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A Pluralistic Approach to Contextual Analysis in Comparative Law

Priv.-Doz. Dr. Konrad Lachmayer

Budapest, May 19, 2016

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A Pluralistic Approach to Context Analysis in Comparative Law

1. Contested Contextualism
2. The Complexity of Contexts
3. Approaches towards Contextual Analysis
4. The Paradigm of Pluralism
5. The Future of Contextual Analysis

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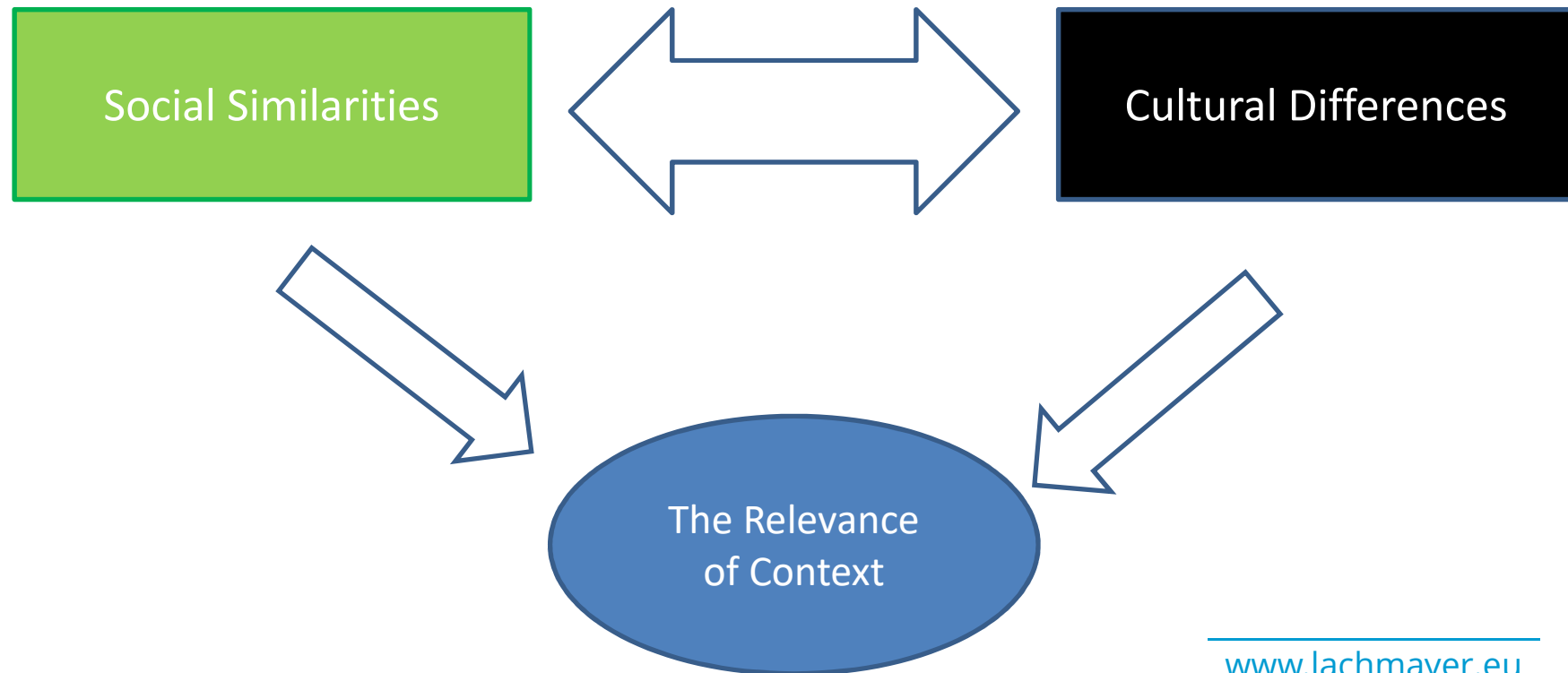
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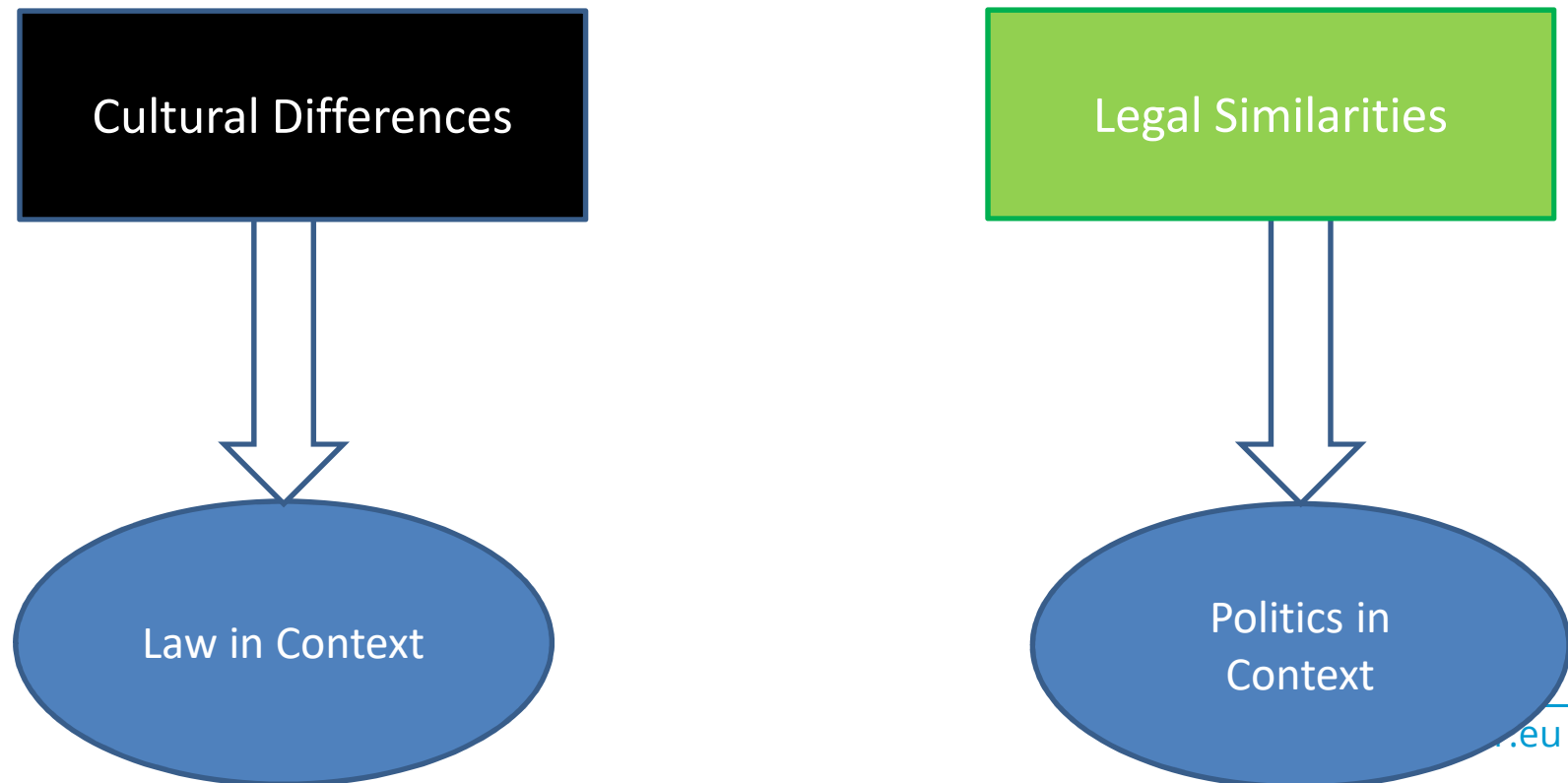
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1. Contested Contextualism

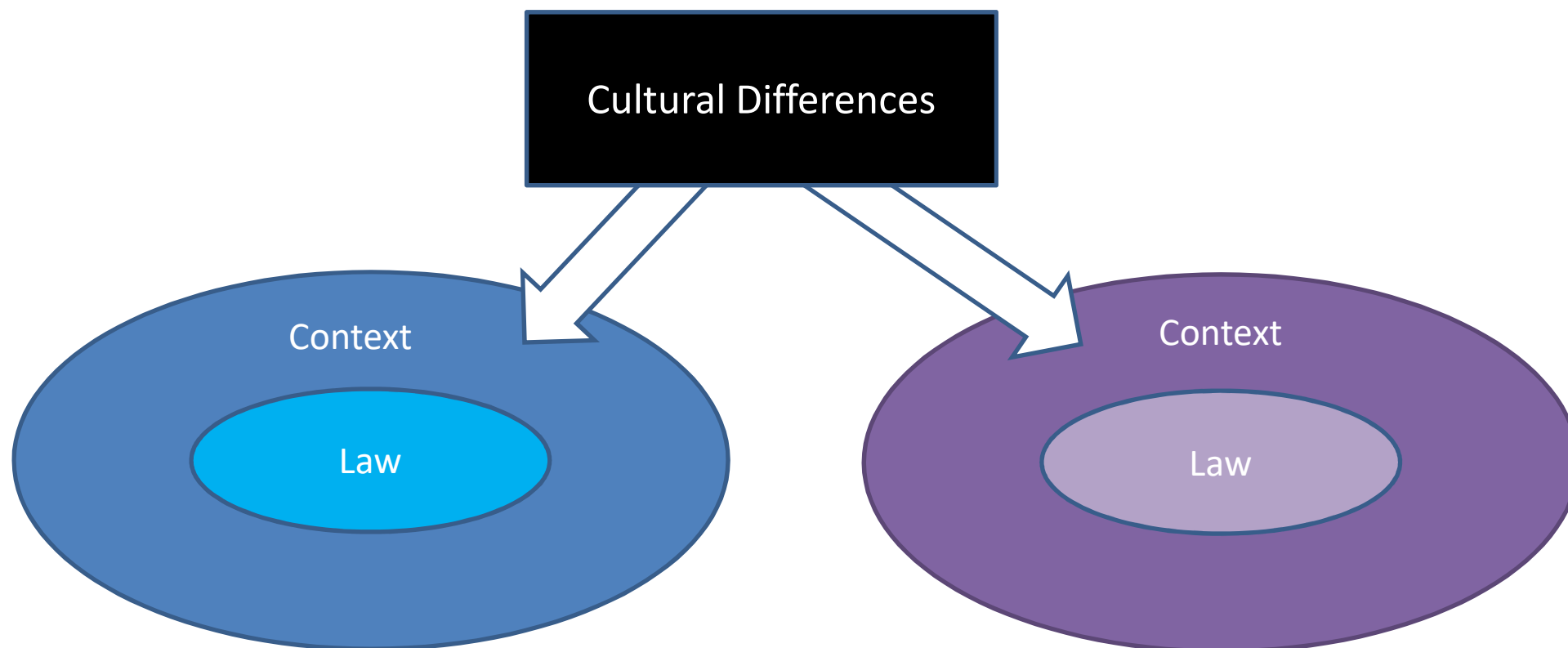
Functionalism vs Contextualism



Comparative Law vs Comparative Constitutional Studies



Contextualism and Contexts



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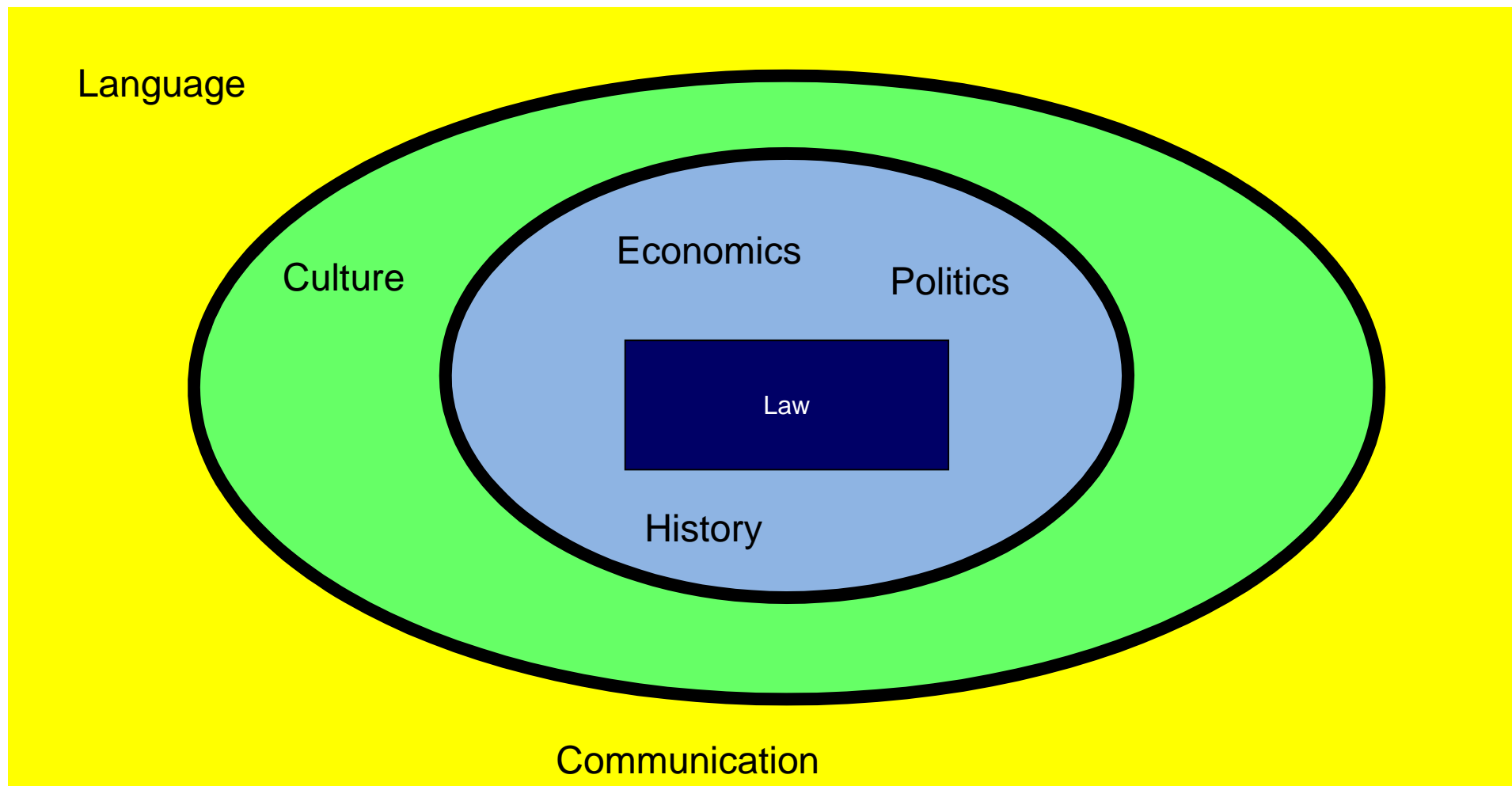
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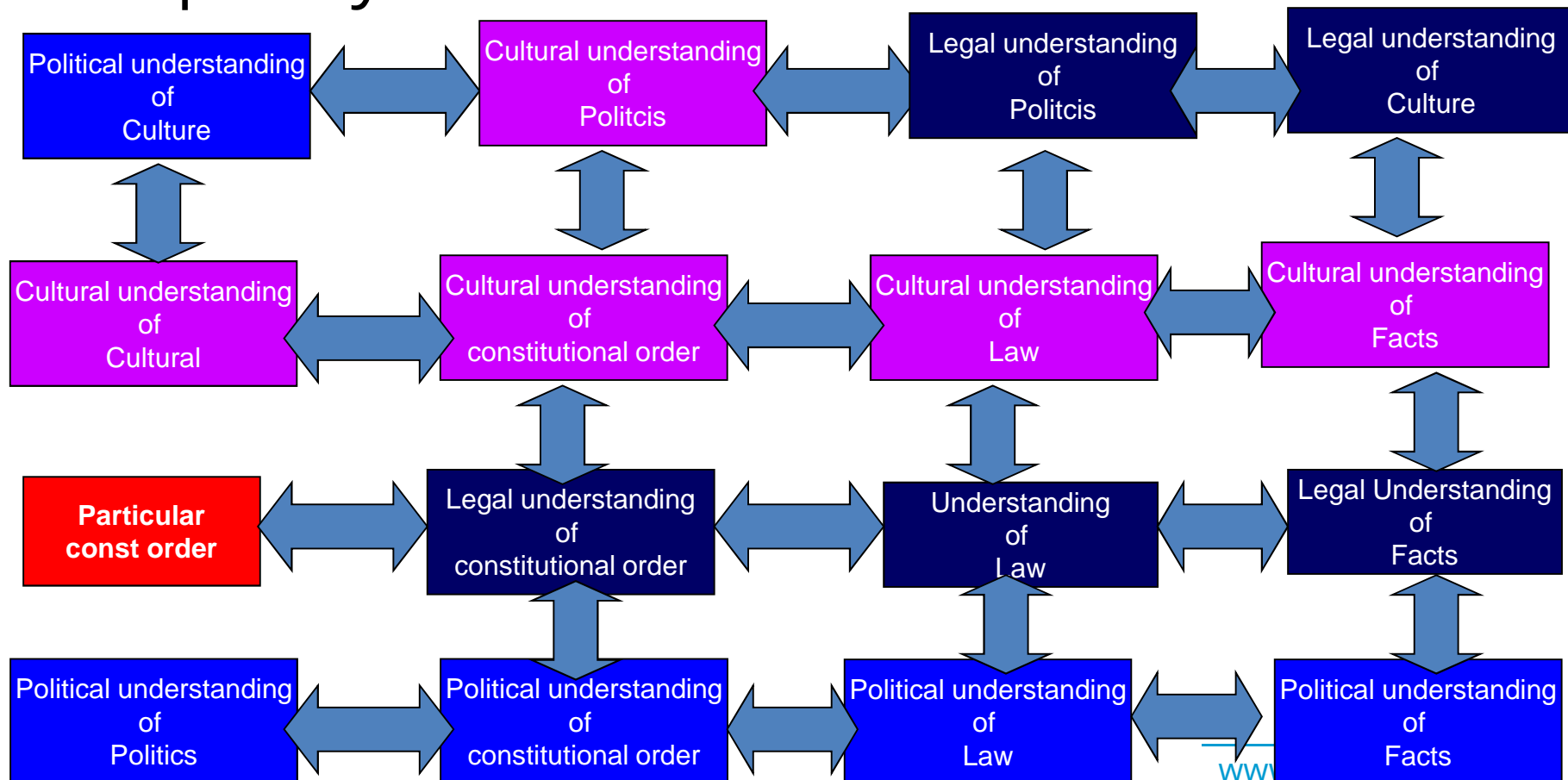
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2. The Complexity of Contexts

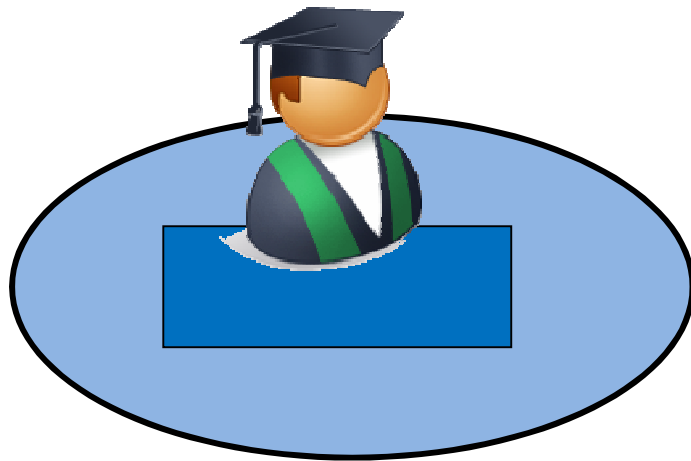
Contexts



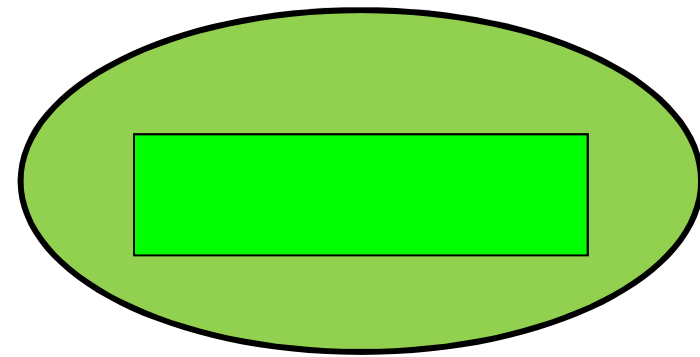
Complexity



The two sides of contexts

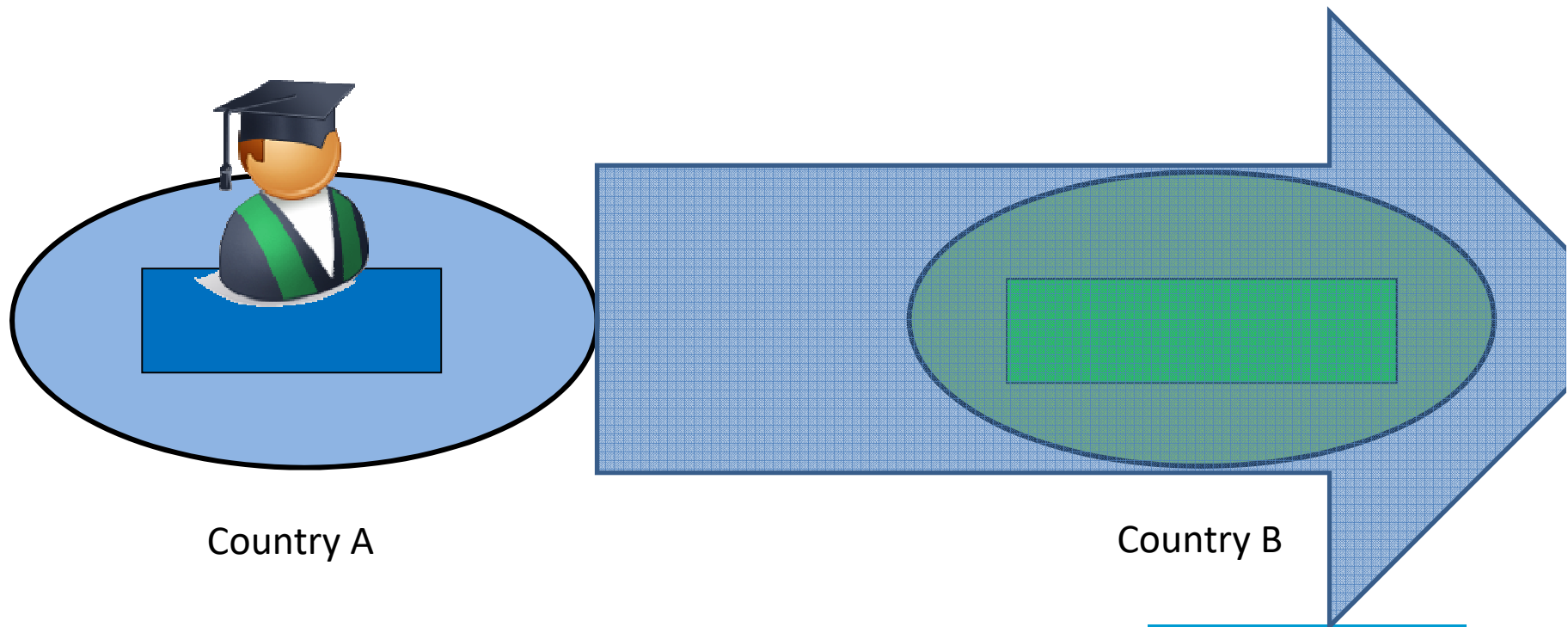


Country A

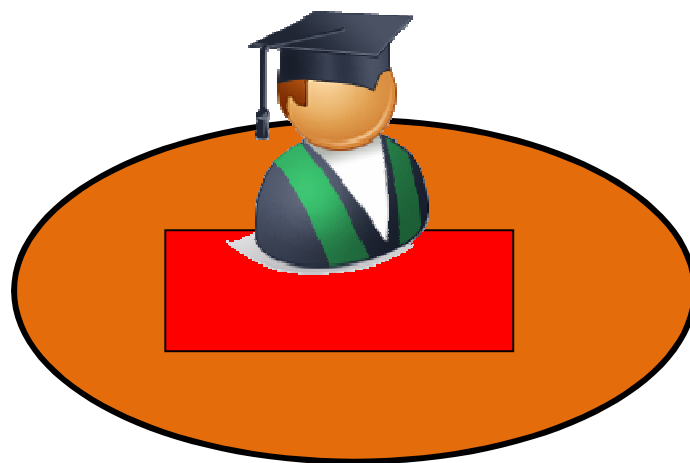


Country B

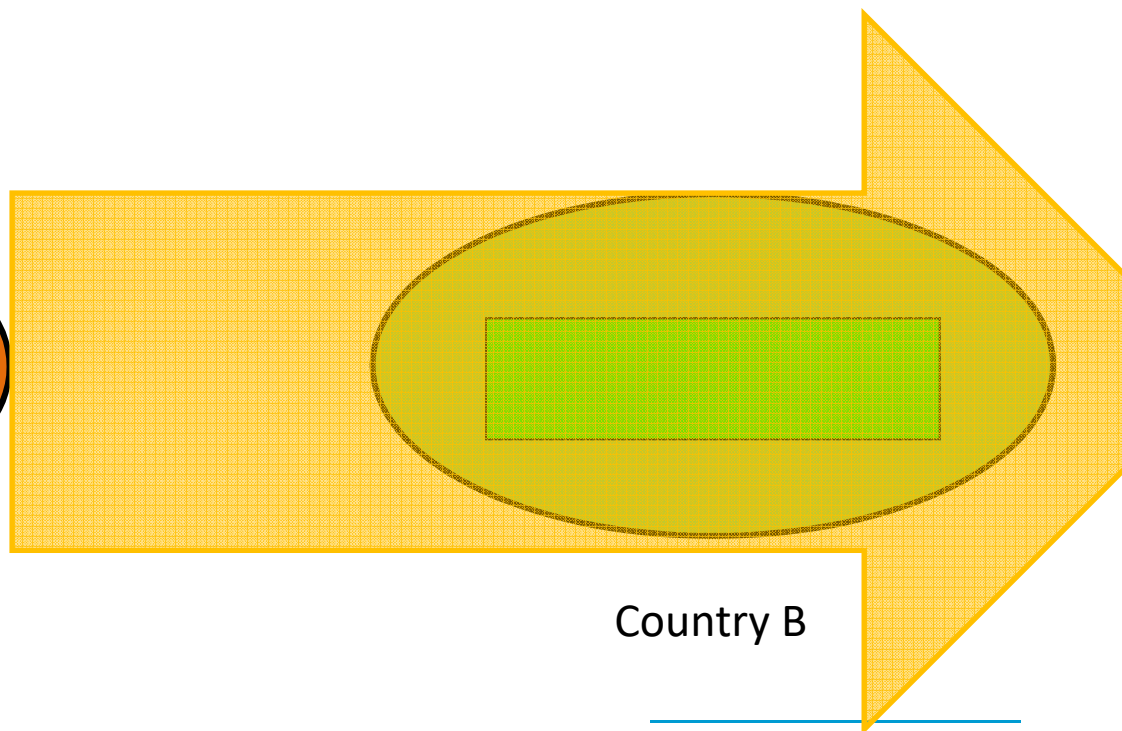
The relativity of the comparative perspective



The relativity of the comparative perspective



Country C

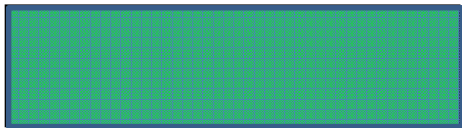


Country B

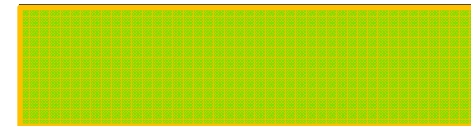
Comparing perspectives



Internal Perspective: C



External Perspective I: A -> B



External Perspective II: C -> B

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3. Approaches towards Contextual Analysis

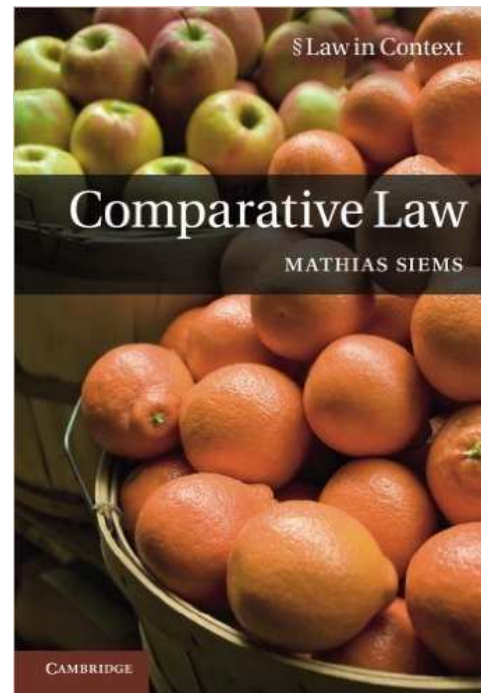
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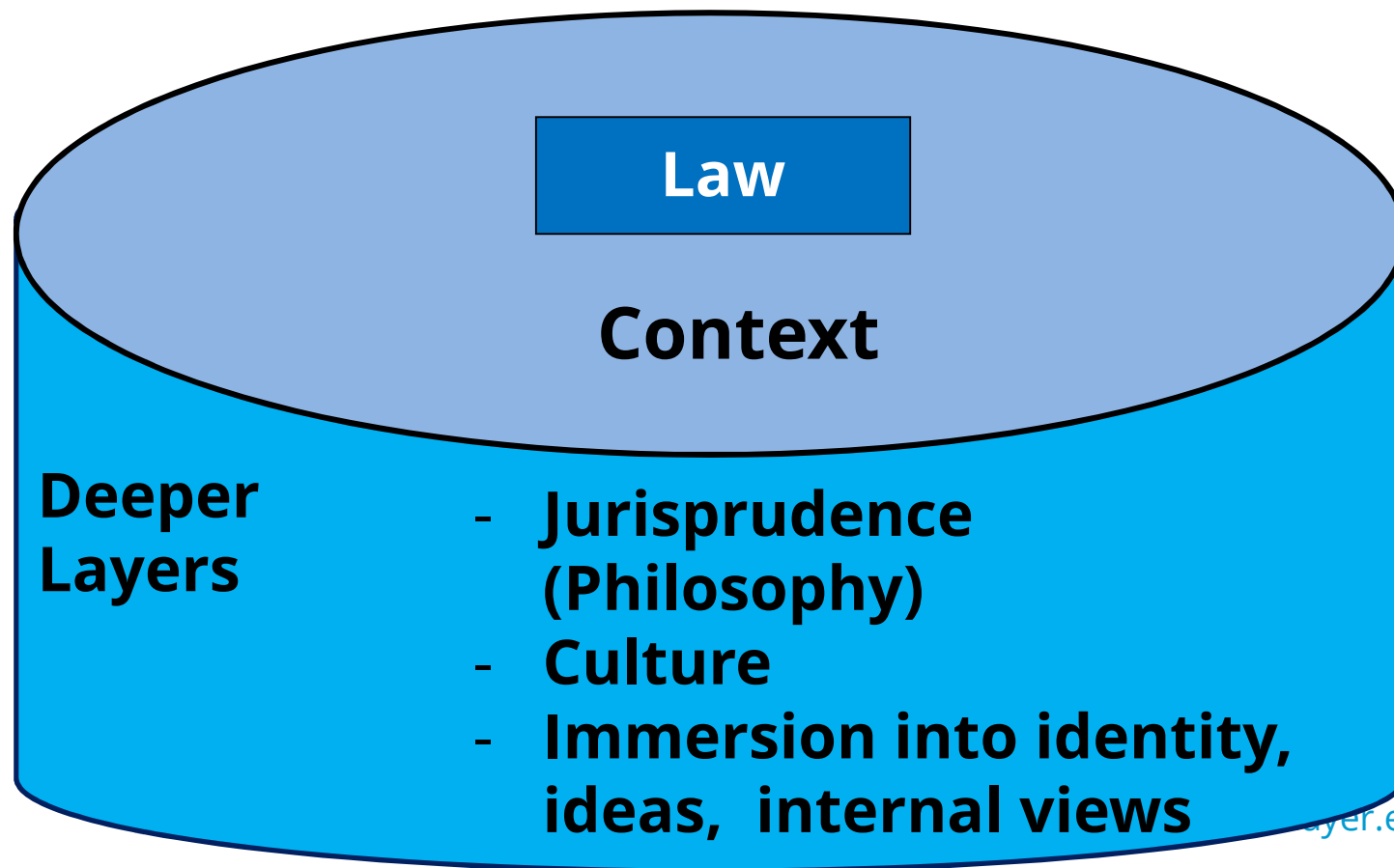
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Extending the Methods of Comparative Law

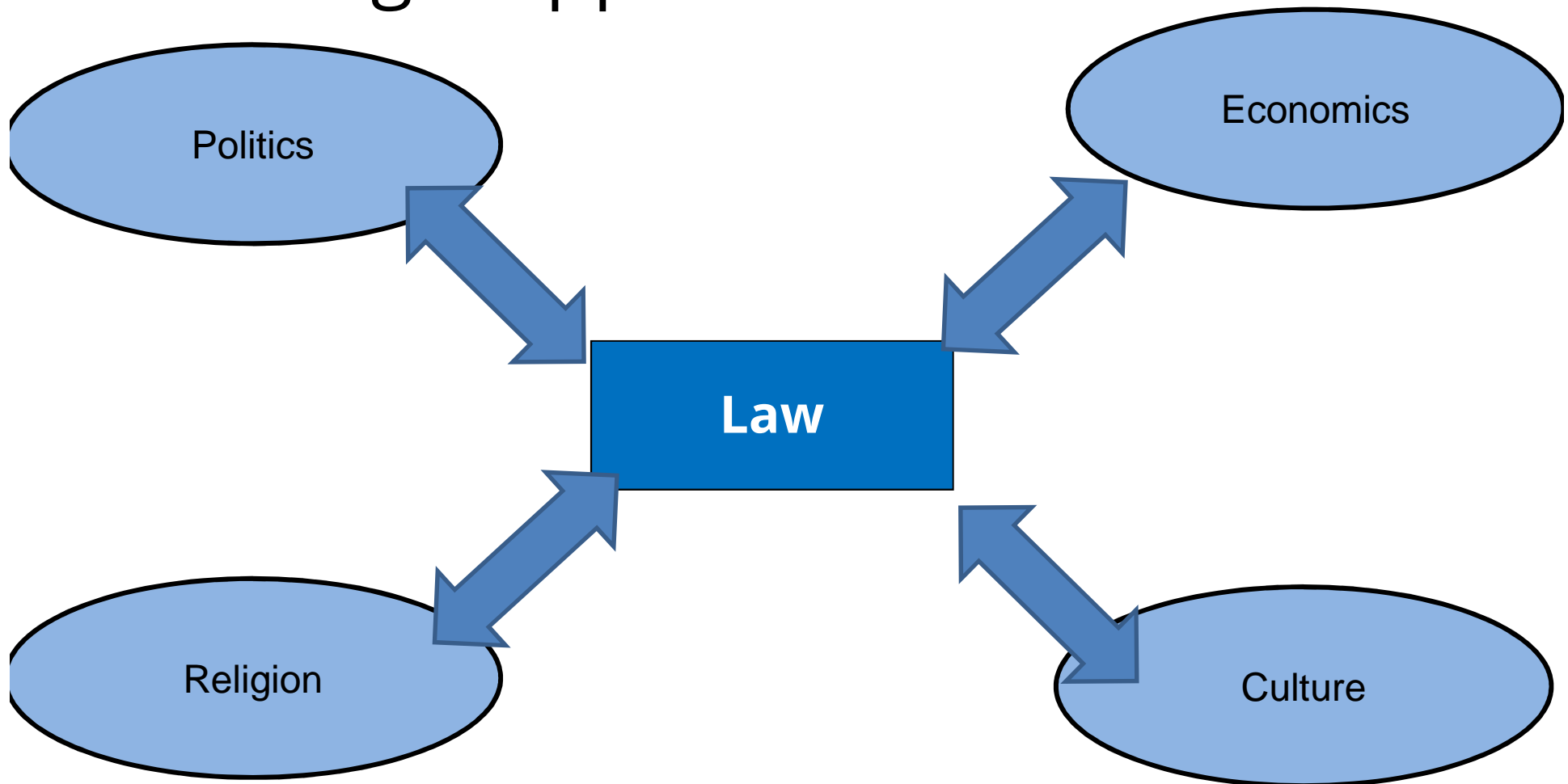


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Deep-Level Approaches

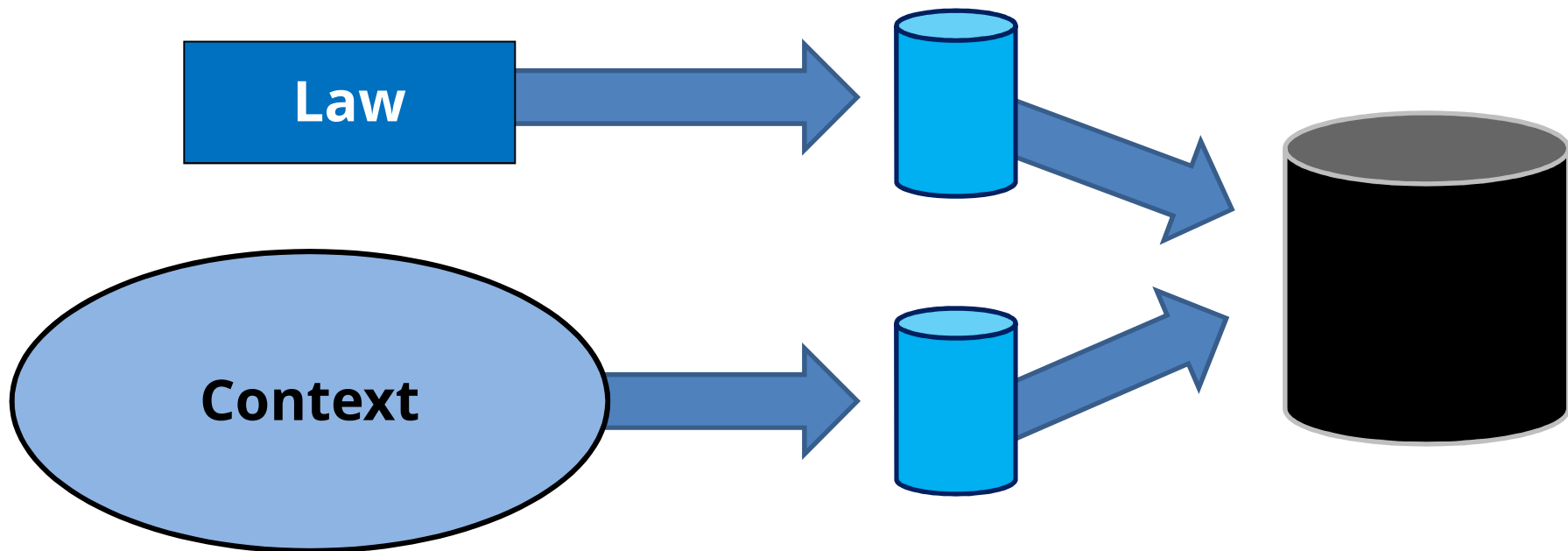


Socio-Legal Approaches



Data-based Approaches

Creating „Objectivity“

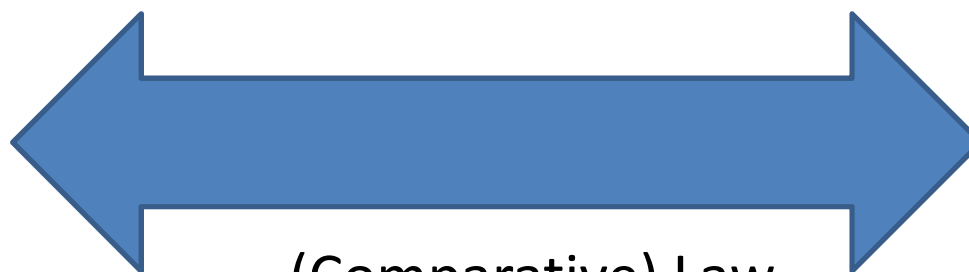


Loosing Characteristics

Broadening the perspective

Humanities

Social Sciences



(Comparative) Law



Broadening the perspective

Art

Humanities

Social
Sciences

Natural
Sciences



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(Comparative)
Law



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4. The Paradigm of Pluralism

Concept of Pluralism

Diana Eck, Harvard University, Pluralism Project

- Energetic engagement with diversity
- Active seeking of understanding across lines
- Encounter of commitments
- Based on dialogue

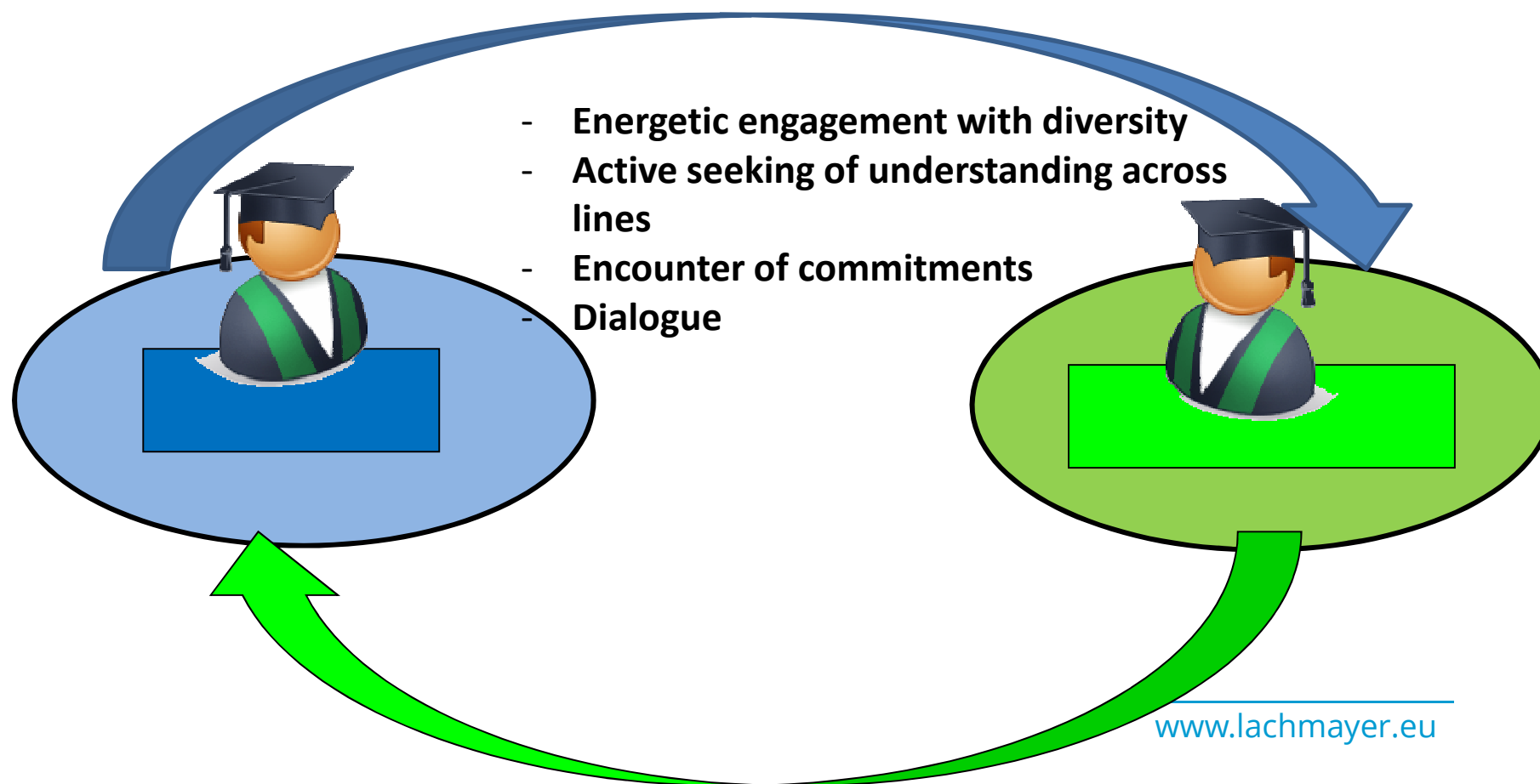
Concept of Pluralism

Diana Eck, Harvard University, Pluralism Project

- **Energetic engagement with diversity**
diversity is a given, but pluralism is an achievement
- **Active seeking of understanding across lines**
tolerance is a necessary public virtue but a too thin foundation
- **Encounter of commitments**
Pluralism is not relativism, holding our deepest differences,
not in isolation, but in relationship to one another
- **Based on dialogue**

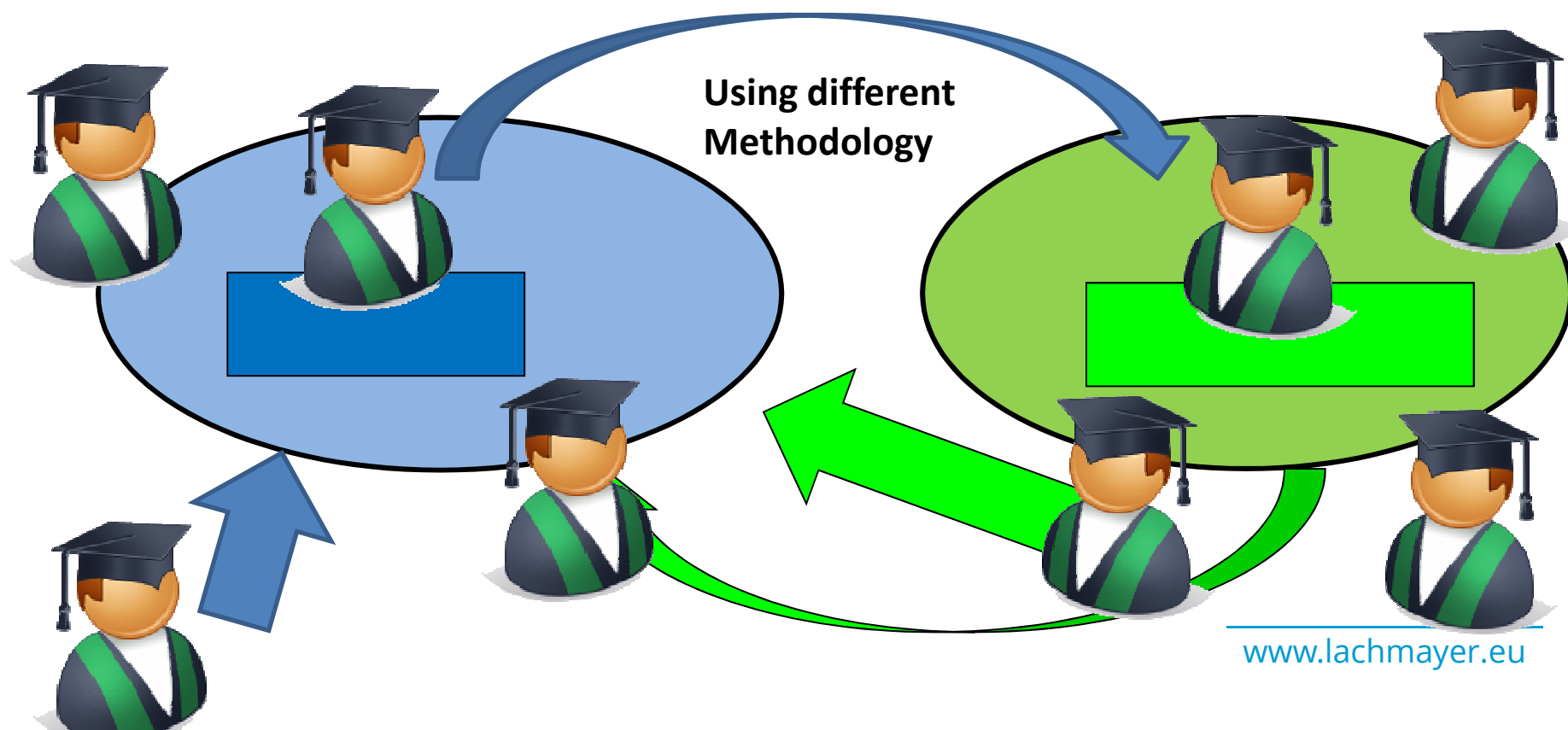
Dialogue means both speaking and listening, and that process reveals both common understandings and real differences. Dialogue does not mean everyone at the “table” will agree with one another. Pluralism involves the commitment to being at the table — with one’s commitments.

Pluralism as a value in comparing law



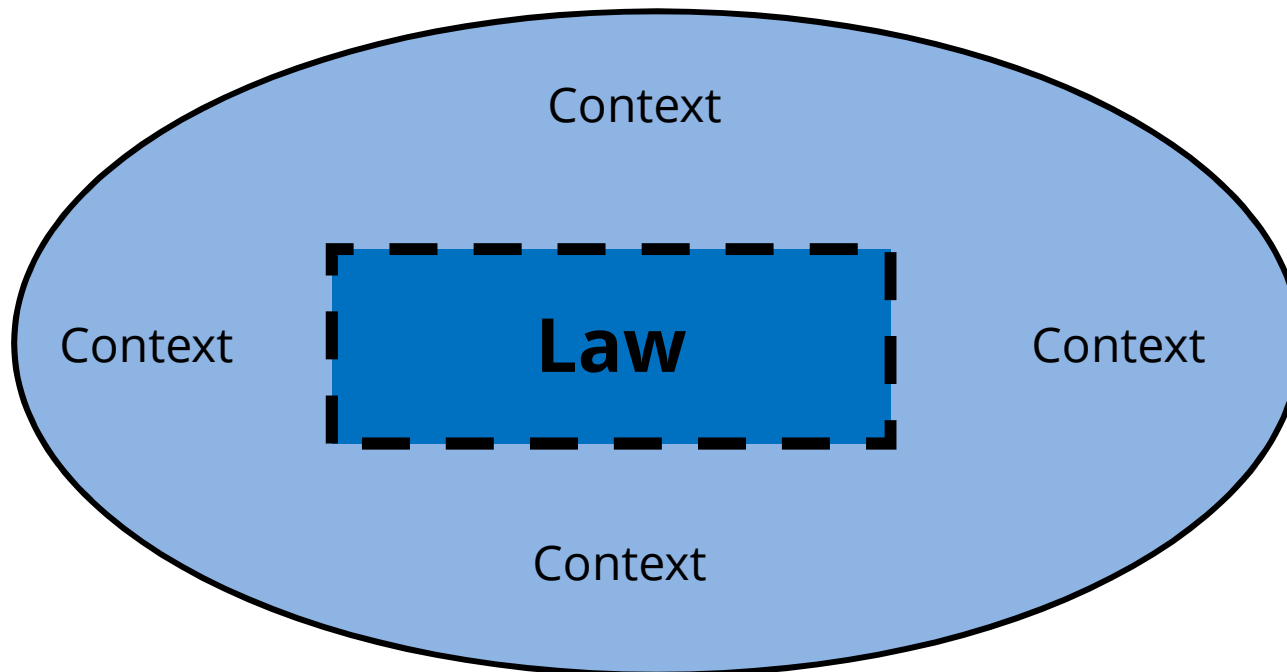
Pluralistic Comparison and Contexts

Interdisciplinary Research-Teams



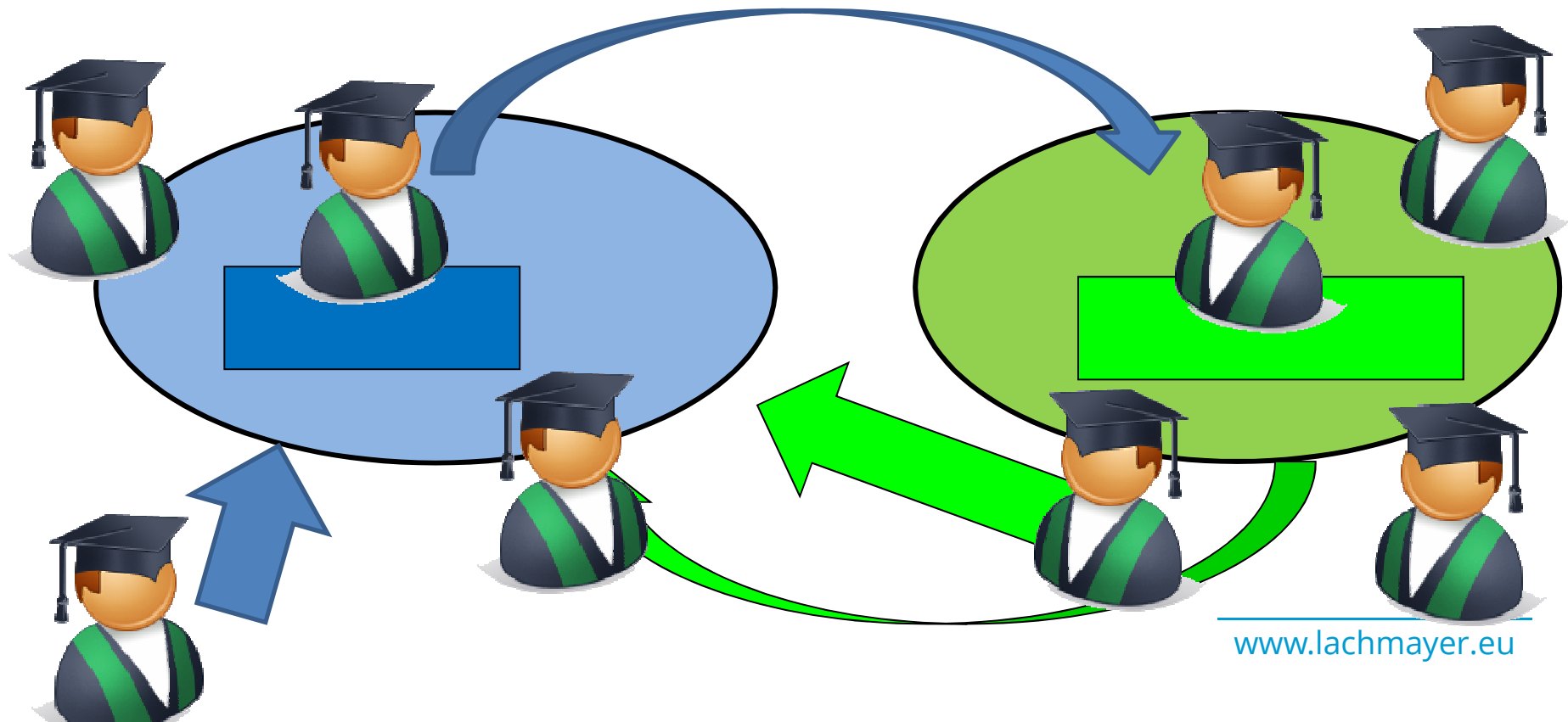
5. The Future of Contextual Analysis

Contextual Analysis is the Future



Pluralistic Approach

international
interdisciplinary
team-based → research



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