

Sovereignty & state

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Notions of state and sovereignty are very important to us in our day to day life and due to such importance it is some times, perhaps become a controversial subject.

Definitions that important to understand these two concepts:

- ◆ Definition of state under political science,
- ◆ State under International Law,
- ◆ Constitutional Definition for sovereignty under the Sri Lankan Constitution,
- ◆ Sovereignty under the international law

Definition of state under political science,

“Entity that controls nation/nations through institutional arrangement, agreed processes, and set of attitudes and norms.”

State under International Law,

- ◆ Definition for statehood under the Montevideo Convention on the rights and duties of states of 1933:
 - a. A permanent Population;
 - b. A defined territory;
 - c. A government to which inhabitants render habitual obedience; and
 - d. The capacity to enter into relations with other states,

Constitutional Definition for sovereignty under the Sri Lankan Constitution,

- ◆ Article 3 of the Sri Lankan
Constitution:

In the Republic of Sri Lanka,
sovereignty is in the people and is
inalienable. Sovereignty includes the
powers of the government,
Fundamental rights and Franchise.

Sovereignty under the international law:

- ◆ States are primary subjects of the international legal system, but not only subjects. Other entities such as international organizations and individuals have international legal personality only to the extent that state allow them.

State Sovereignty:

When an entity satisfies the Montevideo criteria for statehood, it is assumed that the state exercises absolute and exclusive authority and control over its territory; its rules supreme within its territory and does not recognize any outside superior authority.

sovereign equality of all
independent states under the
international Law.

Article 2 of the UN Charter

This right given effect in the one state-one vote principle. Thus, despite tremendous differences in size, population, economic strength and military power, each member state has equal recognition under the international law.

This principle was further amplified in the UN declaration on principles of international law concerning friendly relation among states adopted by the General assembly in 1970 (resolution 2625).

This declaration includes following rights also under the sovereign equality:

- ◆ States are judicially equal,
- ◆ Each state enjoys the rights inherent in full sovereignty,
- ◆ Each state has the duty to respect the personality of other states,
- ◆ The territorial integrity and political independence of the state are inviolable,
- ◆ Each state has the right freely to choose and develop its political, social, economic and cultural systems, and
- ◆ Each state has the duty to comply fully and in good faith with its international obligations and to live in peace with other states.

Sovereignty Debate: Internal and External aspects of Sovereignty

- ◆ Based on political norms,
 - ◆ Based on international norms,
- 

Based on political norms,

- ◆ Deriving from the definition of the state and sovereignty,

1. Based on subjects of the state:
Nation/nations

- ◆ What is nation?

Political togetherness, based on

Political aspirations that are deriving from self determination

In such a context, the question is how the sovereignty is organized in a state,

Sovereignty is organized through:

- ◆ Social contact,
- ◆ Economic theory of the state,


Single sovereignty,

Shared sovereignty

Unitary state,
Unitary Decentralized state,
Non Centralized state,

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Based on international norms,

- ◆ State Responsibility to comply fully and in good faith with its international obligations and to live in peace with other states.
 - ◆ Sovereignty and self determination,
 - ◆ Sovereignty and Human Rights
- 

State Responsibility to comply fully and in good faith with its international obligations and to live in peace with other states:

- ◆ Evolution of the doctrine of state responsibility now reveals that the state did not have unlimited powers within its territorial jurisdiction.
- ◆ Even long before human rights guarantees were recognized by modern human rights conventions, the law relating to state responsibility for denial of justice to aliens protected these rights as universally recognized requirements of civilized justice.
- ◆ These understandings helped to develop in those days obligation to honor certain minimum standard **for common human good and human dignity.**

Sovereignty and self determination,

- ◆ (connects to the political debate)
- ◆ Self Determination: Different definitions under the international law
 1. Marxist view,
 2. Self Determination under the nation state (Woodrow Wilson ion definition in 1914)
 3. Definition that used to emancipate states from colonialism,
 4. Ethnic Self Determination- External factor, (ICJ –Baltic issue) Internal Factor (Canadian S.C. Quebec issue),

Recognition of non recognized states;

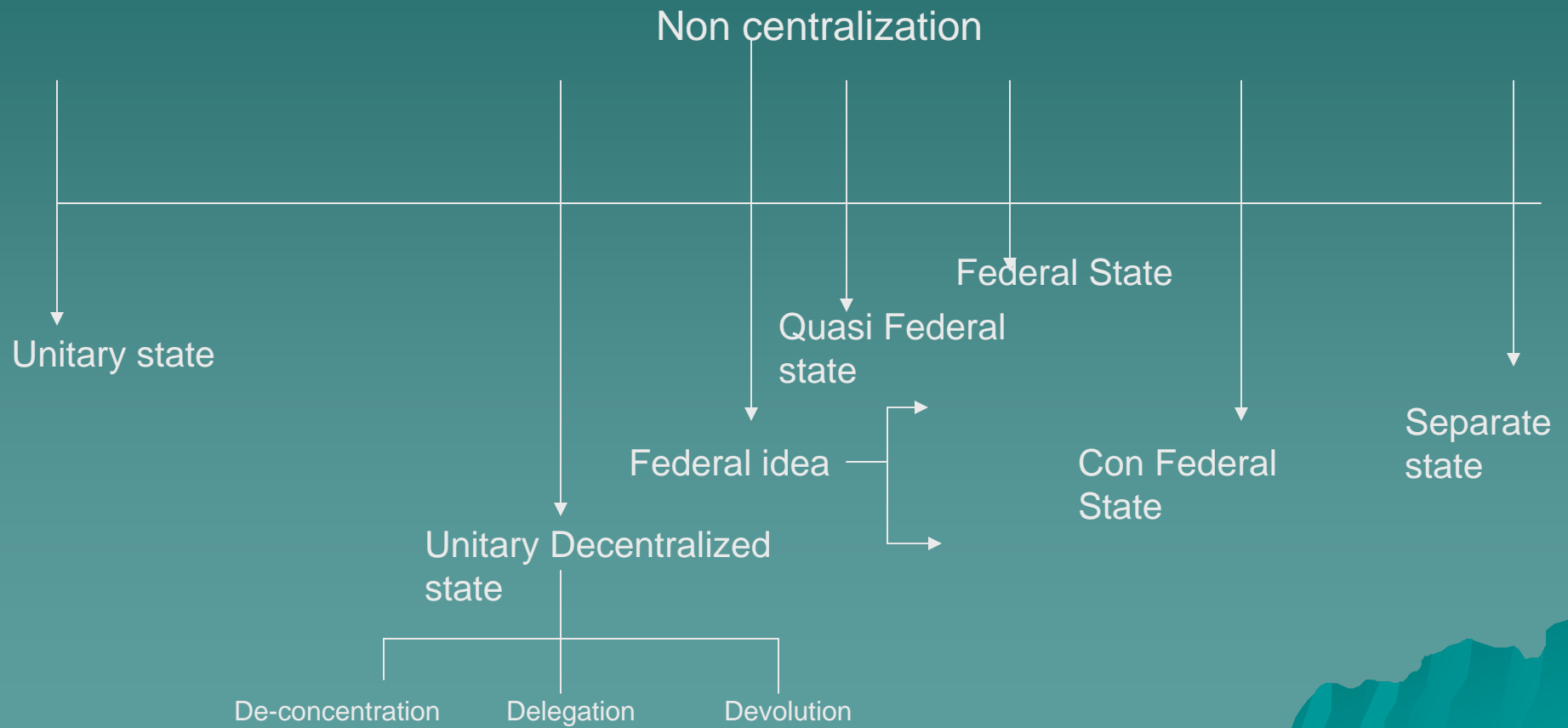
- ◆ question of fact-criteria for statehood
- ◆ Political factors-
 1. Constitutive theory: only by recognition,
 2. Declarative theory: statehood exists as such prior to and independent of recognition. The act of recognition is merely the formal acknowledgement of an already existing fact.

Sovereignty and Human Rights

- ◆ Scholars of international relations have succinctly identified the tension of these two as follows;

“the beginning of wisdom is that under certain circumstances, even non feasant state (taking no action at all) may be liable for violation of human rights. Thus even if a sate does not violate human rights by its actions, it may nonetheless be liable for its inaction by a private third party.

State crafting Continuum



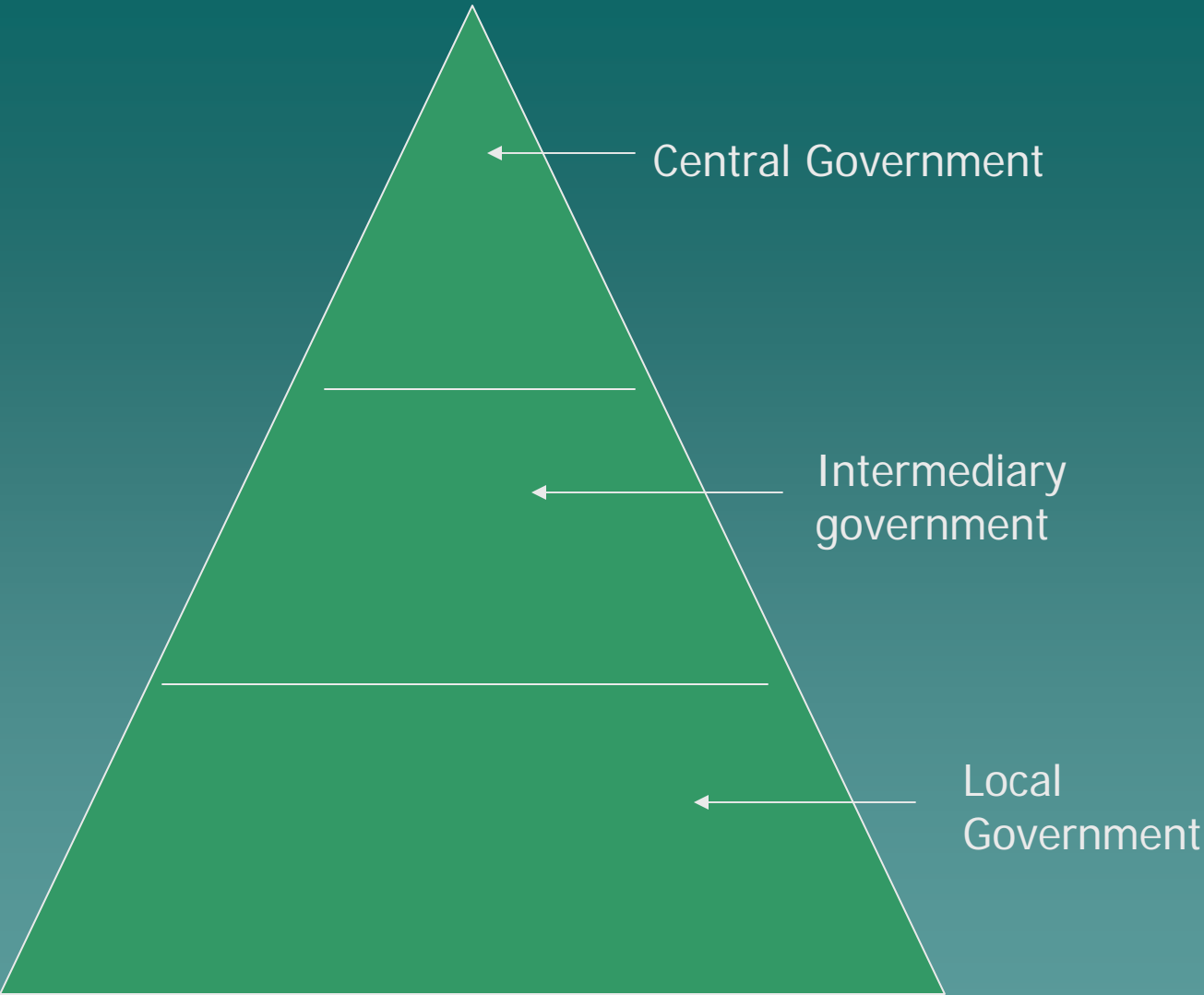
Models of Structures and processes of the state:

- ◆ Models of Structures and processes are differentiated according to the nature of individuals' sovereignty organized.
 - I. Unitary structure and processes
 - II. Unitary decentralized structures and processes
 - III. Non Centralized structures and processes

Concept of Unitary state (positivist theory)

- ◆ Power derives from one source
- ◆ No competing structures are allowed
- ◆ People obey to the law due to the coercive nature of the laws

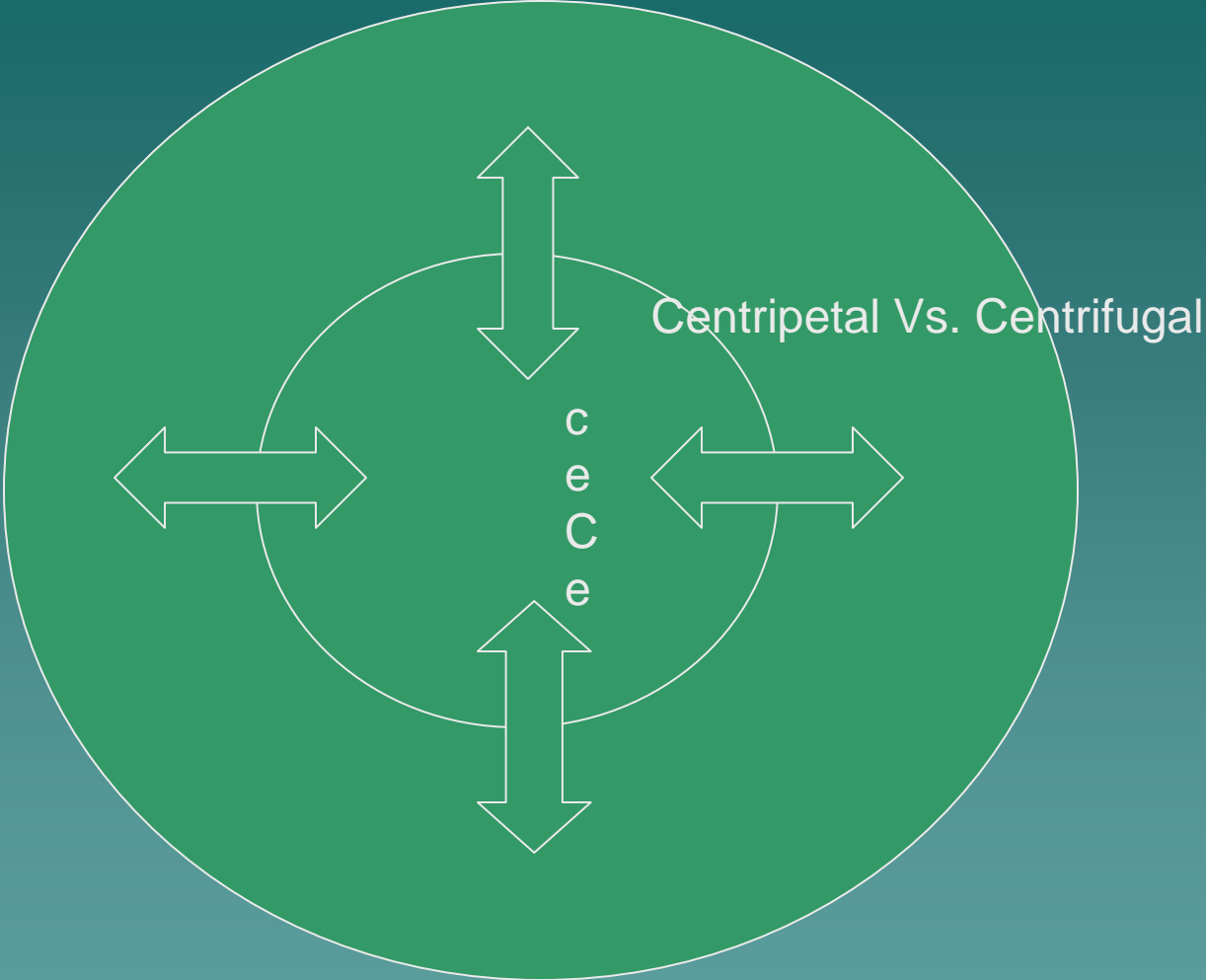
Unitary governance structure



Decentralization: disburse power from the centre to periphery

- ◆ De-concentration-disburse executive power
- ◆ Delegation-disburse legislative power
- ◆ Devolution-disburse executive, legislative and judicial power
- ◆ Privatization-market forces
 - de-regulation
 - Privatization
 - Individual aspirations

Unitary Decentralized structure



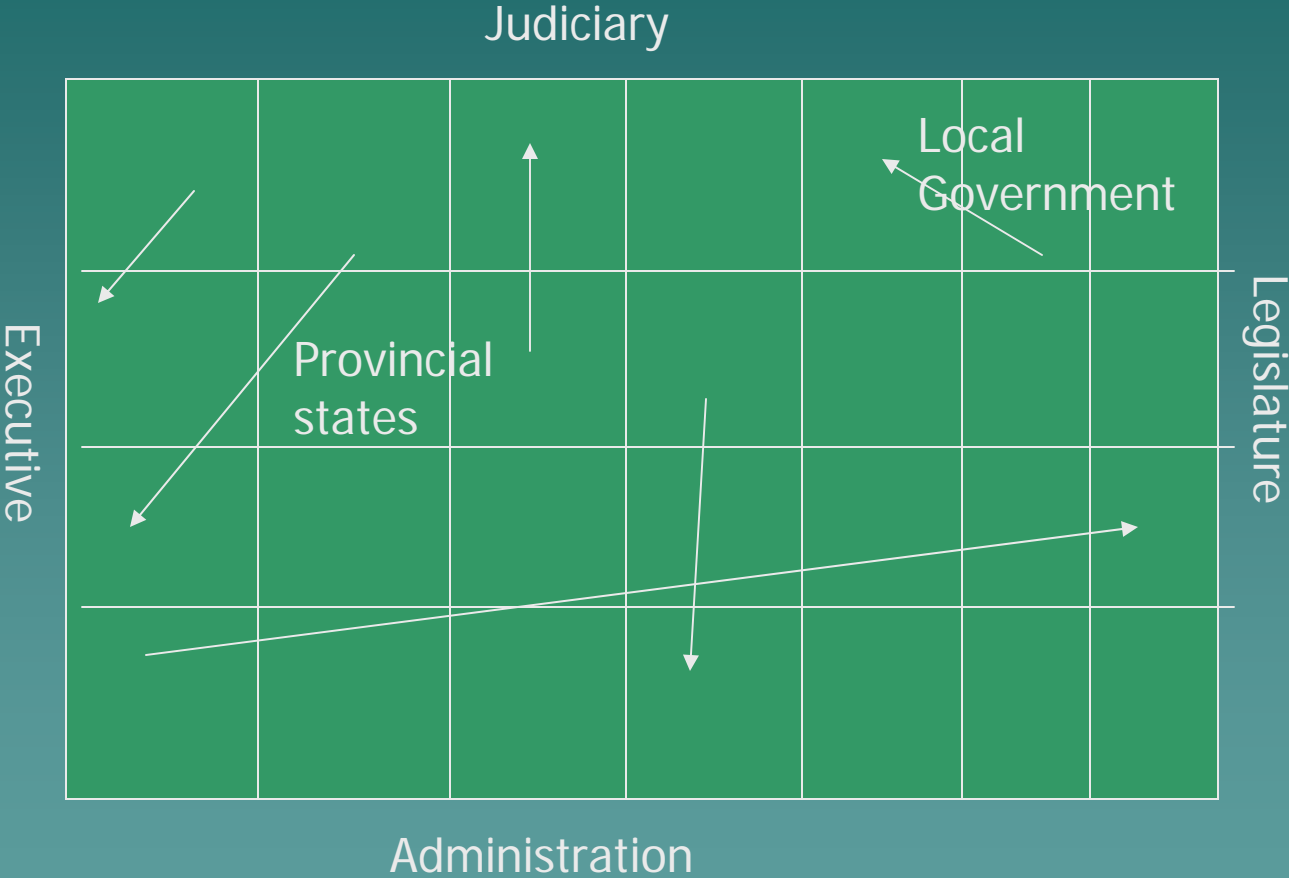
Examples for decentralized countries:

- ◆ Sri Lankan state under the 13th Amendment to the constitution
 - ◆ United Kingdom: England, Welsh and Scotland-Northern Ireland (asymmetrical decentralization)
 - ◆ Spain and Basque autonomous region
 - ◆ Italy and "Alto-Adige" autonomous region
 - ◆ Sweden
 - ◆ Japan
- strong fiscal decentralization

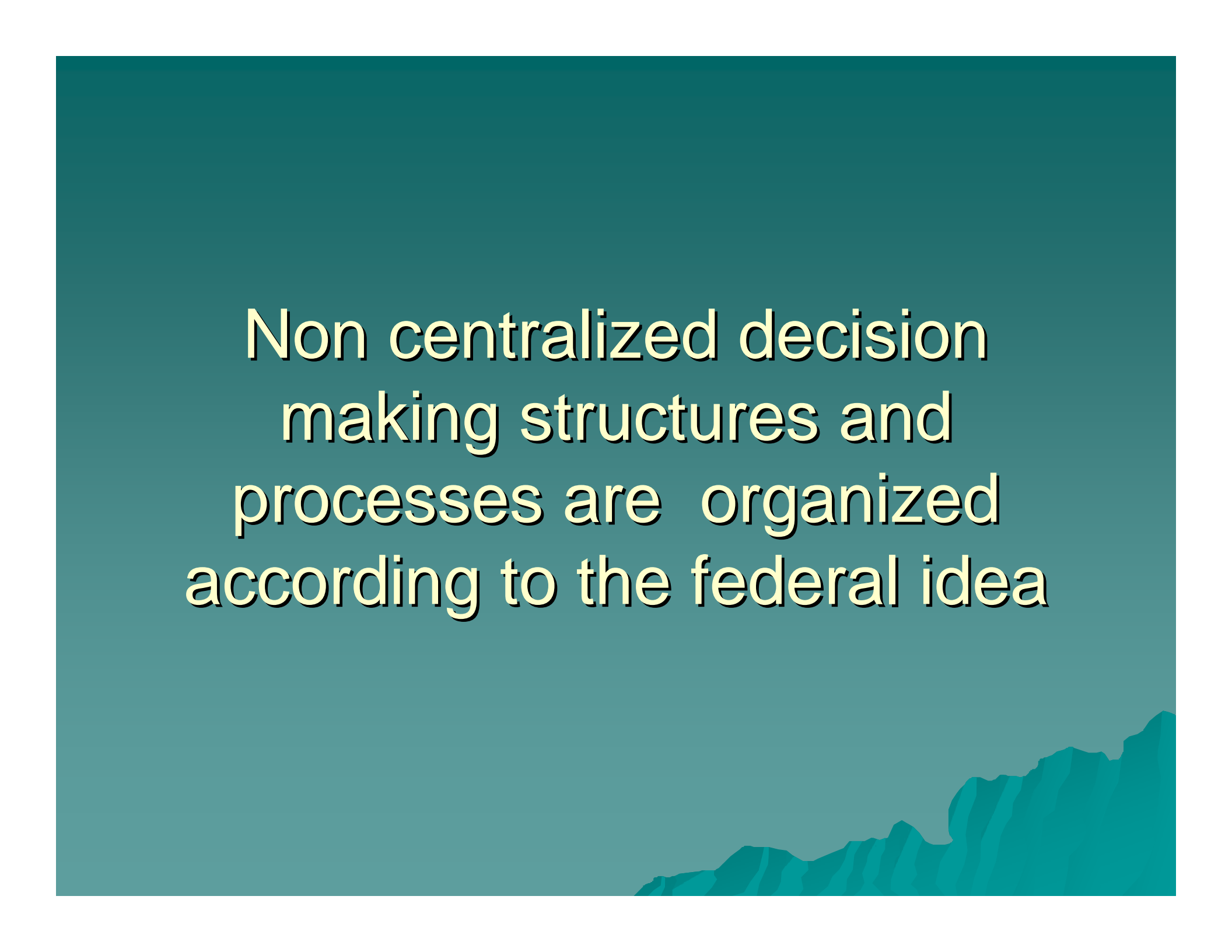
Non Centralization

- ◆ Self Rule
- ◆ Shared rule
- ◆ Balance the centripetal and centrifugal powers through a covenant based on shared sovereignty
- ◆ Constitutional supremacy
- ◆ Constitutional court to adjudicate constitutional grievances

Non Centralized matrix model




Non centralized decision
making structures and
processes are organized
according to the federal idea

The background is a solid teal color. At the bottom right corner, there is a stylized silhouette of a mountain range in a slightly darker shade of teal.

The word federal idea has entered into the English language via French, from Latin. Foederatus means ,”bound to by treaty” deriving from feadus(=treaty and federal (=trust)

Federal idea response to the question of how to link separate political communities together (originally separate entities or imminent to separate) in order to pursue effective objective otherwise un-obtainable alone, but without submerging their own identities.

A stylized silhouette of a mountain range in shades of teal, located in the bottom right corner of the slide.

Once Federal idea operates at the ground level it is important for the society as:

- ◆ Political Phenomenon,
- ◆ Social Phenomenon,
- ◆ Cultural Phenomenon,
- ◆ Territorial Phenomenon,

As a political phenomenon:

- It places the society in a practical governance mode,
- Establishes just political society,
- Establishes just and moral society

As a social phenomenon:

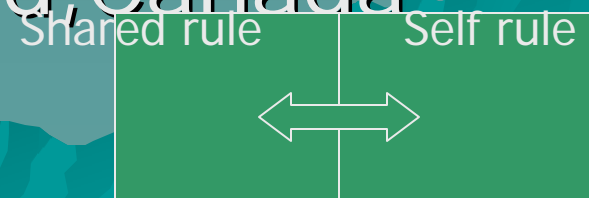
- ◆ Allow to understand people are comprised not only of individuals but also of groups
- ◆ Allow to understand citizens are comprised not only of individuals but also of groups,
- ◆ Individual community and human dignity should protect not only through ensuring individual freedom, liberty but also through group freedom and liberty, and ensure it in every aspect of life

As a cultural phenomenon:

- ◆ Allows to think civil and political behavior as a coordinating, cooperative, deliberative, non hierarchical and sharing attitude

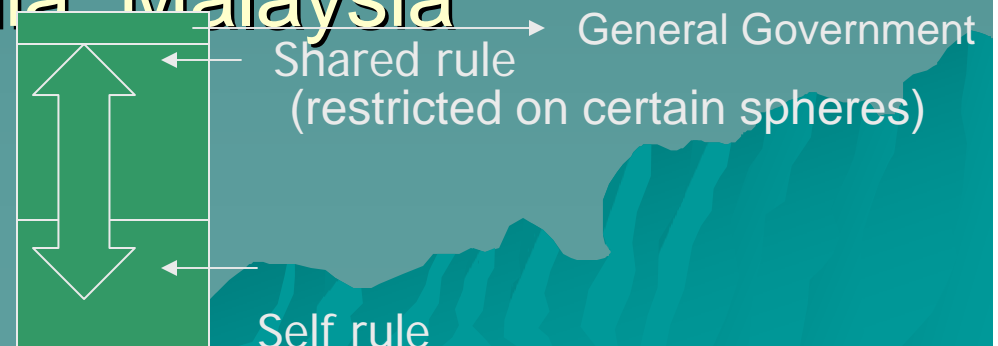
Federal idea is applied in different forms to create federal states:

- ◆ Federation: a compound polity comprised of strong constituent entities and strong general government, each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in the exercise of those powers. Ex. Switzerland, Canada



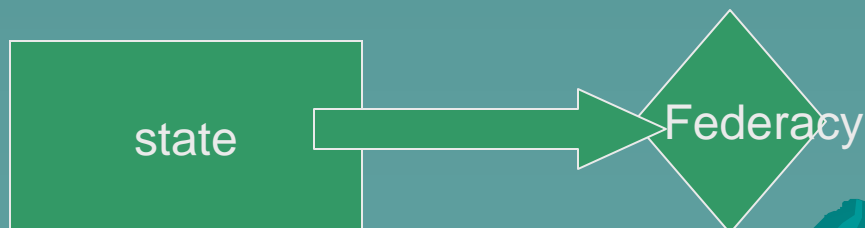
Union: a polity compounded in such a way that its constituent entities preserve their respective integrities primarily or exclusively through common organs of the general government rather than dual government structures.

Ex. India Malaysia

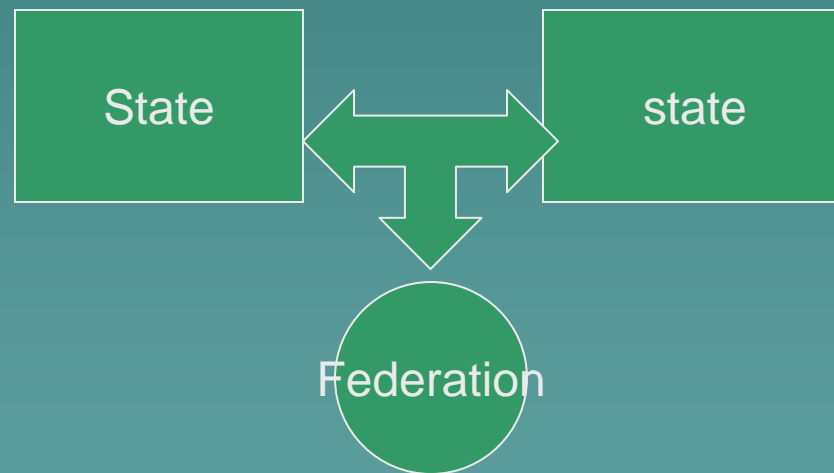


Federacy: Whereby larger power and a small polity are linked asymmetrically in a federal relationship in which latter has **substantial autonomy** and in return has minimal role in the governance of the larger power. Resembling a federation, the relationship between them can be dissolve only by mutual agreement.

Ex. Puerto rico and USA,
Kashmir and India



Confederations: Several pre-existing polities joined together to form government for strictly limited purposes.
Ex. Russian Federation



Confederations:

Powers of the centre are not derived from the constitution but by the delegation of unit governments.

Switzerland and USA before their first constitutions were best examples for this kind of confederal arrangement, nevertheless thereafter all these two countries transformed into federal states.

(Example for independent countries coming together through federal idea)

Basic differences between federal and confederal arrangements:

◆ Federal

- ◆ Designed in tripartite basis; legislature, executive and judicial division of powers,
- ◆ Tri arena basis: Federal ,state and local,
- ◆ Governance through parliament,
- ◆ Constitutional court

◆ Confederal

- ◆ Designed in quadripartite and Quadra arena basis: Ex. EU-Council of Ministers (legislative), Commission (Executive), Constitutional court (judicial), parliament (consultative-advisory),
- ◆ Legislative arm is weak,
- ◆ Governance based on

UN Charter enumerates provisions for such occasions under humanitarian intervention.

◆ Humanitarian Interventions:

A threat or use of force by a belligerent community, or state, or international organization with the object of protecting human rights.

Nevertheless this is a hotly debated issue. To understand this one has to read Article 2(4) and Article 51 together.

Article 2(4) provides that:

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or any other manner inconsistent with the purposes of the United Nations.

Article 51 nevertheless, states that:

- ◆ Nothing in the present chapter shall impair the inherent right of individual or collective self defense if an armed attack occurs against a member of the United nations.

Although this power itself has self contradictory nature in application, to minimize the ambiguity of this provision international jurists have introduced certain criterion in applying this power into empirical conditions.

- ◆ There should be an immediate and extensive threat to human rights,
- ◆ The intervening state uses proportional force,
- ◆ There is a minimal effect on authority structure,
- ◆ The intervention is of limited duration,
- ◆ The intervening state promptly reports its action to the security council,
- ◆ The intervening state is "relatively disinterested" in the affairs of the target state,