Why the SAFA NEC Must Not Vote

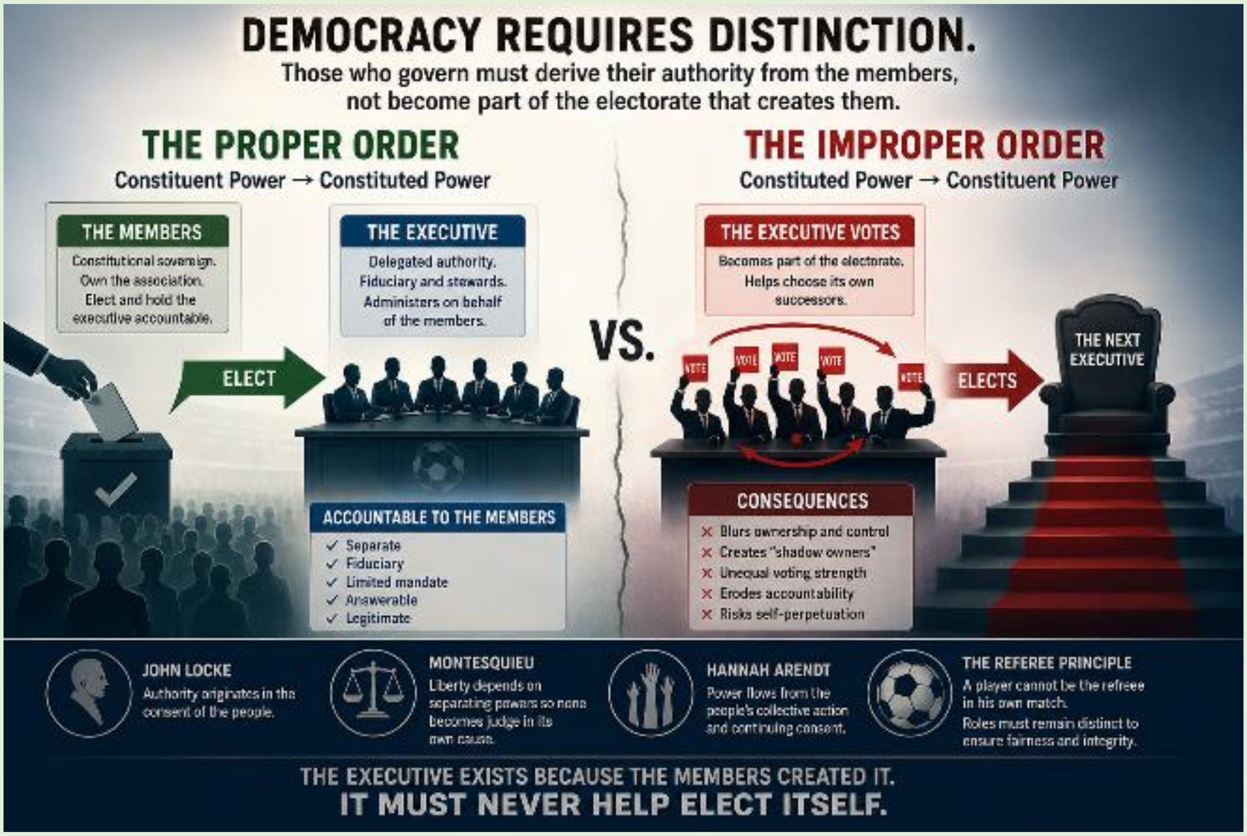
By Dennis A. Mumble
15 July 2026

This article is an updated extract of a section in chapter 2 of my 2022 book, *Our Football is Broken: How to Fix South African Football's Dispute Resolution System*.

The rumoured reinstatement of voting rights for members of the South African Football Association's (SAFA) National Executive Committee (NEC) by the SAFA Congress on 23 May 2026 invites consideration of a constitutional principle that has occupied political philosophers, jurists and corporate governance scholars for centuries: whether those entrusted with exercising delegated authority may simultaneously become part of the sovereign electorate responsible for conferring and renewing that authority.

Although the rumoured amendment reversed the position adopted in the 2022 SAFA Statutes, the issue it raises extends far beyond SAFA itself. It concerns the constitutional distinction between those who own and constitute an institution and those who govern it on the owners' behalf.

If true, the decision of the SAFA Congress to extend voting rights to members of the NEC fundamentally alters the



constitutional character of the Association. In doing so, Congress diluted the voting strength of SAFA's recognised Members by creating a new class of voter – the executive office-bearer – despite FIFA's directive of 26 September 2012 that NEC members should not participate in elections for the National Executive Committee because such elections belong to the Members of the Association.

Contrary to SAFA's public assertions, FIFA never withdrew or amended that directive, even after being requested to reconsider its position.

The philosophical objection to this arrangement, however, does not depend solely upon FIFA's directive. It arises from far older and more fundamental principles of democratic governance, constitutional theory and corporate governance.

Even if FIFA had approved such an arrangement — which it did not — the extension of voting rights to NEC members would remain difficult to reconcile with the foundational principle that those who exercise delegated authority cannot simultaneously become part of the sovereign body from which that authority is derived.

This principle was succinctly captured by Professor Michael Katz during his governance presentation to the SAFA National Executive Committee on 27 August 2010, when he observed:

> "*Governance arises from the separation between ownership and control. If you take a company, there are some people who own it — the members or shareholders. In that company there are other people who control it, the directors. That is the famous concept of the separation between ownership and control.*"

That observation reflects one of the central pillars of modern corporate governance. South African courts have consistently recognised that voluntary associations are expected to adhere to governance standards comparable to those applicable to companies, including the principles embodied in the Companies Act and the King Code of Corporate Governance. Those principles are not confined to commercial enterprises; they express universal standards governing the relationship between those who own an institution and those entrusted with managing it.

SAFA itself reflects this constitutional architecture. As a *universitas*, it exists as a legal person separate from its members and possesses perpetual succession.

Its Members constitute the constitutional foundation of the Association, while the National Executive Committee is merely one of several internal organs created by the Statutes to exercise executive authority on behalf of those Members.

The NEC is therefore not an independent constitutional constituency; it is an institution whose existence, powers and legitimacy derive entirely from the Members who established it.

The difficulty arises when executive office is transformed into a source of electoral power. By granting voting rights to NEC members purely because they occupy executive office, the Statutes dissolves the distinction between ownership and control.

Executive office-bearers cease to be merely fiduciaries accountable to the Members and instead acquire constitutional rights equivalent to those of the Members themselves. No board of directors acquires shareholder status simply because its members have been elected to govern.

Likewise, no governing body should acquire an ownership interest in the institution merely because it has been entrusted with its administration. Governance presupposes accountability; accountability presupposes institutional separation.

The Statutes consequently create an unacceptable constitutional stratification within SAFA. One class of Members enjoys the full rights traditionally associated with membership; another is denied equivalent participatory rights; while a third category – the NEC – acquires voting rights not through membership but solely through election to executive office.

The result is the creation of what Professor Katz aptly described as "shadow owners": individuals who acquire rights proportionately equivalent to those of the constitutional owners without making any corresponding constitutional contribution to ownership itself.

The practical consequences are significant. Every NEC member must first be nominated by his or her Regional Member before election. Once elected, however, that individual's Region effectively acquires an additional vote in future elections through one of its own serving on the NEC. A Region represented on the NEC therefore enjoys greater electoral influence than a Region without executive representation.

In constitutional terms, this creates what may aptly be described as a "Super-Region", introducing an inequality that finds no justification in democratic principle. George Orwell's famous observation in *Animal Farm* – that "all animals are equal, but some animals are more equal than others" – captures the constitutional anomaly with uncomfortable precision.

More fundamentally, the voting strength of the executive expands automatically as the size of the NEC increases. The executive therefore acquires an ever larger proportion of the electoral college without any corresponding increase in the constitutional membership of the Association.

This is analogous to increasing a company's board of directors while simultaneously granting every new director voting rights equivalent to those of shareholders. The board gradually enlarges its influence over its own continuation in office without any increase in the underlying ownership of the company.

Political philosophy has long recognised the dangers inherent in such an arrangement. John Locke argued that all legitimate political authority originates in the consent of those who constitute the political community. Government possesses no original authority of its own; it exercises powers delegated to it by the people for limited purposes.

Executive authority is therefore fiduciary rather than sovereign. Those who govern derive their authority from the governed and remain accountable to them precisely because the source of authority lies outside the executive itself.

Modern constitutional theory expresses this distinction through the concepts of *constituent power* and *constituted power*.

Constituent power belongs to the constitutional sovereign – the Members – who establish the organisation, adopt its constitution and determine who shall govern.

Constituted power belongs to the institutions created by that sovereign authority, including executive committees, boards and office-bearers.

Their powers are derivative, not original. Their legitimacy depends upon preserving the distinction between those who create authority and those who exercise it.

Allowing the executive to participate in electing the executive fundamentally confuses these two forms of authority. Delegated power becomes partially involved in reproducing itself.

The relationship between principal and agent becomes circular rather than hierarchical, enabling the institution created by the Members to participate in determining its own future composition. The executive thereby begins, however incrementally, to resemble a constituent body rather than a constituted institution.

Montesquieu recognised that constitutional liberty depends upon maintaining institutional boundaries so that no institution becomes the judge of its own authority or the architect of its own continuation in office.

Hannah Arendt similarly distinguished between power and authority, arguing that genuine authority flows from the continuing consent of the political community rather than from institutional office. Institutions remain legitimate only so long as they faithfully reflect the authority originally vested in them by those whom they represent.

Once institutions begin reinforcing or reproducing their own authority, democratic legitimacy gradually gives way to institutional self-preservation.

Football itself provides perhaps the clearest illustration of the constitutional principle. The integrity of the game depends upon preserving a clear distinction between those who participate in the contest and those entrusted with administering it. A player does not become a referee merely because he possesses experience of the game, nor may a referee participate as a player in the very match over which he exercises authority.

The issue is not whether the individual acts honestly, but whether the constitutional structure preserves public confidence by maintaining institutional impartiality. The same principle applies to constitutional governance.

Election to executive office confers powers of stewardship and administration; it does not transform the office-holder into an additional component of the constitutional sovereign.

The issue is therefore not whether NEC members can be trusted to vote responsibly, nor whether their votes are numerically decisive. Constitutional legitimacy has never depended solely upon arithmetic. It depends upon preserving the integrity of the institutional relationships through which authority is created, exercised and renewed.

Members establish the executive; the executive does not establish itself. To permit delegated authority to participate in renewing its own constitutional mandate is to blur the distinction between constituent and constituted power, between owner and fiduciary, and between principal and agent.

In doing so, the Association risks replacing democratic accountability with institutional self-replication and weakening one of the oldest principles of constitutional governance: that those who govern must always derive their authority from the governed and must never become part of the sovereign body from which that authority flows.

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