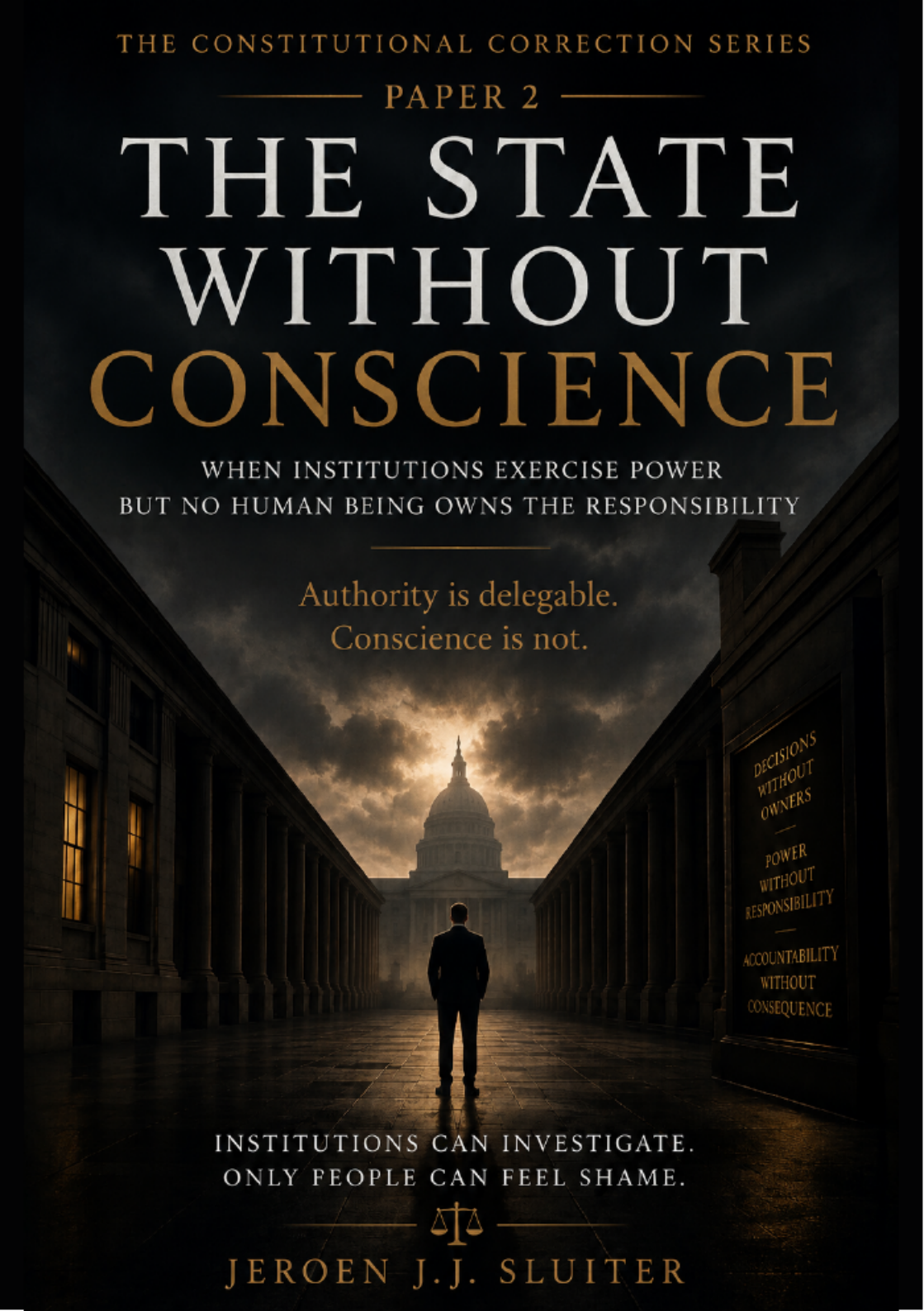
THE CONSTITUTIONAL CORRECTION SERIES

PAPER 2

# THE STATE WITHOUT CONSCIENCE

WHEN INSTITUTIONS EXERCISE POWER
BUT NO HUMAN BEING OWNS THE RESPONSIBILITY

Authority is delegable.
Conscience is not.




INSTITUTIONS CAN INVESTIGATE.
ONLY PEOPLE CAN FEEL SHAME.

JEROEN J.J. SLUITER

**WAIT**

# THE STATE WITHOUT CONSCIENCE

## Moral Agency, Institutional Power and Human Responsibility

A Proto-Democratic Position Paper

Jeroen J.J. Sluiter

*Developed in collaborative writing with ChatGPT (OpenAI)*

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This paper develops the Proto-Democratic argument that authority may be delegated but conscience cannot. It distinguishes normative claims, established scholarship, official findings and attributed testimony.

Paper #1 established the Proto-Democratic principle of recoverable delegated authority. Paper #2 asks what must remain human when that authority is exercised through institutions.

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# Introduction

## Authority Is Delegable. Conscience Is Not

At five o’clock in the morning, the state entered a family home in Leeuwarden.

Sander Webbers had gone to bed at half past three. Barely ninety minutes later, he says, he woke to masked officers inside the house. His room was opposite the bedroom of his stepfather, lawyer Arno van Kessel.

> **“I remember waking up and staring into the barrel of a machine gun.”**

Webbers recalls targeting lights beneath the weapon and men shouting that they were police. For several seconds, he says, he could not understand what was happening.

> **“It took me a moment to realise it wasn’t a nightmare.”**

He was allowed to dress and ordered downstairs. Passing the bedroom opposite his own, he caught sight of Van Kessel: blindfolded, handcuffed, about to be taken from the house in an unmarked vehicle.

In another bedroom was Webbers’s younger sister. According to him, the officers who entered her room did not initially identify themselves as police.

> **“She thought she was going to die.”**

The family was then kept together downstairs for hours while officers searched the house. Webbers later corrected a claim circulating on social media that they had been held at gunpoint for eight hours. They had not, he said. He had read too many stories that were simply untrue.[1]

That correction matters.

Because what remains after exaggeration is removed is disturbing enough.

A sleeping family. A counter-terrorism operation before dawn. A young man waking to the barrel of a weapon. A girl believing, however briefly, that the masked men entering her bedroom had come to kill her. A father figure blindfolded and handcuffed. Then the door closes behind him.

> **The institution has acted. But institutions do not enter bedrooms. People do.**

None of the officers entering that house was “the state”. Each was a human being. So were the people who authorised the operation, assessed the intelligence, determined the level of force, approved Van Kessel’s subsequent detention and restrictions, and later reconsidered whether those measures should continue.

They possessed something the institutions they served did not.

> **A conscience.**

And each remained capable of asking a question no warrant, protocol or institutional mandate could answer for them:

> **Am I still doing the right thing?**

Not: am I authorised? Not: has the correct procedure been followed? Not: does the institution support this decision? But: knowing what I know now, and knowing what this is doing to another human being, can I still defend my part in it?

This paper does not require Van Kessel to be innocent. The Barracuda investigation concerns allegations of extraordinary seriousness, including a suspected criminal network, weapons, dangerous substances and possible violence. The criminal case has not yet been tried on its merits, and no final judgment has established Van Kessel's guilt or innocence.[2]

Indeed, the problem of conscience would be trivial if it arose only when state power was obviously unjustified.

> **It matters precisely when officials believe they are justified.**

The constitutional question is what prevents lawful authority, once set in motion, from becoming morally self-validating.

An institution can investigate. A court can review. A ministry can explain. A commission can report. A procedure can be followed.

> **Only a person can answer to his conscience.**

And when that person disappears behind the institution, something constitutionally dangerous happens. Power remains human in its effects while responsibility becomes institutional in its explanation.

We recognise the sequence because we have watched versions of it happen again and again. Something goes badly wrong.

Sometimes catastrophically wrong. People are harmed. Warnings turn out to have been ignored. Decisions that once appeared authoritative become difficult to defend.

An inquiry follows. Documents are produced. Officials testify. Ministers explain. Agencies reconstruct their procedures. Failures are acknowledged. Lessons are learned. Recommendations are issued.

And yet, at the end of it all, an elementary question can remain strangely difficult to answer:

## Who was responsible?

Not which department. Not which procedure. Not which chain of command. Not which combination of circumstances.

## Which human being exercised the power?

Who knew? Who decided? Who could have stopped it? Who continued after serious grounds for doubt had emerged? And when the consequences became undeniable, who was prepared to say: I did this. It was my responsibility. I was wrong.

There was no lost golden age in which honourable resignation followed every failure, and this paper will not invent one. Public responsibility has always been mediated by politics, confidence, causation and circumstance. But modern government has become extraordinarily capable of explaining failure while making its human authors increasingly difficult to locate.

The report appears. The institution apologises. Procedures change. Oversight bodies investigate. Recommendations are implemented. Each may be necessary. Each may improve government. None necessarily answers the human question.

> **We can become surrounded by accountability while starving for responsibility.**

This is not merely a public-relations frustration. It reveals a deeper constitutional problem.

An institution can investigate. It can apologise. It can compensate. It can reform. It can accept legal and political responsibility. But it cannot feel shame. It cannot experience remorse. It cannot lie awake at night wondering whether it has done wrong.

Only a person can do that.

Paper #1 began with the constitutional hierarchy: the person precedes the institution. Government does not create sovereignty. It receives authority from human beings and exercises that authority conditionally. Political power is therefore derivative.

Paper #1 asked where legitimate power comes from and whether the citizen can correct it from outside. Paper #2 moves one step further inside the exercise of power. It asks what must remain human after authority has been delegated.

## Authority is delegable. Conscience is not.

Within the theological conception from which Proto-Democracy ultimately proceeds, the hierarchy is God, person, institution. God is the transcendent source of moral order; the person is the bearer of conscience, rights and moral agency; the institution is a derivative instrument created by human beings for legitimate common action. A secular reader may begin instead from

natural law, inherent human dignity or the moral primacy of the person. The constitutional consequence is substantially the same: institutions are instruments; persons are moral subjects.

The State Without Conscience names the point at which two movements meet: responsibility becomes difficult to locate at the same time that independent conscience becomes difficult to exercise. The question is whether constitutional government can preserve the human moral actor inside institutional power without dissolving legitimate authority into private preference. That is the argument developed here.

## I. The Moral Actor

Before responsibility becomes a doctrine, it is a private moral event. A person who has exercised power must still be capable of turning judgment back upon himself. Constitutionalism begins with human fallibility precisely because people can deceive themselves, rationalise ambition as duty, mistake fear for prudence and remain convinced of their own good intentions.

Law constrains that fallibility, but it cannot do all the work. No constitution can supervise every conversation, judgment or exercise of discretion. No court can occupy the mind of an official at the moment a decision is made. Public authority therefore depends, in part, upon something that precedes procedure: the capacity of the person exercising power to judge his own conduct.

Was I wrong? Did I mislead? Did I exceed what I was entitled to do? Did people suffer because of my decision? What did I know? What should I have known? What do I owe them now?

## That is conscience in public life.

Conscience should not be confused with consciousness. Consciousness is awareness. Conscience is the human faculty of moral judgment: the capacity to experience oneself as answerable for what one does. It can be mistaken, malformed, self-serving or cowardly. That is why conscience cannot replace law. But law is also incomplete. A person can comply with procedure and still act dishonourably. He can remain within a mandate and still abuse power. He can avoid a provable lie while deliberately creating a false impression.

But the word answerable contains a deeper question: answerable to whom or to what? If conscience were only private preference, it would be difficult to explain why it can condemn us precisely when condemnation is costly. We could simply revise the preference. Remorse does not normally present itself as “I dislike what I did.” It presents itself as “I ought not to have done it.” Shame, in its moral sense, is possible because the self experiences a standard against which the self can be judged.

Proto-Democracy does not treat that standard as a product of the institution, the majority or the individual will. Its theological foundation will matter again at the end of this paper. For now, the constitutional point is enough: conscience is meaningful only if moral judgment is capable of standing above institutional command. The official must remain able to encounter an obligation that his office did not create and cannot cancel.

Shame belongs to this moral landscape, but it cannot be constitutionalised. Moral shame, properly understood, is the recognition that one's conduct has fallen below a standard one

accepts as binding. It can make admission possible before discovery and resignation possible before removal. But public displays of shame prove little, and a person may accept responsibility without displaying shame. The constitutional chain is therefore not shame to punishment. It is conscience, moral recognition, responsibility, accountability and proportionate consequence.

Nor does this argument deny collective responsibility. Governments, agencies, corporations and states can bear legal and political responsibility. A serious philosophical literature goes further. Christian List and Philip Pettit argue that sufficiently organised groups can qualify as agents in their own right: they can form beliefs and purposes, make normatively significant choices and, under specified conditions, be held responsible for them.[3] Proto-Democracy need not reject that account. Even if an institution can coherently bear collective moral responsibility, it does not follow that the human beings exercising consequential discretion through it cease to be moral agents. Collective responsibility may supplement human responsibility; it cannot, merely by existing, absorb it.

This distinction matters because institutional accountability and personal moral responsibility answer different questions. Institutional accountability asks: what happened, what failed, what must be repaired, and what must the organisation change? Personal responsibility asks: what did I do through the authority entrusted to me, what followed, and what does that now require of me?

A healthy constitutional order needs both. Institutional explanation without human responsibility can become morally empty. Personal conscience without institutional accountability

can become self-exculpating. The task is to keep the two connected.

**Conscience is the human faculty. Responsibility connects the human actor to the exercise of power. Accountability is the constitutional mechanism that connects responsibility to consequence.**

## II. The Problem of Many Hands

Responsibility is easy to affirm in principle. Modern government makes it difficult to find in practice. Power no longer passes through a small number of easily identifiable hands. Ministers rely on departments; departments on agencies; agencies on experts, committees, regulators, contractors and data systems. National governments act within treaty obligations and supranational structures. Private organisations sometimes perform functions indispensable to ordinary civic and economic life.

Much of this complexity is necessary. Complex societies require specialisation. Expertise can improve decisions. Delegation can protect impartiality. Independent institutions can constrain arbitrary politics. But complexity has a constitutional price when the human author of consequential power becomes difficult to find.

Dennis F. Thompson described this as the 'problem of many hands': when many officials contribute in different ways to decisions and policies, moral responsibility becomes difficult to assign. Thompson rejected the idea that this difficulty eliminates

personal responsibility, arguing instead for attention to causal contribution and volition.[4]

Then comes the familiar chain. The minister relied on advice. The expert advised but did not decide. The agency followed its mandate. The regulator applied the rules. The civil servant implemented policy. The national government fulfilled an international obligation. The international body acted under powers granted by its members.

Every sentence may be true. Taken together, however, they can describe a decision of enormous consequence for which no human being appears fully answerable.

**The citizen experiences the consequence. The institution returns a process.**

This need not be evasion. Modern government genuinely separates formal responsibility, effective power and control of information. A minister may answer politically for a decision he did not personally make. An official may exercise real discretion without formal authority. An expert may shape every available option without possessing the legal power to choose. A committee may divide a decision so widely that no member experiences himself as its author.

The answer is not to find one person to blame whenever something goes wrong. That would be scapegoating. The constitutional task is harder: to reconstruct who actually knew, decided, influenced, authorised or could have acted otherwise where consequential discretion existed.

A useful distinction follows:

## Formal office is not effective power. Effective power is not informational control. None alone equals human authorship.

Responsibility should track the relevant combination of causal contribution, knowledge, discretion, authority and capacity to act otherwise. Sometimes that will lead to one person. Sometimes to several. Sometimes the evidence will show that individual responsibility is genuinely limited and that institutional responsibility properly carries most of the burden. Traceability does not predetermine culpability; it prevents complexity from predetermining innocence.

This exposes a striking asymmetry. The citizen is increasingly legible to the state. Tax, identity, financial and administrative systems can connect conduct to a named person with remarkable precision. Government may publish more records than ever through freedom-of-information laws, parliamentary archives and digital disclosure. Yet more information does not necessarily make the human authors of consequential public power easier to identify.

A citizen may receive thousands of pages and still be unable to answer four elementary questions: Who decided? Who knew? Who authorised it? Who could have stopped it?

A constitutional order should not have to depend on an office-holder's later memory, candour or cooperation to discover how serious public power was exercised. Where the stakes are high, the chain of information, advice, objection, discretion and approval must remain recoverable. The purpose is not paperwork. The purpose is authorship.

## III. The Institution as a Moral Environment

**An institution has no conscience. But it is not morally inert.**

The problem of many hands explains why responsibility can disappear after a decision. A second problem begins earlier: what happens to conscience while the decision is being made? An institution has no conscience of its own. But it can shape the conditions in which human conscience must operate.

Institutions establish purposes and hierarchies. They define professional competence. They reward some behaviour and discourage other behaviour. They create the language through which action is understood. They decide what counts as success, which risks matter, which objections are serious and which doubts are inconvenient. The danger is double: human authorship can disappear inside the structure while the structure itself shapes the moral judgment of the people acting through it.

### Necessary discipline

No functioning institution can exist without role obligation. A civil servant cannot disregard lawful ministerial direction merely because he would have chosen a different policy. A judge cannot replace law with private morality. A military organisation cannot function if every lawful order is endlessly renegotiated. Cabinet government requires forms of collective discipline. Professional organisations require standards.

Proto-Democracy does not constitutionalise personal preference. Conscience is not a licence for an official to make himself sovereign over lawful authority.

But role discipline has a boundary. The duty to perform a role cannot become a duty to suspend moral judgment about one's own participation in the exercise of power. The constitutional order needs officials capable both of serving legitimate institutional purposes and of recognising that no institutional purpose can become the final source of morality.

## From role to obedience

The transition is rarely abrupt. Legitimate purpose creates role obligation. Role obligation encourages loyalty. Loyalty creates pressure to conform. Conformity makes doubt costly. Costly doubt is more easily withheld. Withheld doubt becomes deference. Deference can become obedience.

None of the early steps is inherently illegitimate. Institutions need loyalty, coordination and trust. The danger begins when the official's governing question changes.

Instead of asking, 'Is this right, lawful and proportionate?', he increasingly asks, 'What does my institution require of me?' The deeper change arrives when institutional requirement itself begins to answer the moral question.

**The official no longer asks whether the institution is right. He asks what being a good member of the institution requires him to do.**

Another path remains possible.

In March 2026, Joe Kent resigned as Director of the United States National Counterterrorism Center over the US war with Iran. Kent was not an institutional outsider. He had served twenty

years in the US Army, completed eleven combat deployments, served in Special Operations and later as a CIA paramilitary officer. His wife, Shannon, a Navy cryptologist, had been killed in a 2019 ISIS attack in Syria. He had been appointed to lead the NCTC by the President whose policy he was now rejecting. In his resignation letter, he wrote: “I cannot in good conscience support the ongoing war in Iran.”[5]

Whether Kent was right about Iran is not the point. Resignation does not make a moral judgment correct. The constitutional significance is that he made the judgment as his own. He did not treat office, loyalty, expertise or presidential authority as sufficient to settle the moral question for him. He reached a conflict between institutional direction and personal conviction and accepted a personal consequence rather than silence the conflict.

> **That is what retained conscience looks like inside power.**

It still exists. Its rarity is one reason it is so visible. More importantly, it proves that institutional discipline need not extinguish human moral agency. A person can remain inside a chain of authority and still recognise a point at which obedience no longer answers the question he believes he must answer.

Albert Bandura's work on moral disengagement helps explain how this can occur without requiring malicious actors. Moral justification can recast harmful conduct as serving a worthy purpose; euphemistic language can sanitise it; responsibility can be displaced upward or diffused across a group; consequences can become psychologically remote.[6] The point is not that bureaucracy mechanically produces immoral conduct. It is that

institutional conditions can make moral self-sanction easier to disengage.

The people involved may remain entirely conscientious in ordinary life. They may be sincere, diligent and committed to public service. That is precisely why the danger matters. The State Without Conscience does not require bad people. It requires an institutional environment in which the independent exercise of conscience becomes progressively less consequential.

## Instrumental criticism and moral criticism

An institution can be highly self-critical and still resist the question that matters most. The distinction is between instrumental and moral criticism.

Instrumental criticism asks: Are we achieving the institutional objective effectively? Can the model be improved? Can implementation be faster? Can communication be clearer? Can enforcement be more consistent?

Moral criticism asks a different question: Should the institution be pursuing this objective, by these means, at all?

An organisation can reward the first and marginalise the second. Highly sophisticated institutions may analyse themselves constantly while treating a challenge to settled purpose as evidence of naivety, disloyalty, lack of expertise or insufficient commitment.

**The relevant constitutional test is not whether an institution permits criticism. It is whether it remains capable of receiving criticism that questions its own settled purposes, assumptions and exercise of authority.**

Dissent does not have to prevail, and dissenters are not presumptively right. But an institution that can no longer hear unwelcome information loses a source of correction before the citizen, court, parliament or inquiry ever gets the chance to intervene.

### Institutional Moral Substitution

Institutional Moral Substitution occurs when institutional purpose, procedure, expertise, professional consensus or organisational loyalty begins to perform the moral function that independent human judgment ought to perform.

It has at least two forms.

Passive substitution says: I complied with the procedure; therefore my responsibility is discharged.

Active substitution says: the institution has determined the legitimate objective; therefore serving that objective is morally sufficient.

The second reaches deeper. Procedure can become an alibi after the act. Institutional purpose can become moral permission before it.

**The most constitutionally dangerous form of moral substitution may occur not when officials cease caring about morality, but when institutional purpose becomes their morality.**

A censor can believe he protects truth. A prosecutor can believe he protects democracy. A regulator can believe exclusion is necessary for safety. An official can withhold information because disclosure is judged harmful to the public interest. Any of those judgments may, in a particular case, be justified. The danger is structural: once the proclaimed good of the institution is allowed to settle the moral question by itself, coercion becomes easier to reconcile with virtue.

The same institutional movement can operate in two directions. Inside the institution, conscience can be displaced by conformity. Outside it, consent can be displaced by compliance.

Inside the institution, the message is: your role is to implement. Outside it, the citizen hears: your role is to comply. Internal dissent becomes a problem of loyalty; external dissent becomes a problem of governance. The institution may remain formally lawful throughout. What changes is whether correction is still genuinely welcome.

This is the point at which Paper #2 reconnects with Paper #1. Paper #1 asked whether the citizen remains capable of correcting delegated authority from outside. Paper #2 asks whether the human actor remains capable of moral correction from inside.

The State Without Conscience therefore emerges through two routes. The first is diffusion: distributed power, many hands, diffused responsibility, institutional explanation, responsibility without consequence. The second is subordination: institutional purpose, organisational loyalty, conformity pressure, suppression of independent judgment, institutional moral substitution, obedience.

**The State Without Conscience emerges where responsibility becomes difficult to locate at the same time that independent conscience becomes difficult to exercise.**

## IV. Responsibility Without Consequence

We can now return to the frustration with which this paper opened. Something fails. The explanation comes. The apology comes. Reform follows. Yet identifiable human consequence can remain elusive. It is tempting to say that political responsibility has disappeared. History requires a more careful claim.

There was no golden age in which ministers routinely resigned whenever government failed. Historical research in Britain and the Netherlands shows that departure has long depended upon political confidence, cabinet conflict, personal conduct and circumstance.[7][8]

The claim is not that personal responsibility once ruled public life and has now vanished. The change is subtler and more important.

**The doctrine of personal responsibility has survived. The institutional path from failure to personal consequence has become progressively more diffuse.**

The Dutch Council of State has described several features of this development: fragmentation of public tasks, blurred responsibility, more diffuse political-administrative relations and greater distance between politics and implementation, all of which can impede effective accountability. Its 2020 advice concluded that ministerial responsibility was functioning increasingly poorly in practice.[9]

British constitutional doctrine itself places information, explanation and remedial action alongside resignation, which is reserved for extreme cases.[10] Those mechanisms are necessary. The problem begins when the process can absorb responsibility without returning it to the people who exercised the power.

Four distinctions are useful.

Responsibility acknowledged: I accept that this falls within my responsibility.

Responsibility explained: this is how the failure occurred.

Responsibility repaired: this is how the harm will be remedied and recurrence prevented.

Responsibility consequentialised: because this occurred through authority entrusted to me, an appropriate consequence attaches to me.

The fourth does not always require resignation or punishment. Consequence can range from correction and censure to loss of

discretion, removal or legal liability. Room for good-faith error must remain; government would be paralysed if every failed judgment demanded personal sacrifice.

Explanation is not consequence. A system can become more procedurally accountable while leaving underlying human responsibility increasingly uncertain.

**The modern state may possess more accountability machinery than ever while making responsibility harder to locate.**

That is the paradox. Accountability becomes visible everywhere while responsibility becomes tangible nowhere.

Inquiry and institutional learning are indispensable. But they cannot become the endpoint. When the institution explains, apologises, reforms and continues while consequential human discretion disappears into the process, accountability has begun to consume responsibility.

At that point, the original relationship changes. 'I exercised authority; therefore I answer for its consequences' becomes 'the institution exercised authority; therefore the institution explains what happened.'

**When explanation becomes an accepted substitute for consequence, accountability remains procedurally visible while becoming constitutionally weaker.**

## V. The State Without Conscience in Practice

Two established cases and one live constitutional stress test illuminate different dimensions of the same problem. The first two rest on authoritative inquiry findings. The third concerns a continuing criminal case in which the relevant facts remain partly contested or unavailable.

### 1. Infected Blood: institutional defensiveness

The Infected Blood Inquiry did not uncover a single mistaken decision. It revealed institutions that continued defending their position after the need for doubt had become unavoidable. In its 2024 final report, Sir Brian Langstaff identified as a principal theme defensiveness in the NHS and particularly in government, compounded by groupthink among civil servants and ministers and by failures of transparency and candour. He found that this defensiveness compounded the original harm through failures to accept responsibility, provide answers, compensate those affected and offer meaningful recognition or apology.[11]

What matters here is not only that grave mistakes were made. Volume 7 shows how settled 'lines to take' could be repeated until they ceased to be questioned, describing groupthink as a closing of ranks around a position whether or not it was adequately justified. It also records the Department of Health as seeing itself as being on the defensive.[12] The human danger is plain: once defence of the institutional position becomes normal, contradiction can start to look less like information and more like threat.

The Inquiry also shows why collective responsibility cannot end the analysis. A finding of failure across officials, ministers and

institutions raises rather than removes the Proto-Democratic question: how should varying degrees of knowledge, discretion and human responsibility remain distinguishable inside collective failure?

The answer cannot be retrospective scapegoating. Nor can collective failure mean that the failure belongs morally to no one.

## 2. Blind voor mens en recht: failure across the constitutional chain

Citizens were not failed at one point of contact. They were failed across the constitutional chain that should have protected them. In 2024, the Dutch Parliamentary Inquiry Committee on Fraud Policy and Public Services concluded in Blind voor mens en recht that all three branches of state had been blind to people and law: government and parliament failed, implementation acted unlawfully, the judiciary failed adequately to protect people, fundamental rights were violated and the rule of law was set aside.[13]

When every branch fails, responsibility does not become clearer. It begins to dissolve.

Policy formation, legislation, administrative execution, objection, political supervision and judicial protection form different parts of a corrective chain. When several fail together, saying that 'the state failed' may be institutionally accurate but morally incomplete. The wider the failure, the easier it becomes for every participant to see his own part as only partial.

The case therefore illustrates the distinction between institutional culpability and human authorship. A constitutional order can acknowledge systemic failure, compensate victims

and reform institutions while still struggling to answer which persons possessed consequential discretion at which moments and what responsibility followed from their use of it.

The case also demonstrates why the doctrine proposed here cannot simply demand resignation. The third Rutte cabinet did accept a collective political consequence in January 2021: Prime Minister Mark Rutte offered the resignation of all ministers and state secretaries to the King and stated that political responsibility ultimately lay with the sitting cabinet.[14] Yet the underlying human decision chain remained distributed across years, institutions and branches of government. Collective consequence can therefore be constitutionally meaningful without exhausting personal responsibility.

Together, the cases show two mechanisms. Infected Blood demonstrates institutional defensiveness and resistance to corrective knowledge. Blind voor mens en recht demonstrates responsibility dispersed across an extended constitutional chain. Neither proves a general pathology of democratic institutions. Both show that lawful institutional structures can coexist with grave harm, delayed correction and difficult human attribution.

That is sufficient for the argument. The State Without Conscience is a constitutional theory of how institutional organisation can weaken both independent moral judgment and the return path from public consequence to human responsibility.

## 3. Van Kessel: conscience under coercive power

We can now return to the house in Leeuwarden.

The constitutional question is no longer simply why armed officers entered it. It is what happened to human responsibility after they left.

Van Kessel was arrested on 11 June 2025 in the Barracuda investigation. The official Rechtspraak case page records the arrest of eight suspects, repeated pro forma proceedings, the release under conditions of four defendants in February 2026, the release of the last detained defendant on 22 April 2026, and the discontinuation of the cases against two other suspects. The substantive criminal hearing and judgment have not yet taken place.[2]

Van Kessel says that after six days in police custody in Leeuwarden, he was transferred to the terrorism unit at PI Vught, where he remained until 26 February 2026. He describes the beginning of that detention as twenty-three hours a day in isolation under “volledige beperkingen”, without contact with the outside world, and says his wife initially did not know where he was being held.[15]

He describes a cell window facing concrete and an exercise yard enclosed by four concrete walls, with the sky visible only through a grille above. His account is testimony, not an official finding. The legal status of Dutch “full restrictions” does not by itself establish solitary confinement under the Nelson Mandela Rules.[16]

That distinction matters. So does the human reality described.

The Nelson Mandela Rules define solitary confinement as twenty-two hours or more a day without meaningful human contact, define more than fifteen consecutive days as prolonged solitary confinement, prohibit prolonged solitary confinement, and require solitary confinement to be exceptional, a last resort,

as short as possible, independently reviewed and authorised by a competent authority.[17] Whether Van Kessel's actual conditions met those definitions is not established by the public official record.

That uncertainty limits what can responsibly be claimed about the precise legal classification of his detention conditions. It does not require moral neutrality about the cumulative use of coercive power.

Van Kessel spent 260 days in pre-trial detention before its suspension. The official Rechtspraak record confirms that, at the third pro forma hearing on 20 February 2026, four of the five defendants then before the court were permitted to await the substantive proceedings in freedom under GPS-monitoring conditions; the substantive hearing still had not begun. Reporting from that hearing records one defence lawyer asking whether people could simply remain in pre-trial detention while the investigation continued and saying that the damage already caused was "disproportionately great". Months earlier, Van Kessel's own defence lawyer had publicly argued, after reviewing the dossier, that there was in his view no legal reason to keep him detained.[18]

Neither statement establishes that the detention was unlawful. Both matter because they show that proportionality was not merely a criticism invented after release. It was being contested while the coercive power was still being exercised.

Whatever the eventual criminal verdict, the cumulative exercise of power was extraordinary: a pre-dawn counter-terrorism raid before his family; transfer to a terrorism unit; an initial regime which he describes as twenty-three hours a day in isolation and severely restricted contact with the outside world; and more

than eight months of pre-trial detention before release while the substantive case remained untried. Serious allegations may justify serious measures. They do not make duration, necessity and proportionality self-answering.

One need not accept Van Kessel's account of the criminal case to recognise the asymmetry. The state possessed his liberty, his physical environment, much of the evidence, the timetable of the investigation and the institutional machinery through which detention was reviewed. Van Kessel possessed the consequences.

> **That asymmetry is precisely where conscience should become most visible.**
>
> **The less the outside world can see, the more, not less, conscience matters on the inside.**

Where exceptional coercive power is exercised under conditions largely inaccessible to outsiders, the institution holds much of the information required to test necessity and proportionality. Criticism can then be discounted because the relevant evidence lies principally within the institutional system itself. Uncertainty is not evidence of institutional wrongdoing. But institutionally sustained uncertainty cannot become a constitutional safe harbour.

Someone approved the arrest strategy. Someone assessed the threat. Someone approved the conditions of detention. Someone reviewed, renewed, modified or ended them. As days became weeks and weeks became months, human beings remained inside every institutional decision.

> **Who remained personally responsible for asking whether the extraordinary treatment of the man taken from that house at five in the morning was still necessary?**

That is the conscience question. “I judge this treatment necessary and remain answerable for that judgment” is morally different from “the system permits this treatment”. The principle must hold irrespective of the detainee’s politics, profession or eventual guilt.

The case therefore adds one precise element to the doctrine developed here: traceability after the event is insufficient if human conscience is absent during the event. Proto-Democracy requires contemporaneous conscience and retrospective traceability.

## VI. When Conscience Does Not Correct Power

### The Second Safeguard

Joe Kent resigned. Many officials do not.

That does not mean those who remain are corrupt, cowardly or without conscience. They may sincerely believe themselves right. They may possess different information. They may judge loyalty, necessity or proportionality differently. They may fail to recognise the moral significance of their own part in a decision. Conscience can be courageous and still mistaken. It can also remain silent when it should speak.

> **A constitutional order therefore cannot depend upon conscience succeeding.**

Paper #2 has argued that conscience must remain alive inside power. Paper #1 established the corresponding safeguard outside it: when the human actor does not correct himself, the citizen must remain capable of correcting the authority he exercises. That is why Attribution, Justification, Contestability, Effective Reversibility, Consequence and Recoverability matter.

> **Conscience is the first opportunity for correction. Constitutional corrigibility is the second.**

Neither is sufficient alone. A good person inside a bad structure cannot guarantee liberty. A sophisticated accountability structure cannot manufacture a good person. Constitutional government needs both an internal capacity for moral self-correction and an external path by which justified challenge can alter policy, repair harm and reach the people exercising power.

> **Attribution must ultimately be capable of reaching human authorship. Consequence must ultimately be capable of reaching human responsibility.**

This is why peaceful correction matters. Governments will fail. Experts will be wrong. Courts will make contested judgments. Administrations will sometimes act unlawfully. Democratic legitimacy cannot depend upon the absence of failure. It

depends upon whether failure can still travel through a credible corrective circuit.

When conscience fails and external correction also becomes ineffective, grievance has nowhere lawful to go. A state may continue to explain itself in ever greater procedural detail while citizens cease to believe that explanation can change anything. The political danger is not failure alone. It is repeated failure without a credible return path from power to consequence.

> **Constitutional democracy is strongest when peaceful correction remains credible enough to make resort to force irrational.**

## VII. What Must Remain Human

### The Doctrine of Human Responsibility

> **We cannot command a person to have a conscience.**

We cannot regulate courage into existence. We cannot write a procedure that guarantees that, when everyone around him says continue, one person will still be willing to say stop. Joe Kent could resign. Another official may sincerely reach the opposite judgment. A third may never question the institution at all.

> **Constitutional design cannot decide in advance which of them is morally right. It can decide whether the human being is allowed to disappear.**

That is the purpose of the Doctrine of Human Responsibility. Thompson gives us the problem of many hands. Bandura helps explain displacement and diffusion of moral responsibility. List and Pettit show why organised collectives may themselves qualify as responsible agents. Proto-Democracy asks what constitutional conditions must remain when neither institutional complexity nor institutional purpose may sever consequential power from the human moral agency through which it is exercised.

The answer has two temporal dimensions: conscience must remain meaningfully active before and during the exercise of consequential power; responsibility must remain traceable afterwards. Six principles follow.

### 1. Retention of Conscience

You do not surrender your conscience when you receive public authority.

No delegation of public authority entails the delegation of human conscience. A person does not cease to be a moral actor by entering public office, joining an agency, accepting a professional role or acting under institutional authority.

This principle does not authorise officials to replace lawful democratic authority with personal preference. It means that lawful office cannot extinguish the obligation to judge one's own participation in consequential exercises of power. The

obligation intensifies, rather than recedes, as the coercive effect upon another person becomes more severe.

**Public office disciplines conscience. It cannot legitimately abolish it.**

### 2. Protected Moral Agency

A person cannot exercise independent judgment if disagreement itself threatens his place inside the institution.

Institutions exercising consequential public power should preserve meaningful space for professional doubt, moral objection, internal contradiction and the communication of unwelcome information.

This is not a right of every dissenter to prevail. Nor is every objection principled. Institutions must decide. But an institution that cannot tolerate contradiction becomes progressively incapable of distinguishing loyalty from obedience.

Protected moral agency therefore requires more than a formal whistleblowing channel. The deeper question is cultural and constitutional: can a person question the assumptions or moral implications of an institutional course without being treated, merely for doing so, as professionally defective or disloyal?

The objective is not permanent internal opposition. It is to keep institutional purpose exposed to human judgment.

### 3. Responsibility Follows Effective Power

Titles are not enough. Find the people who could actually decide, stop, change or continue the action.

Human responsibility should follow consequential discretion rather than formal office alone.

Relevant questions include: Who could decide? Who could prevent? Who could alter? Who approved? Who possessed material information? Who knowingly sustained a course after its consequences became apparent? Where coercion continues over time, responsibility also follows the power to review, renew, modify or terminate it.

Not every participant in a chain carries equal responsibility. Knowledge, expertise and effective discretion may increase personal responsibility; coercion, constrained authority and reasonable reliance upon others may mitigate or eliminate it. The doctrine seeks attribution, not blame by association.

**Responsibility follows effective power, not merely organisational position.**

### 4. No Institutional Absolution

No office, procedure or chain of command can turn a human act into an authorless event.

Procedure, hierarchy, mandate, expertise, collective decision and organisational loyalty may condition responsibility. None automatically extinguishes it.

'I followed the rules' is constitutionally relevant. It is not necessarily morally conclusive. The same is true of 'I followed orders', 'I relied upon expert advice', 'the cabinet decided collectively' or 'that was established policy'. Each may constitute a powerful justification. None should function as an automatic transfer of human agency into an abstraction.

The central rule is simple:

**Procedure may explain a decision. It cannot, by itself, absolve its human author.**

### 5. Traceability and Compensating Accountability

The less the public is allowed to see, the more important it becomes that someone independent can see.

The purpose of traceability is not to document every administrative act. It is to prevent consequential public power from becoming humanly authorless.

Where public decisions can seriously affect rights, liberty, livelihood, property or political participation, the institutional record should be sufficient to reconstruct the relevant chain of information, advice, objection, discretion and approval. The required depth should be proportionate to the gravity, duration and reversibility of the power being exercised. Where legitimate secrecy or restricted observation prevents ordinary external scrutiny, independent scrutiny should intensify rather than recede.

This is not an argument for a larger compliance state. On the contrary, excessive procedure can itself diffuse responsibility by allowing every actor to point to process. Records and review matter only insofar as they preserve authorship and make serious exercises of power independently testable.

**The institutional record exists in service of human responsibility. Human responsibility does not exist in service of the institutional record.**

**The more coercive the power and the less independently observable its exercise, the greater the constitutional burden of traceability, disclosure and compensating accountability.**

### 6. Proportionate Human Consequence

Responsibility that can never produce consequences eventually becomes only a description.

Where serious failure is attributable to identifiable exercises of consequential human discretion, accountability must be capable of reaching the responsible actor as well as the institution.

Consequence must remain proportionate. Good-faith error, incomplete information, reasonable reliance, constrained discretion and the genuine difficulty of public decision-making matter. A constitutional order that punishes every mistake will create risk aversion, concealment and still more defensive bureaucracy.

**Traceability is not scapegoating. Consequence follows responsibility, not merely failure.**

The doctrine therefore rejects two opposite errors. One is to make every institutional failure personal. The other is to allow institutional form to make personal responsibility impossible.

Taken together, these principles produce a constitutional proposition broader than traceability alone:

**Constitutional government requires institutions to constrain human fallibility without allowing institutions to extinguish human moral agency.**

That is why The State Without Conscience cannot be repaired merely through another oversight office, another reporting duty or another declaration of values. The institution must remain capable of being contradicted by the people inside it; the human actor must remain capable of being found behind it; and responsibility must remain capable of producing proportionate consequence.

Conscience where possible. Accountability where necessary. Consequence where responsibility requires it.

## Conclusion

### No Authority Beyond Responsibility

Paper #1 established that legitimate delegated authority must remain corrigible and recoverable by the person from whom it ultimately derives. This paper has followed power in the other direction: inside the institution, to the human being who exercises it.

The State Without Conscience is not a state populated by people without conscience. It is a condition in which responsibility becomes difficult to locate while independent conscience becomes difficult to exercise. Power passes through many hands. Institutional purpose, loyalty and settled procedure can then make it easier for each hand to experience itself as only part of the process.

## Authority can be delegated. Conscience cannot.

But that proposition leaves one final question unanswered.

## Why should conscience matter at all?

Why should a person who can justify himself to his colleagues, satisfy the procedure, retain his office and avoid legal consequence still wake at three in the morning with the question: Did I do right? Why does remorse survive when the institution has already said that the decision was authorised? Why can shame remain after every external tribunal has fallen silent?

## And when a person asks, “Did I do right?”, who is he asking?

If the self is both judge and source of the standard, the question eventually collapses into preference: the self can rewrite what the self created. If the institution is the source, procedure can acquit. If the majority is the source, popularity can acquit. A secular moral realist may ground objective moral obligation without theology. Proto-Democracy makes a more specific claim: the moral standard is real, it is not manufactured by any human authority, and its ultimate source is God.

Proto-Democracy does not leave that question suspended. Its answer is theological. The moral order is not created by the state, the institution, the majority or the individual. It precedes them. In the biblical formulation, the law is written on the human heart and conscience bears witness; in the natural-law

tradition, human reason participates in an order of good that it does not invent.[19]

That is why the Proto-Democratic hierarchy is God, person, institution. The person precedes the institution politically not because the individual is morally sovereign, but because both the person and the institution stand beneath a moral order higher than either. The institution receives delegated authority. The person bears conscience. Neither creates the good to which power is answerable.

Conscience is therefore not merely an internal feeling. It is the human capacity to experience oneself as answerable beyond convenience, role and command. It can be mistaken and must be formed; it cannot replace law. But without the possibility of such higher answerability, morality inside power is reduced to whatever the institution can successfully authorise.

This is why shame and remorse matter without becoming constitutional tests. Their importance is not that every good official must display them. It is that they reveal something no institution can manufacture: the possibility that a human being recognises that lawful permission, professional approval and personal advantage have not settled the moral question.

Joe Kent's resignation matters here for the same reason that Van Kessel's detention matters from the opposite side of power. One shows a human actor refusing to let institutional direction complete his moral judgment. The other shows why that judgment matters when the institution possesses another person's liberty and outsiders cannot fully see what occurs inside.

> **One human being exercises power. Another human being experiences it. The institution must never make either disappear.**

The Doctrine of Human Responsibility follows from that proposition. Institutions must preserve meaningful moral agency before and during consequential exercises of power; the more coercive and less observable that power becomes, the stronger the requirement for independent scrutiny; human responsibility must remain traceable afterwards; and established responsibility must remain capable of proportionate consequence. Collective responsibility may supplement that chain, but cannot automatically absorb the human beings through whom institutional power was exercised.

Constitutions cannot guarantee courage. They cannot make a minister resign, an officer refuse, a civil servant speak, a prosecutor reconsider, a judge doubt or an institution apologise. But they can preserve the conditions in which those acts remain possible.

> **Behind every office, mandate, department, court, agency and command there must remain a person capable of saying: I exercised this power. I knew what it could do. I judged it necessary. And I remain answerable for that judgment.**

> **Or, when conscience requires something harder: I can no longer defend it. I will not lend my authority to it. The consequence is mine.**

That is not administrative accountability. That is human responsibility.

The first two Proto-Democratic papers therefore establish two requirements. Authority must remain recoverable. Responsibility must remain traceable. If either chain breaks, power begins to separate from the person.

A constitutional order that can no longer return power to the citizen or responsibility to the decision-maker has lost both ends of its moral chain. Authority becomes remote. Responsibility becomes anonymous. Correction becomes increasingly theoretical.

> **If authority must remain recoverable and responsibility must remain humanly traceable, distance is no longer merely an administrative question. It becomes a constitutional limit.**

Existing European subsidiarity doctrine asks, in defined fields, whether objectives can be sufficiently achieved by Member States and better achieved at Union level; the Treaties separately state that decisions should be taken as closely as possible to the citizen.[20] Proto-Democracy asks a different,

prior question: how far can authority travel before recoverability and responsibility become structurally impaired?

**That is the question of subsidiarity.**

## Notes and selected sources

[1] Ido Dijkstra, 'Arno is geen terrorist, maar een grote teddybeer', De Andere Krant, 28 February 2026. Sander Webbers, Van Kessel's 21-year-old stepson, gives an eyewitness account of the 11 June 2025 arrest: waking to a firearm pointed towards him, seeing Van Kessel blindfolded and handcuffed, and his younger sister believing she was going to die. Webbers also expressly corrects exaggerated social-media claims about the duration for which the family was held at gunpoint. The account is cited as attributed eyewitness testimony, not as an official finding. https://deanderekrant.nl/arno-is-geen-terrorist-maar-een-grote-teddybeer/ (accessed 4 September 2026).

[2] Rechtspraak, 'Strafzaak Barracuda', Rechtbank Noord-Nederland. The official case page records the arrests of eight suspects on 11 June 2025; pro forma hearings on 10 September and 4 December 2025 and 20 February 2026; the February decision allowing four of five defendants then before the court to await the substantive proceedings in freedom under GPS-monitoring conditions; the discontinuation of the cases against two other suspects; and the 22 April 2026 decision allowing the last detained defendant to await the case in freedom. The page states that the substantive hearing and judgment have not yet taken place. https://www.rechtspraak.nl/bekende-rechtszaken/barracuda (accessed 4 September 2026).

[3] Christian List and Philip Pettit, Group Agency: The Possibility, Design, and Status of Corporate Agents (Oxford: Oxford University Press, 2011), especially Part III and ch. 7, 'Holding Group Agents Responsible', pp. 153-169, DOI 10.1093/acprof:oso/9780199591565.001.0001, ISBN 978-0-19-959156-5. Accessed 4 September 2026.

[4] Dennis F. Thompson, 'Moral Responsibility of Public Officials: The Problem of Many Hands', American Political Science Review 74, no. 4 (December 1980): 905-916, DOI 10.2307/1954312. Thompson argues that many-handed government makes moral responsibility difficult to ascribe and defends personal responsibility using causal and volitional criteria. Accessed 4 September 2026.

[5] Office of the Director of National Intelligence, 'DNI Gabbard Welcomes Joe Kent as National Counterterrorism Center Director', 31 July 2025, recording Kent's twenty years of Army service, eleven combat deployments, Special Operations service and subsequent CIA paramilitary service; Erin Banco and Phil Stewart, Reuters, 'Top US security official quits, says Iran did not pose immediate threat', 17 March 2026, reporting Kent's resignation as NCTC Director and his statement that he could not 'in good conscience' support the war in Iran. ODNI: https://www.odni.gov/4781/pr-20-25/ ; Reuters: https://www.reuters.com/world/middle-east/us-national-counterterrorism-center-director-resigns-over-war-iran-2026-03-17/ . Accessed 4 September 2026.

[6] Albert Bandura, 'Moral Disengagement in the Perpetration of Inhumanities', Personality and Social Psychology Review 3, no. 3 (1999): 193-209, DOI 10.1207/S15327957PSPR0303_3.

[7] Keith Dowding and Won-Taek Kang, 'Ministerial Resignations 1945-97', Public Administration 76, no. 3 (1998): 411-429, DOI 10.1111/1467-9299.00109.

[8] Charlotte Brand, Gevallen op het Binnenhof: Afgetreden ministers en staatssecretarissen 1918-1966 (Amsterdam: Boom, 2014), 368 pp., ISBN 978-90-8953-311-1; Anne Bos, Verloren vertrouwen: Afgetreden ministers en staatssecretarissen 1967-2002 (Amsterdam: Boom, 2018), 352 pp., ISBN 978-90-8953-313-5.

[9] Afdeling advisering van de Raad van State, Ongevraagd advies over de ministeriële verantwoordelijkheid, W04.20.0135/I, vastgesteld 3 June 2020, advies/publicatie 15 June 2020, Bijlage Kamerstukken II 2019/20, 35 300, nr. 78. https://www.raadvanstate.nl/adviezen/@121354/w04-20-0135/ (accessed 4 September 2026).

[10] House of Commons Public Administration Select Committee, Government by Inquiry, First Report of Session 2004-05, HC 51-I (London: The Stationery Office, 3 February 2005), paras. 167-168. https://publications.parliament.uk/pa/cm200405/cmselect/cmpubadm/51/51i.pdf (accessed 4 September 2026).

[11] Infected Blood Inquiry, The Report, Volume 1 (London: HMSO, May 2024), Overview, principal themes, p. 14. https://www.infectedbloodinquiry.org.uk/sites/default/files/Volume_1.pdf (accessed 4 September 2026).

[12] Infected Blood Inquiry, The Report, Volume 7 (London: HMSO, May 2024), ch. 7.3, 'Lines to Take', text accompanying nn. 222-223 and 546-550. ISBN 978-1-5286-4685-7. https://www.infectedbloodinquiry.org.uk/sites/default/files/Volume_7.pdf (accessed 4 September 2026).

[13] Parlementaire enquêtecommissie Fraudebestrijding en Dienstverlening, Blind voor mens en recht, Kamerstukken II 2023/24, 35 867, nr. 6, 26 February 2024. https://www.tweedekamer.nl/kamerstukken/detail?did=2024D06757&id=2024Z02942 (accessed 4 September 2026).

[14] Rijksoverheid, 'Minister-president Rutte biedt ontslag aan van kabinet', 15 January 2021; and 'Letterlijke tekst persconferentie na ministerraad 15 januari 2021'. https://www.rijksoverheid.nl/actueel/nieuws/2021/01/15/minister-president-rutte-biedt-ontslag-aan-van-kabinet ; https://www.rijksoverheid.nl/documenten/2021/01/15/letterlijke-tekst-persconferentie-na-ministerraad-15-januari-2021 (accessed 4 September 2026).

[15] Ido Dijkstra, 'Arno van Kessel - Beschadigd, niet gebroken', De Andere Krant, 25 April 2026. In this interview Van Kessel states that he was initially placed under 'volledige beperking' and describes that period as twenty-three hours a day in isolation without contact with the outside world. This is cited as Van Kessel's own account, not as an independently established official finding. https://deanderekrant.nl/arno-van-kessel-beschadigd-niet-gebroken/ (accessed 4 September 2026).

[16] Wetboek van Strafvordering, art. 62, provides that restrictions on a detained suspect must be strictly necessary in the interest of the investigation or order and may include restrictions concerning visits, telephone traffic, correspondence and other aspects of detention. The Openbaar Ministerie commonly explains 'volledige beperkingen' as a regime in which the suspect may have no contact with the outside world except with counsel. These legal and official descriptions do not by themselves establish solitary confinement as defined by the Nelson Mandela Rules. https://wetten.overheid.nl/BWBR0001903

; see, e.g., Openbaar Ministerie, 'Man verdacht van levensdelict 90 dagen langer vast', 12 August 2021, https://www.om.nl/actueel/nieuws/2021/08/12/man-verdacht-van-levensdelict-90-dagen-langer-vast (accessed 4 September 2026).

[17] United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), A/RES/70/175, adopted 17 December 2015, Rules 43-45. Rule 44 defines solitary confinement as twenty-two hours or more a day without meaningful human contact and prolonged solitary confinement as more than fifteen consecutive days. Rule 43 prohibits prolonged solitary confinement. Rule 45 requires solitary confinement to be exceptional, a last resort, as short as possible, independently reviewed and authorised by a competent authority. https://digitallibrary.un.org/record/816764 (accessed 4 September 2026).

[18] Rechtspraak, 'Strafzaak Barracuda', development of 20 February 2026; Ido Dijkstra, 'Arno van Kessel verlaat donderdag gevangenis in Vught', De Andere Krant, 20 February 2026, reporting the hearing and a defence lawyer's statement that the damage already caused was 'onevenredig groot'; Ido Dijkstra, 'Exclusief interview met advocaat van Van Kessel: “We gaan voor volledige vrijspraak”', De Andere Krant, 5 September 2025, in which Van Kessel's defence lawyer states that in his view there was no legal reason to keep Van Kessel detained. The lawyers' assessments are cited as defence positions, not judicial findings. https://www.rechtspraak.nl/bekende-rechtszaken/barracuda ; https://deanderekrant.nl/arno-van-kessel-verlaat-donderdag-gevangenis-in-vught/ ; https://deanderekrant.nl/exclusief-

interview-met-advocaat-van-van-kessel-we-gaan-voor-volledige-vrijspraak/ (accessed 4 September 2026).

[19] Romans 2:15 describes the work of the law as written on human hearts, with conscience bearing witness. The natural-law tradition develops the same structure philosophically: Thomas Aquinas, Summa Theologiae I-II, q. 94, especially art. 1, describes synderesis as the 'law of our mind' containing the first principles of human action. See also Second Vatican Council, Gaudium et Spes, no. 16, on conscience as the place where the person discovers a law he has not laid upon himself. These sources state the theological and natural-law foundation adopted by Proto-Democracy; the constitutional argument does not depend upon treating conscience as infallible. Accessed 4 September 2026.

[20] Consolidated Version of the Treaty on European Union, OJ C 202, 7 June 2016, Articles 1 and 5(3), with Protocol (No. 2) on the Application of the Principles of Subsidiarity and Proportionality. Article 5(3) contains the legal subsidiarity test; Article 1 separately states that decisions are to be taken as openly as possible and as closely as possible to the citizen. https://eur-lex.europa.eu/eli/treaty/teu_2016/oj/eng (accessed 4 September 2026).

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