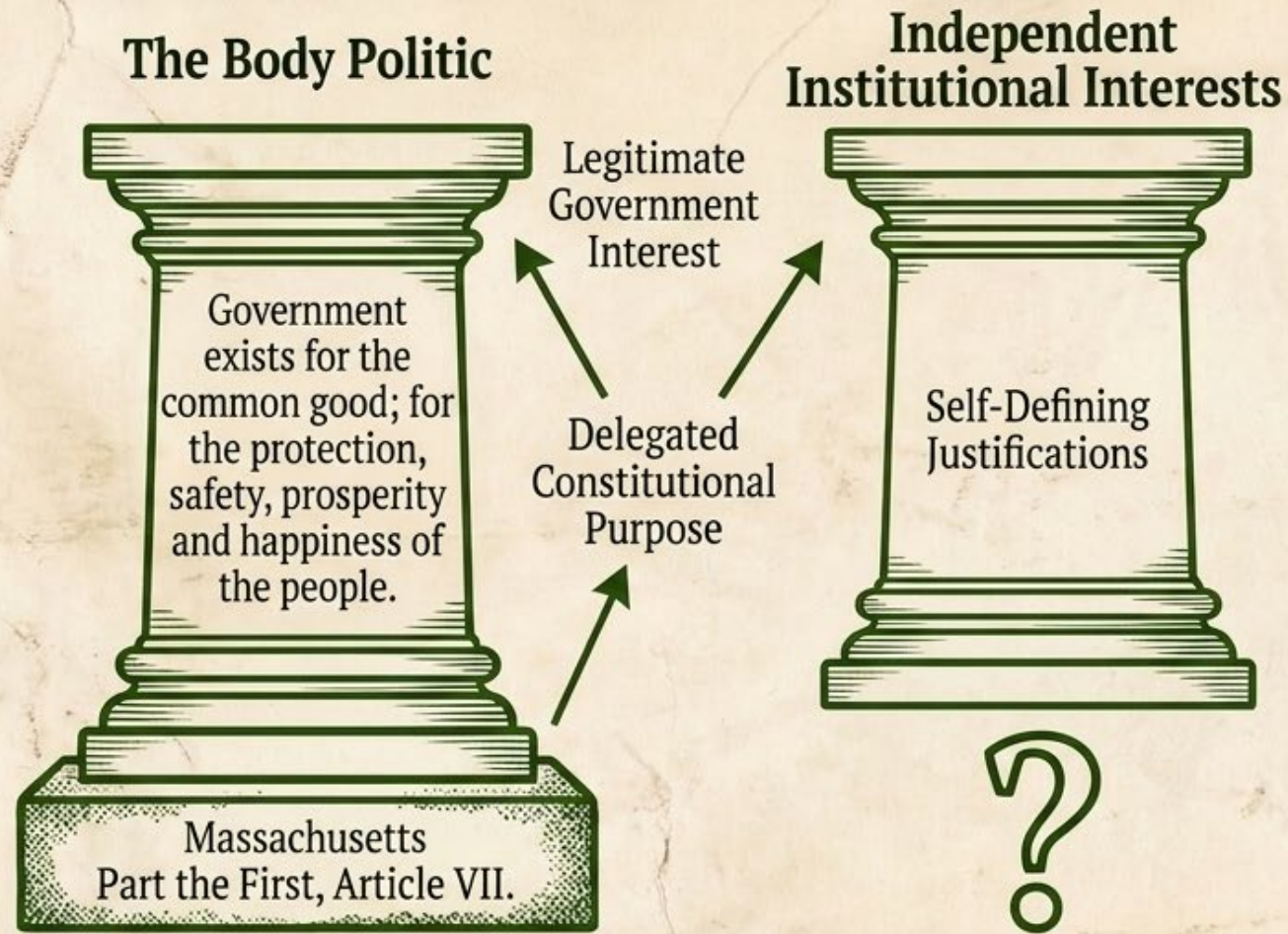
Is the interference reasonable enough to justify the burden?

Option A (The Boundary): A retained right remains a constitutional boundary requiring lawful authority to cross.

Option B (The Creation): Once classified, the right's protection depends upon judicial balancing against governmental interests.

The Proof Burden: Identify the constitutional delegation authorizing courts to convert retained boundaries into adjustable standards dependent upon judicial balancing.

SLIDE 14: WHAT IS A “GOVERNMENT INTEREST”?

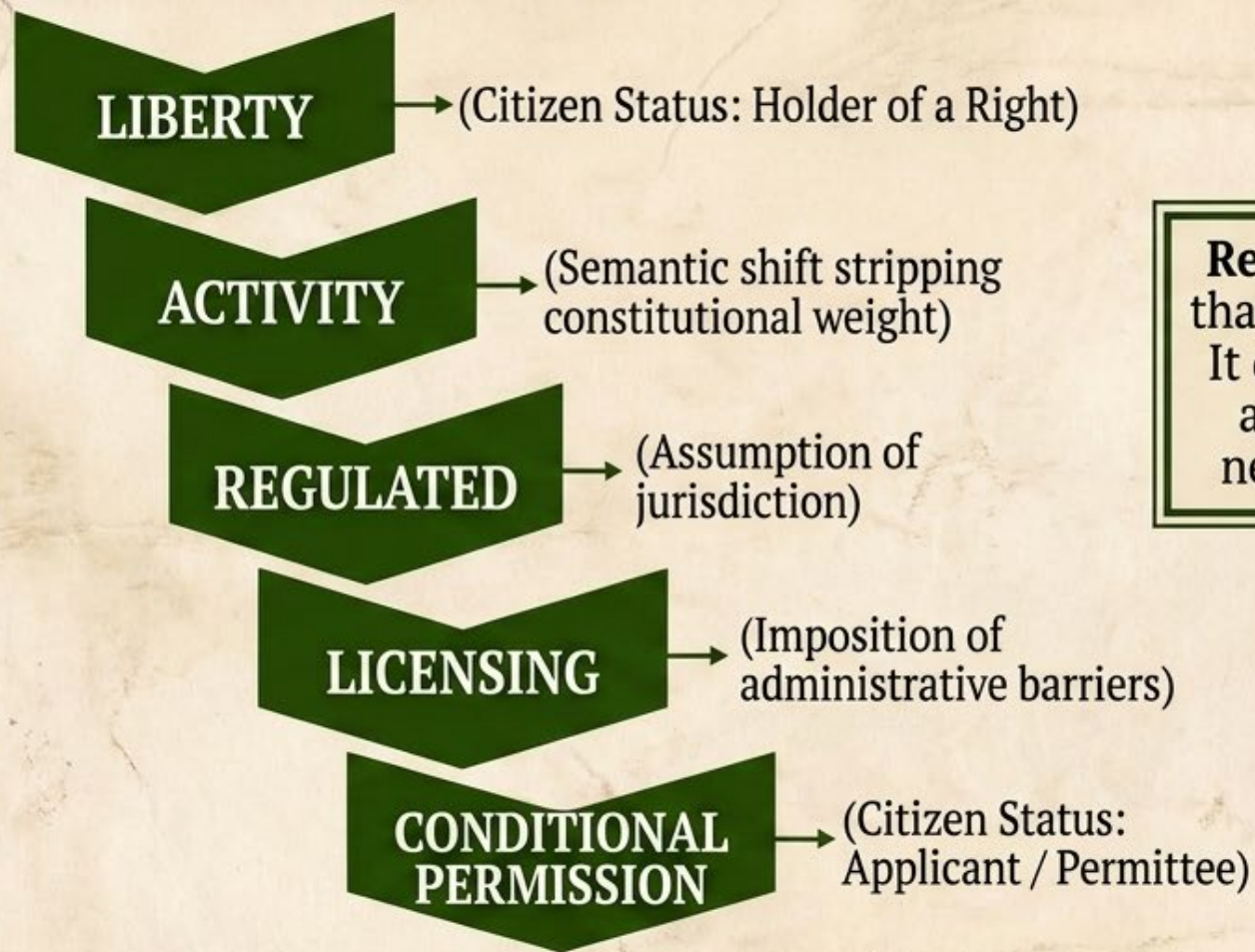


Option A (The Boundary): Legitimate interests must trace to a delegated constitutional purpose directed toward the common good.

Option B (The Creation): Government possesses independent institutional interests that may diminish retained rights without delegated constitutional ends.

The Proof Burden: Identify the provision creating an institutional interest independent of the People that authorizes diminishing the rights government was created to secure.

SLIDE 15: WHEN LIBERTY BECOMES A REGULATED ACTIVITY



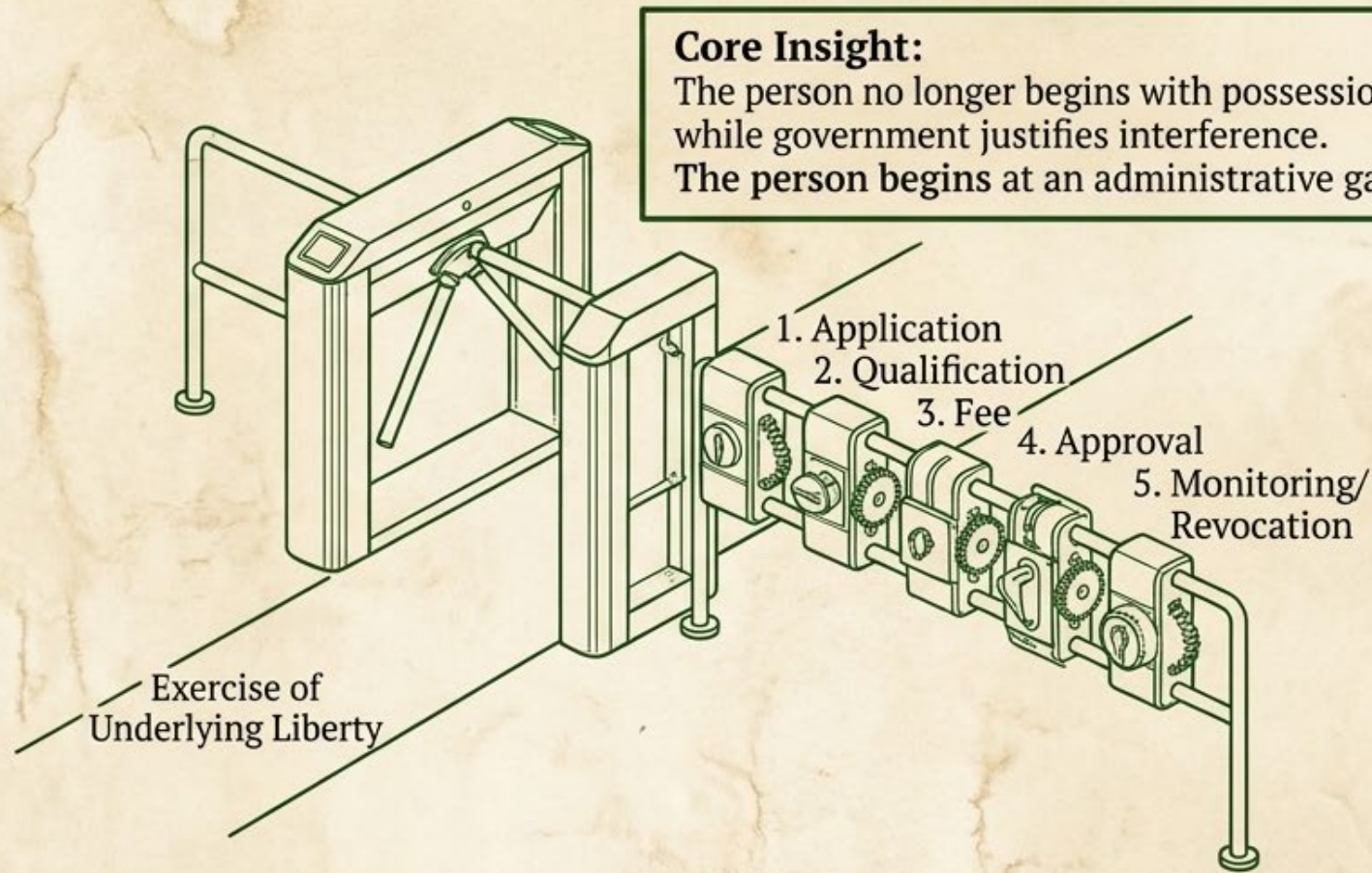
Regulation proves only that regulation occurred. It does not establish the antecedent authority necessary to impose it.

Option A (The Boundary): Government may regulate conduct only via lawful authority; regulation does not transfer ownership of liberty.

Option B (The Creation): Calling liberty a regulated activity validates requirements of compliance, licensing, or permission as proof of authority.

The Proof Burden: Identify the constitutional rule by which changing the description of a liberty into a regulated activity creates authority that did not previously exist.

SLIDE 16: THE PERMISSION ARCHITECTURE

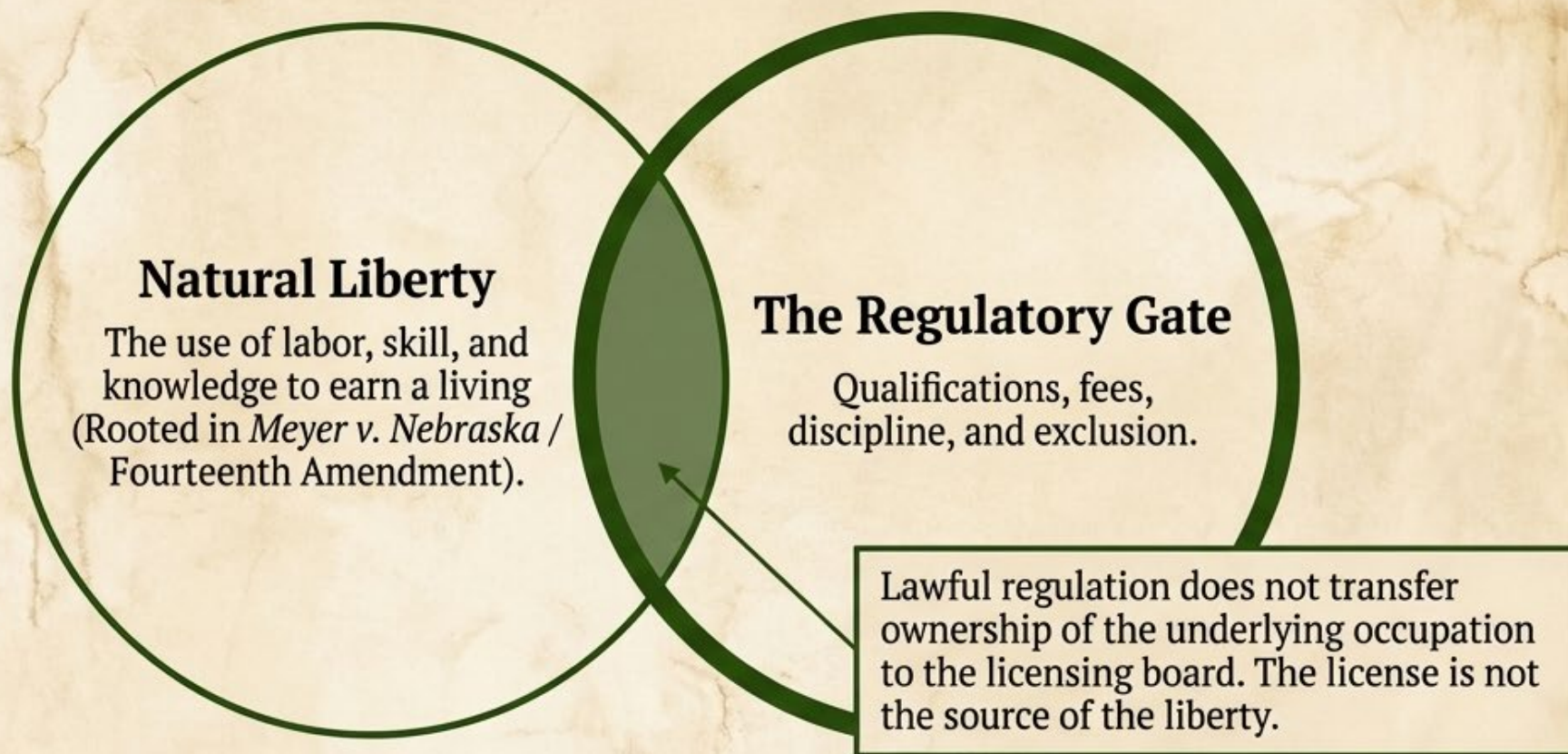


Option A (The Boundary): A permitting structure is lawful only if government possesses delegated authority, with all conditions subordinate to constitutional limits.

Option B (The Creation): The mere existence of a permission system proves government may condition, suspend, or revoke the underlying liberty.

The Proof Burden: Identify the antecedent lawful source proving that the creation of an administrative gate grants the authority to place the gate there.

SLIDE 17: PROFESSIONAL LICENSING AND THE RIGHT TO EARN A LIVING

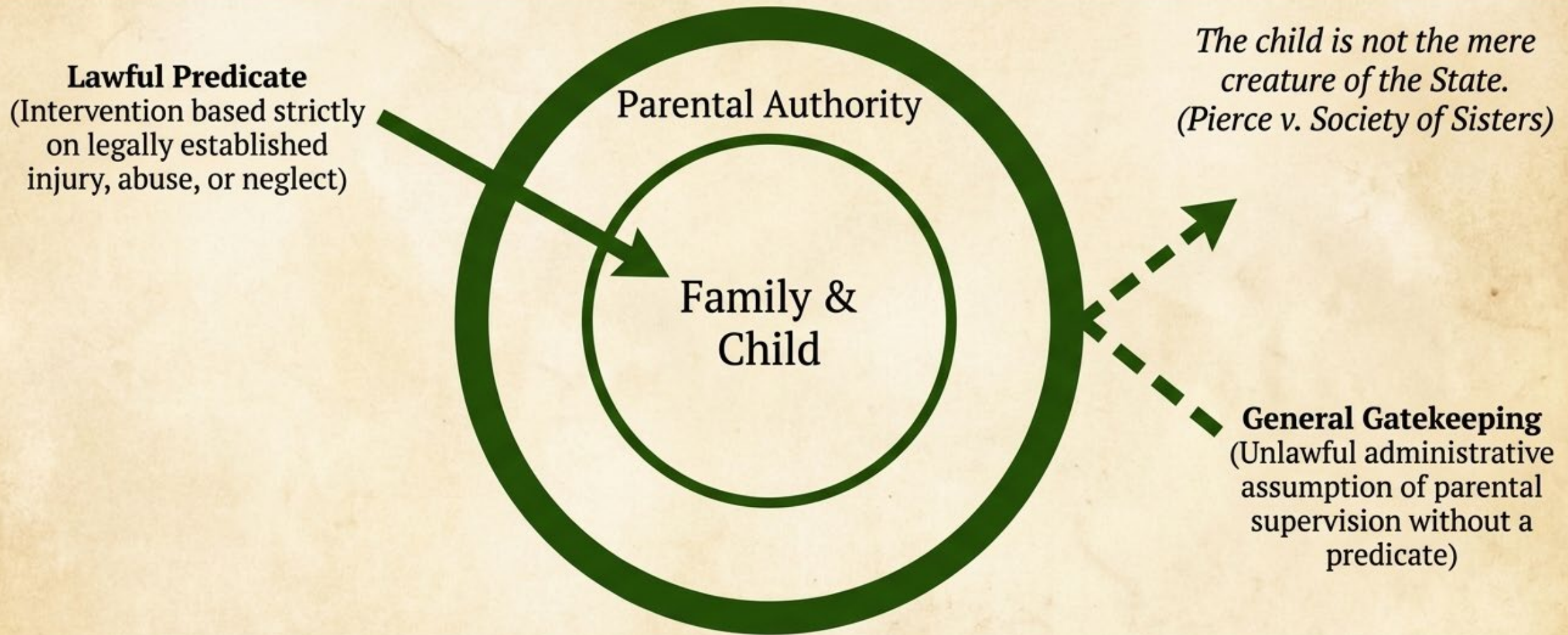


Option A (The Boundary): Government may regulate an occupation via lawful authority without converting the underlying liberty into government property.

Option B (The Creation): Placing an occupation in a licensing system grants the institution authority to dictate practice based on the licensing structure itself.

The Proof Burden: Identify the antecedent lawful source by which regulation of an occupation becomes absolute ownership of access to that occupation.

SLIDE 18: FAMILY AUTONOMY AND THE STATE AS GATEKEEPER

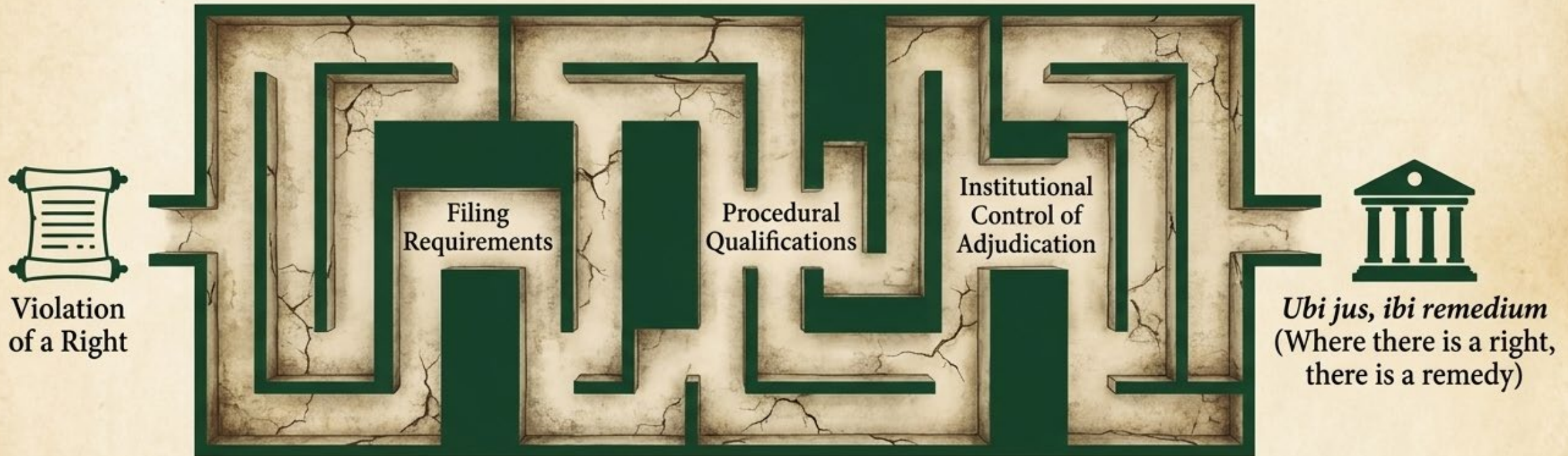


Option A (The Boundary): Parents possess an antecedent sphere of authority; government may intervene only when a lawful predicate justifies intrusion.

Option B (The Creation): Because government protects children, family autonomy is a conditional privilege subject to administrative supervision whenever deemed warranted.

The Proof Burden: Identify the antecedent source by which a protective duty against demonstrated injury becomes general authority to stand between parent and child.

SLIDE 19: ACCESS TO COURTS AND THE PRICE OF A REMEDY



When the institution regulating the action also controls the doorway to the remedy, procedure consumes the right.

Option A (The Boundary): Reasonable procedures may regulate the manner of seeking relief, but cannot extinguish meaningful access to a remedy.

Option B (The Creation): Government may condition access to the only judicial remedy upon institutional requirements that effectively prevent the claim from being heard.

The Proof Burden: Identify the authority by which government may recognize a protected right, control the exclusive enforcement forum, and then impose conditions making that forum unavailable.

SLIDE 20: WHEN CONSTITUTIONAL PROTECTIONS BECOME ADMINISTRATIVE SUBSTITUTES

Constitutional Safeguard (Substance)		Administrative Substitute (Form)
Jury Trial	➔	Internal Hearing Officer
Due Process	➔	Compliance with Agency Procedure
Independent Judgment	➔	Internal Institutional Review

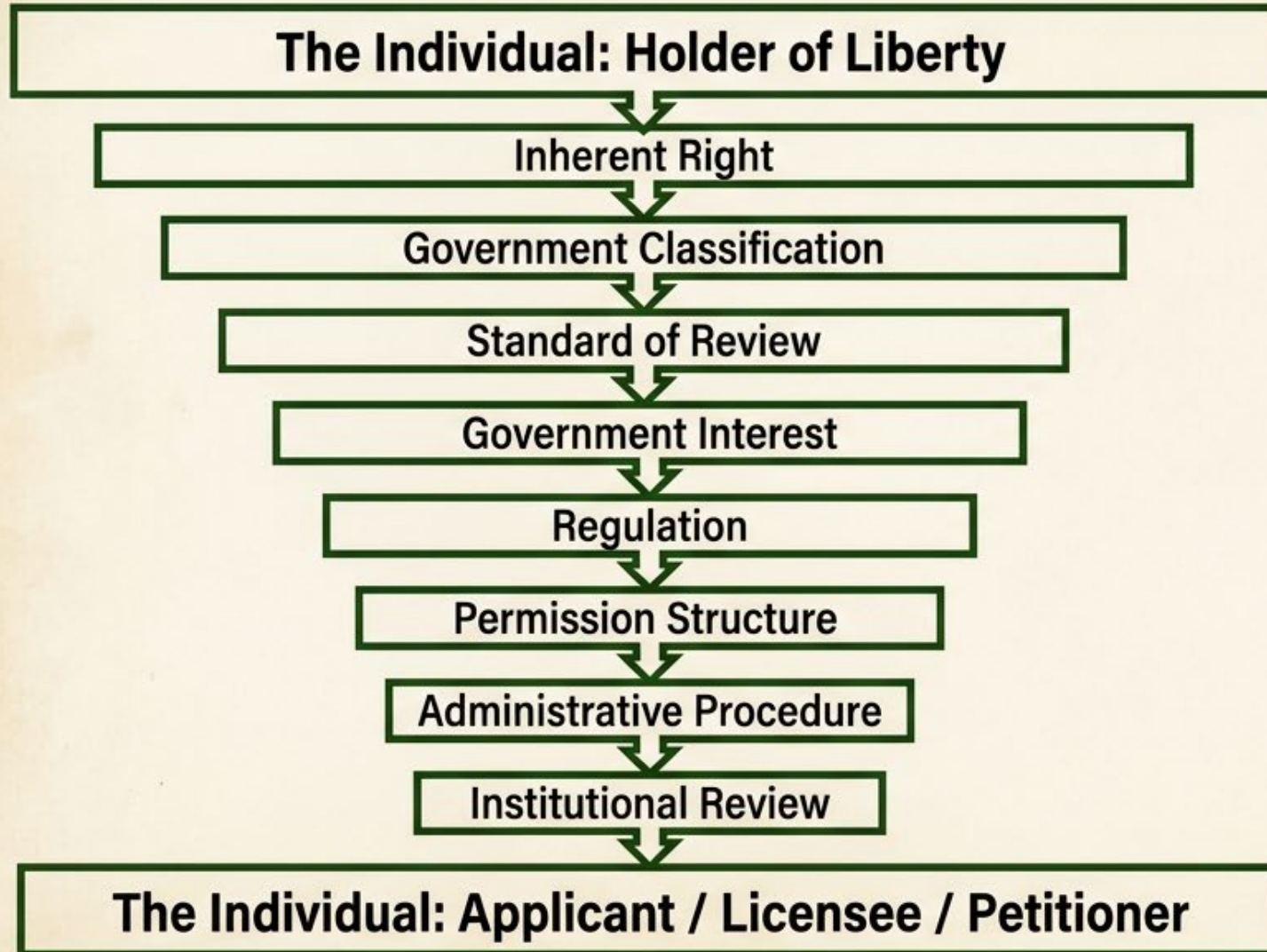
Efficiency, expertise, or convenience cannot accomplish this substitution. Form does not prove constitutional sufficiency.

Option A (The Boundary): Constitutional protections remain controlling conditions that administrative procedures must satisfy.

Option B (The Creation): Government may replace structural protections with internal procedures so long as some form of notice/hearing remains available.

The Proof Burden: Identify the constitutional delegation by which government may exchange a protected structural safeguard for an administrative substitute of its own design.

SLIDE 21: THE COST OF CIRCULARITY



The Mechanism of Circularity:

At each stage, the institution acquires another layer of control over something it did not create.

The institution created to secure liberty progressively positions itself between the People and the exercise of that liberty.

SLIDE 22: THE FINAL RIGHTS BINARY

Option A: Rights as Antecedent Limits

- Rights are inherent and retained.
- Government acts purely as trustee.
- Every regulation, condition, or restriction must remain subordinate to the original constitutional structure.

Option B: Government as Administrator

- Government defines and classifies the right.
- Government balances, regulates, licenses, and conditions the right.
- Government acts as final judge of its own limits.

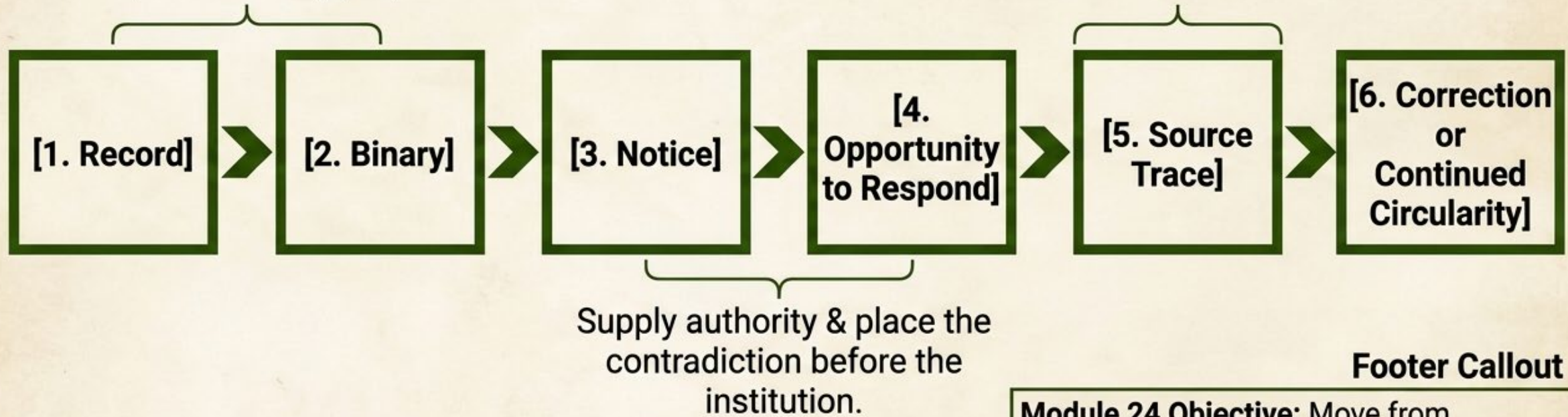
The Proof Burden: If Option B is asserted, identify the exact constitutional act by which the People transferred ownership of their inherent rights to the institutions created to secure them.

Trustee → Gatekeeper → Administrator → Judge

SLIDE 23: NEXT, FROM RECORD TO ACTION

State the lawful proposition & identify the contrary proposition.

Require the institution to identify the antecedent lawful source.



Footer Callout

Module 24 Objective: Move from constitutional visibility to documented action. A systemic defect is demonstrated from the structure itself. The next step is placing that structure into the record.