

Constitution and Basic Law

- Module introduction
- Some basic concepts of law

Constitution and Basic Law

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Class rules



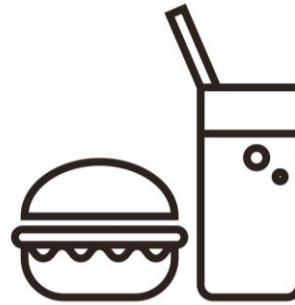
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Come and
be punctual.



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No private talks
and discussions.



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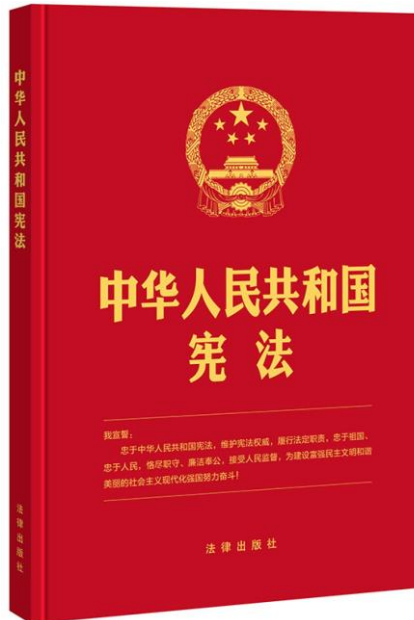
Light food and
drinks are
allowed.



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No recording.
No photo taking.
No games.

Constitution and Basic Law



Source of picture: <https://images-na.ssl-images-amazon.com/images/I/61PEcGYJML.jpg>

The Constitution of the People's Republic of China
(The Chinese Constitution)

The Basic Law of the Macao Special Administrative Region of the People's Republic of China
(The Macao Basic Law)



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Module introduction

This module introduces the **general principles**, the **state system**, the **state organs**, and the **fundamental rights and duties of citizens** stated in the *Constitution of the People's Republic of China* (the Chinese Constitution). It also covers the formulation of the **“One Country, Two Systems” policy** and the *Basic Law of the Macao Special Administrative Region of the People's Republic of China* (the Macao Basic Law) and such sections in the Macao Basic Law as **the relationship between the Central Government and the Macao Special Administrative Region (SAR)**, the **political structure of the Macao SAR**, and the **fundamental rights of Macao residents**. The module is aimed at assisting the students to establish a correct understanding about the Chinese Constitution and the Macao Basic Law, and to identify the basic concept of the legal protection of people's rights and freedoms.

Purpose of the Module

To distinguish and generalize the basic concept of law and legal thinking logic.

To identify your duties, rights and freedom protected by the constitutional and fundamental laws of the Macao SAR:

1. The Chinese Constitution
2. The Macao Basic Law



Source of picture: <https://news.idea-show.com/wp-content/uploads/2019/09/%E6%B3%E9%96%80%E5%9F%BA%E6%9C%AC%E6%B3%95%E6%8E%A8%E5%BB%A3%E5%BD%94%E6%9C%83%E3%80%82%E6%86%B2%E6%B3%95%E8%88%87%E5%9F%BA%E6%9C%AC%E6%B3%95%E6%A0%A1%E5%9C%92%E6%BE%A8%E5%BB%A3%E8%A8%88%E5%8A%83%E6%AF%94%E8%B3%BD-%E9%AB%98%E6%A0%A1%E7%B5%84-%E7%AB%A0%E7%A8%BB.jpg>

Content (Part I: Constitution)

Chapter 1

Introduction and Some Basic Concepts of Law

Chapter 2

The Concept and Functions of Constitution

Chapter 3

The Development of the Constitutions in China

Chapter 4

The Main Principles of the Chinese Constitution

Chapter 5

The Fundamental Rights and Obligations of the People in the PRC

Chapter 6

The State Institutions and National Symbols of the PRC

Content (Part II: Basic Law)

Chapter 7

The Principle of “One Country, Two Systems” and the Macao Basic Law

Chapter 8

The Relationship between the Central Authorities and the Macao SAR

Chapter 9

The Fundamental Rights and Duties of the Residents of the Macao SAR

Chapter 10

The Political Structure in the Macao SAR

Chapter 11

The Economy, Culture and Social Affairs of the Macao SAR

Chapter 12

The Interpretation and Amendment of the Macao Basic Law

Assessment

Item		Description	Percentage
1.	Assignments	Canvas quizzes	10%
		Home-based assignment	15%
2.	Test	Knowledge assessment	25%
3.	Examination	3-hour written examination	50%
Total Percentage:			100%

How to learn and revise?

- Understand the concepts. You are not required to memorize the articles in the legal documents, but you have to understand the spirit embedded in it.
- Memorize some key figures, like important years, numbers, etc.
- There are key knowledge points in each chapter, which are summarized for you.
- Do assignments on your own. No copying! No plagiarism!
- Pay attention in class. Let me know if you don't understand.

What is “law”?

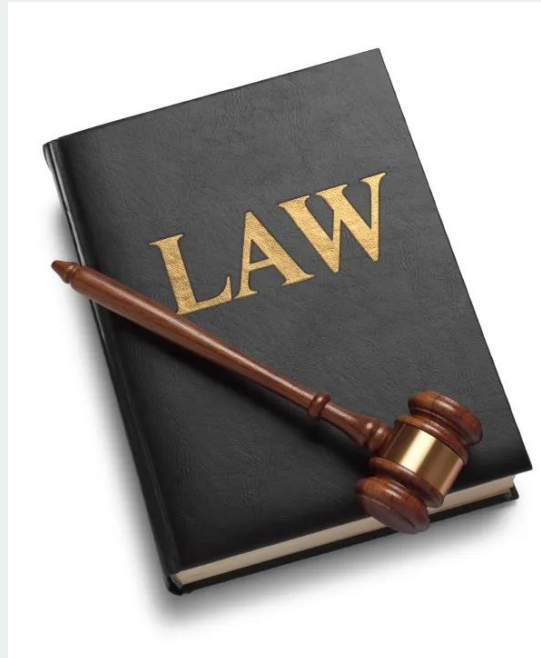
Who and what?

Law as a system of rules

What is “law”?

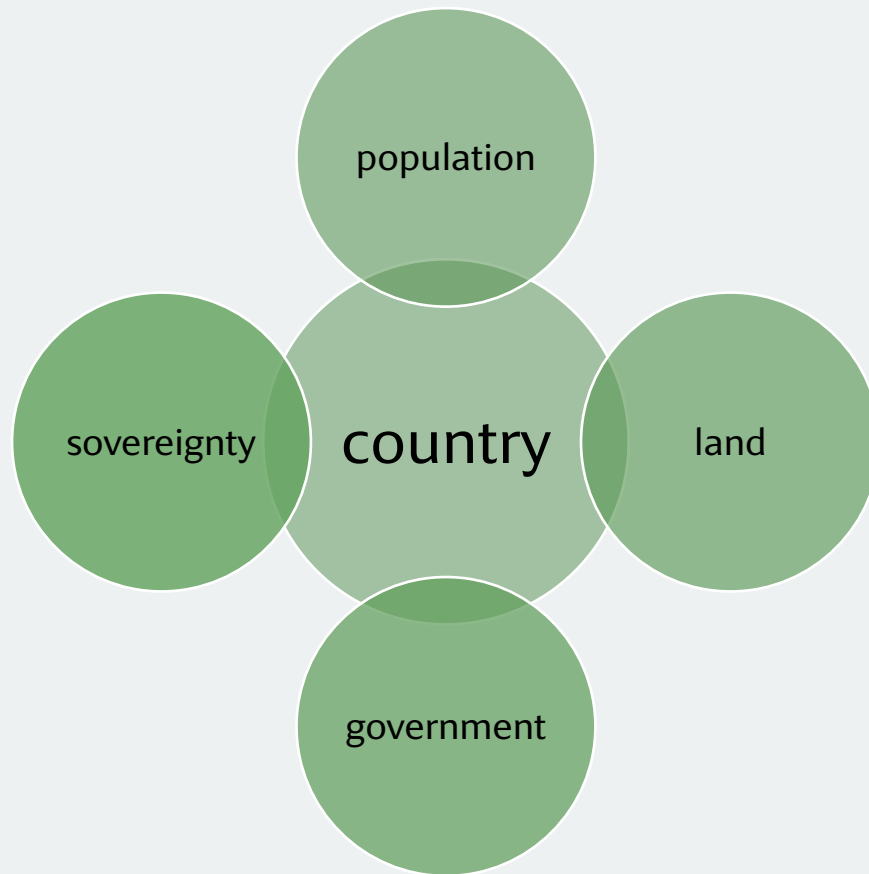
According to the *Oxford Advanced Learner's Dictionary*:

1. the **system of rules** that a particular **country** or **community** recognizes as regulating the **actions** of its members and may enforce by the imposition of penalties;
2. a particular branch of law, eg. civil law, common law, international law, etc.;
3. a rule that deals with a particular crime, agreement, etc.;
4. the study of the law as a subject at university or a profession;
5. ...



Law – Who and What?

Who:

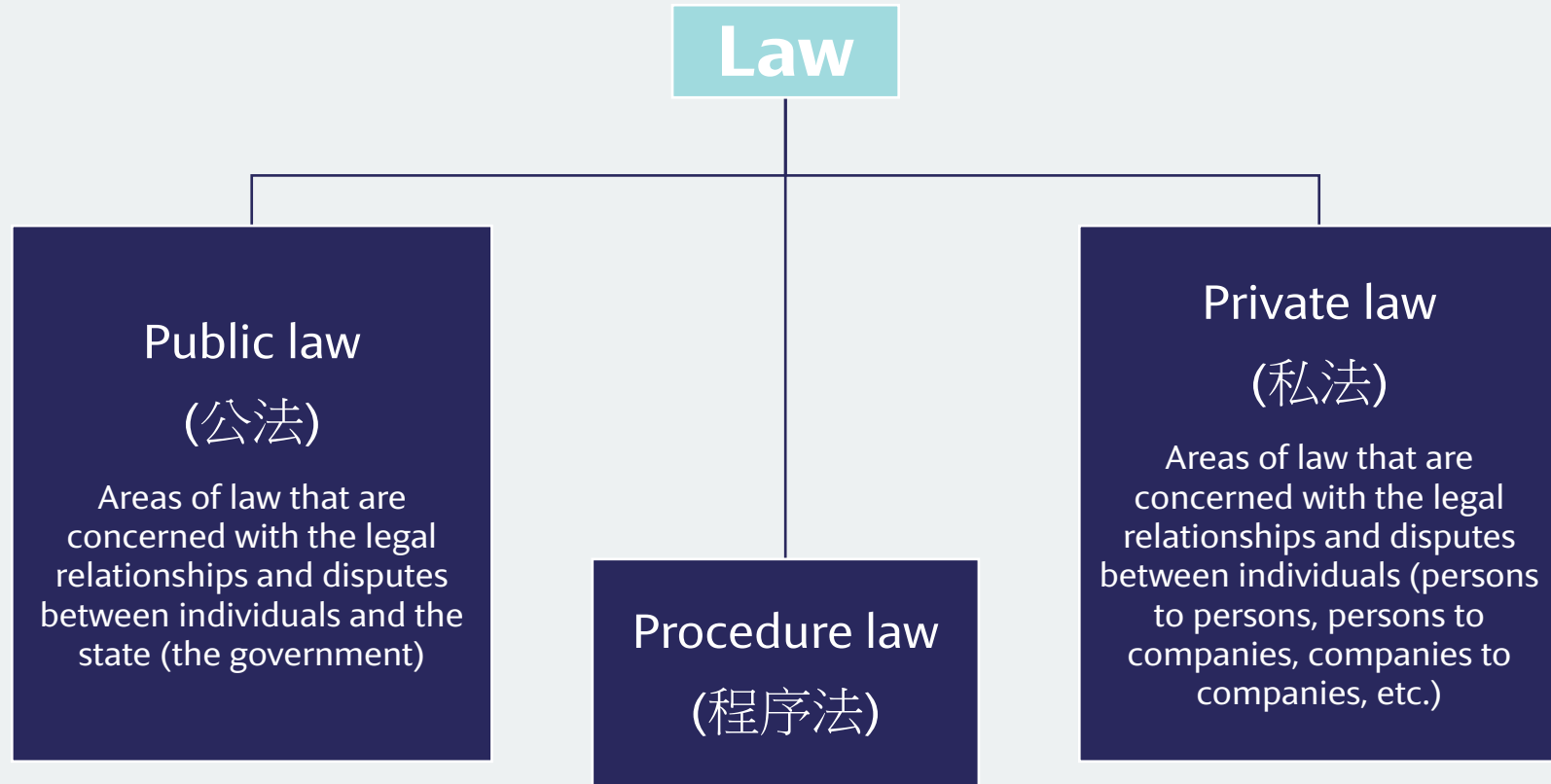


What:

- Boundary of actions
(permitted, mandatory, forbidden)
- Relationship
(people vs. state, people vs. people)

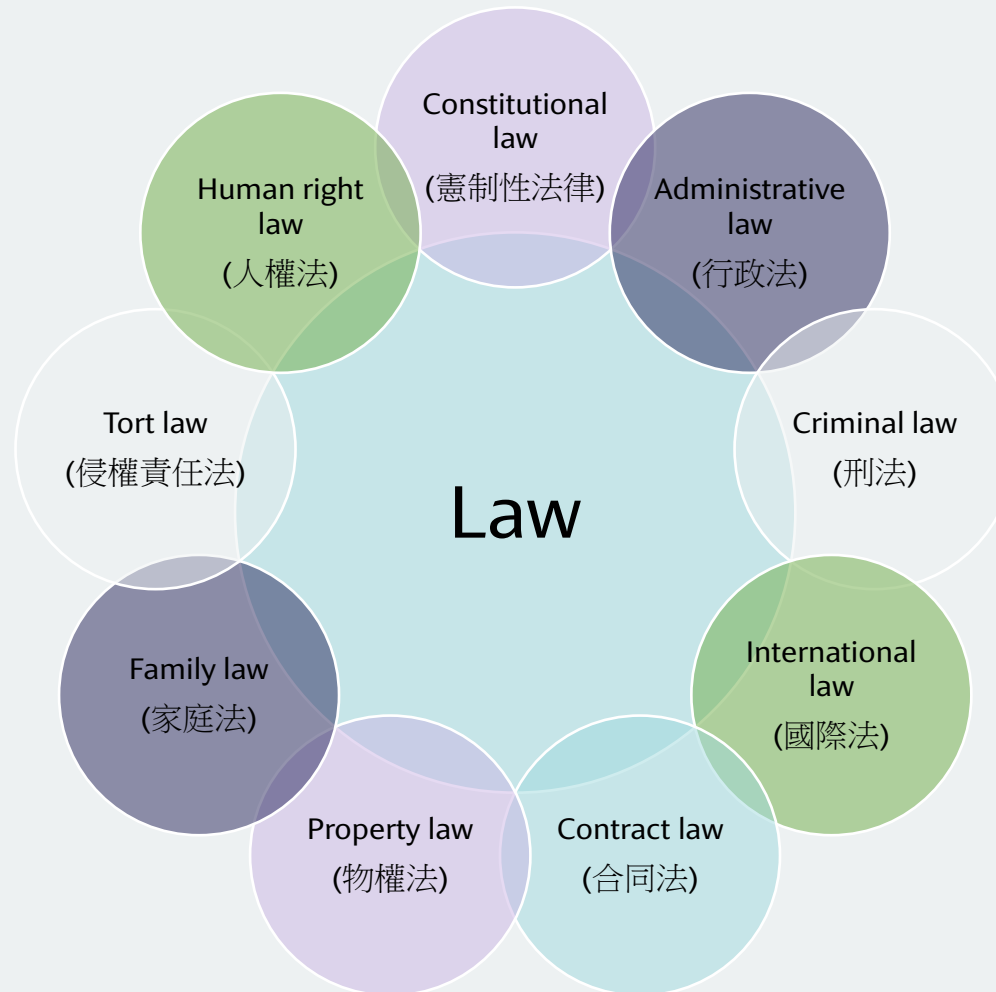
Law as a system of rules

Types of law:



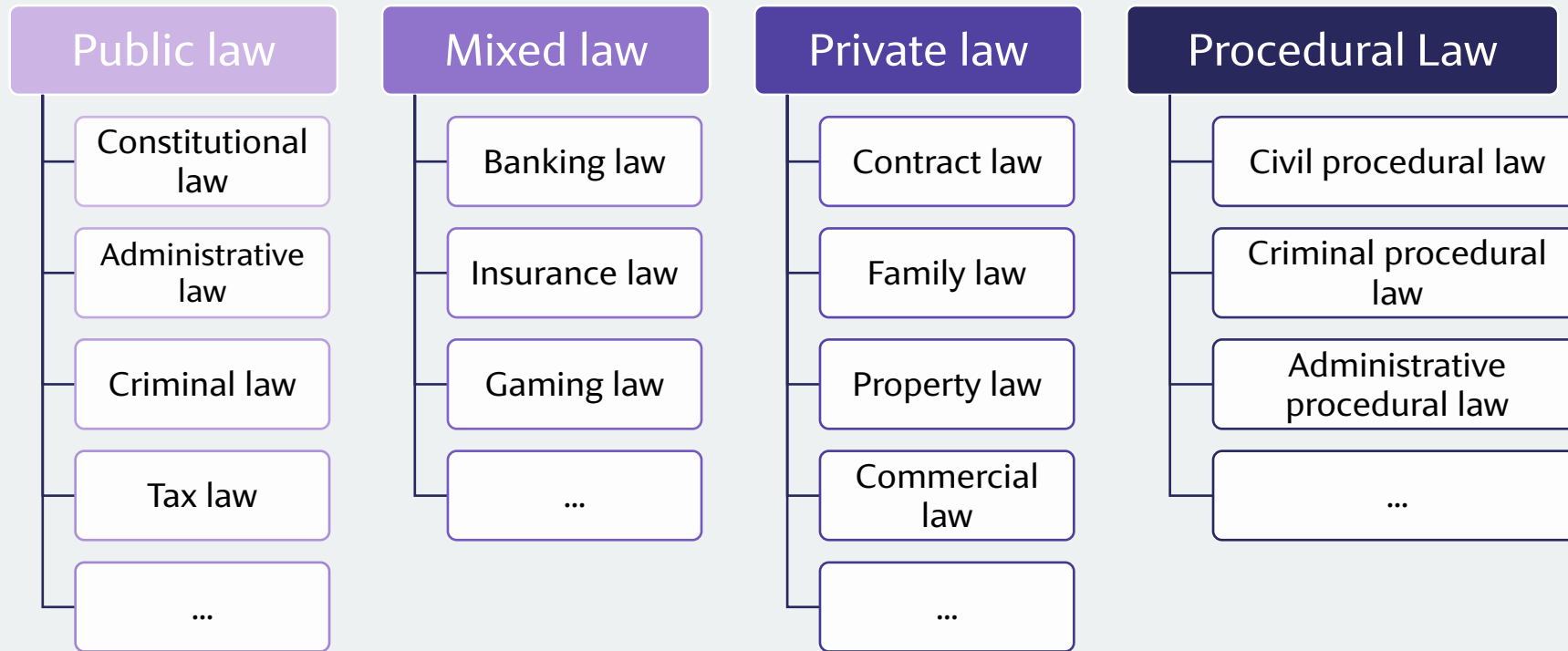
Law as a system of rules

Areas of laws:



Law as a system of rules

Branches of laws:



Categories of laws in the PRC

Seven categories of laws under the Socialist legal system with Chinese Characteristics:

中國特色社會主義法律體系的七大法律部門：

1. Constitutional law 憲法相關法
2. Civil and commercial law 民法商法
3. Administrative law 行政法
4. Economic law 經濟法
5. Social law 社會法
6. Criminal law 刑法
7. Litigation and non-litigation law 訴訟與非訴訟程序法

Different types of legal documents in the PRC and in the Macao SAR

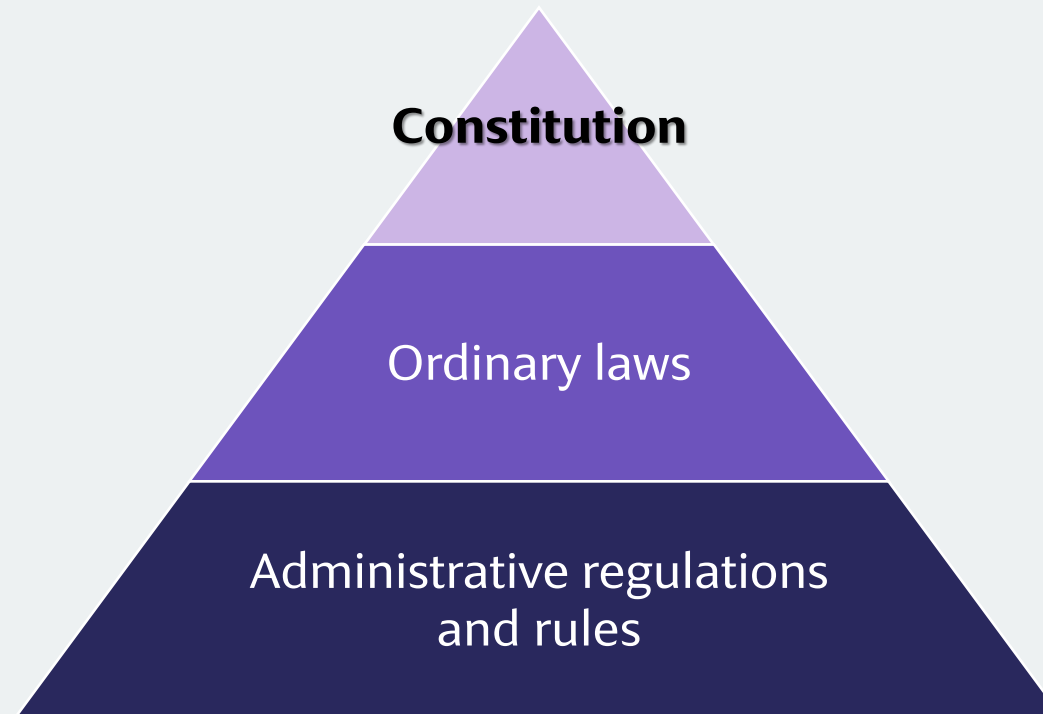
Different types of legal documents in the PRC:

1. Laws 法律
2. Administrative regulations 行政法規
3. Local regulations 地方性法規
4. Autonomous regulations 自治條例
5. Separate regulations 單行條例

Different types of legal documents in the Macao SAR:

1. Laws by the Legislative Assembly 立法會的法律
2. Independent administrative regulations by the Chief Executive 行政長官的獨立行政法規
3. Complementary administrative regulations by the Chief Executive 行政長官的補充性行政法規
4. Other decree-laws and normative acts before the Handover 回歸前制定的法令、其他規範性文件

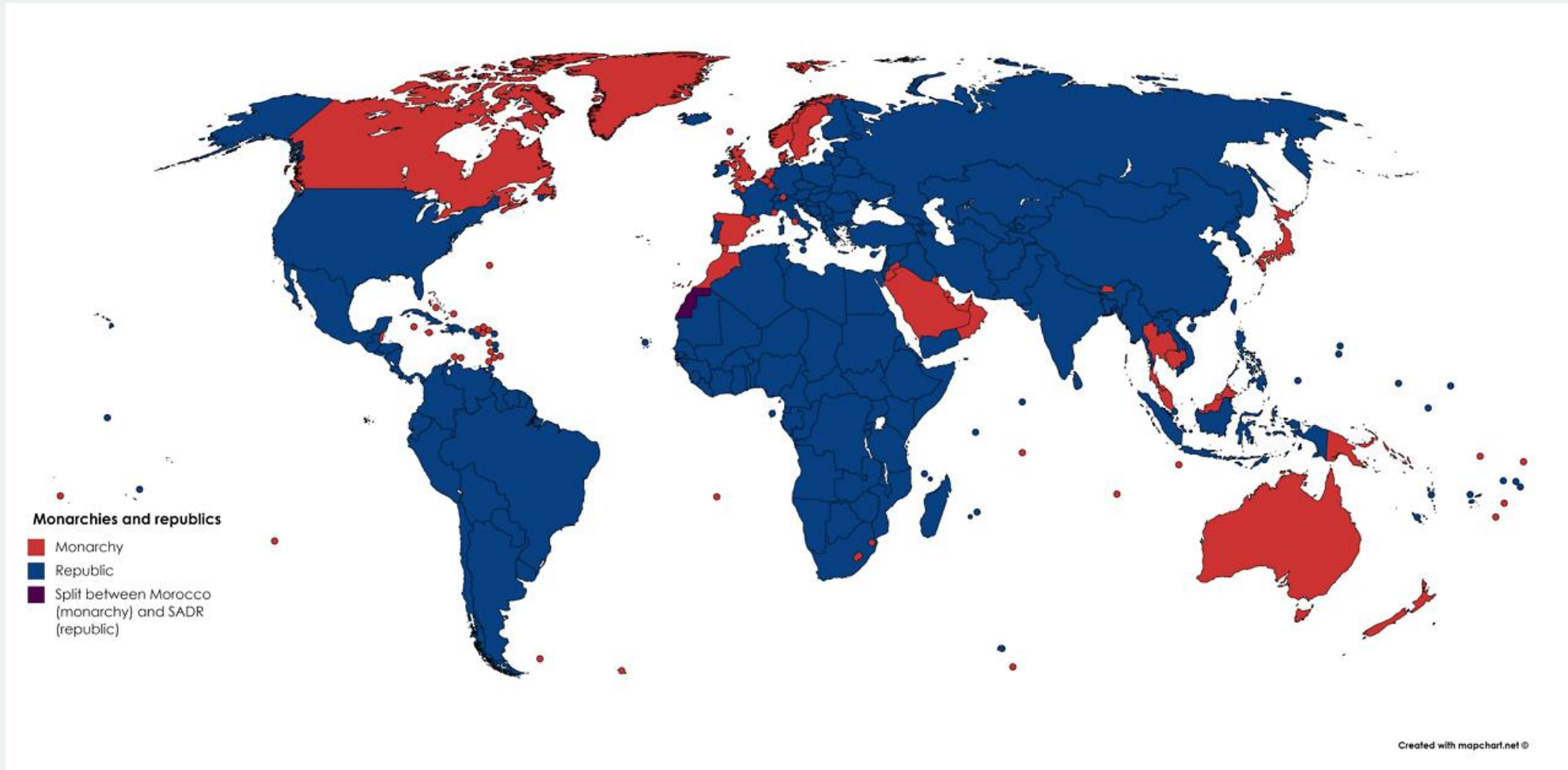
Hierarchy of laws



Political Systems

Republic vs. Monarchy

Also the concept of democracy, aristocracy, dictatorship and anarchy



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Republic vs. Monarchy

Republic 共和

The word “republic” is derived from Latin terms meaning “matters” and “the public.” Originally, it is simply a synonym for “state,” such as what Plato referred to in his work *Republic*. From 17th century, it came to mean a state without a king. A republic is a type of government based on the idea of popular or public sovereignty. In essence, a republic is a government in which leaders are chosen by the public rather than by inheritance or by force. The main characteristic of a republic is that the government is subject to people, and leaders can be recalled.



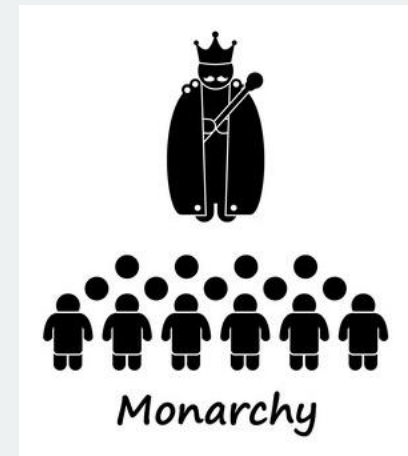
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Republic vs. Monarchy

君主

Monarchy

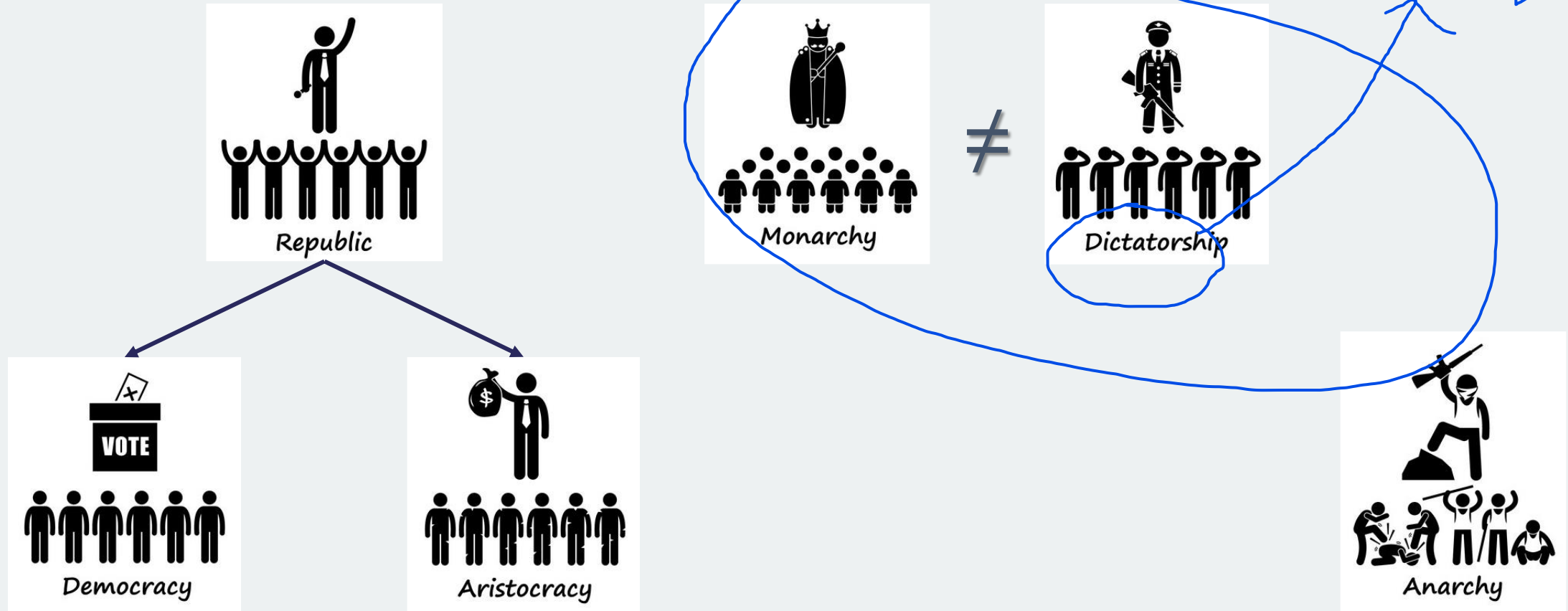
A state in which sovereignty is permanently vested in a single person—typically a king or an emperor. A monarchy is a political system based on the sovereignty of a single individual who holds actual or symbolic authority over all governmental functions. The monarchy is one of the oldest forms of government in human history and was the most common type of government until the nineteenth century. In a monarchy, authority is inherited, usually through primogeniture, or inheritance by the eldest son.



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More about political systems...

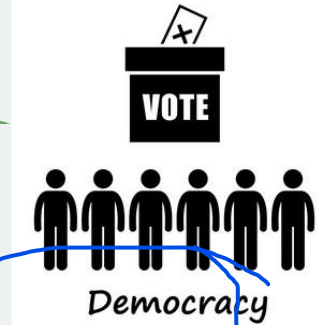
独裁



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More about political systems...

Democracy is a political system based on majority rule, in which all citizens are guaranteed participatory rights to influence the evolution of government.



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民主



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贵族

More about political systems...



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Dictatorship is political systems in which absolute power is held by an individual, under whom all political control is consolidated. A dictator usually takes power though military support.

Despotism?



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More about political systems...



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Anarchy means the absence of government. Anarchists believe that order is maintained by voluntary association and self-regulations, they are opposed to all forms of government.



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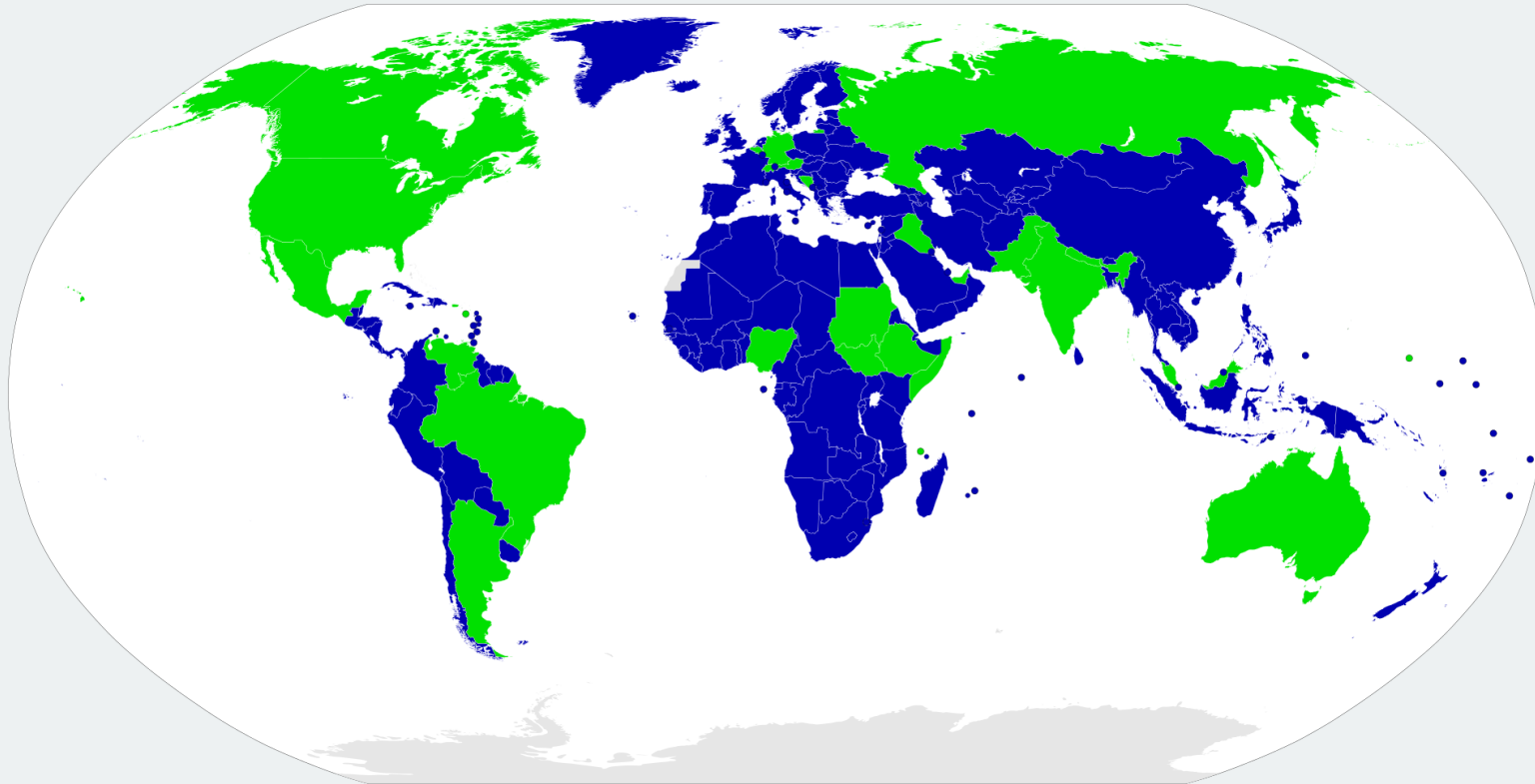


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https://upload.wikimedia.org/wikipedia/commons/thumb/e/e4/Charles_Montesquieu.jpg/220px-Charles_Montesquieu.jpg

- “**Political liberty** is not possible in a despotic political system, but it is possible, though not guaranteed, in republics and monarchies.”
 - – Charles de Montesquieu

Government Systems

Federal vs. unitary, also that of confederation



Source of picture: https://upload.wikimedia.org/wikipedia/commons/thumb/4/46/Map_of_unitary_and_federal_states.svg/1920px-Map_of_unitary_and_federal_states.svg.png

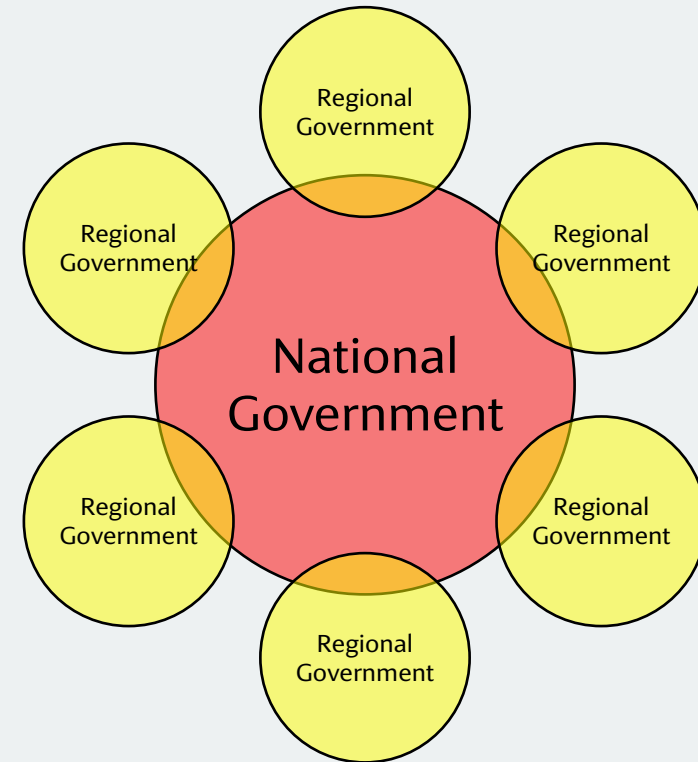
- Federal states
- Unitary states

Federal vs. Unitary

Federal system

A federal system is one that emphasizes both vertical power-sharing across different levels of governance (centre–region) and, at the same time, the integration of different territorial and socio-economic units, cultural and ethnic groups in one single polity. Federal systems are hence often viewed as combining “unity with diversity.”

Ex. The Federal Government of the US and the State Government



Federal vs. Unitary

Unitary system

In a unitary system, the central government holds all of the power. While the government maintains local and regional offices, which perform their functions according to protocol, they operate under the authority and control of the central government. The central government may grant or withdraw authority from local offices whenever it deems fit.

Ex. China and Macao



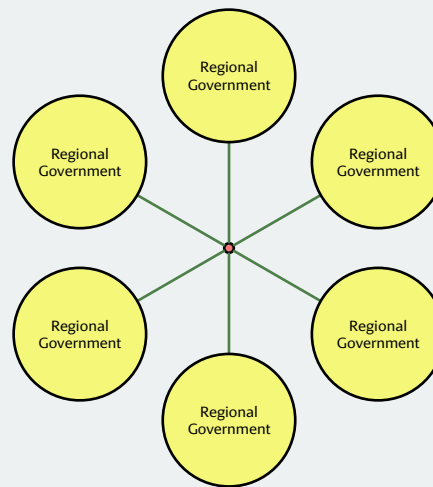
National
Government

Power distribution of the government...

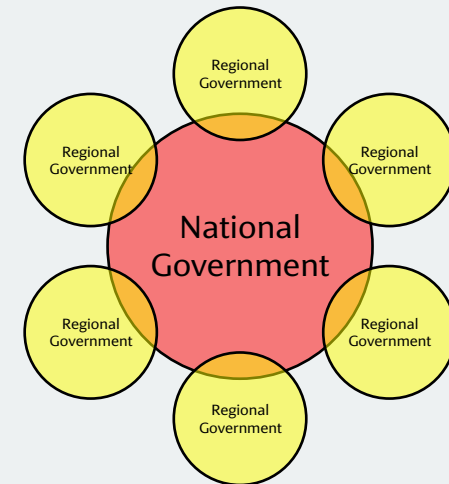
This classification is from the perspective of power distribution which describes how a government is organized. It shows whether authority or power in a country is:



concentrated at one
national level –
Unitary.



decentralized at the
regional level –
Confederation.



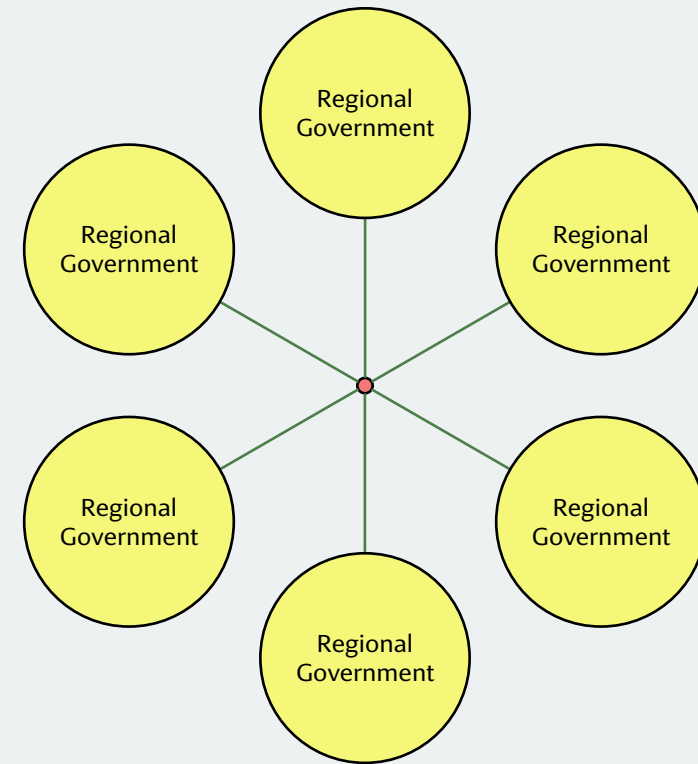
shared between
national and regional
level – **Federal.**

Power distribution of the government...

Confederation

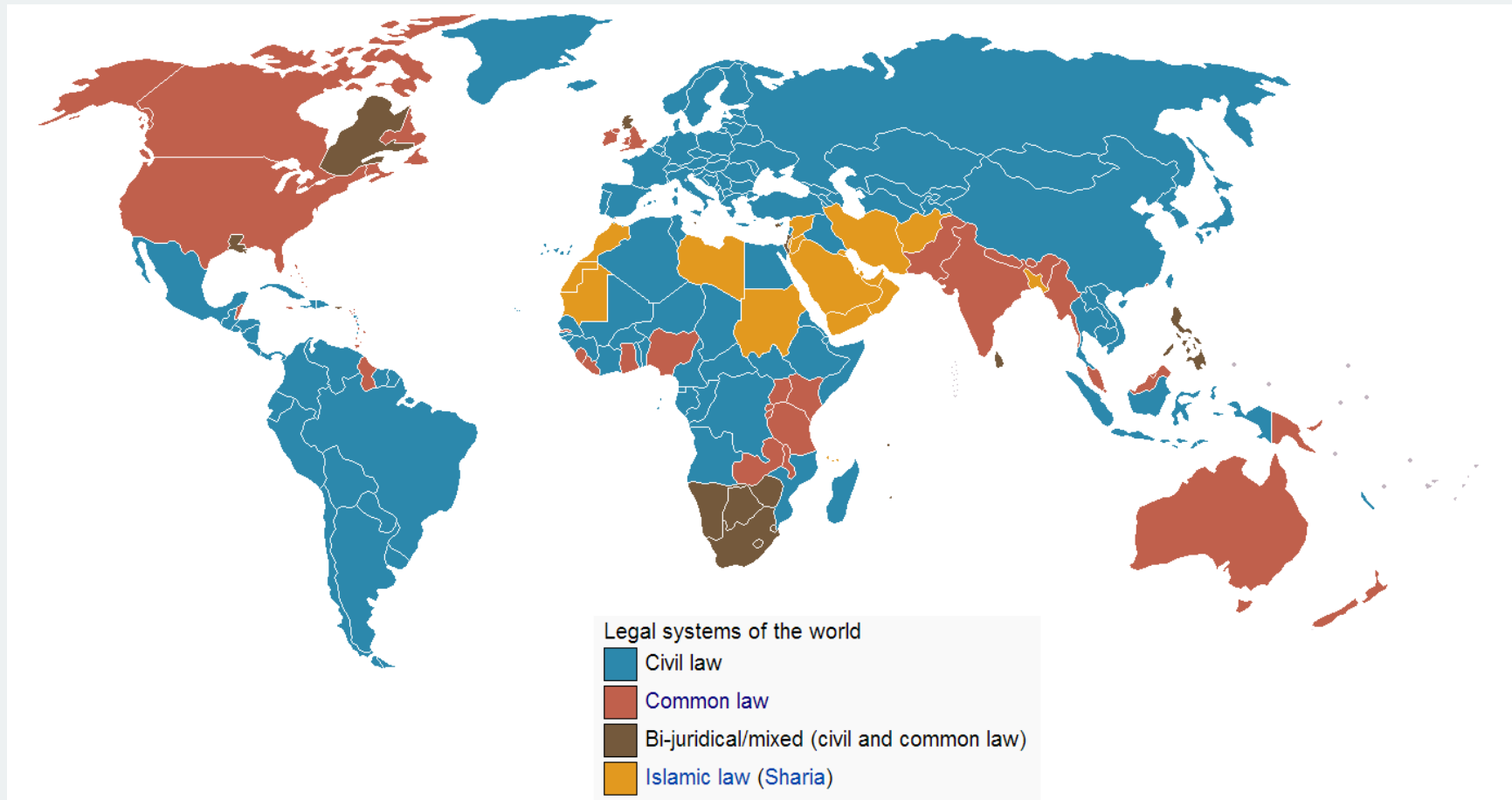
A confederation is a group of loosely allied states or nations that come together for a common cause. It is opposite to a unitary system. In a confederation, all the authority is held at the regional level. Those separated regions, while cooperating to common goals, maintain total autonomy.

Ex. European Union



Legal Systems

Common law vs. civil law



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Civil Law vs. Common Law

Civil Law System 大陸法系(歐陸法系)	Common Law System 普通法系(英美法系)
<ul style="list-style-type: none"> • Originated in ancient Rome, influenced and adopted voluntarily by most parts of Europe, and other Asian and African countries; 	<ul style="list-style-type: none"> • Originated in the Great Britain, then spread through conquest and colonization;
<ul style="list-style-type: none"> • Codified constitutions and other laws are also highly codified, legislation is the primary source of law; 	<ul style="list-style-type: none"> • Written constitution is not a necessity, law is generally uncoded;
<ul style="list-style-type: none"> • Academic writings (interpretation by law experts) is an important source of law; 	<ul style="list-style-type: none"> • Precedents (interpretation by judges) is the primary source of law;
<ul style="list-style-type: none"> • Changeable but not as flexible; 	<ul style="list-style-type: none"> • Honed over time;
<ul style="list-style-type: none"> • <u>Advantages:</u> not arbitrary, proactive, democratic <u>Disadvantages:</u> too much power of the legislator, inflexible 	<ul style="list-style-type: none"> • <u>Advantages:</u> specific, consistent, flexible, political independent <u>Disadvantages:</u> reactive, secondary function of the court, undemocratic

Law vs. Morality

The difference between law and morality

Why is law necessary?

Does an act that is legal or that is not illegal mean it is moral?
Are there acts which are legal but are considered to be immoral?



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Source of picture: <https://www.ucf.edu/news/files/2019/05/ucf-speed-limit.jpg>

Difference between law and morality and their relationship

Law	Morality
Political authorities command	Gods command, social and culture imposition
Enforceable	Unenforceable
Violations may bring a loss of or reduction in freedom and possessions	Violations may bring disturbance to individual conscience and social sanctions

Law and morality are connected in a way that most of the laws serve to defend basic values, such as against murder, rape, fraud, bribery, etc.

When the moral standard changes, the laws may changes, eg. laws against slavery, laws protecting the rights of women, laws for homosexual marriage, etc.

Law vs. Morality

Law is the moral minimal. 法律是道德的最低標準。



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<https://rs1.huanqiucdn.cn/dp/api/files/imageDir/0e90fef20b3b6d3f872ec95c45ba8783.png>



Source of picture: <https://statics.exmoo.com/uploads/2021-08-04/aufum7JaoHWn6YmdFLn.jpg>

Law is the necessary evil. 法律是必要之惡。

Why is law necessary?

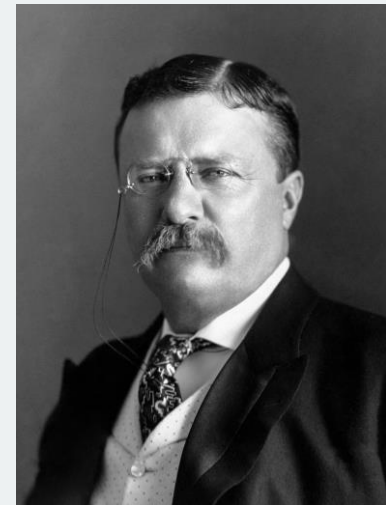
- To protect general safety;
- To ensure rights against abuses by other people, organization and government;
- To provide foreseeability;
- To resolve conflicts, deliver justice and ensure our society function effectively;
- ...



Source of picture: https://m.media-amazon.com/images/I/81bHhfsu6L_AC_SL1500_.jpg

Ours is a government of liberty, by, through and under the law. No man is above it, and no man is below it.

by Theodore Roosevelt



Source of picture:
https://upload.wikimedia.org/wikipedia/commons/6/64/President_Roosevelt_-_Pach_Bros._%28cropped%29.jpg

Important knowledge points:

1. Law – who and what?
2. Law is a system of rules, which can be divided into different types and areas. Different countries and regions have their own system of law.
3. Hierarchy of law
4. There are different types of political systems, two main types nowadays are republic and monarchy. The People's Republic of China is a republic.
5. The key difference between a federal governmental system and a unitary governmental system lies in the distribution of power. The governmental system of the PRC is a unitary one.
6. Civil law and common law are two different types of legal system. The legal system of both the PRC and the Macao SAR is based on the civil law system, while that of the Hong Kong SAR is based on the common law system.

References:

1. Brown, G. W., I. McLean & A. McMillan (2018). *A Concise Oxford Dictionary of Politics and International Relations*. Oxford: Oxford University Press.
2. Calhoun, C. (2002). *Dictionary of the Social Sciences*. Oxford: Oxford University Press.
3. Shally-Jensen, M. (2015). *Countries, Peoples & Cultures: Vol. I*. Massachusetts: Salem Press.
4. Cane, P. & J. Conaghan (eds.) (2008). *The New Oxford Companion to Law*. Oxford: Oxford University Press.