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constitutional
thinking
beyond
borders

Constitutional Law and Geography



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Constitutional Law and Geography

1. Interrelations
2. Shaping Constitutional Law
3. Shaped by Constitutional Law
4. Constitutional Law beyond Geography
5. Dynamics of Social Space

The Summit of Halti

Norwegian prime minister, Erna Solberg considers giving mountain to Finland as 100th birthday present

“The originator of the idea is a retired geophysicist and government surveyor, Bjørn Geirr Harsson, 76, who learned last year that Finland would celebrate the 100th anniversary of its independence from Russia on 6 December 2017 and recalled being puzzled by the location of the border when he flew over Halti in the 1970s.

Harsson wrote to the ministry of foreign affairs in July 2015, pointing out that the gesture would cost Norway a “barely noticeable” 0.015 sq km of its national territory and make Finland very happy”

The Guardian

... but its not just geography ...

Constitutional dimension

“The deputy chair of the parliamentary scrutiny committee, Michael Tetzschner, also told Aftenposten earlier this year that the plan was “bewildering” and “a joke”, stressing the constitution “clearly prohibits the surrender by the state of any part of Norwegian territory to another power”

Political dimension

“Public reaction has been overwhelmingly positive in both Norway and Finland, with the only objection so far coming from the indigenous Sami community, whose reindeer roam freely across the border and who argue that the land should belong to neither country”

September 2016: With Finland slowly approaching the 100th anniversary of the country's independence, Norwegian Foreign Minister Børge Brende firmly rejected the idea of bestowing its neighbor a mountain, an initiative previously considered by the Norwegian government. ... According to Brende, a change of the Norwegian constitution is needed in order to be able to freely give away Norwegian territory, which is hardly worth the trouble.

Constitutional law expresses a social understanding of territory, which is dynamic and negotiable

Territory is not an objective entity but becomes a fluid concept, which depends it's social construction

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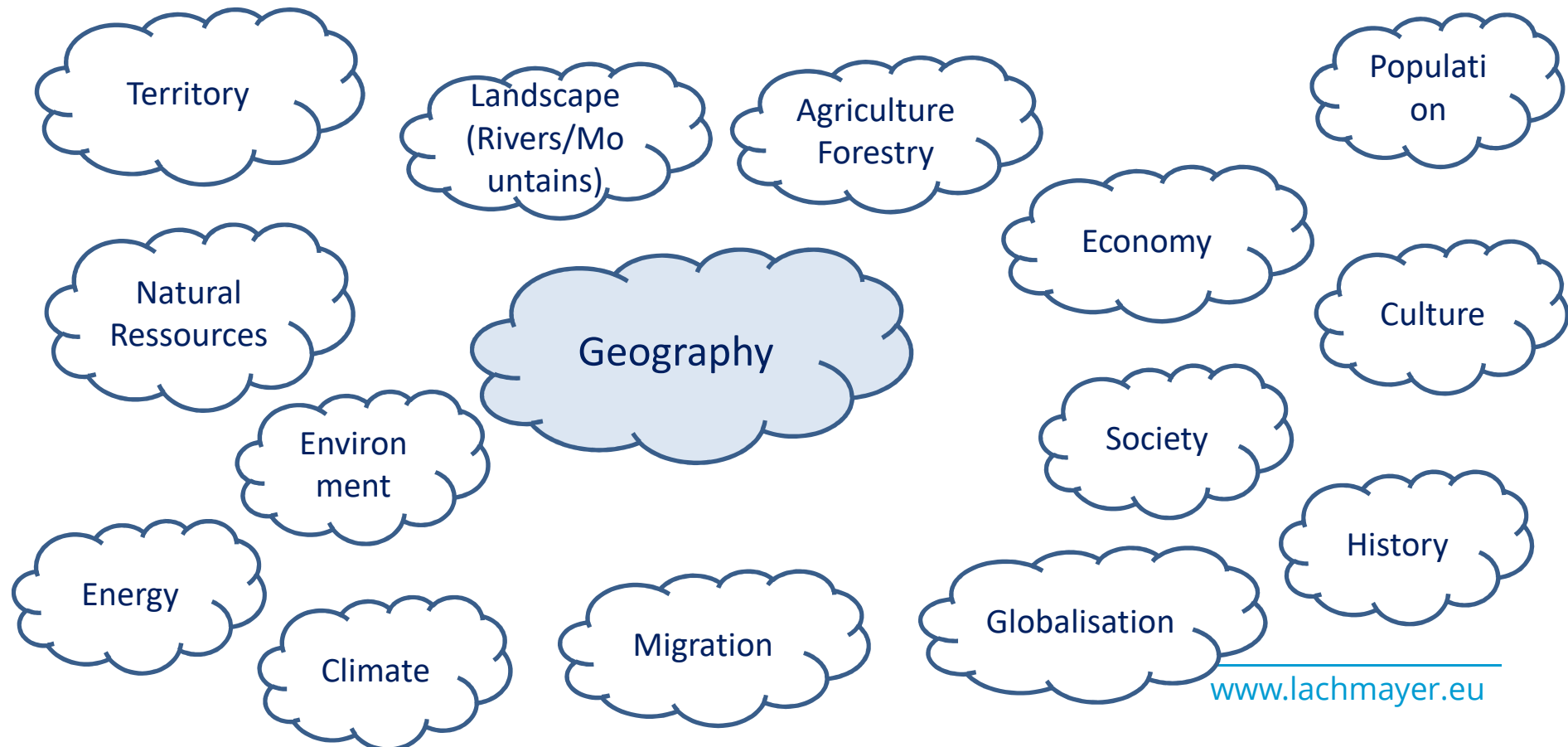
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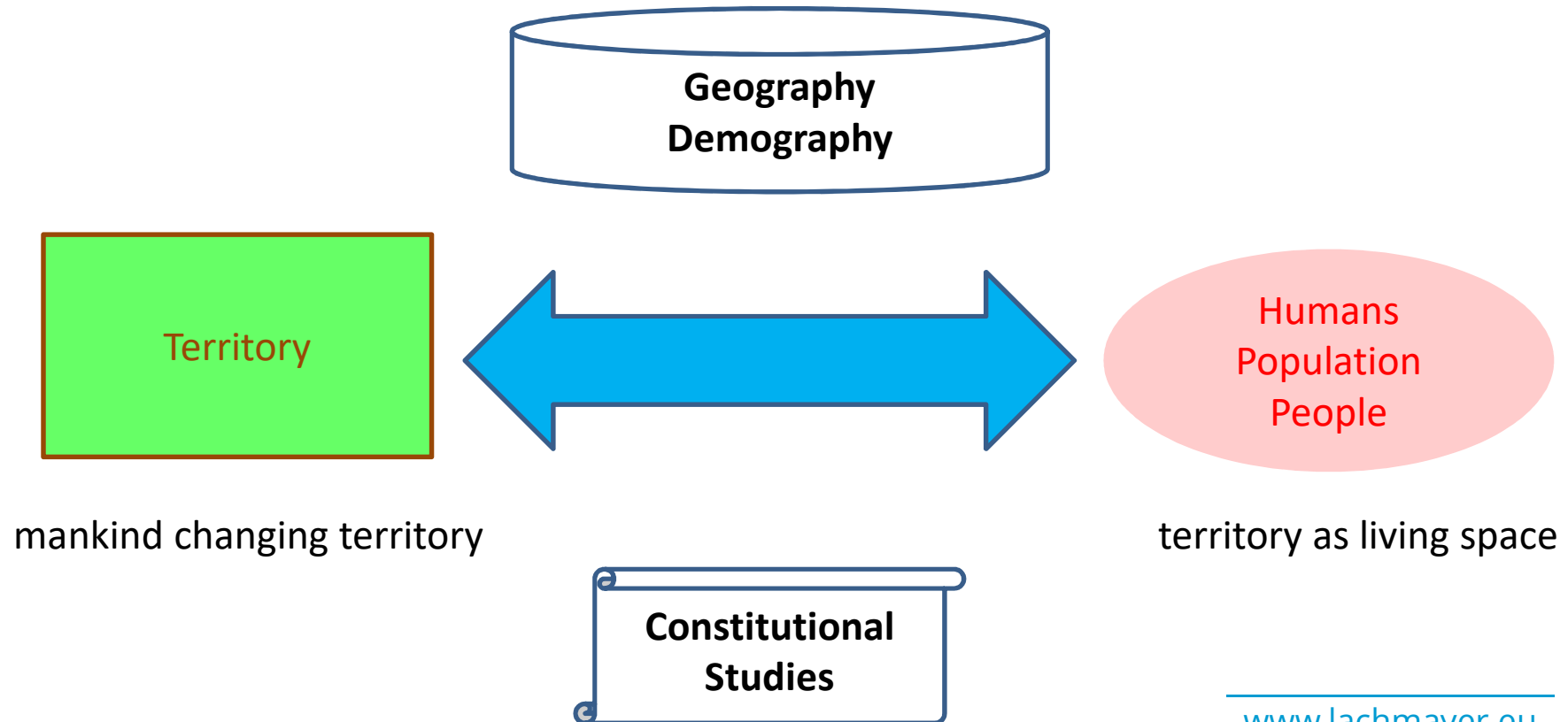
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1. Interrelations

Mindmap



Interrelating Territory and People



Spatial Legal Thinking I

Territorial Approaches towards Law

Raustiala, The Geography of Justice: „The physical location of an individual determines the legal applicable and the legal rights that individual possesses.“

Amar, The Law of the Land: a Grand Tour of Our Constitutional Republic

Geographical relevance on constitutional history (the role of the Mississippi, the North and the South, influence on US Supreme Court decisions etc)

Spatial Legal Thinking II

Mapping Law (see e.g. Paterson/Teubner, Changing Maps: Empirical Legal Autopoiesis)

Applying Space as Analytical Tool to Understand Law

e.g. Sabine Müller-Mall, Legal Spaces

- Space understood not primarily as territorial but social concept
- Space is understood as a relational, dynamic structure composed of different elements
- Norm, Judgement and Theory as Legal Spaces
- Introducing spatial terminology: space/place, dimension, scaling, topology

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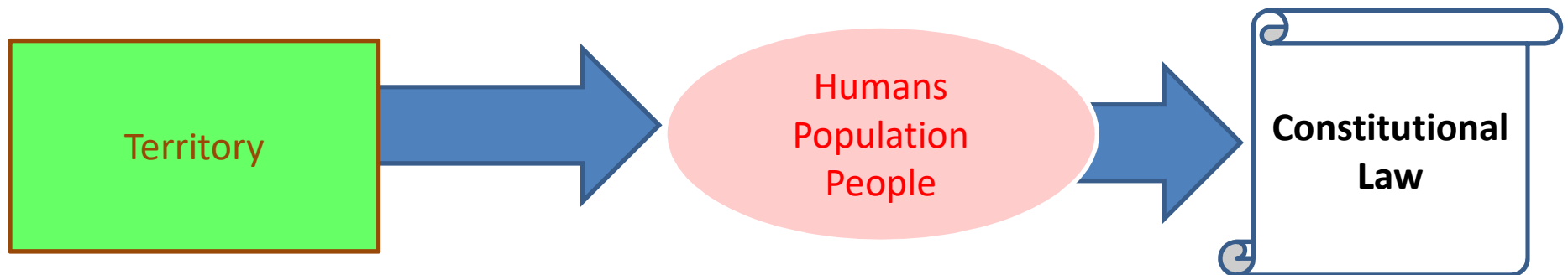
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2. Shaping Constitutional Law

The geographical influence



Constitutions as state-related concepts
(State: Power, People and Territory)

Constitutional borders shaped by territorial borders (e.g. oceans, rivers, mountains...)

Example: Climate Refugees



Territorial changes lead to migration.
Migration as a constitutional challenge.

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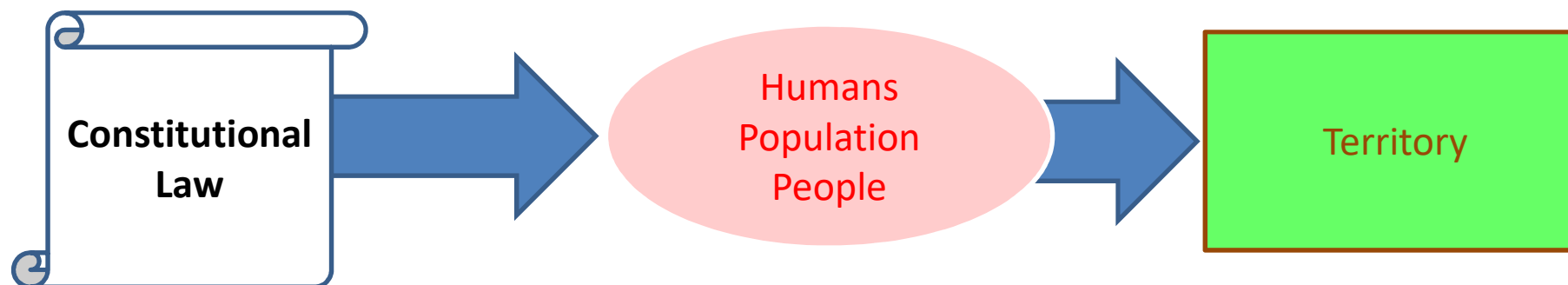
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3. Shaped by Constitutional Law

The constitutional influence



Constitutions as state-related concepts (State: Power, People and Territory)

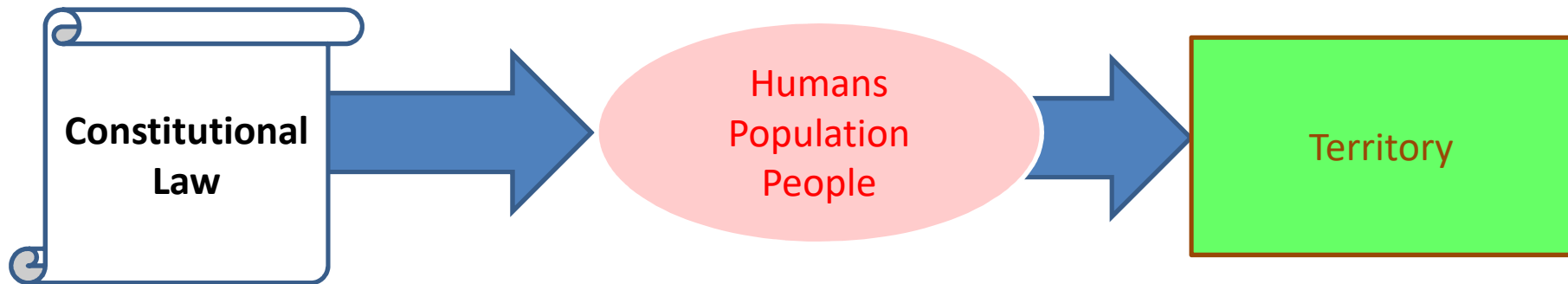
Constitutional concept as territorial concept (state, borders, ...)

Territorial concepts in constitutional law (decentralisation, federalism, ...)

Population related concepts in constitutional law (citizenship, people, minorities, ...)

Combined concepts (Migration, Citizenship...)

The constitutional influence



Constitutional Concerns of Natural Resources, Environmental Issues ...

Extra-state Territories

Extraterritorial concept of human rights (effective control over territory)

Even failed states usually have a constitution and a territory

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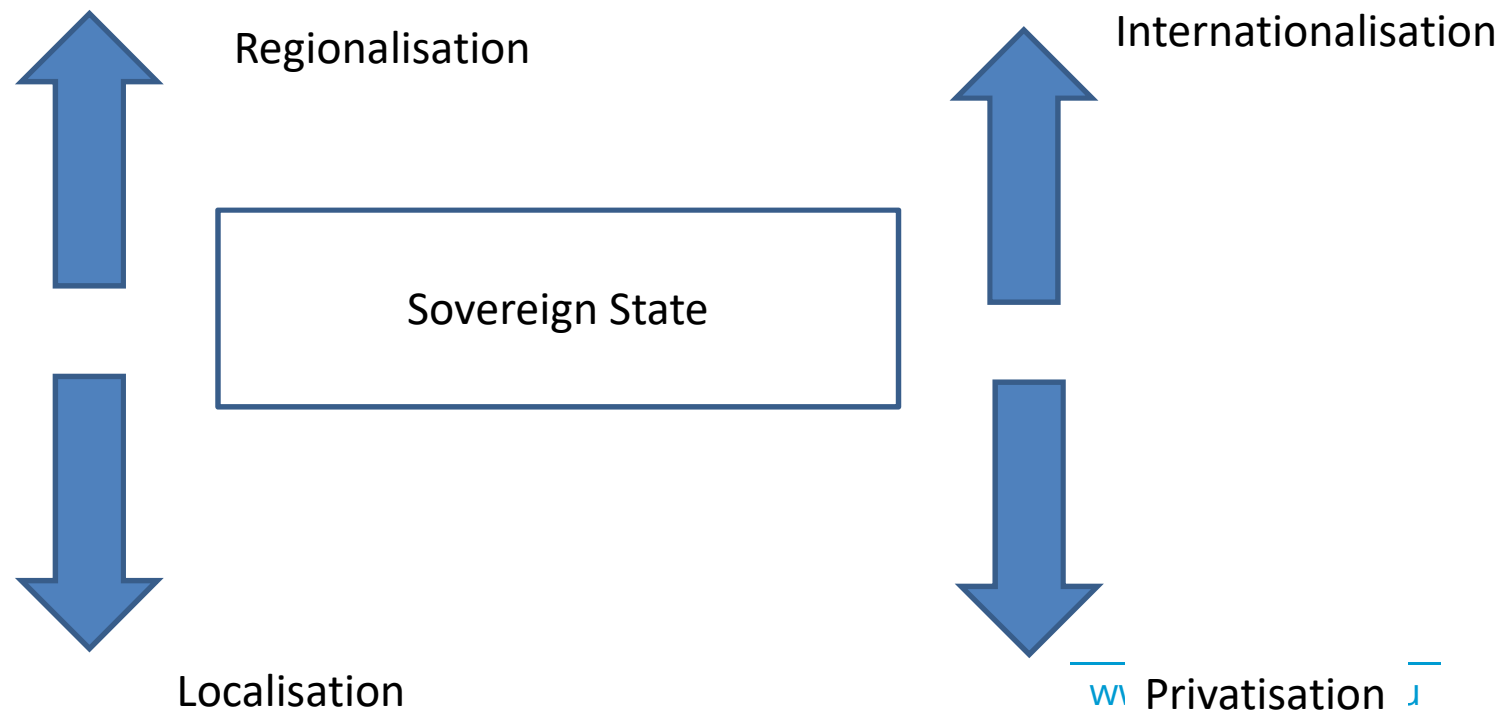
4. Constitutional Law beyond Geography



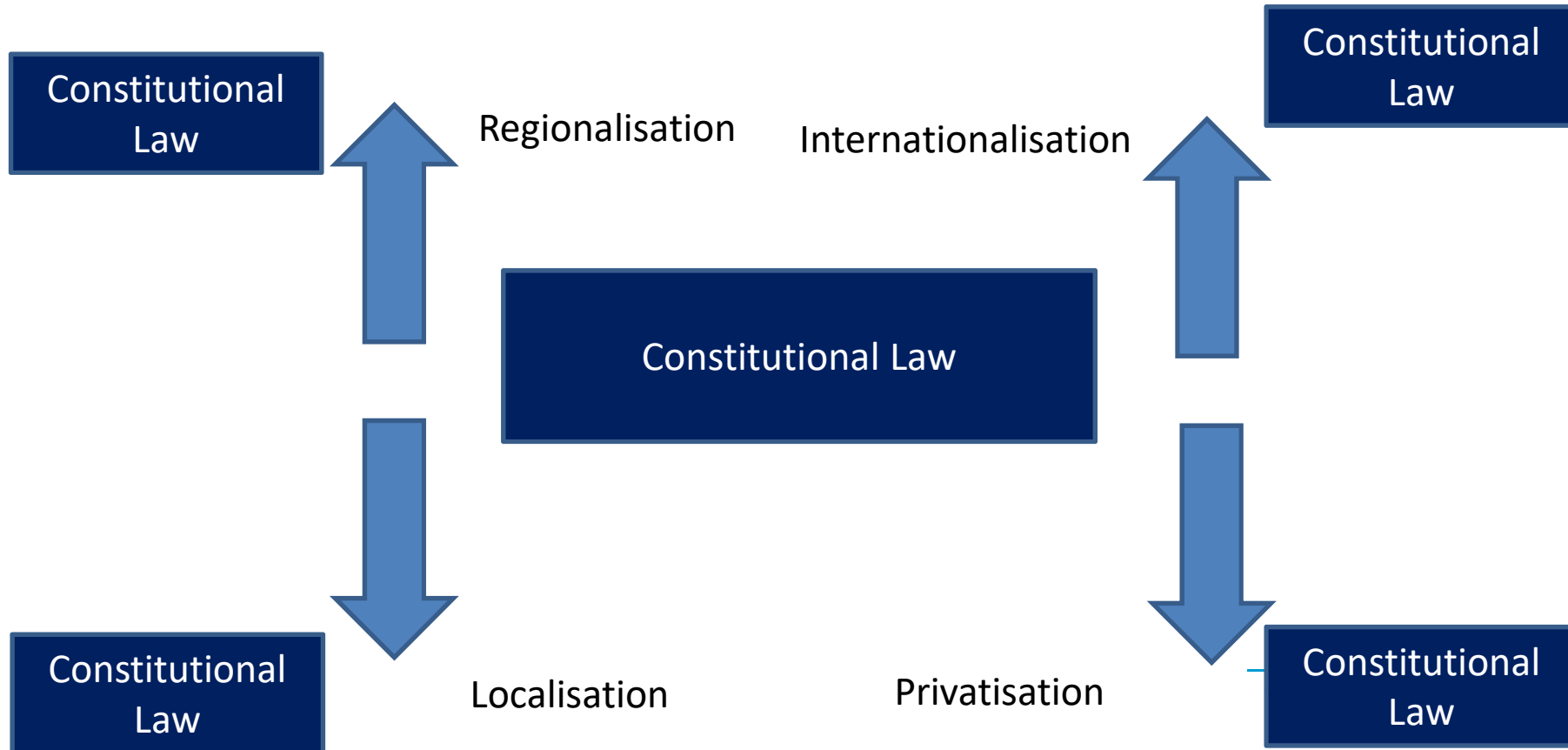
Locating Constitutional Law



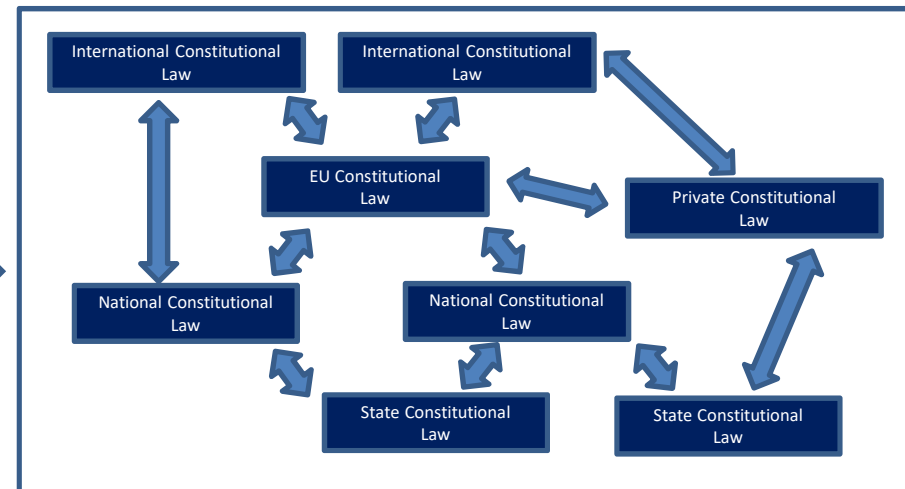
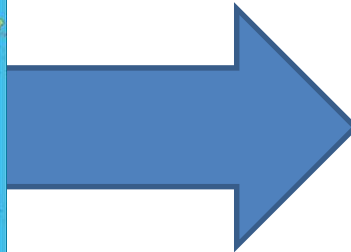
Dislocation and Dispersion of Political Power



Dislocation and Dispersion of Constitutional Law



Dis-Locating Constitutional Law



Critiquing International Constitutionalism

Alexis Galan, on the geographical assumptions of international constitutional law

the territorial trap is a notion that problematises the assumption, whereby the state is understood as a timeless entity, with fixed and clearly demarcated boundaries, having as its territory its physical substratum

International Constitutionalism is caught in the territorial trap by referring to it while trying to overcome the state-based concept

Missing the conceptual change of the territorial understanding of the state

Result: Reproducing the state on an international level

Critical Geography, broader and more fluent approach to spatiality

Constitution – Territory

- Constitutions without Territory
Societal Constitutionalism without a territorial concept
- Territories without Constitution
Social understanding of territory without a constitutional concept

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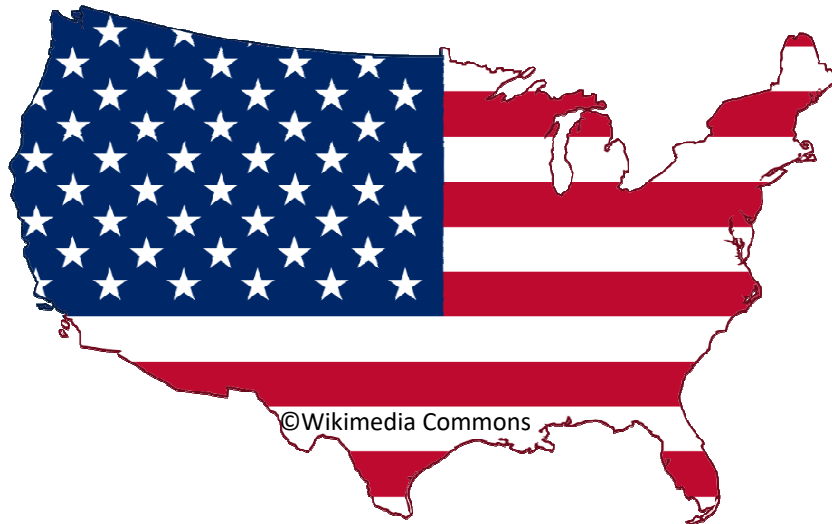
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5. Dynamics of the social space

Comparative Constitutional Law

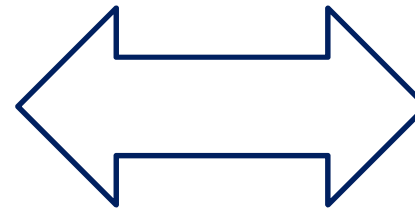
United States

Total area: 9,8 Mio km²
Population: est. 324m



Austria

Total area: 83.900 km²
Population: est. 8,7m

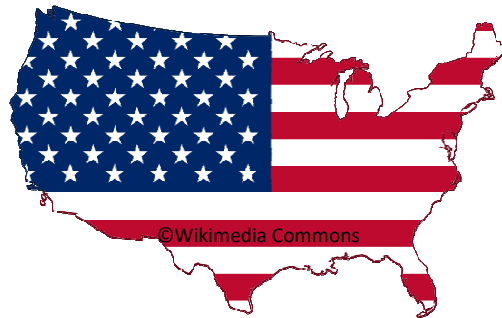


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Constitutional Law as Concept for the Future Generations

United States

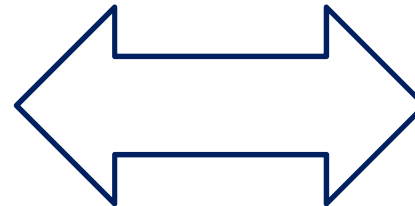
Total area: 9,8 Mio km²
Population: est. 324m



1787

Total area: 800.000 km²
Population: 3,9m (1790)

2016



Constitutional Enactment

Austria

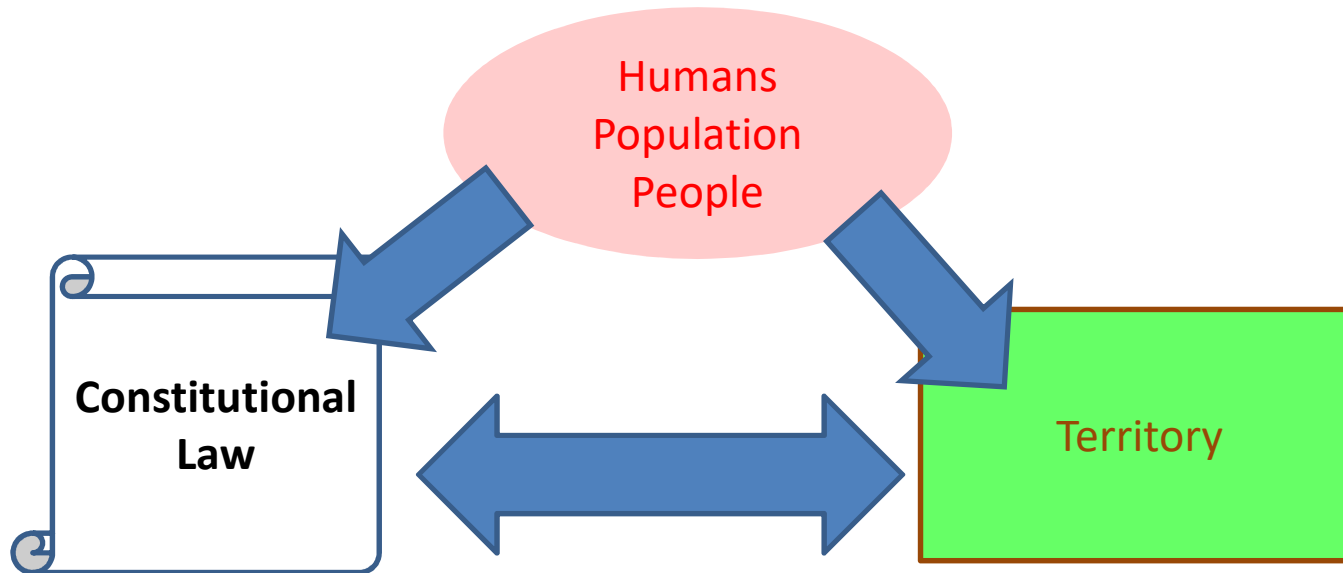
Total area: 80.000 km²
Population: est. 8,7m



1920

Total area: 80.000 km²
Population: 6,5m (1923)

Social Dimension of Territory



- Permanent process of re-negotiating of territorial dimensions
- Constitution only one element of territorial negotiations
- Permanent process of re-negotiating constitutional elements

Identifying the overlapping elements

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