

Fundamentals of Anglo-American and Polish Legal Systems – Constitutional Law

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Executive Power

UK

US

PL

Head of state

Elizabeth II

Donald

Andrzej

Head of government

Boris

Donald

Mateusz

How to get there?

UK

US

PL

Head of state

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Head of government

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Where is the power?

UK

US

PL

Head of state

Elizabeth II

Donald

Andrzej

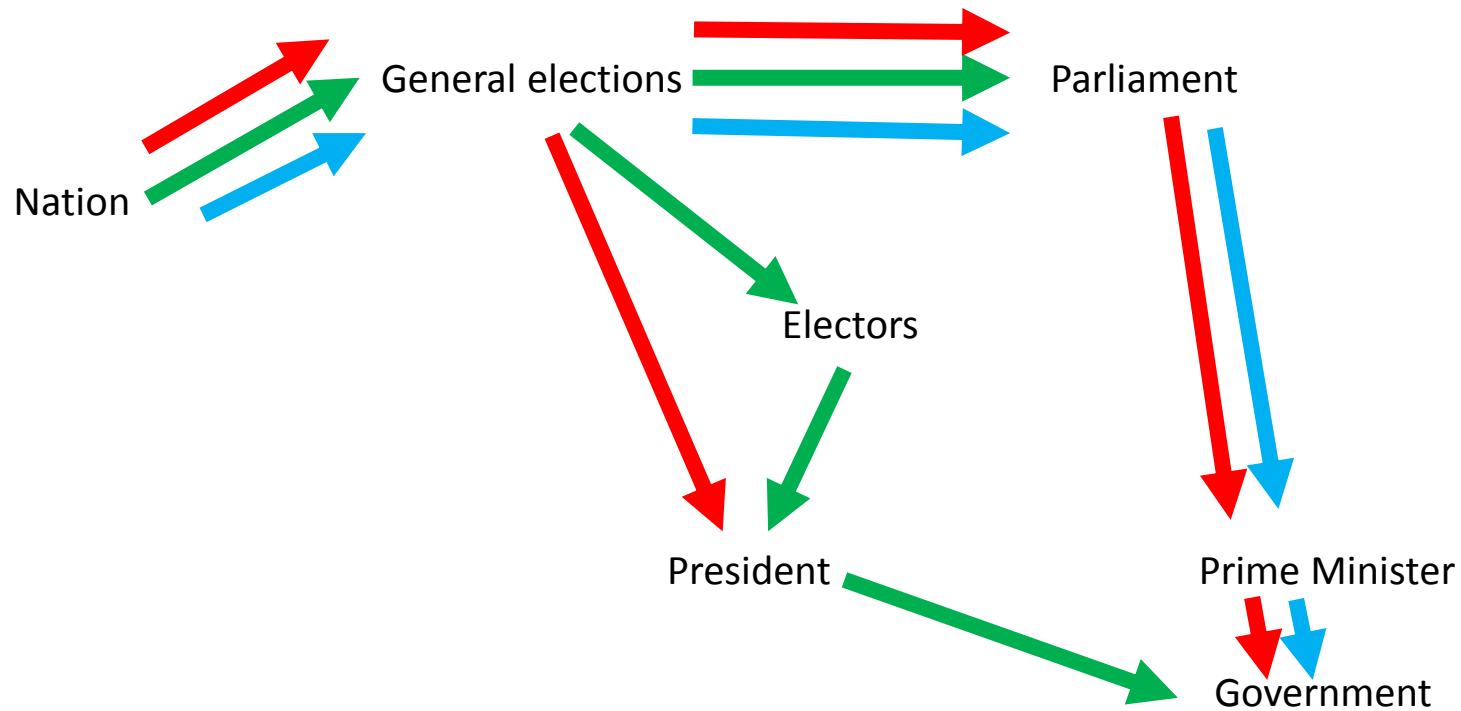
Head of government

Boris

Donald

Mateusz

How to get there?



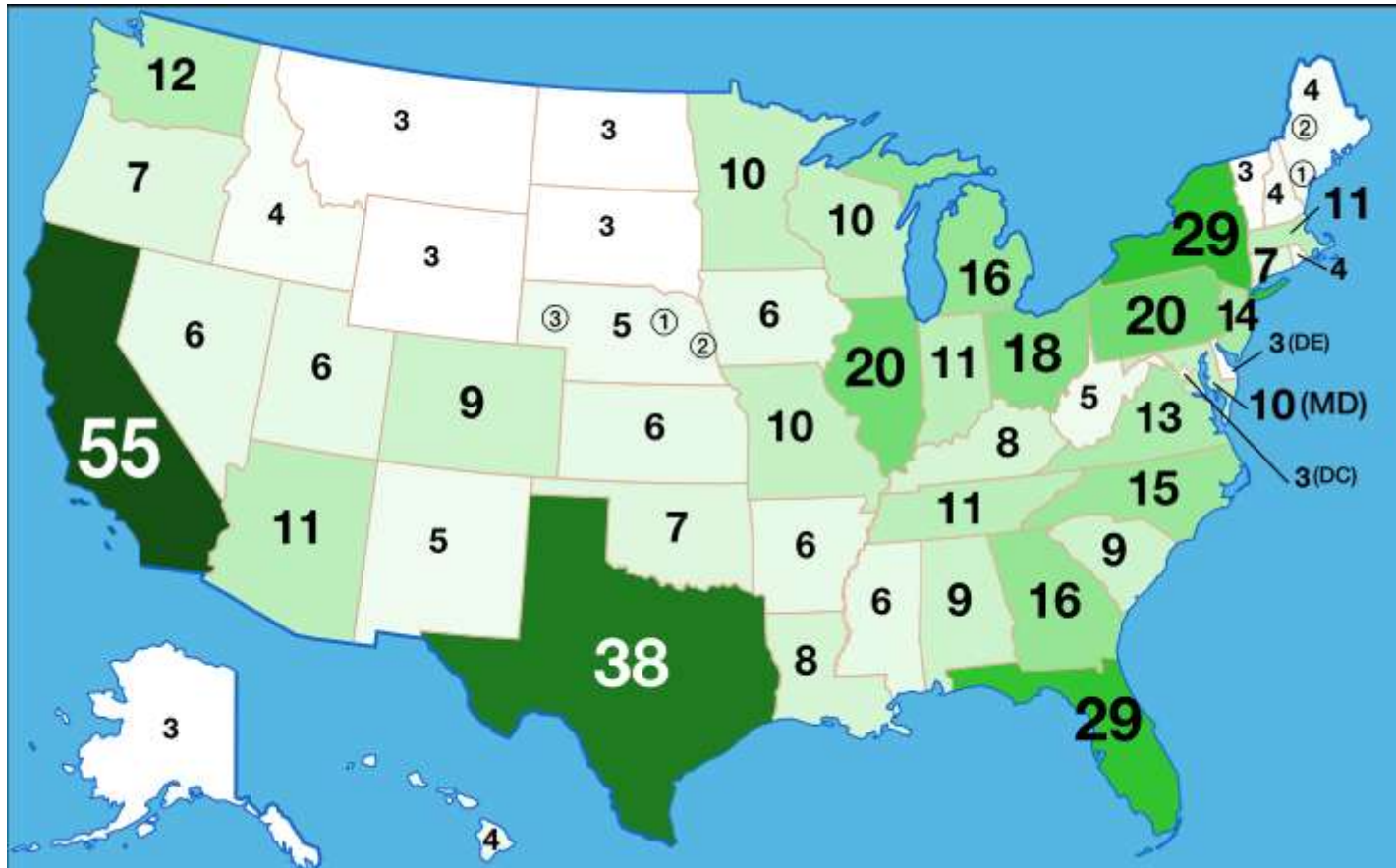
Elections

On the example of the Art.127 (PL):



The President of the Republic shall be elected by the Nation, in universal, equal and direct elections, conducted by secret ballot.

Who are electors?



USA: 538 = 435+100+3 /who is faithless elector?/

Article II - The Executive Branch

Section 1 - The President



- The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice-President chosen for the same Term, be elected, as follows...

Section 3 - State of the Union, Convening Congress

- He shall from time to time give to the Congress **Information of the State of the Union**, and recommend to their Consideration such Measures as he shall judge necessary and expedient;



Section 3 - State of the Union, Convening Congress

- he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper;

Section 3 - State of the Union, Convening Congress

- he shall receive Ambassadors and other public Ministers;
- he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.



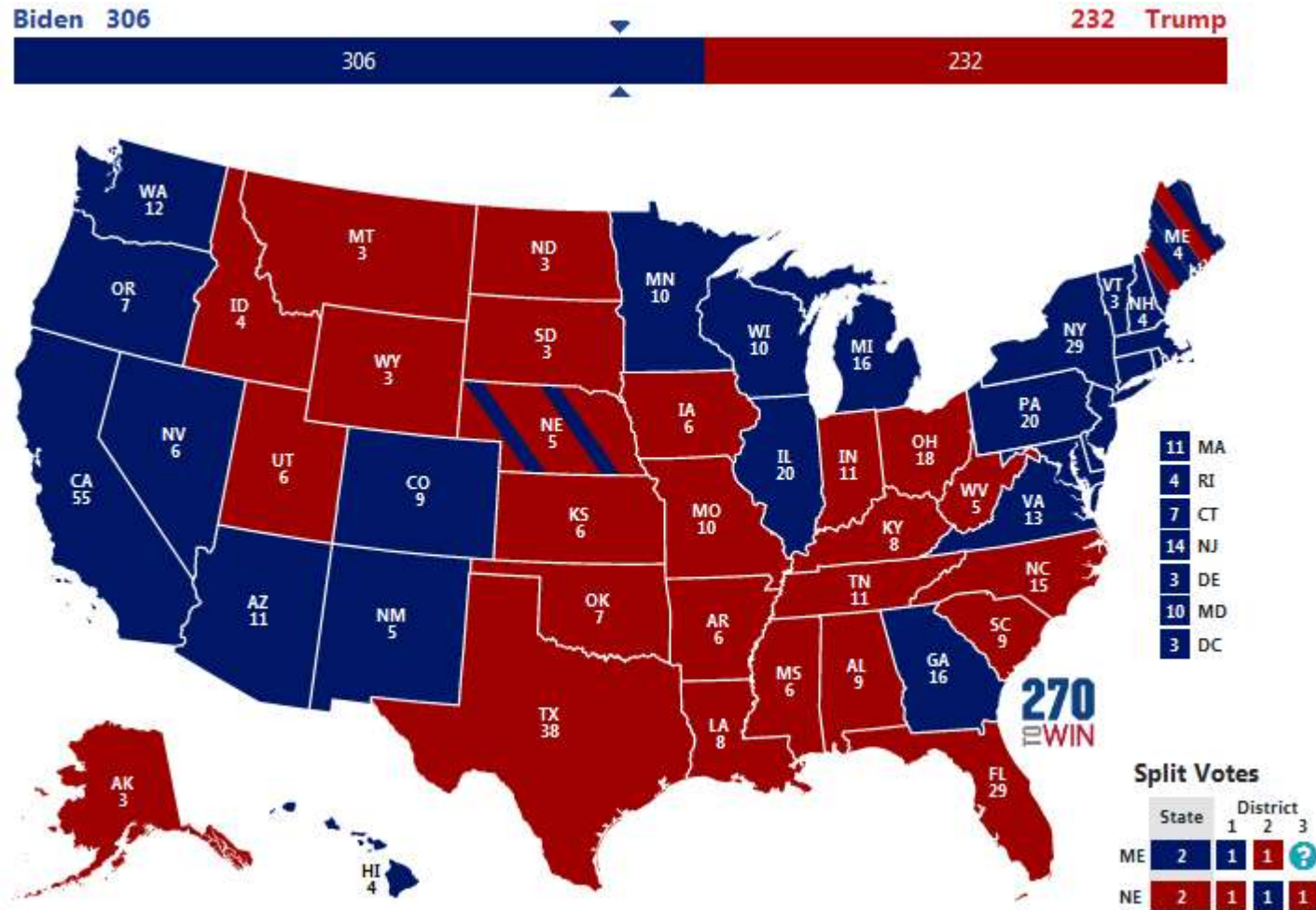
Vice President

- the Vice President is allowed to vote in the Senate, but only when necessary to break a tie vote

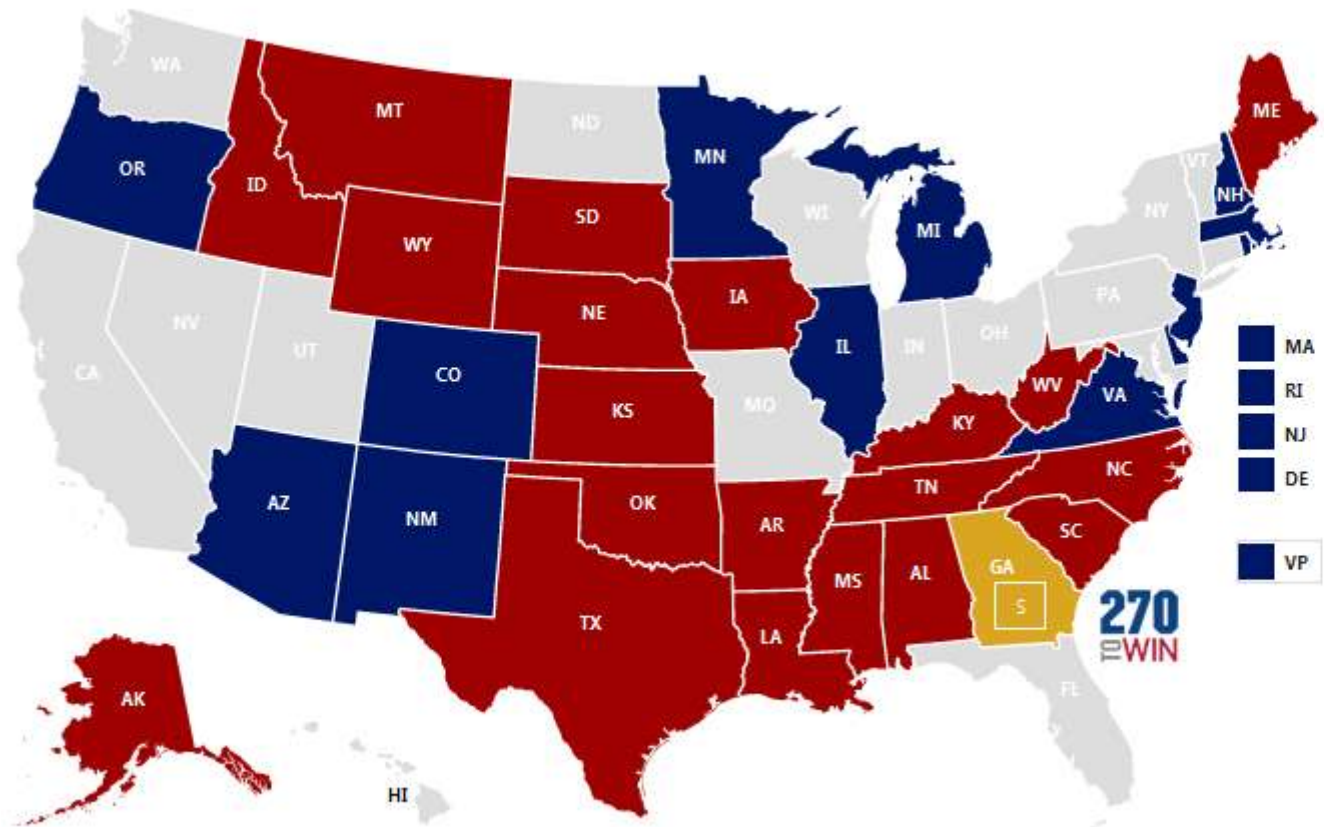
- How about the 2020 Senate Elections???



The POTUS Elections 2020



The Senate Elections 2020



United States Senate Battle for Control

	Democrat	Republican
Current	47	53
No Election	35	30
Decided	13	20
Total (Live)	48	50
Remaining	2	
Runoff	2	
Safe	0	0
Likely	0	0
Leaning	0	0
Toss-up	2	
Forecast	48	50
Vice President	1	
Total	49	50

Vice President breaks ties. Senate control goes to party with a total of 51 or more.

The House Elections 2020



Checks and ballances

- How President influences legislative branch:
- State of the Union Message.
- Suspensive veto / pocket veto.



Checks and ballances

- How Congress influences executive branch:
 - - impeachment;
 - - appointments;
 - - peace and war;
 - - treaties.



Peace and War

- **The Congress** shall have Power ... to declare war (Art. 1 Sec. 8)
- **The Sejm** shall declare, in the name of the Republic of Poland, a state of war and the conclusion of peace (art. 116)
- **The Queen** (Royal prerogative) [*on the advice of the **Government***]






Royal Prerogative



- The Queen’s „right to be consulted, the right to encourage, and the right to warn”
- The Queen „reigns, but she does not rule”
- *See: R (Miller) v. Secretary of State for Exiting the European Union (2017)*
- *R (Miller) v. The Prime Minister and Cherry v. Advocate General for Scotland (2019)*



International Treaties

- He [**POTUS**] shall have Power, by and with the Advice and Consent of the **Senate**, to make Treaties (Art. 2 Sec. 2) 
- **The President** ratifies the international agreements concluded by **Council of Ministers**; prior consent granted by statute (**the Sejm**) might be required (art. 89, art. 146) 
- **The Queen** (Royal prerogative) [*on the advice of the **Government***] 



When prior consent is needed?

- **Article 89**
- Ratification of an international agreement by the Republic of Poland, as well as renunciation thereof, shall require prior consent granted by statute - if such agreement concerns:
 - 1) peace, alliances, political or military treaties;
 - 2) freedoms, rights or obligations of citizens, as specified in the Constitution;
 - 3) the Republic of Poland's membership in an international organization;
 - 4) considerable financial responsibilities imposed on the State;
 - 5) matters regulated by statute or those in respect of which the Constitution requires the form of a statute.

Judicial Appointments

- He [**POTUS**] shall nominate, by and with the Advice and Consent of the **Senate**, Judges of the Supreme Court (Art. 2 Sec. 2)
- **The President** appoints judges on the motion of **the National Council of the Judiciary** (art. 179)
- **The Queen** (Royal prerogative) [*on the advice of the **Government***] on the motion of special ad hoc commission



Checks and ballances

- President and the Courts:
- President appoints the federal judges (Senate's participation, Art. 2 Sec. 2)
- Courts have the power of judicial review (Case law)



Article 3 - The Judicial Branch



- Discretionary jurisdiction of Supreme Court.
- Service during **good behaviour**.
- President Jefferson: „the problem with the Supreme Court is that they never retire, and they rarely die.”



Checks and balances

- How courts influence President and Congress?
- What is not written in the Constitution:
- The power of *judicial review* was asserted by Chief Justice Marshall in the landmark Supreme Court Case *Marbury v. Madison* (1803).

The Judicial Branch

- What is not written in the Constitution:
- the implied judicial power of common law courts to formulate persuasive precedent
- *Erie Railroad Co. v. Tompkins* (1938) – there is no general federal common law; state courts are not bound by federal interpretations of state law