



Tribunal independence

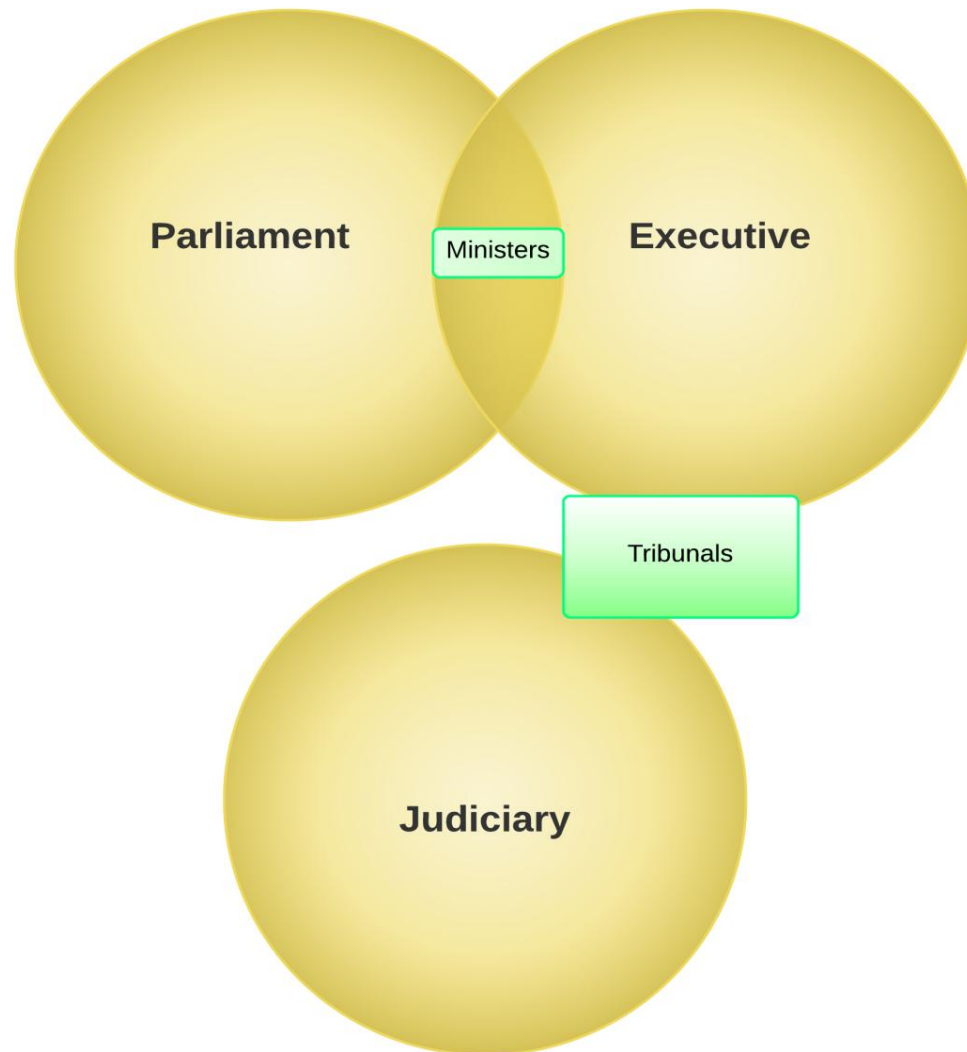
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Questions about tribunal independence

- What is it?
- Why does it matter?
- Is it under threat, and from whom?
- Is it part of judicial independence?
- How can you tell if a tribunal is independent?
- Who or what determines whether a tribunal is independent?

Tribunals in the system of government



Adjudication and impartiality

- Adjudication is a 'triad' relationship in which two parties submit a dispute for decision by a third party (Shapiro)
- The adjudicator decides by making findings of fact and applying the law to the facts as found (Cane)
- Human rights, the rule of law, natural justice, public opinion and 'the logic of adjudication' all demand that adjudicators are impartial.

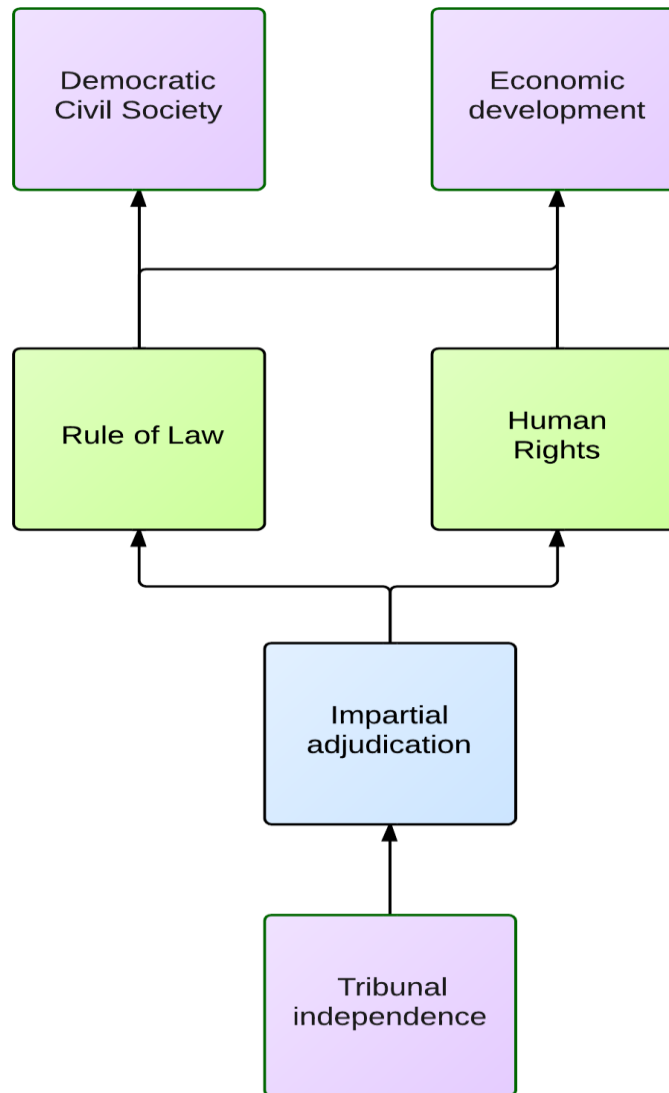
Impartiality: actual and perceived

- Impartiality is the ability to decide according to the adjudicator's own assessment of the evidence, the law and the merits, free of pressure or influence consider extraneous matters.
- It is 'a characteristic of a reasoning process or state of mind'. (Cane)
- Perceptions matter because they affect trust and because impartiality is difficult to measure. (Parker)

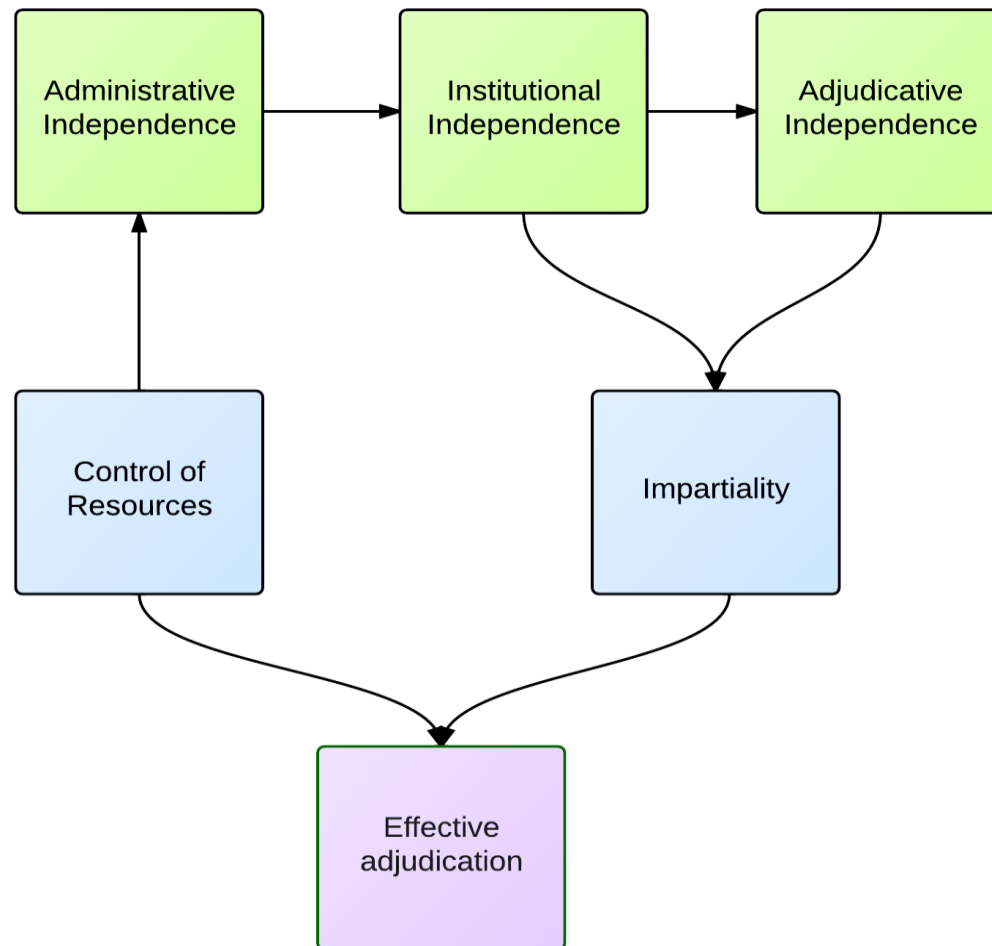
Independence

- Is about the institutional and societal norms that maintain impartiality and perceptions of impartiality
- Institutional norms are formal (eg legislation, guidelines) and informal (eg conventions, practices).
- They are more easily adjusted by deliberate action than societal norms, and may affect perception of impartiality.

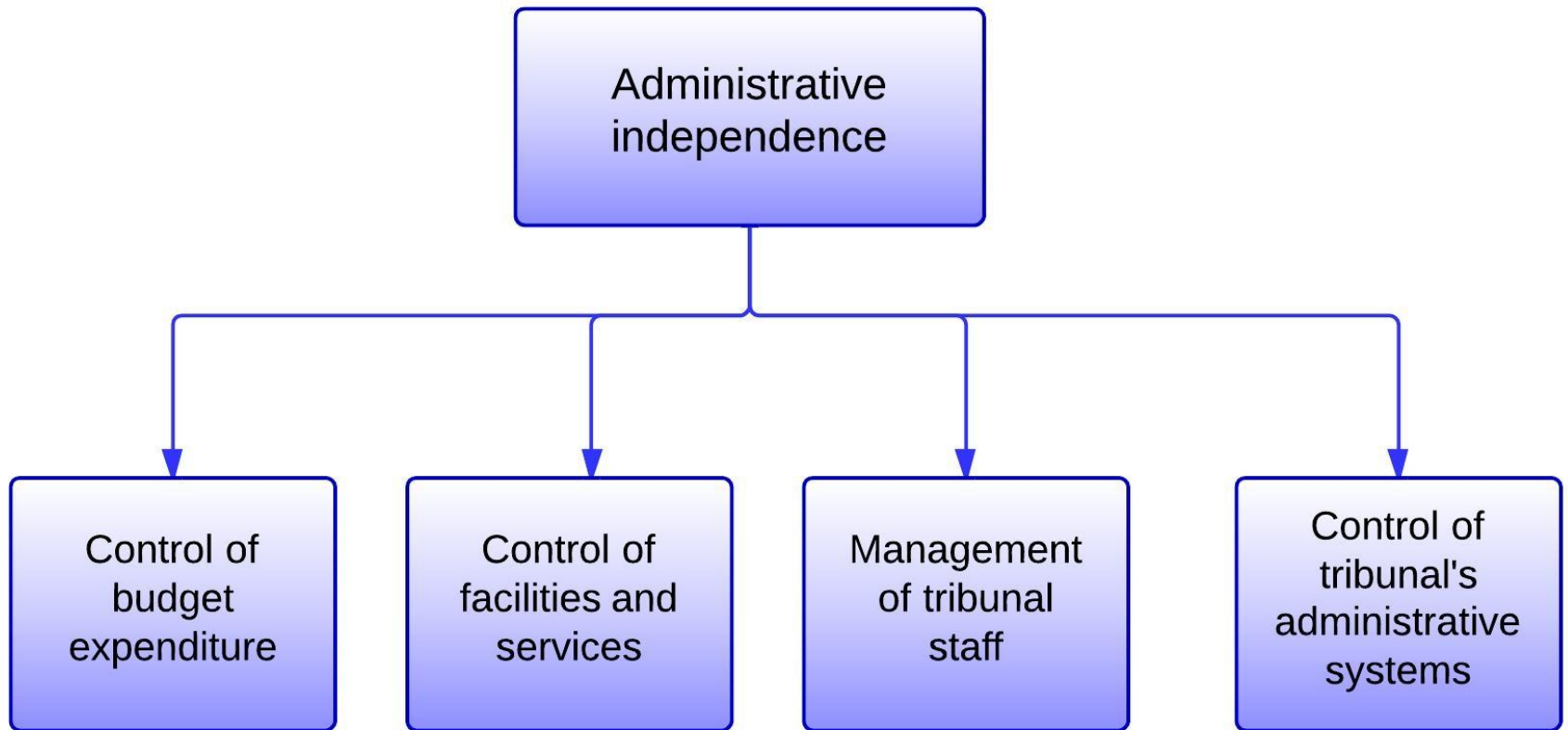
Why independence matters



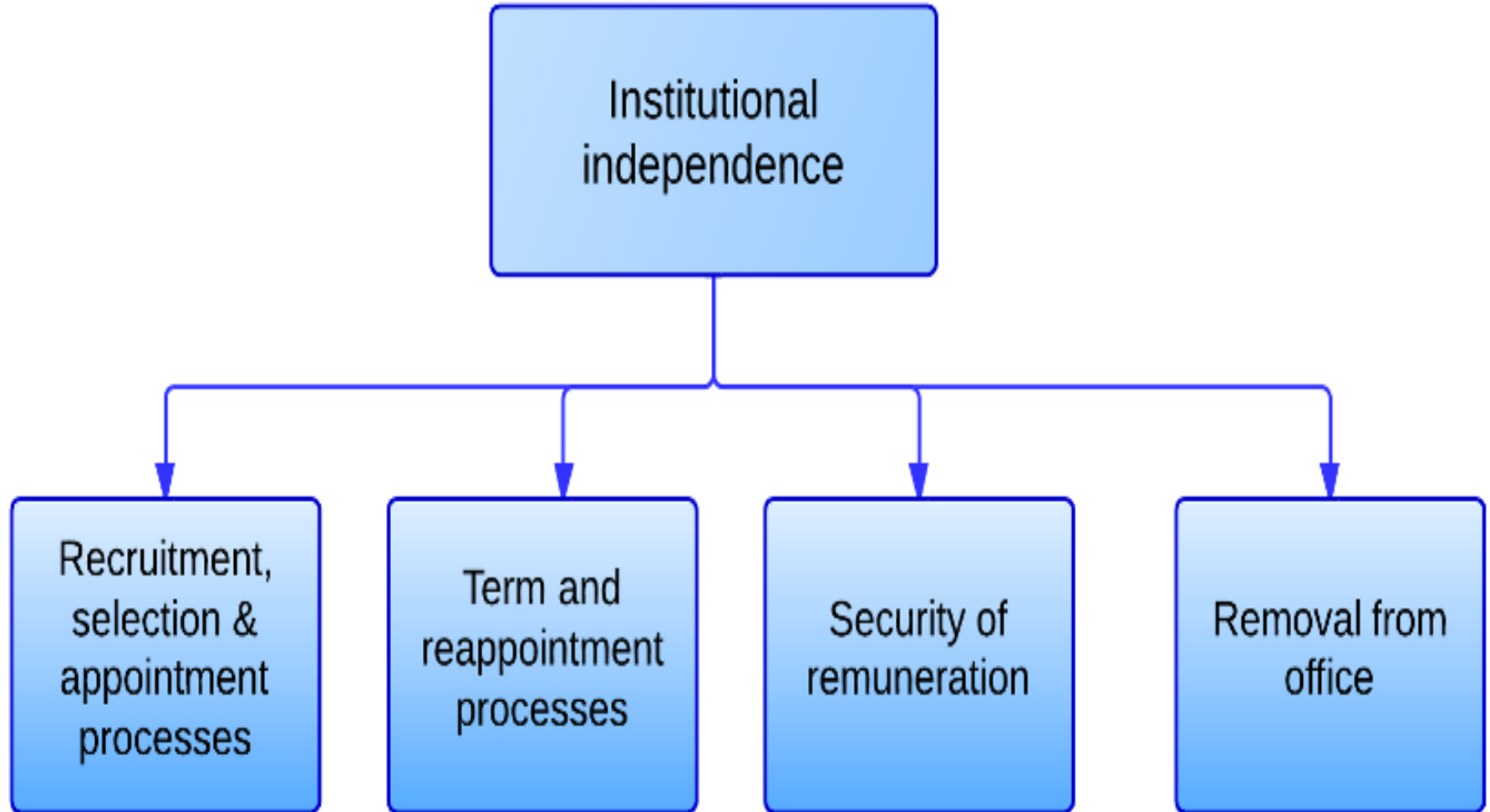
Independence and effective adjudication



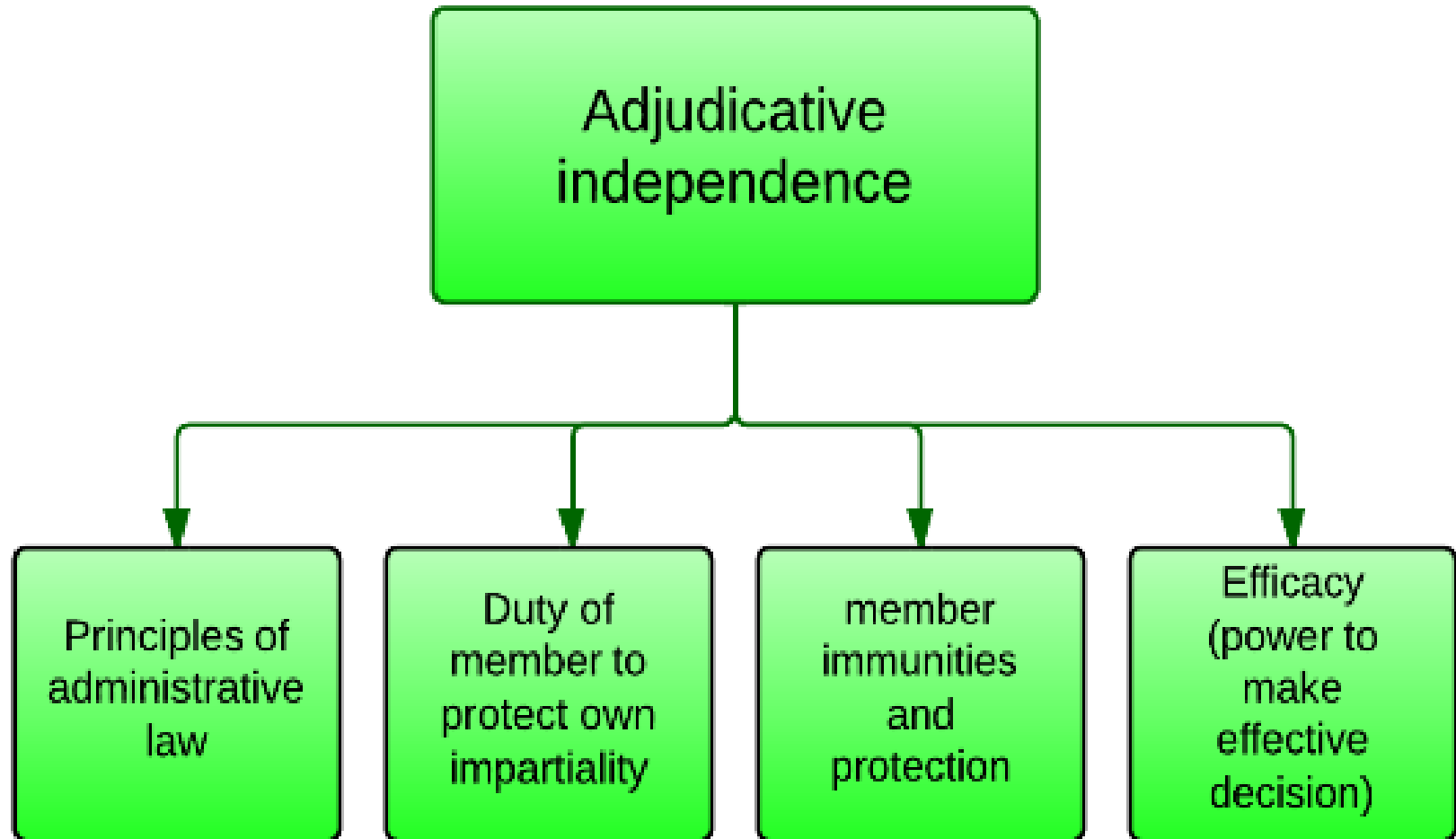
Administrative independence: the tribunal as an entity



Institutional independence: the members



Adjudicative independence: the tribunal in operation



Legislating for independence

- Develop scale with areas, indicators and examples across a spectrum of weaker to stronger.
- What institutional features of independence does SACAT have?
- How useful is this model in assessing and the extent of SACAT's independence?