

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

Dr Jan Halberda

(jan.halberda@uj.edu.pl)

Form of Government

- Republic (USA, Poland)
- Monarchy (UK)

Form of Government

Article IV Section 4 - Republican government

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Form of Government

- **Chapter I**
THE REPUBLIC

- ***Article 1***

The Republic of Poland shall be the common good of all its citizens.

- ***Article 2***

The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice.

- ***Article 3***

The Republic of Poland shall be a unitary State.

Separation of powers

- ***Article 10***
- The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.
- **Legislative power** shall be vested in the Sejm and the Senate, **executive power** shall be vested in the President of the Republic of Poland and the Council of Ministers, and **judicial power** shall be vested in courts and tribunals.

Sources of Law – Constitutions

- **The United States Constitution**

adopted on September 17, 1787, by the Constitutional Convention in Philadelphia, Pennsylvania

- **The Constitution of the Republic of Poland**

adopted on April 2, 1997, by the National Assembly

Sources of Law – Constitutions

- **United Kingdom**

Statutes:

- Magna Carta 1215
- Petition of Right 1628
- Habeas Corpus Act 1679
- Bill of Rights 1689
- Act of Settlement 1701
- European Communities Act 1972
- Human Rights Act 1998
- Constitutional Reform Act 2005

Constitutional convention (political custom)

Royal prerogatives

Sources of Law – Constitutions

- **United Kingdom**
- [Instrument of Government](#) {1653} (the first English Constitution)
- [Humble Petition and Advice](#) {1657} (the second English Constitution)

The United States Constitution

- Preamble
- Article 1 - The Legislative Branch
- Article 2 - The Executive Branch
- Article 3 - The Judicial Branch
- Article 4 - The States
- Article 5 - Amendment
- Article 6 - Debts, Supremacy, Oaths
- Article 7 - Ratification

- Amendments (27)

Article 1 - The Legislative Branch

- [Section 1 - The Legislature](#)
- [Section 2 - The House](#)
- [Section 3 - The Senate](#)
- [Section 4 - Elections, Meetings](#)
- [Section 5 - Membership, Rules, Journals, Adjournment](#)
- [Section 6 - Compensation](#)
- [Section 7 - Revenue Bills, Legislative Process, Presidential Veto](#)
- [Section 8 - Powers of Congress](#)
- [Section 9 - Limits on Congress](#)
- [Section 10 - Powers Prohibited of States](#)

Article 2 - The Executive Branch

- Section 1 - The President
- Section 2 - Civilian Power Over Military, Cabinet, Pardon Power, Appointments
- Section 3 - State of the Union, Convening Congress
- Section 4 - Disqualification

Article 3 - The Judicial Branch

- Section 1 - Judicial Powers
- Section 2 - Trial by Jury, Original Jurisdiction, Jury Trials
- Section 3 - Treason

Article 4 - The States

- Section 1 - Each State to Honor all Others
- Section 2 - State Citizens, Extradition
- Section 3 - New States
- Section 4 - Republican Government

Article I - The Legislative Branch

Section 1 - The Legislature

- All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 7 - Revenue Bills, Legislative Process, Presidential Veto

- All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.
- Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Section 8 - Powers of Congress

- The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;
- To borrow money on the credit of the United States;
- To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
- To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

Section 8 - Powers of Congress

- To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
- To establish Post Offices and Post Roads;
- To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
- To constitute Tribunals inferior to the supreme Court;
- To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

Section 8 - Powers of Congress

- **To declare War**, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
- To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
- To provide and maintain a Navy;
- To make Rules for the Government and Regulation of the land and naval Forces;

Section 8 - Powers of Congress

- To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;
- To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

Section 8 - Powers of Congress

- To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; And
- To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Commerce clause

- Wickard v. Filburn (1942)

Elections

- Members of the House and Senate are elected by first-past-the-post voting in every state except Louisiana, California and Washington, which have runoffs.

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; 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; 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.

Checks and balances

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

Checks and balances

- How Congress influences executive branch:
 - - impeachment;
 - - appointments;
 - - peace and war;
 - - treaties.
- /Dames & Moore v. Reagan (1981)/

Checks and ballances

- How courts influence President and Congress?
- The power of **judicial review** was asserted by Chief Justice Marshall in the landmark Supreme Court Case [Marbury v. Madison](#) (1803).

Article 3 - The Judicial Branch

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

Article IV - The States

- **Section 1 - Each State to Honor all others**
- **Full Faith and Credit** shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Full faith and credit clause

- Fauntelroy v. Lum (1908)

Article V - Amendment

- The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Bill of Rights

- **Amendment 1 - Freedom of Religion, Press, Expression.** Ratified 12/15/1791.
- Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
- **Amendment 2 - Right to Bear Arms.** Ratified 12/15/1791.
- A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Bill of Rights

- **Amendment 7 - Trial by Jury in Civil Cases.** [Ratified](#) **12/15/1791.**
- In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.
- **Amendment 8 - Cruel and Unusual Punishment.** [Ratified](#) **12/15/1791.**
- Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Bill of Rights

- **Amendment 10 - Powers of the States and People. Ratified 12/15/1791.**
- The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Polish Constitution

- ***Article 3***
- The Republic of Poland shall be a unitary State.
- ***UK: unitary state / quasi-federal state***
- ***devolution***

Polish Constitution

- ***Article 4***
- Supreme power in the Republic of Poland shall be vested in the Nation.
- *UK: the doctrine of parliamentary sovereignty*

Polish Constitution

- ***Article 7***
- The organs of public authority shall function on the basis of, and within the limits of, the law.
- ***Article 8***
- The Constitution shall be the supreme law of the Republic of Poland.
- The provisions of the Constitution shall apply directly, unless the Constitution provides otherwise.

Sources of Law

- Can the statute be inconsistent with the constitution ?
- How to change the constitution ?
- [doctrine of implied repeal](#)
- Judicial review - Poland v. UK
- The Treaties / the EU law - Poland v. UK

Separation of powers

- ***Article 10***
- The system of government of the Republic of Poland shall be based on the separation of and balance between the legislative, executive and judicial powers.
- Legislative power shall be vested in the Sejm and the Senate, executive power shall be vested in the President of the Republic of Poland and the Council of Ministers, and the judicial power shall be vested in courts and tribunals.

the Sejm and the Senate

- ***Article 95***
- Legislative power in the Republic of Poland shall be exercised by the Sejm and the Senate.
- The Sejm shall exercise control over the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes.

British Parliament

- the Monarch (one 😊)
- the House of Commons
 - 650 MP elected,
 - single-member constituencies
 - first past the post system
- the House of Lords
 - several hundred lords appointed by the Queen
 - only legislative functions

Elections, Tenure

- ***Article 96***
- The Sejm shall be composed of 460 Deputies.
- Elections to the Sejm shall be universal, equal, direct and proportional and shall be conducted by secret ballot.
- ***Article 98***
- The Sejm and the Senate shall be chosen each for a 4-year term of office.

Sejm

- ***Article 109***
- The Sejm and the Senate shall debate in the course of sittings.
- ***Article 110***
- The Sejm shall elect from amongst its members a Marshal of the Sejm and Vice-Marshals.

Right of *initiative (legislative)*

- **Article 118**
- The right to introduce legislation shall belong to Deputies, to the Senate, to the President of the Republic and to the Council of Ministers.
- The right to introduce legislation shall also belong to a group of at least 100,000 citizens having the right to vote in elections to the Sejm. The procedure in such matter shall be specified by statute.
- Sponsors, when introducing a bill to the Sejm, shall indicate the financial consequences of its implementation.

Legislative

- ***Article 119***
- The Sejm shall consider bills in the course of three readings.
- ***Article 120***
- The Sejm shall pass bills by a simple majority vote, in the presence of at least half of the statutory number of Deputies, unless the Constitution provides for another majority.

What can President do with a Bill?

- ***Article 122***
- After the completion of the procedure specified in Article 121, the Marshal of the Sejm shall submit an adopted bill to the President of the Republic for signature.
- The President of the Republic shall sign a bill within 21 days of its submission and shall order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*).

What can President do with a Bill?

- ***Article 122***
- The President of the Republic may, before signing a bill, refer it to the Constitutional Tribunal for an adjudication upon its conformity to the Constitution. The President of the Republic shall not refuse to sign a bill which has been judged by the Constitutional Tribunal as conforming to the Constitution.
- The President of the Republic shall refuse to sign a bill which the Constitutional Tribunal has judged not to be in conformity to the Constitution.

What can President do with a Bill?

- **Article 122**
- The President of the Republic may refer the bill, with reasons given, to the Sejm for its reconsideration. If the said bill is repassed by the Sejm by a three-fifths majority vote in the presence of at least half of the statutory number of Deputies, then, the President of the Republic shall sign it within 7 days and shall order its promulgation in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*). If the said bill has been repassed by the Sejm, the President of the Republic shall have no right to refer it to the Constitutional Tribunal in accordance with the procedure prescribed in para. 3.

Chapter V

THE PRESIDENT OF THE REPUBLIC

- ***Article 126***
- The President of the Republic of Poland shall be the supreme representative of the Republic of Poland and the guarantor of the continuity of State authority.
- The President of the Republic shall ensure observance of the Constitution, safeguard the sovereignty and security of the State as well as the inviolability and integrity of its territory.
- The President shall exercise his duties within the scope of and in accordance with the principles specified in the Constitution and statutes.

Article 144

- 1) proclaiming elections to the Sejm and to the Senate;
- 2) summoning the first sitting of a newly elected Sejm and Senate;
- 3) shortening of the term of office of the Sejm in the instances specified in the Constitution;
- 4) introducing legislation;
- 5) proclaiming the holding of a nationwide referendum;
- 6) signing or refusing to sign a bill;

Article 144

- 7) ordering the promulgation of a statute or an international agreement in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*);
- 8) delivering a Message to the Sejm, to the Senate or to the National Assembly;
- 9) making a referral to the Constitutional Tribunal;
- 10) requesting the Supreme Chamber of Control to carry out an audit;
- 11) nominating and appointing the Prime Minister;
- 12) accepting resignation of the Council of Ministers and obliging it to temporarily continue with its duties;

Article 144

- 13) applying to the Sejm to bring a member of the Council of Ministers to responsibility before the Tribunal of State;
- 14) dismissing a minister in whom the Sejm has passed a vote of no confidence;
- 15) convening the Cabinet Council;
- 16) conferring orders and decorations;
- 18) exercising the power of pardon;
- 19) granting Polish citizenship and giving consent for renunciation of Polish citizenship;

Article 144

- 17) appointing judges; 20) ...the First President of the Supreme Court; 21) ...the President and Vice-President of the Constitutional Tribunal; 22) ...the President of the Supreme Administrative Court; 23) ...the presidents of the Supreme Court and vice-presidents of the Supreme Administrative Court; 25) ...the members of the Council for Monetary Policy; 26) ...of the National Security Council; 27) ...of the National Council of Radio Broadcasting and Television;
- 24) requesting the Sejm to appoint the President of the National Bank of Poland;
- 28) establishing the statute of the Presidential Chancellery and appointing or dismissing the Chief of the Presidential Chancellery.
- 29) issuing orders in accordance with the principles specified in Article 93;
- 30) resigning from the office of President of the Republic.

"the Queen reigns, but she does not rule"

- Royal prerogatives –
- The power to dismiss and appoint a Prime Minister and other ministers
- The power to summon and [prorogue](#) Parliament
- The power to grant or refuse Royal Assent to bills (making them valid and law)

"the Queen reigns, but she does not rule"

- The power to command the Armed Forces of the United Kingdom
- The power to appoint members to the Queen's Council
- The power to issue and withdraw passports
- The power to grant Prerogative of mercy
- The power to appoint bishops and archbishops of the Church of England.

"the Queen reigns, but she does not rule"

- The power to ratify and make treaties
- The power to declare War and Peace
- The power to deploy the Armed Forces overseas
- The power to recognize states
- The power to credit and receive diplomats

THE COUNCIL OF MINISTERS AND GOVERNMENT ADMINISTRATION

- ***Article 146***
- The Council of Ministers shall conduct the internal affairs and foreign policy of the Republic of Poland.
- ***Article 147***
- The Council of Ministers shall be composed of the President of the Council of Ministers (Prime Minister) and ministers.
- Vice-presidents of the Council of Ministers (Deputy Prime Ministers) may also be appointed within the Council of Ministers.
- The Prime Minister and Deputy Prime Ministers may also discharge the functions of a minister.

Political responsibility

- ***Article 157***
- The members of the Council of Ministers shall be collectively responsible to the Sejm for the activities of the Council of Ministers.
- The members of the Council of Ministers shall be individually responsible to the Sejm for those matters falling within their competence or assigned to them by the Prime Minister.

VOTE OF NO CONFIDENCE

- ***Article 159***
- The Sejm may pass a vote of no confidence in an individual minister. A motion to pass such a vote of no confidence may be submitted by at least 69 Deputies.
- The President of the Republic shall recall a minister in whom a vote of no confidence has been passed by the Sejm by a majority of votes of the statutory number of Deputies.
- ***Article 160***
- The Prime Minister may submit to the Sejm a motion requiring a vote of confidence in the Council of Ministers.

Chapter VIII

COURTS AND TRIBUNALS

- ***Article 173***
- The courts and tribunals shall constitute a separate power and shall be independent of other branches of power.
- ***Article 175***
- The administration of justice in the Republic of Poland shall be implemented by the Supreme Court, the common courts, administrative courts and military courts.

Striking points of contrast

- The source of constitutional law
- Unwritten constitution in UK (statutes, constitutional convenances, royal prerogatives)
- Constitution of 1787 in USA
- Constitution of 1997 in RP

Striking points of contrast

- The date of constitution
- Outcome of evolution (UK)
- Outcome of revolution:
- Independence from UK (USA)
- Change of political system (RP)

Striking points of contrast

- How to change constitution?
- Flexibility (UK)
- Rigidity (USA)
- Possibility (RP)

Striking points of contrast

- Sovereign
- The Parliament (UK)
- The Constitution (USA)
- The Nation (RP)

Striking points of contrast

- Distribution of powers
- Parliamentary sovereignty (UK)
- Separation of powers / checks and ballances (USA)
- Separation of powers (RP)

Striking points of contrast

- Character of state's administration
- Unitary state (UK)
- Federal state (USA)
- Unitary state (RP)

Striking points of contrast

- Government - parliament relation (membership)
- Ministers have to be MPs (UK)
- Ministers must not be MPs (USA)
- Irrelevant (RP)

Striking points of contrast

- Government - parliament relation (vote of no confidence)
- Yes (UK)
- No (USA)
- Yes (RP)

Striking points of contrast

- Head of state
- The Queen (UK)
- The President (USA)
- The President (RP)

Striking points of contrast

- Head of state – parliament relations (veto)
- The Royal Assent of Queen (UK)
- The President's vetoes – suspensive/pocket (USA)
- The President's suspensive veto/referral to Constitutional Tribunal – (RP)

Striking points of contrast

- Head of state – parliament relations (right of legislative initiative)
- No (UK)
- No – Message on the State of the Union (USA)
- Yes (RP)

Striking points of contrast

- Judiciary – parliament relations (judicial review)
- No (UK)
- Judicial review as unspoken part of the constitution (USA)
- The President's right to refer to Constitutional Tribunal/Direct application of Constitution by the courts – (RP)

Striking points of contrast

- Government – subject relations (Bill of rights)
- No (UK)
- Ten constitutional amendments of 1791 (USA)
- Part of constitution (RP)

Striking points of contrast

- Reality – constitution relations
- Gaps (UK)
- No gaps (USA)
- No gaps (RP)