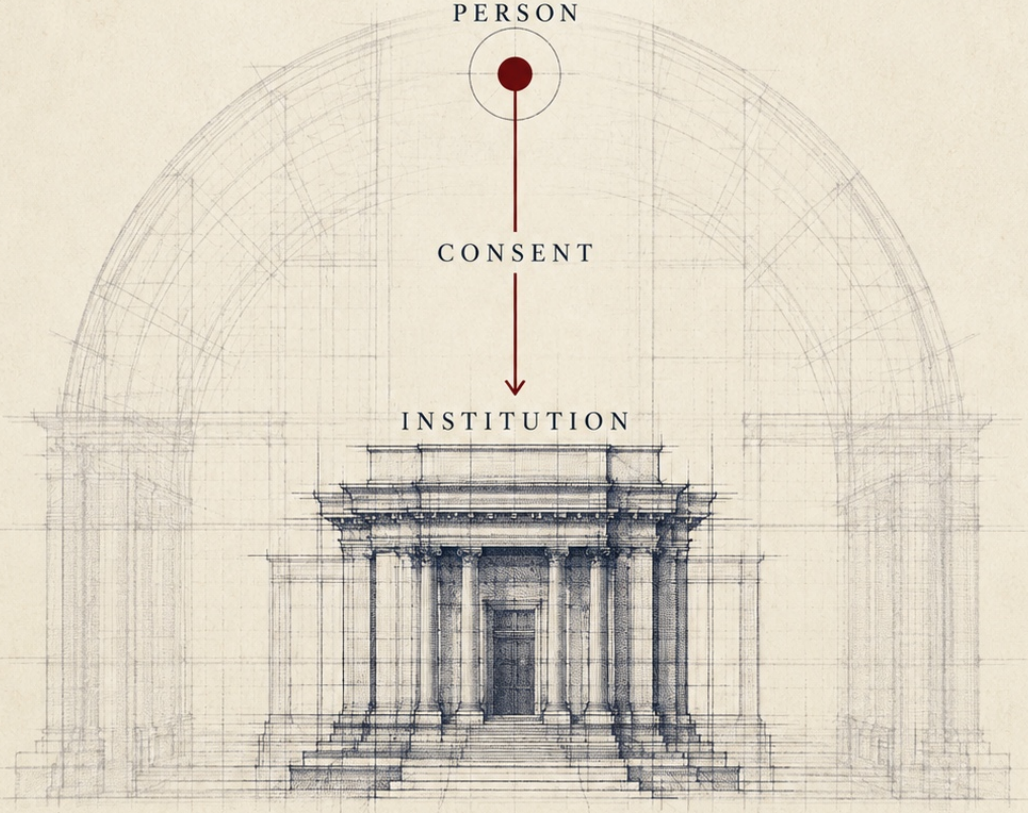
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THE PROTO-DEMOCRATS

RESTORING EUROPE'S CONSTITUTIONAL IDEA

A Legal, Political, and Philosophical Position Paper



JEROEN J.J. SLUITER

PROTO-DEMOCRATIC PAPERS · PAPER #1

THE PROTO-DEMOCRATS

Restoring Europe's Constitutional Idea

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Abstract

Proto-Democracy was introduced by WAIT in response to a constitutional development that can no longer be treated merely as a theoretical possibility. Across Europe, institutions created to administer, protect and constrain democratic government increasingly exercise consequential power at the very points through which democratic correction occurs: voting, candidacy, opposition, legal challenge, public dissent and national political choice. The claim of this paper is not that Europe has ceased to be democratic, nor that every contested intervention is illegitimate. It is that a recognisable pattern has emerged in which institutional self-protection can begin to displace democratic correction.

The paper's foundational claim is philosophical before it is constitutional. The human person possesses moral standing prior to political institutions. Within WAIT's own philosophical frame that hierarchy is Creator, person, institution: rights and conscience are not manufactured by the State. A secular reader may begin from natural law, inherent dignity or moral equality without altering the constitutional conclusion. Political authority is derivative. It may be delegated; the sovereignty from which legitimate authority derives cannot be alienated to the institution receiving it.

Proto-Democracy therefore understands democratic legitimacy as continuously recoverable delegated authority. Legitimate authority flows outward from person to consent to institution, but democracy requires a return path. Those subjected to consequential power must retain a practical constitutional capacity to identify who exercised it, require justification, contest it, obtain effective reversal where possible, impose proportionate consequence for serious abuse, and ultimately recover, relocate or materially redirect

delegated competence when ordinary correction persistently fails.

This return path is the corrective circuit. The paper operationalises it through a six-part Corrigibility Test: Attribution, Justification, Contestability, Effective Reversibility, Consequence and Recoverability. Its seven Proto-Democratic principles are derived from the foundational axiom of retained human sovereignty: Primacy of the Person, Derivative Authority, Presumption of Liberty, Corrigibility of Power, Proximity of Authority, Political Contestability and Symmetry Before the Law.

The paper calls the condition in which formal legality persists while the practical capacity to complete this corrective circuit declines post-democratic legality. Where legitimate secrecy prevents ordinary scrutiny, Compensating Accountability requires stronger independent scrutiny in its place. Paper #1 asks where legitimate authority originates, how delegated authority becomes alienated and how its recoverability can be preserved. Paper #2, The State Without Conscience, turns from institutional legitimacy to the human being inside the institution: authority may be delegated, but conscience cannot.

Introduction

Why Proto-Democracy, Why Now?

In March 2025, a French court convicted Marine Le Pen in the European Parliament assistants case and imposed a five-year sentence of ineligibility with immediate effect. The judgment concerned misuse of public funds, not her political beliefs. No candidate is entitled to immunity from criminal law. Yet the consequence reached far beyond one defendant. It altered, immediately, whether a leading contender could appear before millions of voters in the 2027 presidential election.[5]

For more than a year, two clocks therefore ran at once. One belonged to the courts. The other belonged to democratic politics. Appeals could correct the judgment; the presidential election would not wait indefinitely for them. On 7 July 2026 the Paris Court of Appeal upheld Le Pen's conviction but reduced the ineligibility sentence to fifteen months of effective disqualification, already served by that point, reopening a legal path to her candidacy. She announced that evening that she intended to run in 2027.[5]

> **The correction matters. So does the time in which correction had to arrive.**

The constitutional problem is not whether a court may punish a politician. It plainly may. Nor is it whether voters can place a candidate above the law. They cannot. The problem appears when lawful institutional power reaches a point through which citizens themselves ordinarily correct political power. A remedy delivered after the decisive political moment may remain legally valid while becoming democratically incomplete. A candidate cleared after an election cannot contest the election that has already happened. An annulled

vote cannot simply be relived. A political opportunity can disappear while every institution involved remains formally within law.

That predicament is not confined to France. An election has been annulled after citizens voted. A major opposition party has been subjected to an intelligence classification enabling intensified surveillance before a court intervened. European institutions have constrained a national government through legal and financial mechanisms while both sides claim democratic legitimacy. In the Netherlands, a lawyer engaged in controversial civil litigation was arrested within a criminal investigation into an alleged anti-institutional network and held under severe restrictions while much of the evidential basis remained outside ordinary public scrutiny.[3][4][6][7]

These events are not equivalent. They do not establish a coordinated project. Some interventions may be justified; some may be necessary. Several also demonstrate that European courts remain capable of correction. A serious argument must preserve those facts. But constitutional analysis can fail in the opposite direction by examining every intervention only in isolation. Was this prosecution lawful? Was this intelligence measure authorised? Was this judgment reasoned? Was this treaty competence valid? Those questions are indispensable. They can nevertheless obscure the system-level question that gives this paper its purpose:

> **What does it mean to say that the people remain sovereign if the authority exercised in their name can no longer, in practice, be corrected or recovered by them?**

Proto-Democracy is concerned with the route between those two ends: the person from whom legitimate authority derives, and the institutions through which that authority is exercised. The danger is not that every institution has become authoritarian. It is that institutions confronted with declining trust and increasingly forceful democratic challenge can develop a reflex of self-preservation. Criticism becomes easier to interpret as hostility to the order the institution believes itself responsible for protecting. Resistance becomes a problem of resilience. Dissent becomes a security category. Electoral disruption becomes something to be managed. The institution begins to protect not merely democracy, but the institutional settlement through which democracy is presently administered.

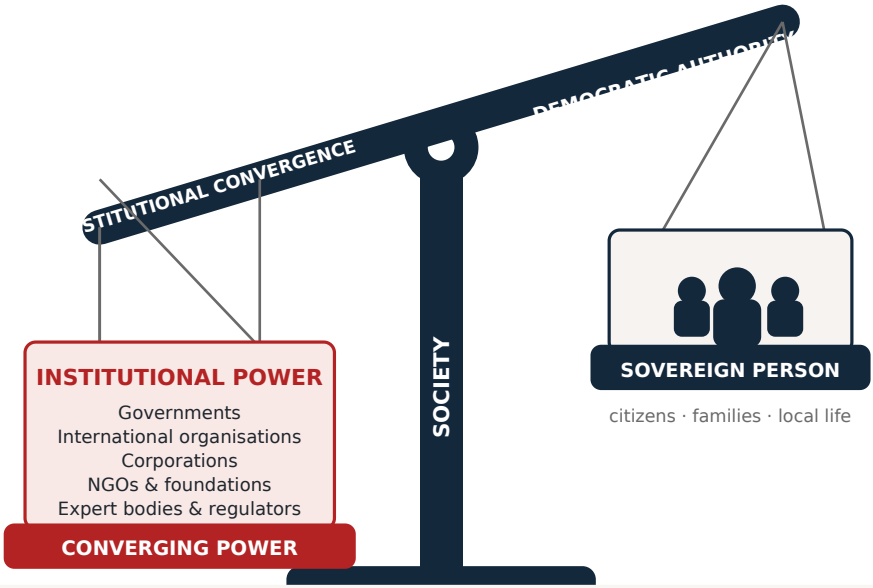
Europe's constitutional emergency is therefore not the disappearance of democratic form. Elections continue. Courts sit. Parliaments debate. Rights remain written into law. The danger is subtler: institutions created to serve, mediate and protect democratic government can increasingly determine the conditions under which democratic correction itself remains admissible.

Nothing need become illegal for something democratic to have been lost.

The paper does not ask the reader to begin from trust in institutions. Nor does it ask the reader to begin from distrust. Proto-Democracy begins with the burden of justification. Power must explain itself because liberty does not.

WHEN POWER MOVES AWAY FROM THE SOVEREIGN PERSON

The original democratic question, redrawn through Proto-Democracy



THE PROBLEM

Formally separate institutions can converge in power while the person becomes increasingly distant from correction.

THE PROTO-DEMOCRATIC REVERSAL

The person is not the weaker counterweight to institutional power. The person is prior to the institution. Political authority is borrowed and must remain attributable, contestable and recoverable.

Developed from the author's original 2021 balance-of-power model.

I. The Origin of the Proto-Democratic Idea

Beyond Patriotism

The political language that first led WAIT towards Proto-Democracy was not constitutional language. It was the language of patriotism, sovereignty and national self-determination. Across Europe, citizens who experienced governance as remote, technocratic and increasingly detached from national electorates reached for an intuitive counterweight: nation against supranational institution, political belonging against administrative abstraction, self-government against rule from elsewhere.

During the 2017 French presidential campaign, Marine Le Pen gave one influential formulation when she declared that the political divide was no longer between left and right, but between 'patriots and globalists'.[12] The phrase recognised a genuine realignment. Political conflict increasingly concerned not only competing policies within an accepted institutional order, but the location of sovereignty, the legitimacy of supranational authority and the capacity of citizens to determine political direction.

Yet patriot was insufficient. Patriotism describes attachment to a nation; it does not establish the conditions under which that nation may legitimately exercise power. A national government can become as remote, coercive and insufficiently corrigible as a supranational one. Nor does globalist provide a constitutional category. It identifies an orientation or adversary, not a principle by which authority itself can be judged.

Proto-Democracy emerged from that gap. It moves beneath left and right, patriot and globalist, and asks what must be

true before any institution can legitimately command obedience.

Person. Consent. Institution.

The relevant question is not to which political camp power belongs, but whether power remains subordinate to the persons from whom its authority is derived and meaningfully corrigible by them. Proto-Democracy does not reject the political intuition contained in the language of patriotism. It constitutionalises it. Sovereignty matters, but national sovereignty is not the final principle. The sovereignty of the person is.

The prefix proto therefore means prior in the order of legitimacy, not primitive or historically earlier. Before parliament, ministry, court, nation-state or European Union lies a philosophical question constitutional theory can too easily treat as already settled: what makes any institution entitled to exercise coercive authority over a human being?

Within WAIT's philosophical frame, the hierarchy is explicit: Creator, person, institution. The reference to the Creator is not decorative theology. It locates the source of human moral standing beyond political manufacture. The Declaration of Independence states the sequence with unusual clarity: human beings possess unalienable rights endowed by their Creator; governments are instituted to secure those rights and derive their just powers from the consent of the governed; when government becomes destructive of those ends, the people retain the right to alter or abolish it.[13] The institution is downstream of a moral status it did not create.

A secular constitutional reader need not accept the theological premise to follow the constitutional consequence. Natural law, inherent dignity, moral equality and modern rights theory can all begin from the narrower proposition that

the human person has a status prior to the State. The boundary is the same: an institution may recognise, protect, balance and lawfully limit rights, but it cannot coherently become the ultimate author of the moral standing from which its own authority derives.

This places Proto-Democracy on old intellectual ground without making its contribution old. Locke begins with persons naturally free and equal and treats political society as arising through consent; government that fails its purposes may be resisted and replaced.[14] Rousseau refuses the simple alienation of sovereignty and warns that government develops a corporate will capable of usurping the sovereign people.[15] Montesquieu and Madison divide power because human beings are fallible; Madison keeps dependence on the people as the primary control.[16] Modern republicanism develops liberty as non-domination, while deliberative democratic theory makes public justification and participation central to legitimacy.[17][18]

These traditions come remarkably close to a complete circuit. They give us pre-political rights, consent, popular sovereignty, divided power, non-domination, public justification, contestation and an ultimate right of political recovery. What they leave less explicit is the ordinary constitutional return path after authority has been delegated. How does the sovereign source of authority move from objection to correction and, where ordinary correction persistently fails, to recovery of the delegation itself?

Proto-Democracy answers by treating democratic legitimacy as a continuous relationship rather than a one-time transfer. Authority moves outward from person to consent to institution and then into the exercise of power. If sovereignty is truly retained, however, correction must be capable of travelling back.

> **Authority that can travel outward but cannot return has ceased to behave like delegated authority.**

The proposed contribution is therefore architectural and operational, not a claim to have discovered natural rights, consent, divided power or accountability. Proto-Democracy integrates those classical components into a first-principles theory of continuously recoverable delegated authority and asks whether the constitutional return path remains intact. That immediately creates the next question: if authority is borrowed, what keeps it borrowed after it has entered institutions?

II. Democracy Before the State

Consent, Corrigibility and the Direction of Legitimacy

Constitutional democracy begins from a realistic view of human beings. People are fallible. They rationalise. They pursue status, security and advantage. They can mistake institutional interest for public interest and personal conviction for necessity. That is why power is divided. But divided power is a safeguard, not the source of legitimacy. Those who govern exercise authority that is not originally theirs.

Individual sovereignty must therefore be understood carefully. It does not mean individual supremacy or exemption from law. Other persons possess equal standing. Collective action is unavoidable, and legitimate government must reconcile competing rights and interests under general rules. The claim is narrower and more demanding: no institution becomes morally self-authorising merely because the legal order gives it competence.

That makes consent central, but not in the literal sense of continuous individual permission. Citizens obey laws they opposed, pay taxes they voted against and live under governments they did not elect. Children, future generations and political minorities make literal consent an inadequate description of common government.

Consent in Proto-Democratic theory therefore establishes the direction from which legitimacy flows. Corrigibility is what keeps that direction constitutionally real. Citizens must retain credible lawful means to influence, challenge and ultimately change the people and institutions exercising public power. Elections are part of this. So are courts, opposition, parliamentary scrutiny, journalism, protest, legal challenge,

repeal, institutional review and the possibility that serious abuse or persistent failure produces consequence.

This is also why constitutional rights limit majorities. If the person is prior, fifty-one per cent cannot make the other forty-nine per cent morally subordinate. Democratic legitimacy is not unrestricted rule by numbers. It is self-government among persons of equal standing under an order that limits what anyone may do with borrowed power.

Consent is not exhausted at the moment authority is delegated. It remains meaningful only while correction remains possible.

A government may have been lawfully elected. A treaty may have been lawfully ratified. A court may possess lawful jurisdiction. An agency may have been lawfully created. None of those facts answers the whole legitimacy question for all future exercises of power. If the people retain sovereignty, they must retain more than the memory of having consented. They must retain a practical route by which delegated authority can be redirected when political judgment changes.

This is recoverability. It does not mean every decision must be reversible or every minority must prevail. Some consequences cannot be undone. Some powers require independence from immediate majorities. Recoverability asks a different question: does the constitutional order preserve a lawful capacity to bring authority back towards its source when ordinary correction repeatedly fails?

Once that distinction is made, another becomes unavoidable. A power can be perfectly legal and still become progressively harder to correct. Legality and democratic legitimacy therefore cannot be treated as the same thing.

III. The Constitutional Inversion

Post-Democratic Legality and Democratic Self-Defence

Legality asks whether power was exercised according to the recognised legal order. Was the competent body acting within its powers? Was the procedure followed? Was the measure authorised by statute, treaty or constitutional doctrine? Legitimacy asks the prior and continuing question: why is this institution entitled to exercise that power over the citizen, and does the relationship still preserve the conditions that justify obedience?

Law is indispensable because arbitrary power is incompatible with liberty. But law cannot become self-legitimating. If legal validity were enough, any sufficiently complete legal system could generate political legitimacy simply by authorising its own procedures.

> **A constitutional order can become less democratic without first becoming less legal.**

This paper calls that possibility post-democratic legality. The term is narrower than the established literature on post-democracy. Colin Crouch described systems in which democratic institutions remain formally intact while substantive participation weakens and elites gain disproportionate influence. Peter Mair described a hollowing of Western democracy in which citizens withdraw from parties while governing elites retreat into institutions increasingly insulated from mass politics.[1] Related literatures describe democratic backsliding, autocratic legalism, abusive constitutionalism, technocracy and constitutional hardball.

Proto-Democracy does not claim to discover that democracy can erode through lawful means. Its narrower proposition is that the divergence between legality and legitimacy can be tested through the integrity of the corrective circuit. Post-democratic legality exists where democratic institutions remain formally operative while citizens become materially less able to identify consequential power, require reasons, contest it, reverse it in time, produce consequence for serious abuse or recover the competence through which it was exercised.

The condition becomes constitutionally serious when exceptional intervention ceases to be exceptional in function: powers operating across different institutions and jurisdictions accumulate at the mechanisms of democratic correction themselves. That claim necessarily encounters the tradition of militant democracy, or democratic self-defence.

Since Karl Loewenstein, constitutional theory has confronted the dilemma that democracies may need to defend themselves against actors who would use democratic freedoms to destroy democracy.[2] Germany's post-war constitutional order is the most familiar European expression of that principle. Proto-Democracy does not deny democratic self-defence. A constitutional order need not remain passive before genuine attempts to abolish it through violence or anti-democratic seizure.

> **The neglected mirror question is: who constrains the institutions empowered to decide which democratic actors constitute a threat to democracy?**

The defender also exercises power. The security service classifying an opposition movement, the court invalidating an election, the regulator restricting political activity and the

supranational institution disciplining a national government do not stand outside constitutionalism because their purpose is constitutional defence. Democracy may defend itself. But democratic self-defence must itself remain democratic.

INTENT AND CONSTITUTIONAL DESIGN

Proto-Democracy does not require a theory of hidden intent. Nor does it require the opposite assumption that institutional drift is necessarily innocent, accidental or uncoordinated. Governments, agencies, corporations and political actors sometimes coordinate, conceal, deceive, capture processes or pursue interests that conflict with those they formally serve. Where such conduct is established, it should be described plainly. But constitutional analysis should not infer a single authorship merely from a pattern of outcomes.

The stronger principle is intent-independent. Constitutional order must remain robust under institutional drift, aligned incentives, coordinated interests and deliberate abuse alike. It should assume neither saints nor villains. It should make both manageable.

> **The constitutional question is not whether power is exercised with good intentions. It is whether power remains corrigible when it is not.**

That leads from the motive of institutions to their design. Some institutions must be insulated from immediate politics. The next task is to distinguish legitimate insulation from democratic alienation.

IV. From Insulation to Alienation

The Corrective Circuit and Corrigibility Test

Modern constitutional government deliberately creates distance between some institutions and immediate political pressure. Judges should not fear dismissal because a majority dislikes a judgment. Electoral authorities should not take instructions from incumbent parties. Central banks may require protection from short-term electoral incentives. Civil servants need professional continuity. Security services cannot conduct intelligence by plebiscite.

Distance is therefore not inherently anti-democratic. The distinction is between insulation and alienation. Insulation protects a bounded constitutional function from immediate political pressure while preserving attribution, review and ultimate corrigibility. Alienation begins when authority has travelled far enough that those subjected to it can no longer meaningfully identify who decided, understand why, contest the decision, obtain correction before the decisive consequence, impose consequence for serious abuse, or recover the delegated competence itself.

An institution can answer without being accountable. It can publish reasons, hold hearings, permit appeals and commission reviews while every route ends with another institutional actor declaring that the decision stands. A system can process dissent without allowing dissent to complete the journey to correction.

> **The corrective circuit asks whether the return path is real.**

Proto-Democracy therefore proposes a six-part Corrigibility Test. The first five questions examine the exercise of

delegated authority. The sixth asks whether the delegation itself remains recoverable.

1. Attribution

Can citizens identify which institution and which human decision-makers exercised the consequential power? Authority that cannot be traced cannot be meaningfully contested, and responsibility that dissolves across agencies, committees, treaties or automated procedures is responsibility weakened.

2. Justification

Must those actors disclose and defend the legal basis, factual grounds and public purpose of the decision sufficiently for meaningful scrutiny? The burden rests on coercive power. Liberty is the starting position; restraint requires reasons.

3. Contestability

Can affected citizens, political opponents, journalists, lawyers or civil society challenge the decision through real rather than merely formal procedures? A hearing is not meaningful contestation if decisive evidence cannot be tested, the remedy cannot reach the decision, or the institutional answer is effectively predetermined.

4. Effective Reversibility

Can lawful correction occur before the principal political, legal or personal consequences become practically irreversible? Formal reversal can arrive too late. An election can later be judged mishandled after the political moment has passed. A candidate can eventually be cleared after the election. A protest can be declared lawful after it was prevented. A bank account can be restored after an organisation collapsed. A lawyer can be released after months of detention. A false security designation can be withdrawn after reputational damage has become permanent.

Time can turn a formally reversible decision into a practically irreversible one.

5. Consequence

Can serious abuse, knowing misconduct or persistent institutional failure produce proportionate personal, legal, political or institutional consequence without turning ordinary error or good-faith disagreement into grounds for retaliation? Corrigibility is not a demand that judges be punished for reversed judgments, intelligence officers for every mistaken assessment or regulators for every policy failure. Such a system would destroy the independence constitutionalism often requires. The question is whether independence can become immunity.

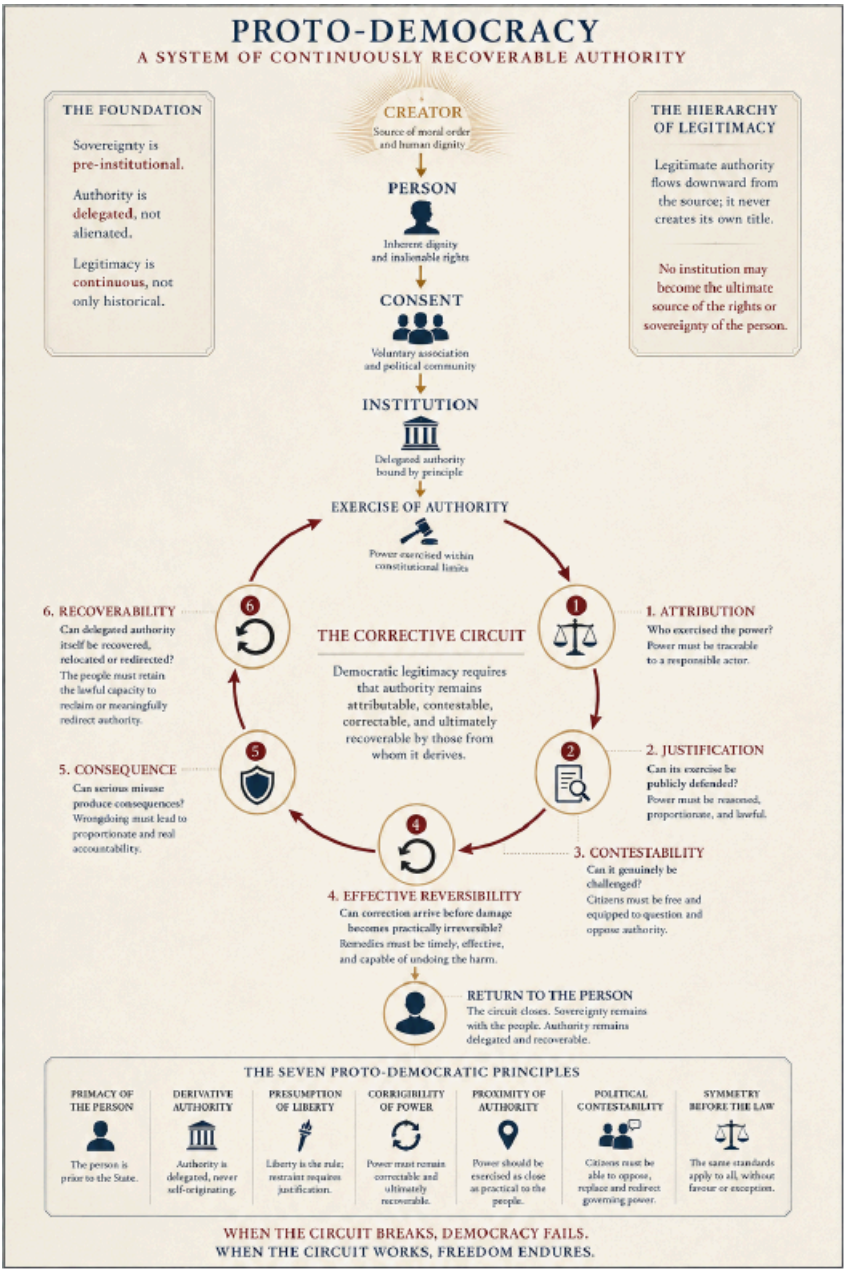
6. Recoverability

Can the persons from whom authority ultimately derives lawfully recover, relocate or materially redirect the delegated competence itself when ordinary correction persistently fails? A power may be attributable, justified, contestable, reversible in individual cases and even capable of producing consequence, yet still become structurally entrenched beyond meaningful democratic redirection. Recoverability asks whether the delegation remains a delegation.

No complex democracy will satisfy all six conditions perfectly. Nor does every weakness invalidate an institution. The test is cumulative and directional. Weakness at one point weakens the circuit; persistent weakness across several points changes the constitutional character of the relationship. When attribution becomes diffuse, justification inaccessible, contestation symbolic, reversal late, serious abuse inconsequential and delegated competence practically irrecoverable, insulation has become alienation.

Delegation becomes alienation when authority can travel farther than responsibility and correction can follow.

The test therefore operationalises retained sovereignty. Authority remains legitimately delegated not simply because it once travelled outward through a lawful chain of consent, but because the constitutional order preserves a path through which correction can travel back.


PROTO-DEMOCRACY
A SYSTEM OF CONTINUOUSLY RECOVERABLE AUTHORITY
THE FOUNDATION
Sovereignty is pre-institutional.
Authority is delegated, not alienated.
Legitimacy is continuous, not only historical.
CREATOR
Source of moral order and human dignity
PERSON
Inherent dignity and inalienable rights
CONSENT
Voluntary association and political community
INSTITUTION
Delegated authority bound by principle
EXERCISE OF AUTHORITY
Power exercised within constitutional limits
THE HIERARCHY OF LEGITIMACY
Legitimate authority flows downward from the source; it never creates its own title.
No institution may become the ultimate source of the rights or sovereignty of the person.
THE CORRECTIVE CIRCUIT
Democratic legitimacy requires that authority remains attributable, contestable, correctable, and ultimately recoverable by those from whom it derives.
1. ATTRIBUTION
Who exercised the power?
Power must be traceable to a responsible actor.
2. JUSTIFICATION
Can its exercise be publicly defended?
Power must be reasoned, proportionate, and lawful.
3. CONTESTABILITY
Can it genuinely be challenged?
Citizens must be free and equipped to question and oppose authority.
4. EFFECTIVE REVERSIBILITY
Can correction arrive before damage becomes practically irreversible?
Remedies must be timely, effective, and capable of undoing the harm.
5. CONSEQUENCE
Can serious misuse produce consequences?
Wrongdoing must lead to proportionate and real accountability.
6. RECOVERABILITY
Can delegated authority itself be recovered, relocated or redirected?
The people must retain the lawful capacity to reclaim or meaningfully redirect authority.
RETURN TO THE PERSON
The circuit closes. Sovereignty remains with the people. Authority remains delegated and recoverable.
THE SEVEN PROTO-DEMOCRATIC PRINCIPLES
PRIMACY OF THE PERSON
The person is prior to the State.
DERIVATIVE AUTHORITY
Authority is delegated, never self-originating.
PRESUMPTION OF LIBERTY
Liberty is the rule; restraint requires justification.
CORRIGIBILITY OF POWER
Power must remain correctable and ultimately recoverable.
PROXIMITY OF AUTHORITY
Power should be exercised as close as practical to the people.
POLITICAL CONTESTABILITY
Citizens must be able to oppose, replace and redirect governing power.
SYMMETRY BEFORE THE LAW
The same standards apply to all, without favour or exception.
WHEN THE CIRCUIT BREAKS, DEMOCRACY FAILS.
WHEN THE CIRCUIT WORKS, FREEDOM ENDURES.

V. Europe and the Alienation of Sovereignty

Formal Recoverability, Practical Irreversibility

The European Union is the clearest contemporary laboratory for this problem because it is both a remarkable achievement of lawful cooperation and an unprecedented structure of pooled sovereignty. Member States created the Union through treaties. National constitutional procedures authorised those treaties. The European Parliament is directly elected. The Council consists of national governments. The Commission is appointed through treaty procedures involving elected governments and Parliament. The Court of Justice operates within a legal order the Member States accepted.

The Proto-Democratic objection is therefore not that the Union appeared without consent. It is that successive acts of lawful delegation can accumulate into an institutional order whose powers later electorates find extraordinarily difficult to reshape or recover.

The obvious objection is Article 50. A Member State can leave. Treaties can be amended. Governments participate in the Council. National parliaments retain roles. European citizens elect the Parliament. Formally, authority is recoverable. But formal recoverability and practical recoverability are not the same thing.

Decades of legal integration, economic interdependence, regulatory alignment, monetary union and institutional reliance create substantial costs around reversal. Brexit demonstrated both propositions at once: withdrawal was legally possible, yet exercising that right required a political, legal and economic transformation of exceptional scale. The same distinction applies below the threshold of withdrawal. A competence may remain theoretically alterable while being

practically entrenched beyond the reach of an ordinary electoral mandate.

> **A right of exit does not by itself prove that ordinary democratic correction remains easy enough to be politically real.**

The question is intergenerational as well as institutional. Can one generation of governments lawfully delegate powers in a manner that substantially narrows the choices available to later generations of citizens? If earlier consent becomes sufficient justification for later authority regardless of contemporary corrigibility, democratic legitimacy becomes historically front-loaded.

The treaties themselves recognise the problem of distance. Article 5 of the Treaty on European Union makes conferral the basis of Union competence and subsidiarity and proportionality the principles governing its exercise. In non-exclusive fields, Union action is justified only where objectives cannot sufficiently be achieved by Member States and can be better achieved at Union level.[8] Proto-Democracy treats that principle as constitutional rather than merely administrative: authority should travel no farther than necessity requires, and never farther than responsibility can reasonably follow.

The continuing conflict between EU institutions and Hungary illustrates the multi-level legitimacy problem. European institutions invoke treaty commitments, judicial independence, budget protection and the rule of law. The Hungarian government invokes national democratic mandate and sovereignty.[9] Neither vocabulary resolves the question merely by being asserted. A national government cannot use sovereignty as immunity from corruption, rights violations or attacks on constitutional constraints. A supranational

institution cannot treat its preferred institutional settlement as synonymous with democracy.

At whichever level power is exercised, the same questions follow: who authorised it, why is it necessary at that level, can it be challenged, can it be corrected in time, and can the people ultimately recover what was delegated? The problem with remote government is not geography. It is political distance becoming practical irreversibility.

Once distance is understood in this way, the contemporary European cases stop looking like unrelated controversies. They appear at successive points along the route by which citizens ordinarily correct power.

VI. The Democratic Perimeter

Signals Along the Corrective Chain

The cases considered here are signals, not verdicts. One signal may be noise. Several signals do not prove a common design. The relevant question is whether powers arising in different institutions share a constitutional location: the points through which political authority is ordinarily corrected.

THE VOTER: ROMANIA

On 6 December 2024 the Romanian Constitutional Court annulled the presidential electoral process after the first round had been held. The decision followed declassified intelligence material concerning alleged manipulation and irregularities. The Venice Commission subsequently examined the standards under which constitutional courts may invalidate election results, emphasising the exceptional nature of such intervention and the need for clear rules and safeguards.[3]

A democracy must be able to protect elections from fraud, covert foreign interference and serious manipulation. But an institution that sets aside votes already cast enters the most sensitive point of popular sovereignty. The legal power to intervene does not end the legitimacy inquiry. It raises the standard of evidence, transparency, proportionality and review that legitimacy requires.

THE OPPOSITION: GERMANY

In May 2025 Germany's Federal Office for the Protection of the Constitution classified the AfD as a confirmed extremist organisation, enabling intensified surveillance of a party that had become the largest opposition force in the Bundestag. In February 2026 the Cologne Administrative Court temporarily prevented the agency from treating and publicly describing the party on that basis pending the main proceedings.[4]

Both facts matter. Militant democracy gives Germany a serious constitutional rationale for defending its order against genuinely anti-democratic movements. But the state security institution deciding that a major political competitor falls within that category exercises extraordinary power over democratic contestability. The subsequent judicial intervention demonstrates that correction remains possible. It also demonstrates why the correcting institution must remain independent of the institution making the security judgment.

THE CANDIDATE: FRANCE

Marine Le Pen's case makes the temporal problem unusually visible. Her criminal proceedings concerned misuse of European parliamentary funds, not her political beliefs, and political prominence cannot confer immunity from criminal law. The first-instance judgment nevertheless made its ineligibility sentence immediately enforceable, removing her legal eligibility for the 2027 presidential election while the appeal was pending. On 7 July 2026 the Paris Court of Appeal upheld the conviction but reduced the effective ineligibility period to fifteen months, which had already been served, thereby restoring a legal path to candidacy.[5]

That is functioning correction, and it should be recognised as such. It also shows why effective reversibility belongs inside the legitimacy analysis. Had the same correction arrived after the decisive electoral deadline, the legal remedy could have

succeeded while the democratic consequence remained irreversible. The constitutional issue is not whether courts may punish candidates. It is whether the timing and form of legal consequence preserve a realistic possibility of correction before the electorate loses the choice at stake.

THE GOVERNING ALTERNATIVE

Voting is not synonymous with political correction. It is one mechanism through which correction may occur. A system can count every vote accurately while becoming less capable of translating a sufficiently large demand for political change into a realistic change of government or governing direction.

Across several European systems, establishment-compatible parties on different sides of the traditional divide may remain willing to govern with one another while treating particular challenger parties as outside the acceptable governing perimeter. Germany's Brandmauer around the AfD and recurring electoral coordination against the Rassemblement National in France illustrate different forms of this phenomenon. They are not constitutionally identical, and neither proves democratic exclusion by itself. Political parties remain free to choose coalition partners. No party acquires a right to government merely because it wins representation, or even because it becomes the largest party. Constitutional democracy may also have legitimate reasons to isolate movements genuinely committed to abolishing the democratic order.

But the system-level question remains. If a large and persistent electoral constituency can speak, organise, vote and win representation, yet discovers across successive elections that its preferred lawful political direction has no plausible route from electoral support to executive authority, formal electoral competition may coexist with declining practical corrigibility.

Representation asks whether dissenting citizens are present. Governing contestability asks whether sufficient democratic support can still produce a realistic change of governing direction.

THE JUDGE: JUDICIALISATION AND POLITICAL AUTHORSHIP

Courts must be independent. Constitutional adjudication necessarily constrains elected majorities. Rights would mean little if every parliamentary majority could simply legislate around them, and a court does not become activist merely because its judgment has political consequences. The boundary problem appears when substantive political choices migrate from institutions voters can replace into jurisprudence that ordinary electoral majorities cannot realistically alter.

The symmetry test is decisive: would the same breadth of interpretative discretion remain acceptable if exercised towards the opposite political end? Judicialisation can produce democratic alienation without any judge acting unlawfully or in bad faith. The danger is especially acute when legislatures avoid politically difficult decisions and leave courts to occupy the space they abandoned. The question is not whether judges should be weaker. It is whether the boundary between constitutional interpretation and political authorship remains visible, justified and corrigible.

THE LEGAL CHALLENGER: THE NETHERLANDS

In June 2025 Dutch lawyer Arno van Kessel was among eight people arrested in an investigation into an alleged criminal network. Police stated that suspects were connected to weapons or dangerous substances, that many adhered to anti-institutional ideas and that violence might be intended. Van Kessel was at the time involved in controversial civil proceedings concerning Covid policy. Full restrictions were imposed during the investigation, and public information about the evidential basis remained necessarily limited while the criminal process continued.[6][7]

Nothing in that chronology establishes that his arrest was caused by his litigation. Being a lawyer or challenging state actors confers no immunity from criminal investigation. Its constitutional significance lies elsewhere. The judicial system is one of the mechanisms through which citizens challenge power without violence. When coercive state power acts against a person simultaneously using that mechanism, under allegations that activate exceptional security procedures and secrecy, the requirements of independent evidence, proportionality, timely review and compensating accountability become unusually important.

THE SOVEREIGN GOVERNMENT: HUNGARY AND THE EUROPEAN UNION

Here the direction of intervention is reversed. A national government claims authority from its electorate; supranational institutions claim authority to enforce legal commitments intended to protect the rule of law and Union finances. Neither claim cancels the other. The conflict demonstrates how difficult democratic attribution becomes once sovereignty is distributed across levels.[9]

These cases arise disproportionately from sovereigntist and anti-establishment politics because that is presently one of

the principal theatres in which incumbent institutions and political challengers collide. Their selection does not confer constitutional innocence upon the actors involved. The test must survive reversal. If a progressive opposition party were placed under intelligence surveillance, if an environmental movement were securitised because of the views of some adherents, if an anti-war candidate were removed through a disputed legal mechanism, or if a conservative government used financial regulation to disable its political opponents, the same standards would apply.

> **Institutional legitimacy should never be presumed merely because an institution acted lawfully. Institutional illegitimacy should never be presumed merely because its action harmed a dissident.**

The cases do not prove post-democratic legality by themselves. They show pressure at successive points of the corrective chain: voter, opposition, candidate, governing alternative, judge, legal challenger and government. The warning lies in the pattern. Institutions charged with protecting democratic order are increasingly capable of defining the conditions under which democratic correction may occur. That is the democratic perimeter. Democracy may defend itself. But the defender cannot quietly become the sovereign.

VII. Security, Secrecy and Institutional Self-Protection

The Accountability Paradox

National security presents the hardest version of the Proto-Democratic problem because secrecy is sometimes not merely defensible but necessary. Intelligence services cannot publish every source. Police cannot reveal every investigative method. Governments cannot conduct military operations in full public view. Witnesses may require protection. Evidence disclosed too early can destroy an investigation or place lives at risk. A constitutional theory demanding total transparency would make serious government impossible.

But secrecy changes the accountability equation. The more serious the security designation, the greater the coercive powers potentially available to the state, while the less the public may be able to know about the evidential basis on which those powers are exercised. The state can know what the citizen cannot. A judge may review material that ordinary political debate cannot access. Parliament may receive information only through specialised oversight. All of this can be lawful and necessary. But the system cannot answer the accountability problem by pointing to the secrecy that created it.

> **Where legitimate secrecy reduces ordinary scrutiny, independent scrutiny must increase proportionately.**

This is Compensating Accountability. Intelligence oversight, judicial warrants, parliamentary security committees and specialised review mechanisms already embody versions of the intuition. Proto-Democracy integrates it into corrigibility

and asks whether the independent scrutiny genuinely compensates for the democratic scrutiny secrecy removes.

The Van Kessel case illustrates the problem without requiring any conclusion on guilt. The initial police account combined alleged weapons-related conduct, possible violent intent and adherence by many suspects to anti-institutional thought, while restrictions limited the information available during the investigation.[6][7] The category of anti-institutionalism requires particular care. Distrust of institutions is not violence. A citizen may believe his government corrupt, the European Union illegitimate, public-health policy criminal, the monetary system fraudulent or the constitutional order fundamentally compromised. Those beliefs may be mistaken, extreme or offensive. They do not by themselves establish criminal conduct. Equally, political belief cannot immunise preparation for violence. Where evidence establishes weapons offences, conspiracy, threats, incitement or terrorist preparation, the state has both authority and responsibility to act. The dividing line must remain conduct and evidence.

THE PERMISSIBLE-SPEECH PERIMETER

The same problem appears in less exceptional form when the state moves from policing conduct towards interpreting expression. A free society has always imposed some limits on speech. Credible threats, incitement, targeted harassment, fraud and participation in criminal conspiracy do not become protected merely because words are involved. The difficult cases begin where coercive intervention depends increasingly on evaluative categories such as offensive, grossly offensive, hateful, harmful, extremist or anti-institutional expression. These categories are not legally equivalent and should not be collapsed into one another.

Their constitutional commonality is narrower: institutions must interpret the meaning, context and permissible

boundary of expression. The United Kingdom provides an existing example because it demonstrates both intervention and correction. British communications law has permitted criminal proceedings for certain grossly offensive or menacing communications, while the separate non-crime hate-incident regime enabled police recording and, in some cases, police contact in relation to expression that did not itself constitute a criminal offence.[10][11] Cases involving direct incitement to violence do not support an argument about the criminalisation of ordinary political dissent and should not be used as if they do.

In 2026 the UK government moved to abolish England and Wales's existing non-crime hate-incident regime after reviews acknowledged disproportionate applications and damage to public trust.[10] That correction should be credited. It also demonstrates the distinction at the heart of this paper: eventual correction does not erase every consequence created before correction arrived.

Political speech deserves particular protection because democratic correction depends upon the freedom to attack not merely a government's policies but its competence, legitimacy, morality and even the desirability of existing institutional arrangements. A citizen cannot meaningfully possess sovereignty if questioning the institutions exercising authority over him becomes presumptively suspect because the criticism is anti-institutional.

A feedback loop then becomes possible. Citizens challenge institutions. Institutions perceive the challenge as a threat. Protective mechanisms strengthen. Contestability narrows. Citizens become more distrustful. Institutions interpret the distrust as further evidence that stronger protection is necessary. Courts, elections, public scrutiny and institutional

reform can interrupt that loop. Where they do not, democratic self-defence begins to turn into institutional self-preservation.

> **A democratic state may sometimes need to act in secret. It may never be permitted to become accountable only to itself.**

That brings the argument to its constitutional architecture. If power must remain corrigible under ordinary politics, exceptional security and institutional self-defence alike, what principles keep the person prior and the delegation recoverable?

VIII. Seven Proto-Democratic Principles

A Derived Constitutional Architecture

The familiar catalogue of liberal rights remains indispensable: expression, conscience, privacy, assembly, association, due process and equality before the law. Proto-Democracy does not improve constitutionalism by merely listing them again. Its task is to identify the deeper order that keeps those rights politically real.

Foundational Axiom - Retained Human Sovereignty

The human person possesses moral standing prior to political institutions. Political authority may be delegated, but the sovereignty from which legitimate authority derives cannot be alienated to the institution receiving it. Institutions exercise borrowed power. They do not acquire an original title over the persons whose authority they administer.

1. Primacy of the Person

The human person is the primary bearer of moral agency, rights and political standing. Institutions possess powers and legal personality, but they do not acquire a moral status superior to the persons from whom legitimate authority derives. Individual primacy is not individual supremacy: every person stands beside others of equal dignity.

2. Derivative Authority

No public institution is the original source of its own legitimate power. Authority must remain traceable to a constitutional chain of delegation. Institutional continuity, expertise, legality, emergency or benevolent purpose may justify action within that chain; none becomes an independent source of sovereignty.

3. Presumption of Liberty

Liberty does not require prior political justification. Coercion does. Freedom of conscience, expression, inquiry, association, peaceful assembly, privacy and lawful autonomy therefore form the starting position. Restrictions require legal basis, necessity, proportionality and remedy.

4. Corrigibility of Power

Consequential public power must remain attributable, justifiable, contestable, effectively reversible where constitutionally possible, capable of producing proportionate consequence in cases of serious abuse, and ultimately recoverable in its delegation. Independence may protect decision-makers from immediate political pressure; it cannot convert independence into immunity or delegated competence into institutional sovereignty.

5. Proximity of Authority

Power should remain at the lowest level capable of achieving the legitimate public purpose effectively. Every upward transfer carries a burden of justification because distance tends to weaken responsibility and increase the cost of correction. Subsidiarity is therefore a constitutional discipline, not merely an efficiency rule.

6. Political Contestability

Democracy requires more than the legal existence of opposition. Lawful dissent must retain a credible path from thought to speech, from speech to organisation, from organisation to representation, and - with sufficient democratic support - from representation to a realistic possibility of governing and changing policy within constitutional limits. Political parties cannot be compelled into coalitions and constitutional democracy may legitimately defend itself against actors committed to destroying it. But democratic self-defence cannot quietly turn the existing institutional settlement into the definition of democracy itself.

7. Symmetry Before the Law

Constitutional principles must survive political role reversal. Before granting or defending coercive power, ask whether the same power, evidentiary standard and safeguard would remain acceptable if exercised by one's political opponents. A power that appears legitimate only while one's own side controls it is presumptively incompatible with constitutional restraint.

Compensating Accountability follows from Corrigibility. Where genuine national-security, intelligence or privacy interests make ordinary transparency impossible, stronger independent scrutiny must take its place. The greater the legitimate secrecy, the stronger the compensating mechanism required to keep the circuit open.

These principles do not replace familiar rights. They explain their constitutional function. Expression and assembly protect liberty and contestability. Due process gives legal form to symmetry. Separation of powers institutionalises corrigibility. Subsidiarity gives structure to proximity. Electoral pluralism protects contestability. Limited government follows from

derivative authority. Recoverability prevents delegation from becoming a one-way constitutional ratchet.

> **Person first. Authority borrowed. Liberty presumed. Power corrigible. Government proximate. Politics contestable. Law symmetrical.**

The architecture is now complete enough to ask what restoration requires in practice - and where constitutional design reaches its human limit.

IX. Restoring the Democratic Hierarchy

From Constitutional Correction to Moral Responsibility

Proto-Democracy does not promise politics without conflict. It does not resolve disagreements over immigration, war, taxation, climate, public health, culture or European integration. Its purpose is prior to policy. It asks what must remain true about power while those disagreements are fought.

The answer is not institutional weakness. It is constitutional direction. The state may compel, but coercion carries the burden. Courts may invalidate democratic acts, but only within bounded authority and under standards capable of surviving political reversal. Experts may advise, but expertise does not inherit the citizen's political agency. Security services may act secretly, but secrecy requires compensating accountability. Supranational institutions may coordinate and bind within delegated competence, but delegation cannot become a one-way constitutional ratchet.

The same discipline applies to critics. Institutions develop professional assumptions, categories, incentives and narratives through which they interpret events. Outsiders can see patterns insiders miss. But scepticism can become equally closed. If every court decision becomes lawfare, every security investigation repression, every adverse judgment censorship and every institutional defence proof of corruption, the critic has reproduced the same epistemic failure in reverse.

> **The burden is justification - for government, opposition, institution and critic alike.**

The practical implications follow directly from the circuit. Make authorship visible. Require reasons. Preserve opposition. Keep remedies timely. Restore consequence for serious abuse. Reconsider competences that have become practically irreversible. Apply subsidiarity as a burden of proof. Protect lawful dissent even when it is hostile to institutions. Strengthen independent oversight wherever secrecy makes public oversight impossible.

None of this requires dismantling Europe. It requires refusing to confuse Europe with its present institutional configuration. A civilisation is larger than its bureaucracy. Cooperation is larger than centralisation. Democracy is larger than the institutions that presently claim to protect it.

The constitutional crisis identified here can therefore be stated without exaggeration. Democratic forms remain, yet the practical capacity of citizens to convert lawful disagreement into consequential political correction can become progressively less reliable. Voting may continue while governing direction becomes harder to change. Review may exist while arriving after the decisive moment. Institutions may explain themselves while the delegation beneath them becomes increasingly difficult to redirect.

But even the best constitutional architecture reaches a limit. Institutions do not exercise power in the abstract. Human beings exercise it through institutions. A constitution can divide authority. Law can prescribe procedure. Courts can review decisions. Elections can remove governments. Oversight can expose misconduct. None of these mechanisms can possess conscience on behalf of the person acting.

> **The individual does not exist for the institution. The institution exists for the individual.**

Conclusion

When Power Must Come Back

Europe's constitutional danger is easy to miss because it need not look like the death of democracy. There may be no cancelled constitution, no abolished parliament, no general suspension of elections and no single moment at which a citizen can say: here, democracy ended.

The institutions can remain. The procedures can remain. The language of rights, law and democratic protection can remain. Elections can still be competitive. Courts can still correct governments and agencies. Opposition can still win. Europe continues to possess some of the strongest democratic institutions in the world.

And yet something essential can still weaken.

> **The citizen may retain the right to choose while losing the practical capacity to make power change direction.**

That is the condition this paper has tried to isolate. It begins when authority moves outward through legitimate delegation but the route back becomes longer, slower, more expensive or increasingly dependent upon institutions that have acquired their own interests, doctrines and protective reflexes. No single blockage proves democratic failure. A court may rightly disqualify a candidate. An intelligence service may rightly investigate an opposition movement. An election may, in exceptional circumstances, rightly be annulled. A supranational institution may rightly enforce obligations a national government accepted. A security investigation may rightly require secrecy.

The constitutional danger appears when blockages accumulate along the route through which correction itself must travel - and when formal remedies cease to arrive in time to restore the political choice, liberty or governing possibility that was lost.

Marine Le Pen's case illustrates both sides of the argument. A court exercised coercive legal power with direct electoral consequence. A later court corrected the ineligibility period in time to reopen a legal path to the 2027 election. That is evidence of corrigibility, not its absence. But the episode also exposes why time belongs inside constitutional analysis. Had the correction arrived after the decisive electoral moment, the law could have corrected itself without restoring the choice that had disappeared.

> **A remedy that arrives after the democratic moment may vindicate law without fully restoring democracy.**

This is why post-democratic legality is not another name for dictatorship. It is the more unsettling possibility that a constitutional order can retain almost every visible institution of democracy while gradually losing the property that makes those institutions democratic: the continuing ability of the governed to redirect the authority exercised in their name.

If that ability weakens far enough, sovereignty becomes ceremonial. Citizens remain the declared source of authority, but the consequences of their changed judgment no longer travel reliably through the system. They may speak but not alter. Vote but not redirect. Challenge but not reverse. Win a remedy after the consequence has become irreversible. Recover a right without recovering the political moment in which the right mattered.

Proto-Democracy therefore does not ask whether citizens were once consulted, whether a treaty was once ratified, whether an institution was once lawfully created or whether an election was once free. Those questions matter. They are not sufficient. A delegation that cannot be meaningfully recovered begins, over time, to resemble alienation.

The corrective circuit is the constitutional answer to that danger. Not because every decision must travel back to the voter, and not because complex government can operate without insulation, expertise or law. The circuit matters because it keeps the direction of legitimacy visible. Attribution prevents power from becoming authorless. Justification keeps coercion under a burden. Contestability preserves lawful opposition. Effective reversibility recognises that time can destroy a remedy. Consequence prevents independence from becoming immunity. Recoverability keeps delegation from becoming permanent institutional possession.

The circuit is therefore not another layer placed on top of democracy. It is a test of whether democracy still closes.

Where power can still return, institutions remain what constitutional government requires them to be: instruments of authority borrowed from persons who retain their sovereign standing. Where it cannot, legality may endure while democratic legitimacy recedes behind it. That is the line Proto-Democracy asks Europe to see before correction becomes rupture.

> **The ultimate test of democracy is therefore not whether the citizen was once asked for consent. It is whether power still has to come back when consent changes.**

Notes

[1] Colin Crouch, Post-Democracy (Polity, 2004); Peter Mair, Ruling the Void: The Hollowing of Western Democracy (Verso, 2013). The present paper uses post-democratic legality more narrowly: formal legality persisting while the practical capacity to complete the democratic corrective circuit declines.

[2] Karl Loewenstein, 'Militant Democracy and Fundamental Rights' (1937), and the subsequent literature on militant democracy/democratic self-defence. Proto-Democracy accepts the problem but adds the inverse question: how are institutions exercising defensive powers themselves kept corrigible and ultimately recoverable?

[3] Romania. On 6 December 2024 the Romanian Constitutional Court annulled the presidential electoral process after the first round. The Venice Commission subsequently examined cancellation of election results by constitutional courts, emphasising exceptional circumstances, legal certainty, procedural safeguards and proportionality.

[4] Germany. The Federal Office for the Protection of the Constitution classified the AfD as a confirmed extremist organisation in May 2025. On 26 February 2026 the Cologne Administrative Court granted interim relief preventing the agency, pending the main proceedings, from treating and publicly describing the party on that basis. The case is used here as evidence both of democratic self-defence and of functioning judicial correction.

[5] France. On 31 March 2025 Marine Le Pen was convicted in the European Parliament assistants case and received a five-year ineligibility sentence with immediate effect. The Paris Court of Appeal confirmed the conviction on 7 July 2026 but imposed 45 months of ineligibility, 30 months suspended; the 15-month effective period had already been served under the first-instance provisional enforcement, reopening a legal path to candidacy in 2027. Le Pen announced that evening that she intended to run and pursue a further appeal. Sources: Cour d'appel de Paris, communiqué de presse, 7 July 2026, affaire dite 'des assistants parlementaires du Front National'; Reuters, 7-8 July 2026. The example concerns the constitutional significance that ordinary criminal adjudication and appellate timing can acquire for electoral competition. It is not an argument for immunity from criminal law.

[6] Netherlands. On 11 June 2025 Dutch police arrested eight suspects in an investigation into an alleged criminal network involving weapons and/or dangerous substances. Police stated that many suspects adhered to anti-institutional thought and might intend violence; full restrictions were imposed and police said further information would be limited while the investigation continued. Lawyer Arno van Kessel was among the suspects and was then involved in civil proceedings concerning Covid policy.

[7] Barracuda. Public notices from the District Court of the Northern Netherlands describe the criminal case against members of the alleged network. At the time of the underlying publication record the proceedings did not justify a conclusion in this paper about guilt, motive or any causal relationship between Van Kessel's litigation and his arrest.

[8] Treaty on European Union, Article 5. Union competences are governed by conferral; their exercise by subsidiarity and proportionality. In areas outside exclusive competence, Union action is justified only where objectives cannot be sufficiently achieved by Member States and can be better achieved at Union level.

[9] Regulation (EU, Euratom) 2020/2092 permits measures where rule-of-law breaches affect or seriously risk affecting the sound financial management of the Union budget or its financial interests in a sufficiently direct way. The Hungary dispute is used here as a multi-level legitimacy problem, not as a conclusion that either side's substantive position is necessarily correct.

[10] England and Wales, non-crime hate incidents. In 2026 the UK government announced abolition of the NCHI regime following review and criticism of disproportionate police involvement in lawful expression. The example is used here both as evidence of overreach and as evidence that institutional correction remains possible.

[11] United Kingdom, communications offences. British law has criminalised certain menacing or grossly offensive communications. Crown Prosecution Service guidance also stresses Article 10 freedom of expression and distinguishes criminal communications from merely offensive, shocking, rude or unpopular expression. The paper does not treat direct threats or incitement to violence as protected political dissent.

[12] Marine Le Pen, presidential campaign speech, Lyon, 5 February 2017. The reference is used as evidence of the political vocabulary through which the realignment was being articulated, not as an endorsement of her programme.

[13] United States Declaration of Independence, 4 July 1776: the document links unalienable rights to the Creator, government to the securing of those rights, just powers to consent, and the ultimate right of the people to alter or abolish a government destructive of those ends.

[14] John Locke, Two Treatises of Government, especially the Second Treatise. Locke's political theory begins from natural freedom and equality, rights with a foundation independent of positive law, consent as central to legitimate political society, and a right of resistance or replacement when government fails its ends.

[15] Jean-Jacques Rousseau, The Social Contract. Rousseau distinguishes the sovereign people from government, rejects the simple alienation of

sovereignty to representatives, and warns that government can develop a corporate will capable of usurping popular sovereignty. Proto-Democracy differs by retaining the pre-institutional moral standing of the person as a limit upon collective as well as institutional power.

[16] Montesquieu, The Spirit of the Laws; James Madison, Federalist No. 51. The tradition of divided power treats human fallibility as a design problem. Madison describes dependence on the people as the primary control on government while insisting upon auxiliary institutional precautions.

[17] Contemporary republican theory, especially Philip Pettit's account of liberty as non-domination, treats freedom as security against arbitrary or uncontrolled power. Proto-Democracy shares that concern but frames its central question as the continuing legitimacy and recoverability of delegated authority.

[18] Deliberative-democratic and public-justification traditions, including Jürgen Habermas, make reason-giving, participation and public justification central to democratic legitimacy. Proto-Democracy adds that answerability and deliberation are insufficient where lawful opposition cannot complete the journey to effective correction and recovery.

Selected Sources

Primary legal and institutional sources are preferred for contemporary cases. The philosophical sources identify the traditions from which Proto-Democracy derives its premises and against which its proposed synthesis should be judged.

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Philip Pettit, Republicanism: A Theory of Freedom and Government (1997); Stanford Encyclopedia of Philosophy, 'Republicanism'.

Jürgen Habermas, Between Facts and Norms (1992/1996); Stanford Encyclopedia of Philosophy, 'Democracy' and 'Political Legitimacy'.

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THE PROTO-DEMOCRATIC ARCHITECTURE

CREATOR

↓

PERSON

↓

CONSENT

↓

INSTITUTION

AUTHORITY OUTWARD · CORRECTION BACK · SOVEREIGNTY RETAINED

Paper #1: the legitimacy and recoverability of power.
Paper #2: the responsibility of power.
Paper #3: the location of power.