

Comparing Constitutional Networks

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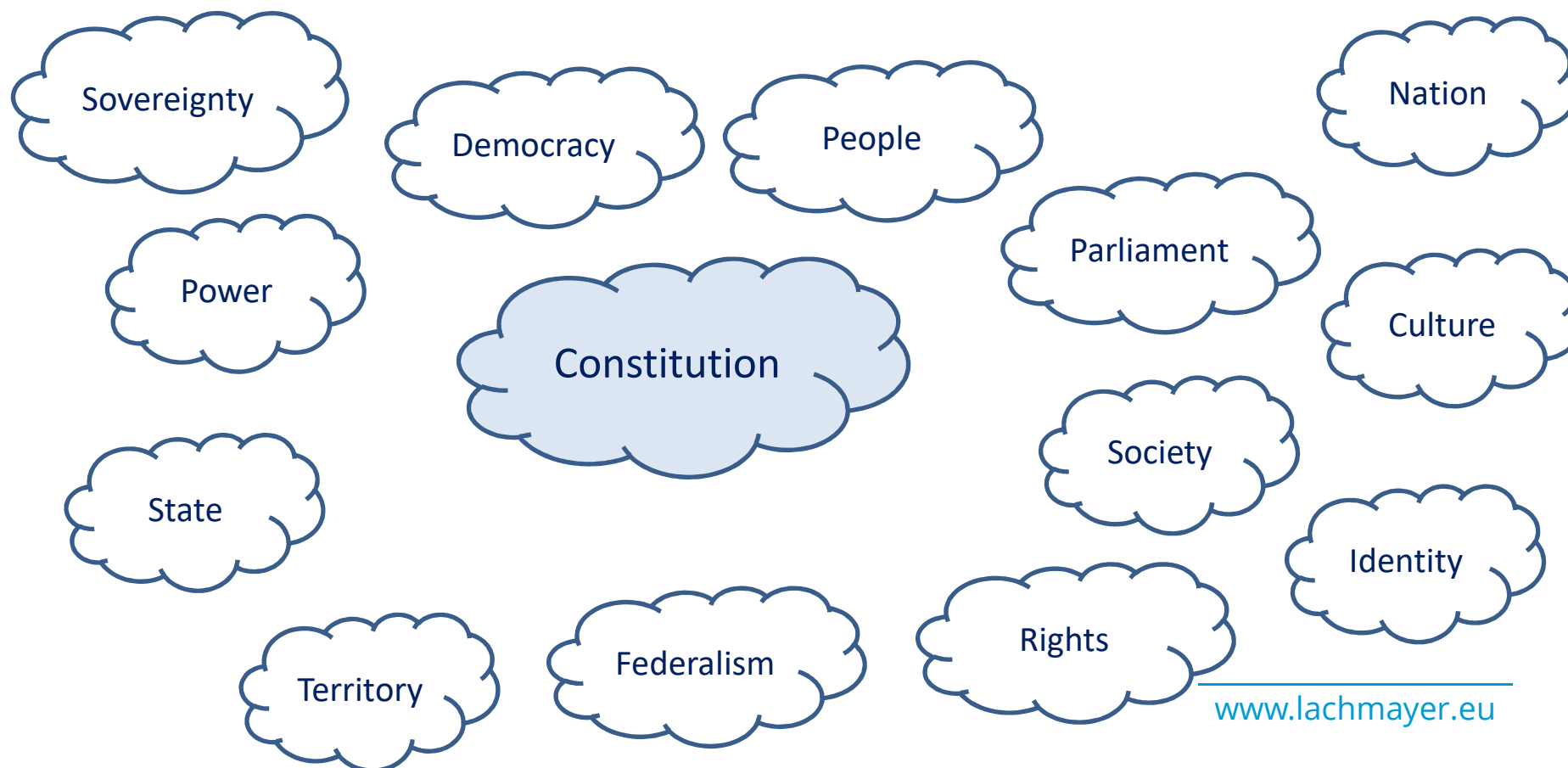
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Comparing Constitutional Networks

1. The Concept of Constitutional Law
2. Federalism and Sub-national Constitutions
3. Neo-Federalism and Transnational Constitutions
4. From Constitutional Fragments to Constitutional Networks
5. Methodological Consequences

1. The Concept of Constitutional Law

Constitution as State-building concept



Functions of Constitutional Law



Unifying political
power

Monopolising
(Political) Power

Legal expression of
political power

Structuring
(political) power

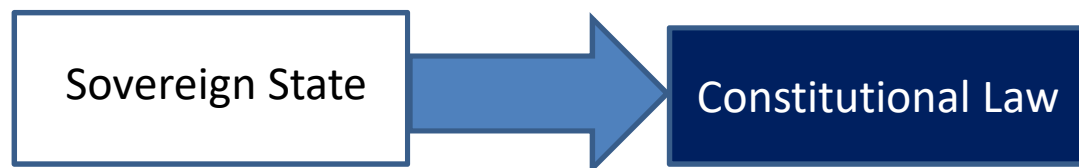
Legitimising and binding
(political) power

Addressee of
political demands:

- Democracy
- Human rights
- Social justice

...

Characteristics of Constitutional Law



Establishing a legal system, legal expression
of political authority

Unifying a social entity

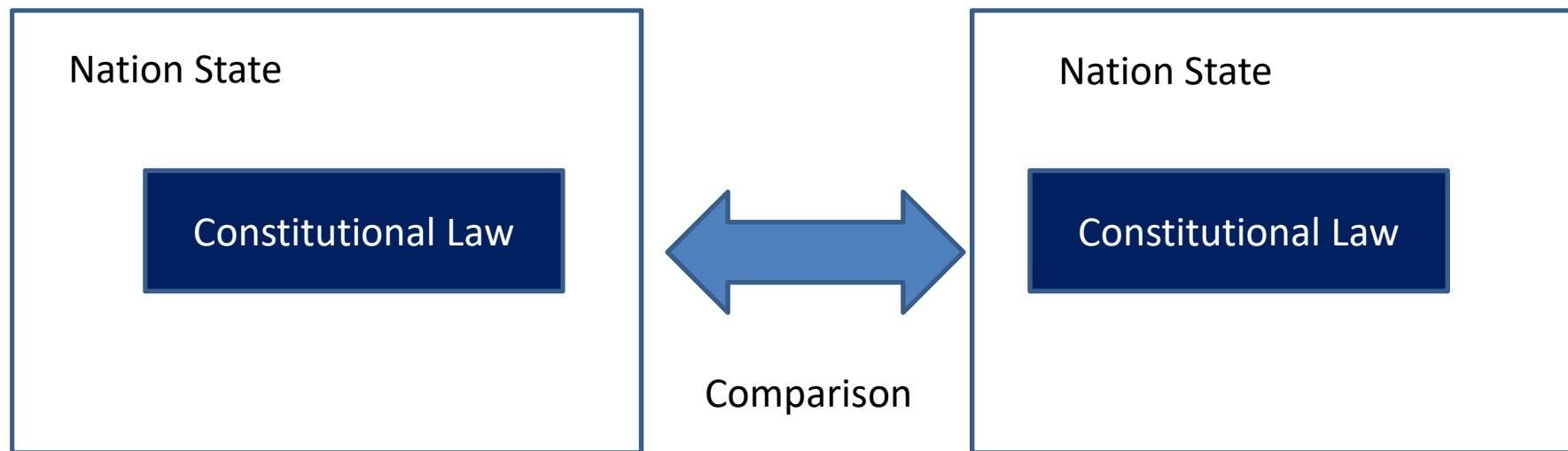
Re-structuring a unified entity („separation
of powers“)

Legitimizing and Binding Political Power
(„rule of law“)

„Constitution as a single,
unitarian, coherent level of law“

„Constitution as a higher, even
supreme level of law“

Comparative Constitutional Law



Ideas?

Function?

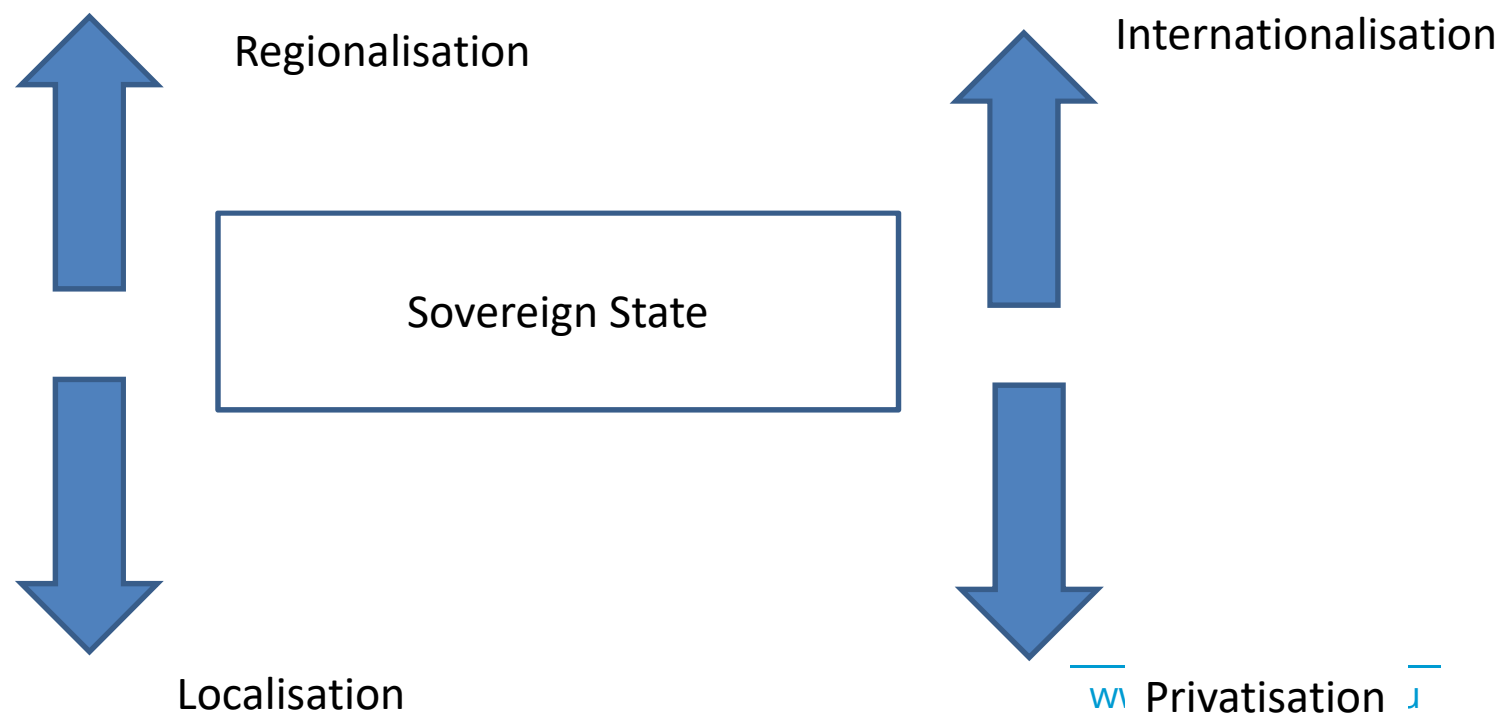
Culture?

Identity?

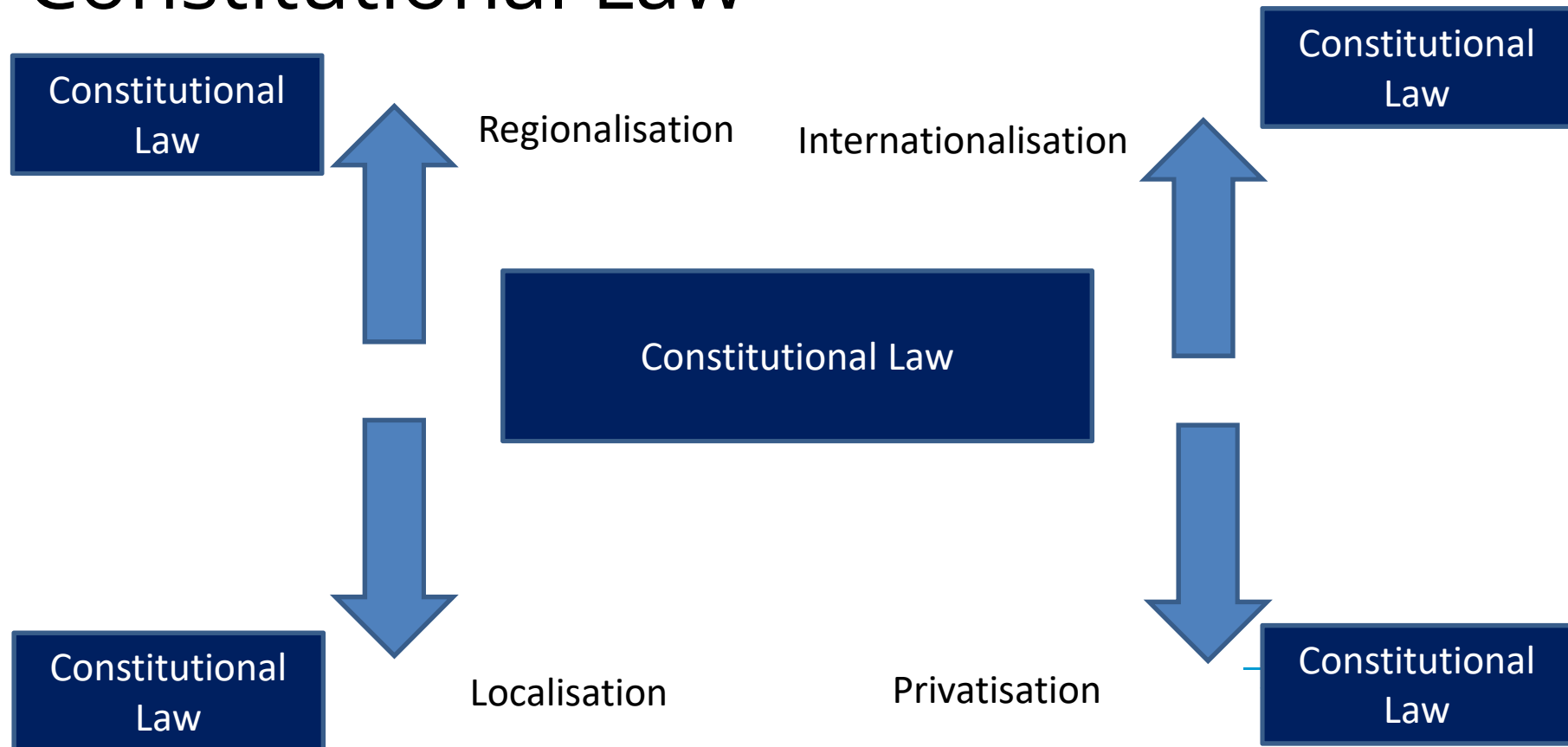
Locating Constitutional Law



Dislocation and Dispersion of Political Power

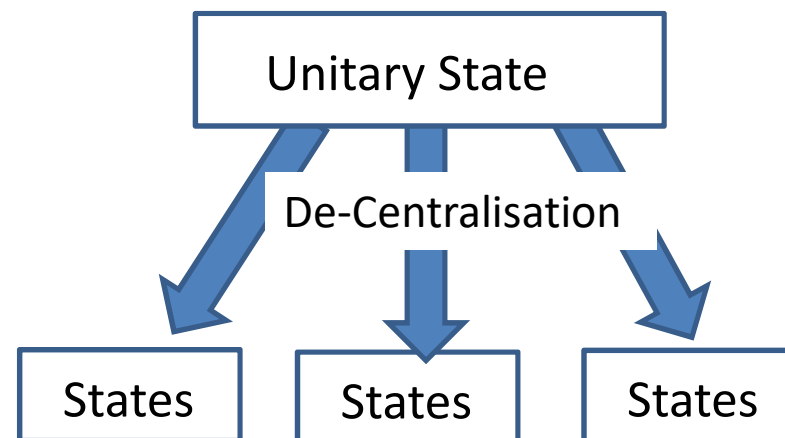
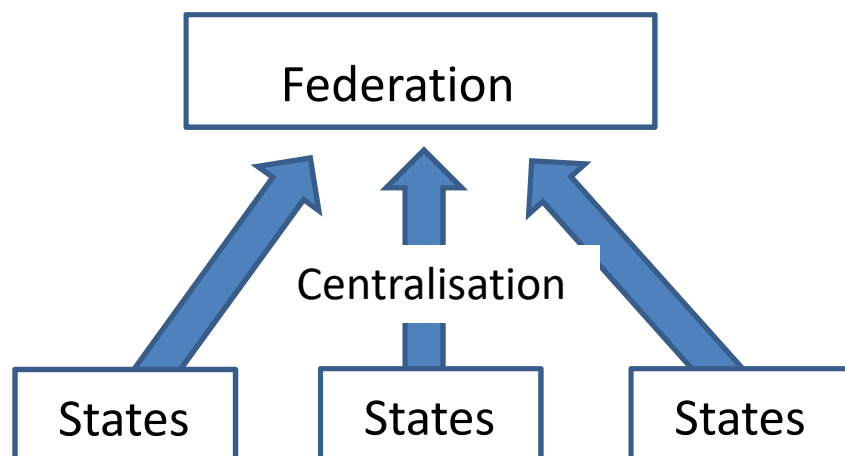


Dislocation and Dispersion of Constitutional Law



2. Federalism and Sub-national Constitutions

Federalism



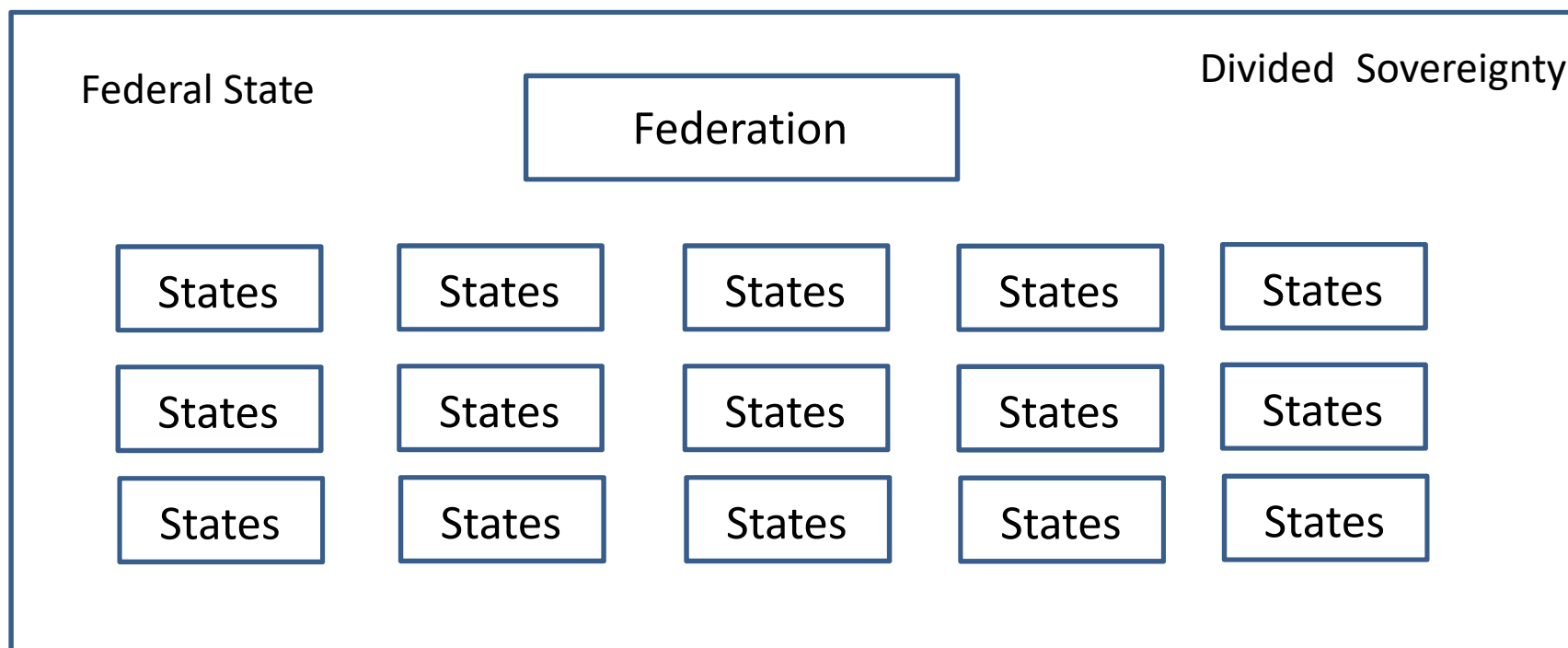
Culture?

Identity?

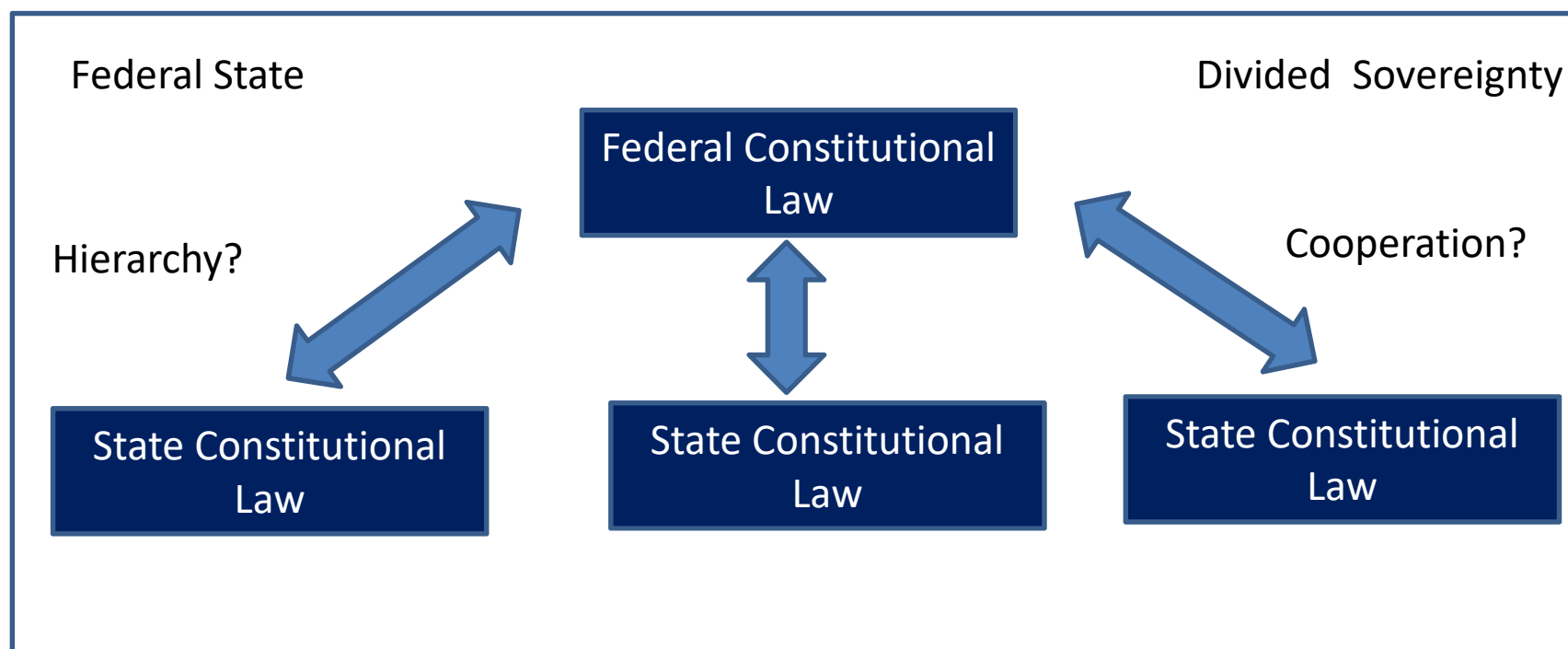
Society?

Federalism

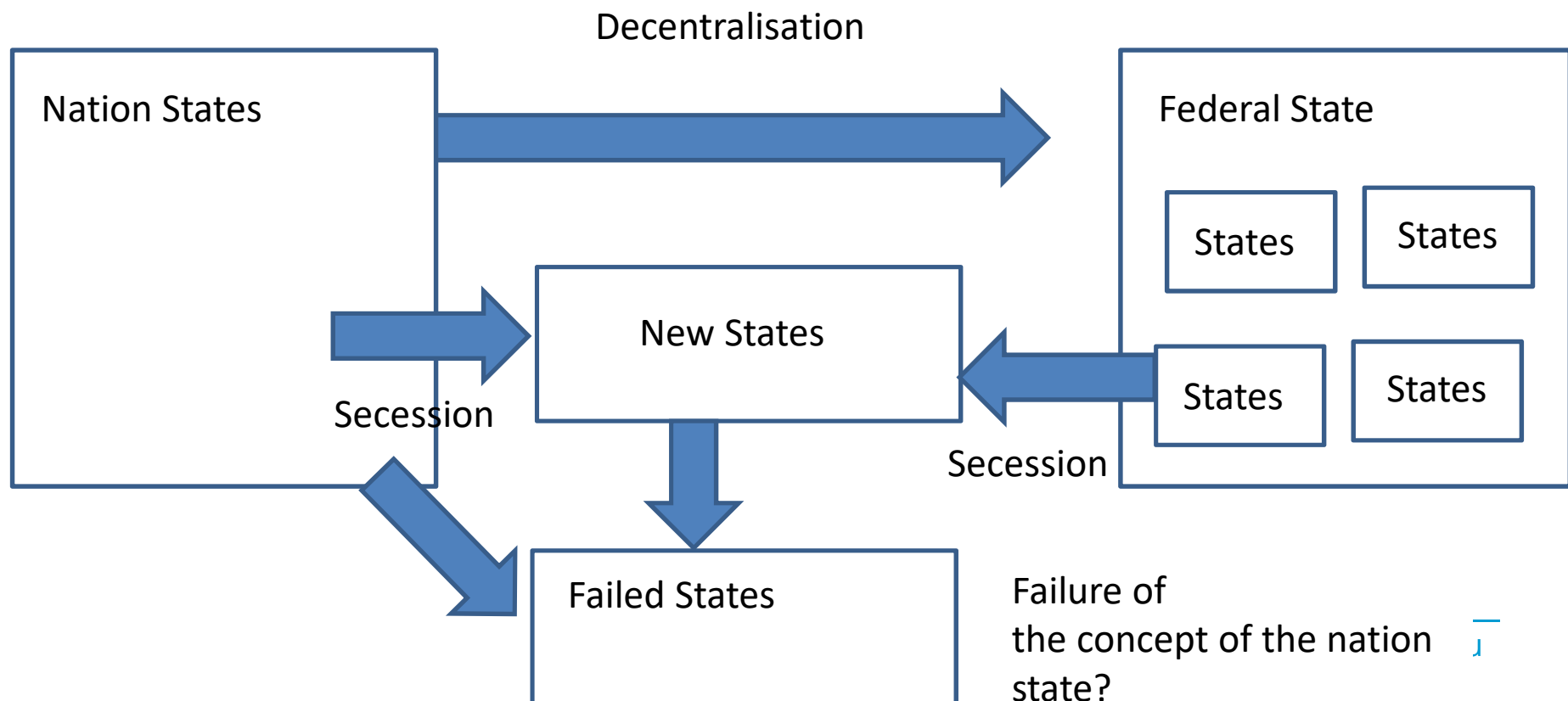
Sovereign State



Sub-national constitutions

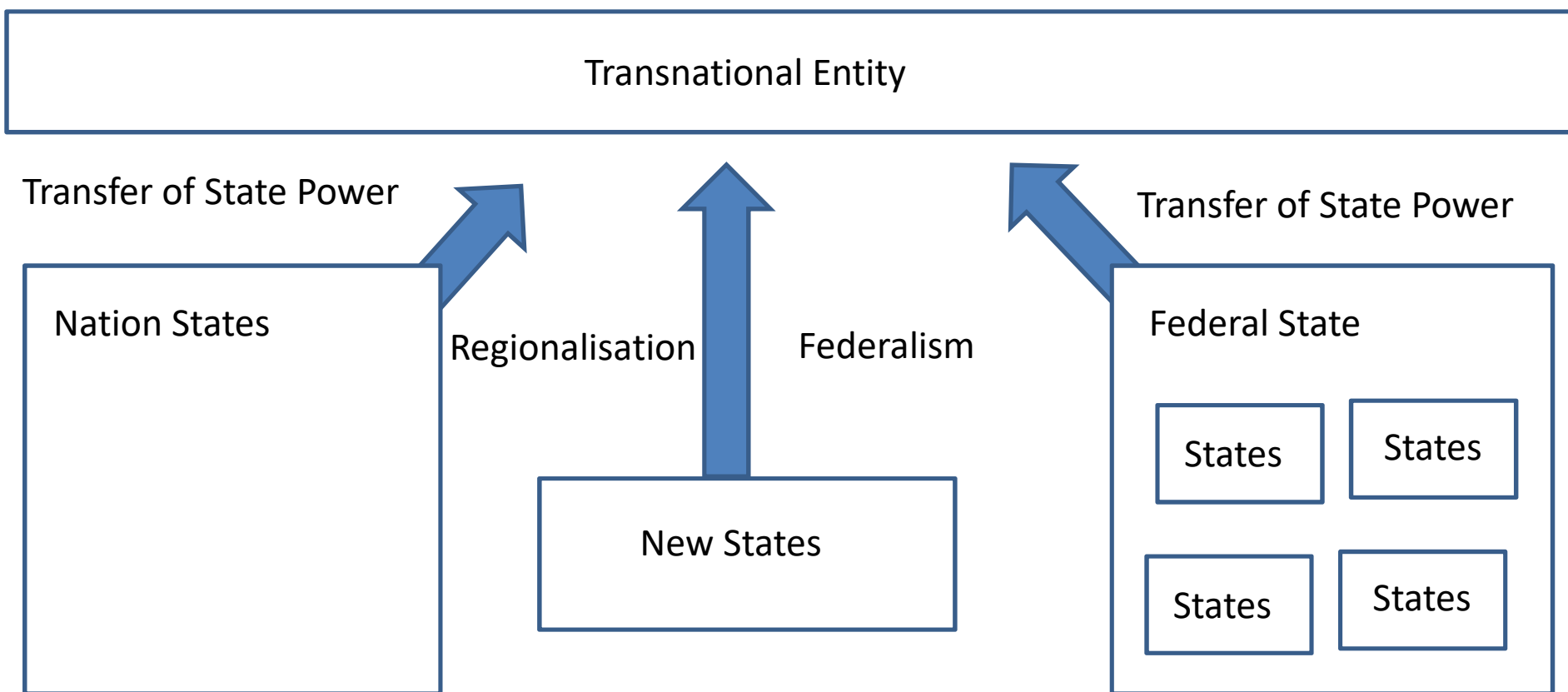


Evolution of States and Dynamics of Federalism

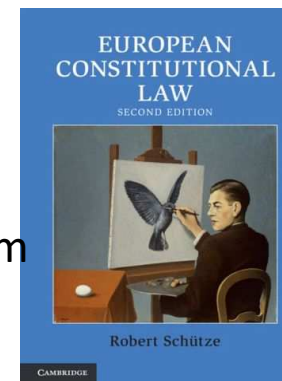


3. Neo-Federalism and Transnational Constitutions

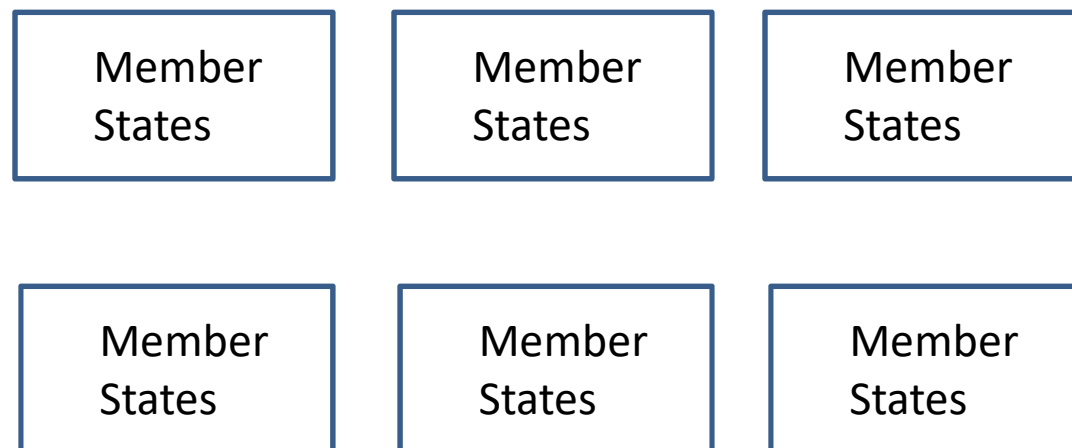
Regionalisation and Federalism



European Constitutional Law



European Union



Demos?

Culture?

Identity?

Society?

Constitutional Dimension:

- Legal expression of political power
- Structuring (political) power
- Legitimising and binding (political) power

International Constitutional Law

Transfer of
state power



Post-Sovereignty
Concept



Constitutionalism

**Anne
Peters**

International Organisation

Member
States

Member
States

Member
States

Member
States

Member
States

Member
States

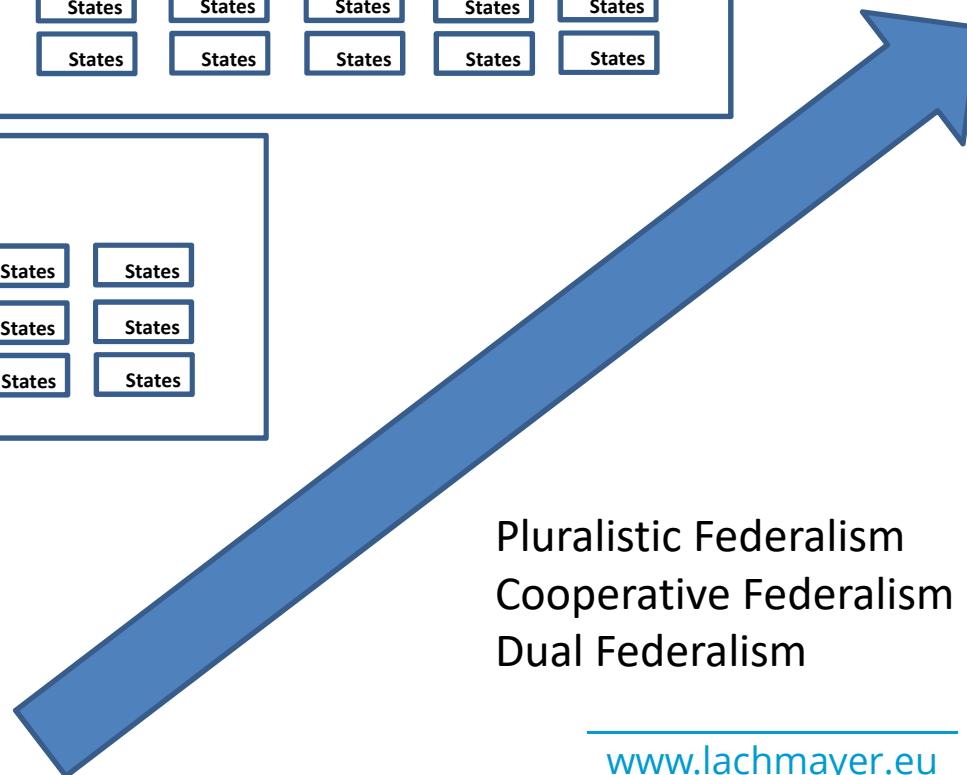
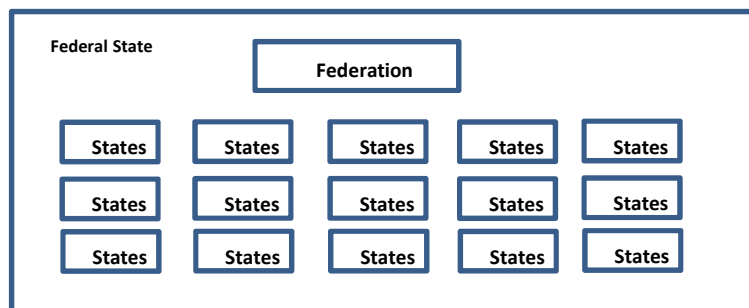
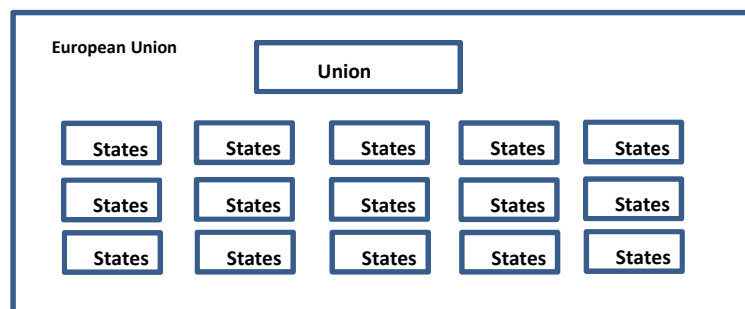
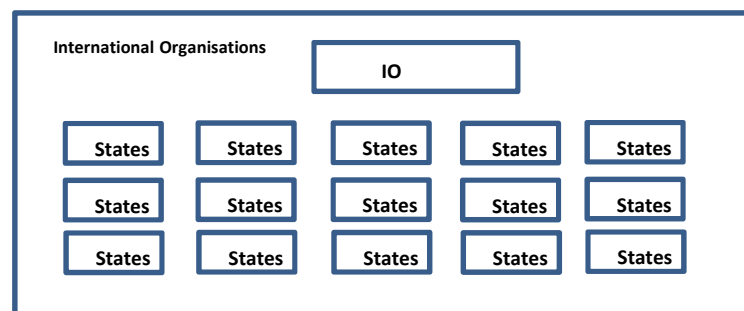
Constitutional
Dimension:

- Legal expression of political power
- Structuring (political) power
- Legitimising and binding (political) power

No Demos // No Culture // No Identity

Neo-Federalism

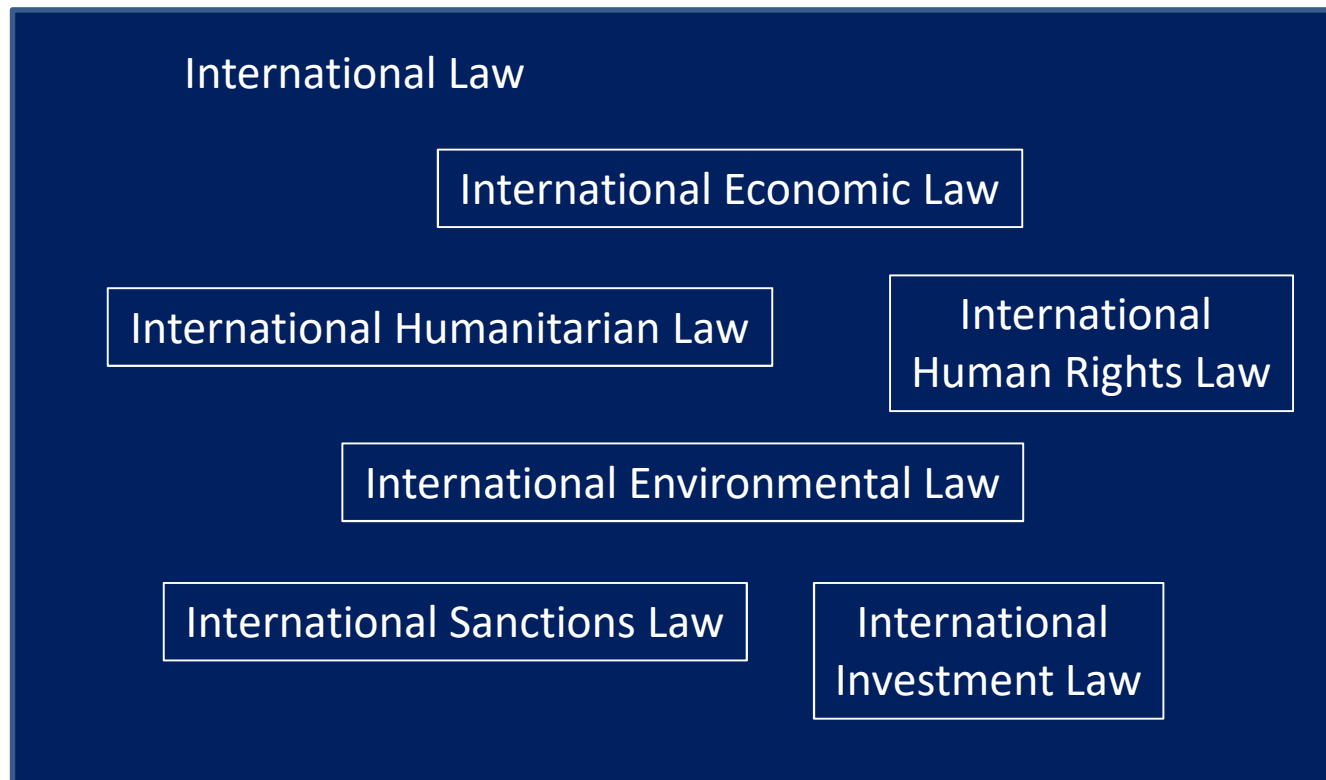
Robert
Schütze



Pluralistic Federalism
Cooperative Federalism
Dual Federalism

4. From Constitutional Fragments to Constitutional Networks

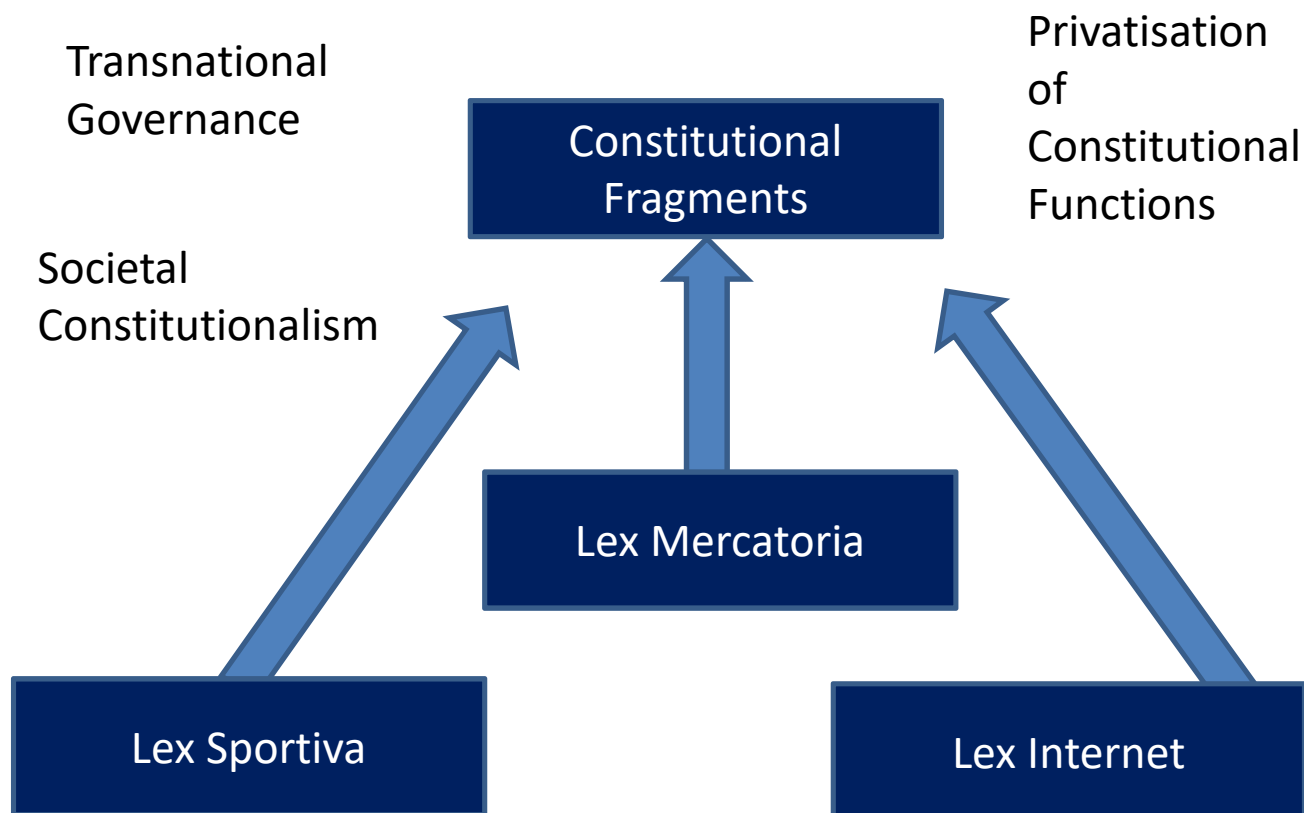
Fragmentation of International Law



Constitutional
Dimension:

- Legal expression of political power
- Structuring (political) power
- Legitimising and binding (political) power

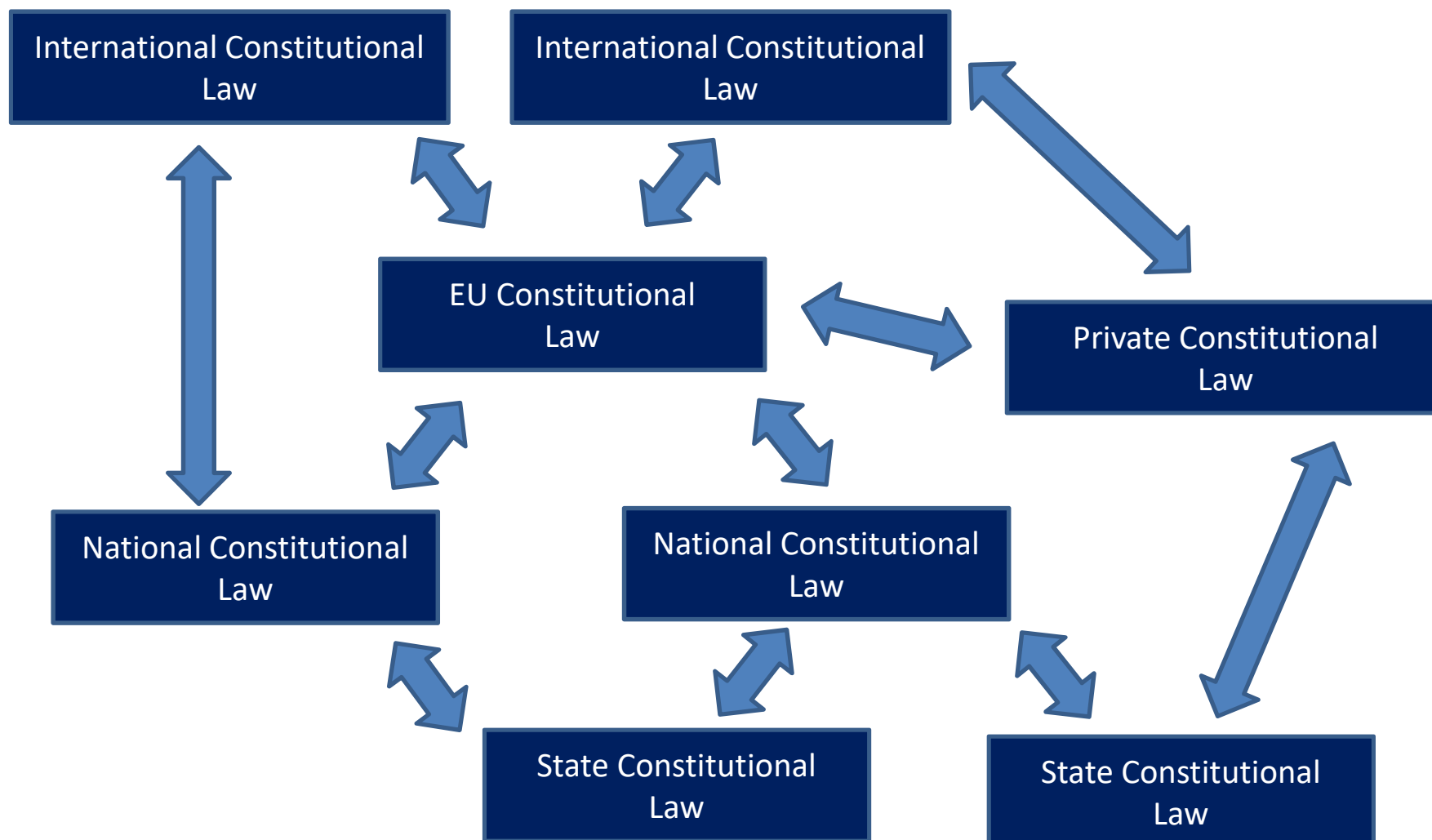
Constitutional Fragments



Constitutional Dimension:

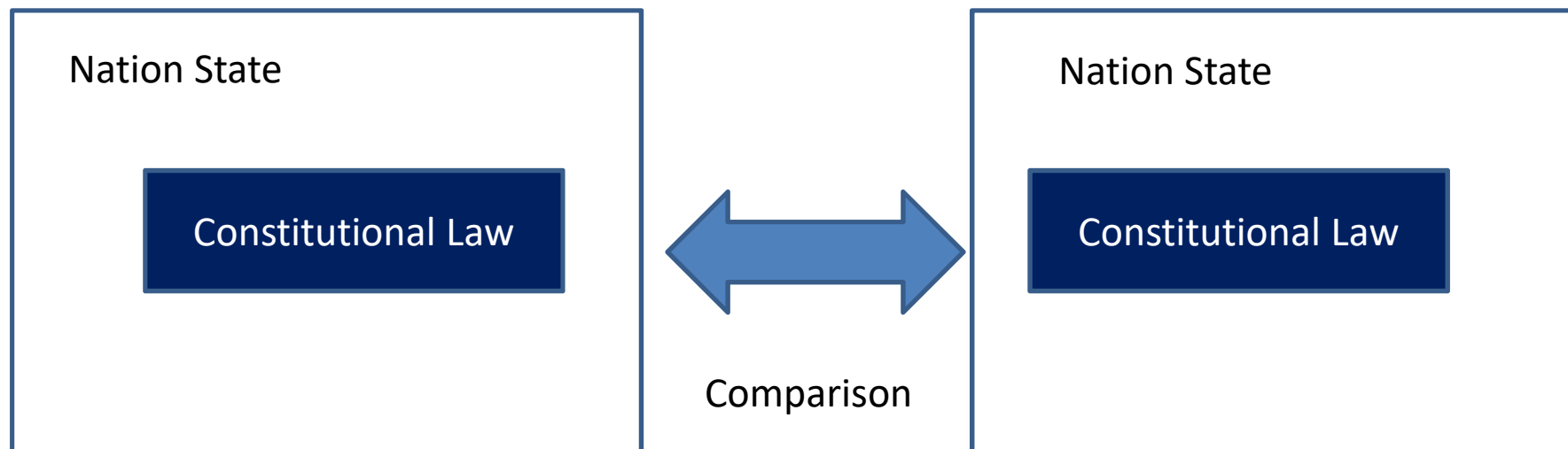
- Legal expression of political power
- Structuring (political) power
- Legitimising and binding (political) power

Interrelating Fragments: Constitutional Networks

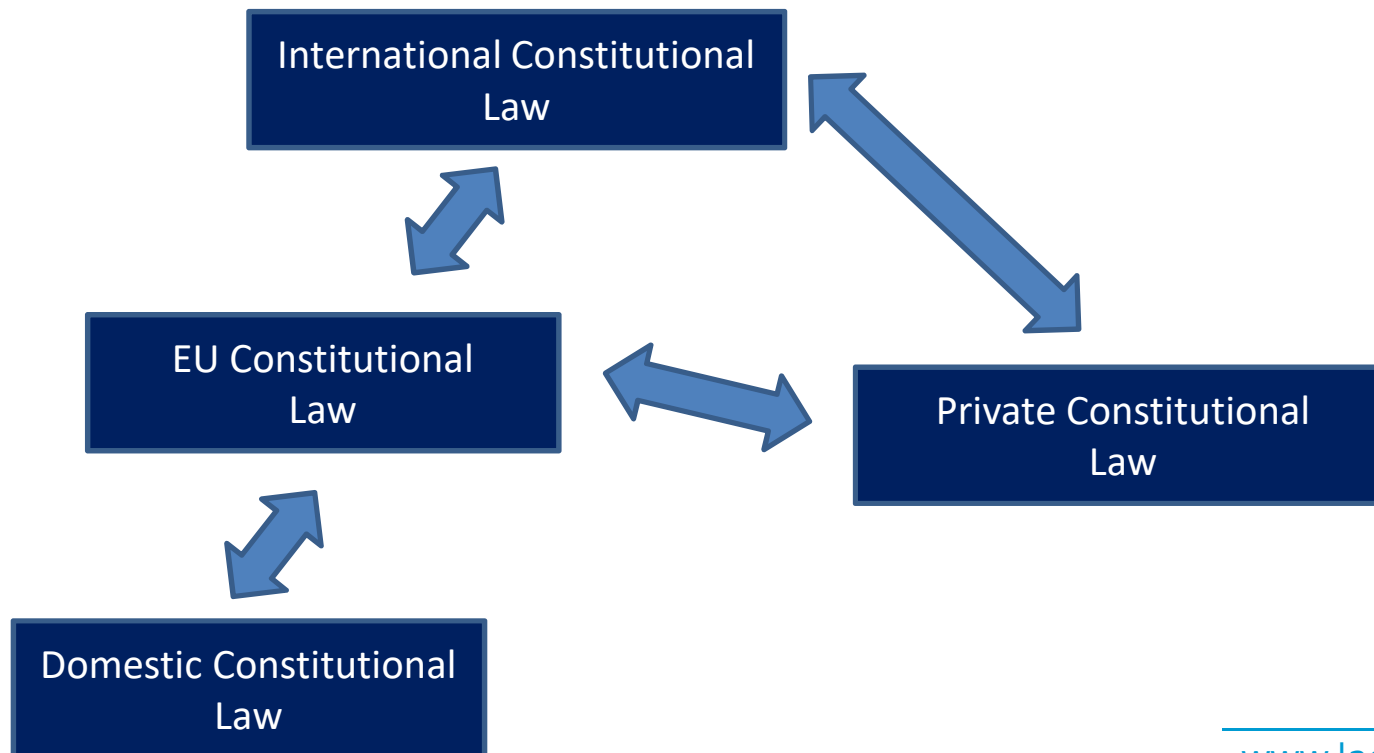


5. Methodological Consequences

Comparative Constitutional Law



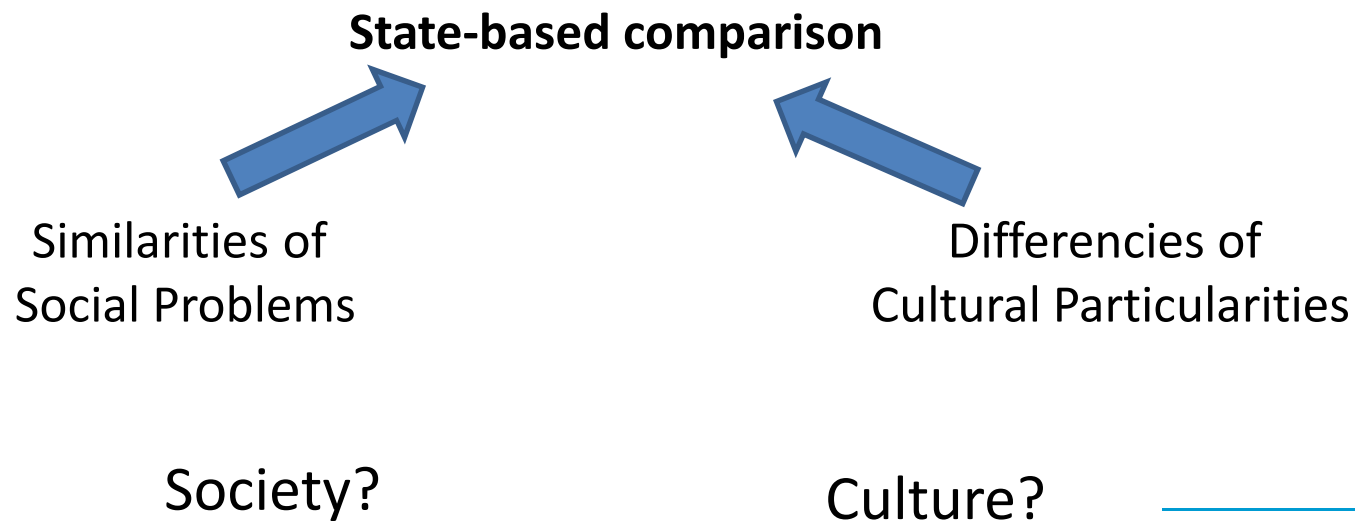
Comparing Constitutional Networks



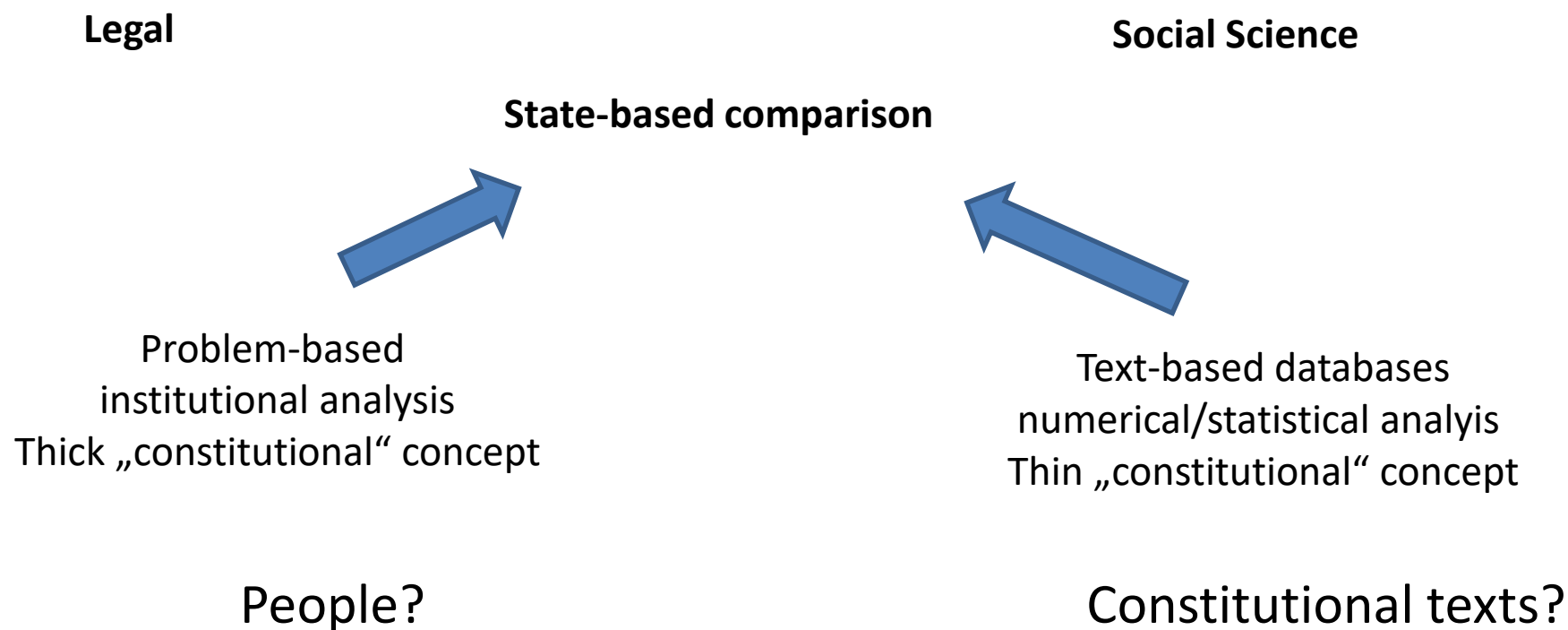
Revisiting the Functionalist – Contextualist Debate

Functionalist

Contextual

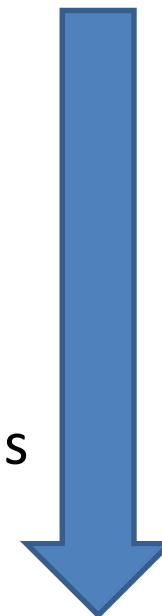


Revisiting the Legal vs Social Science Debate



Steps towards a new way of comparison

- Addressing national constitutions, which might be the wrong legal level (place) to find answers to the questions
- Comparing international law regimes
- Cross-comparison of national and transnational constitutions



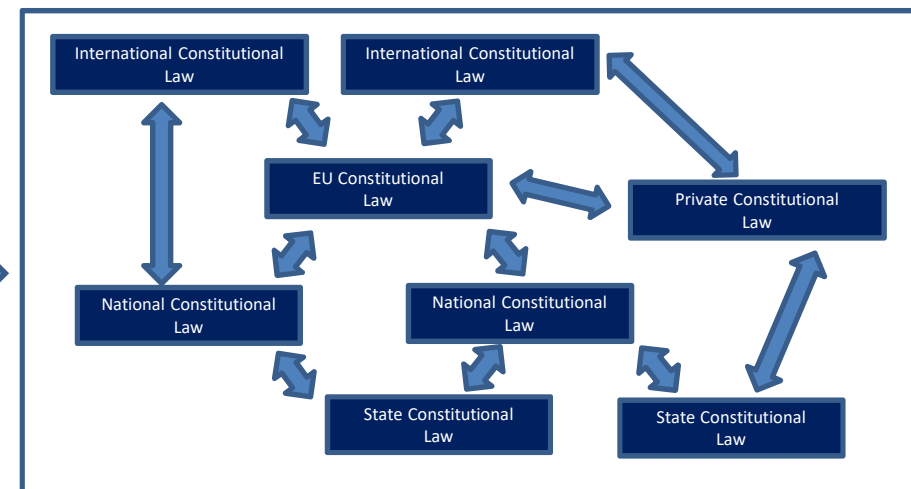
Comparing Constitutional Networks

- Different constitutional layers (fragments) have to be taken into account at the same time
 - multi-level human rights regime in comparison to the multi-level environmental law regime
- Dynamics have to be taken into account
 - Sub-national constitutionalism results in national constitution affecting transnational constitutions (e.g. Scotland case)
- Comparing relations between constitutions became more important
 - Different influences of transnational courts on domestic courts

Comparing Constitutional Networks

- Identifying relevant constitutional fragments
- Analysing of the dynamics and interrelations of these constitutional fragments
- Methodological pluralism (functional, contextual, hermeneutical, quantitative ...)

Dis-Locating Constitutional Law



Comparing Constitutional Networks

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