Introduction to the American Legal System

Izabela Kraśnicka

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Temida2
Białystok 2008

Reviewer: Rett R. Ludwikowski

Editor-in-Chief: Jerzy Banasiuk

Cover design: Jerzy Banasiuk

Publisher: Temida 2, Faculty of Law, University of Białystok

Series Editors: Izabela Kraśnicka, Halina Sierocka

English language consultants: Katarzyna Szczerbińska–Speakman, Dorian Speakman

ISBN: 987–83–89620–57–6

Temida 2
Mickiewicza 1
15–213 Białystok, POLAND
Voice: (+48) 085 7457168 • Fax: (+48) 085 7406089
E–mail: temida2@uwb.edu.pl
Website: www.temida2.pl

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1. Legal Education in the United States of America

BASIC DEFINITIONS[1]*:*

The American Bar Association (**ABA**) - largest voluntary professional association in the world (over 400,000 members) providing law school accreditation, continuing legal education, information about the law, programs to assist lawyers and judges in their work, and initiatives to improve the legal system for the public.

Bar - whole body of lawyers, the legal profession.

Case method - teaching method based on case analysis and legal reasoning in caselaw.

Socratic method - teaching method based on guided questioning.

INTRODUCTION:

Up to the middle of the 19th century legal education in the United States was carried out by practitioners themselves. There was no obligation to attend law school, apprenticeships at law firms constituted the only requirement to obtain license to practice. Dane College of Law, established in 1817 at Harvard University was the first organized law school in the USA. A major reform was initiated in 1870 when Christopher C. Langdell became a Dean to the Harvard Law School and introduced entrance exams, a fixed curriculum, final exams and teaching methods including the Socratic method and case analysis. In 1879 the American Bar Association (ABA) was established as a voluntary association dedicated to raising standards of the profession

1 Basic Definitions throughout the text are based on: Webster Dictionary: www.merriam-webster.com/, Business Dictionary: www.businessdictionary.com and Legal Dictionary: http://legal-dictionary.thefreedictionary.com/

and improving the administration of justice. It developed a law school accreditation system and legal education standards which are presently followed by most of the states, as education falls under the state, not federal competence.

ABA Standards for Approval of Law Schools.[2]

Standard 301. OBJECTIVES

(a) A law school shall maintain an educational program that prepares its students for admission to the bar, and effective and responsible participation in the legal profession.

(b) A law school shall ensure that all students have reasonably comparable opportunities to take advantage of the school's educational program, co-curricular programs, and other educational benefits.

Standard 302. CURRICULUM

(a) A law school shall require that each student receive substantial instruction in:

(1) the substantive law generally regarded as necessary to effective and responsible

participation in the legal profession;

(2) legal analysis and reasoning, legal research, problem solving, and oral communication;

(3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;

(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

(5) the history, goals, structure, values, rules, and responsibilities of the legal profession and its members.

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2 American Bar Association, Section of Legal Education and Admissions to the Bar: www.abanet.org

(b) A law school shall offer substantial opportunities for:

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence;

(2) student participation in pro bono activities; and

(3) small group work through seminars, directed research, small classes, or collaborative work.

Standard 503. ADMISSION TEST

A law school shall require each applicant to take a valid and reliable admission test to assist the school in assessing the applicant's capability of satisfactorily completing the school's educational program.

1.1. Characteristics of American Law School: admission, curriculum, teaching methods

European students are usually quite surprised when they learn how different American law school and legal education are from their home law faculties and study programs.

An American high school graduate first applies to college to obtain undergraduate degree (bachelor, BA). It is a four-year study program in variety of majors: business, politics, international relations, philosophy, art etc. Upon the completion of the BA degree, a student may apply to one of many law schools spread throughout the country (law school rankings provide detailed information on every institution). Basic requirements include: 1. LSAT results (Law Schools Aptitude Test - testing general abilities, skills necessary for further legal education), 2. GAP (grade-point average) from college, 3. type and level of college, 4. other possible requirements (recommendation letters, additional activities, interview, experience, motivation, even life obstacles and ethnic background or sporting achievements).

A three-year study program at law school provides students with many possible course options. The first year consists only of mandatory courses (such as civil procedure, contracts, property, criminal law, torts, constitutional law, legal writing and research) but students are free to arrange the second and third years according to their interests as long as they obtain the required amount of credits per semester and year.

Teaching techniques used by American law professors are based on two methods: case method based on analyzing cases and legal reasoning in caselaw and Socratic method aiming to engage students in discussion of the cases they read.

1.2. 2009 Law School Rankings by Tuition[3]

Legal education in the US is expensive. Public schools usually charge less than private ones; nonetheless it is a financial challenge for most applicants. The table below shows cost examples for ten best American law schools.

No.	Law School	State	Tuition	Room & Board
1	Columbia University	NY	$43,470	$15,035
2	Yale University	NY	$43,750	$15,100
3	New York Law School	NY	$41,950	$15,750
4	U. of Southern California	CA	$42,640	$13,146
5	Northwestern University	IL	$42,942	$12,376
6	New York University	NY	$40,890	$19,731
7	Cornell University	NY	$42,683	$10,300
8	U. of Pennsylvania	NY	$41,960	$11,695
9	Duke University	NY	$40,748	$9,180
10	U. of Chicago	IL	$39,198	$13,466

3 Internet Legal Research Group: http://www.ilrg.com/rankings.html

1.3. Becoming a lawyer in the USA: Bar exam

In order to obtain a license to practice law, almost all law school graduates must apply for bar admission through a state board of bar examiners. There are two areas to be tested: competence and character. The most common testing configuration consists of a two-day bar examination: 1. Multistate Bar Examination (MBE), a standardized two hundred - item test covering six areas (Constitutional Law, Contracts, Criminal Law, Evidence, Real Property, and Torts), 2. An exam typically comprised of locally crafted essays from a broader range of subject material. In addition, almost all jurisdictions require that the applicant present an acceptable score on the Multistate Professional Responsibility Examination (MPRE), which is separately administered three times each year. The second area of inquiry by bar examiners involves the character and fitness of applicants for a law license. In this regard, bar examiners seek background information concerning each applicant that is relevant to the appropriateness of granting a professional credential.[4]

Useful links:

US Department of State: Overview of the US education system

http://usinfo.state.gov/infousa/education/edu_overview.html

American Bar Association Home Page

http://www.abanet.org

Princeton Review on The Socratic Method in Law School

http://www.princetonreview.com/law/research/articles/life/socratic.asp

4 Bar Admission Overview: http://www.abanet.org/legaled/baradmissions/basicoverview.html

2. Sources of Law in the USA

BASIC DEFINITIONS:

Supremacy Clause - provision included in the US Constitution providing that the Constitution, laws and treaties are the supreme law of the land.

Amendment - a change or addition to a legal document which, when properly signed, has the same legal power as the original document.

Separation of powers - political doctrine under which the legislative, executive and judicial branches of government are kept distinct, to prevent an abuse of power. This US form of separation of powers is widely known as "checks and balances."

Bill of Rights - the first ten amendments to the US Constitution adopted in 1791 dealing with the fundamental rights and freedoms of citizens.

INTRODUCTION:

Sources of law and their hierarchy are usually included in the Constitution of the state, like in Poland, where most of the sources of law are mentioned in the Constitution of 1997. The United States Constitution lists only three general sources: the Constitution itself, laws and treaties. According to the Supremacy Clause, they constitute the supreme law of the land. The Constitution and laws are superior to any other legal acts.

Originally American law consisted mainly of case law but since the end of 19th century, statutory law has gained in importance and exists on both the federal and state level. The US Constitution defines the legislative competence of the federal government, expressly reserves

all other competences to state legislative power and provides in the Supremacy Clause that federal law overrides inconsistent state law.[5]

The United States Constitution[6]

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I - The Legislative Branch

Section 1: 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 8: The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, [...]

Article II - The Executive Branch

Section 1: 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 [...] Section 4: The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. […]

Article III - The Judicial Branch

Section 1: The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.[…]

Article IV - The States

Section 1: 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

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5 P. Hay, Law of the United States. An Overview, Munich 2002, p. 7.

6 The US Constitution is cited throughout the text from the Cornell Law School website: http://www.law.cornell.edu/constitution/

such Acts, Records and Proceedings shall be proved, and the Effect thereof. […]

Article V - The Amendment Process

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 [...]

Article VI - Supremacy Clause

Section 2: This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding. […]

Article VII - Ratification

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

2.1. Federal Constitution

The United States Constitution dates back to 1788 when it was ratified by the thirteen original states. It is the oldest contemporary constitution in the world. Seven main articles and twenty seven amendments contain the principal elements of the federal structure of the USA.

A Preamble precedes the substantive provisions of the Constitution. It begins with the words "We the People" which symbolize the principle of democracy and outlines the goals and purposes of the Union.

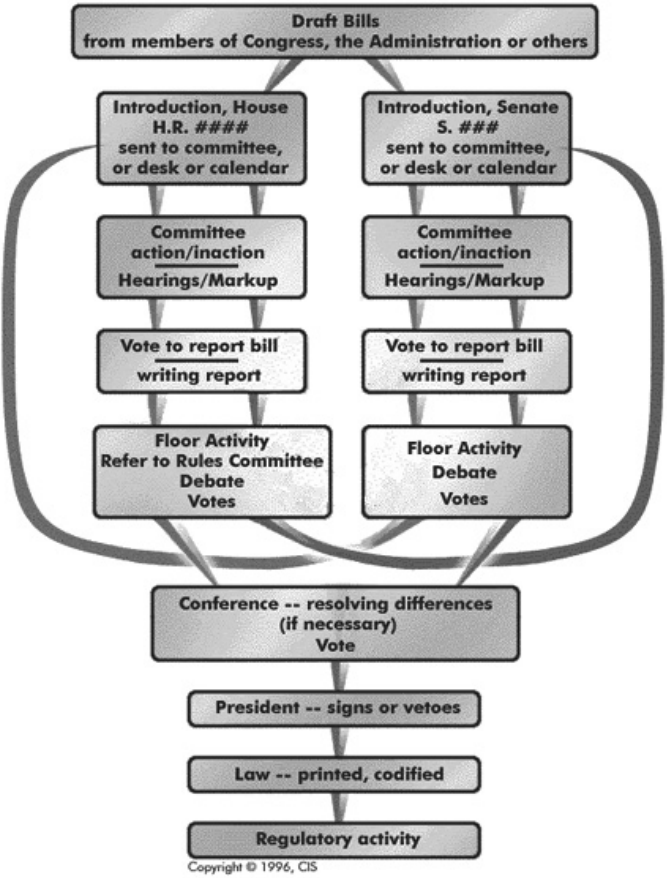
The seven articles outline the structure of the three branches of power (legislative, executive and judicial) and the separation of powers, describe the position of the states within the US federal system, provide

the mechanism for the future amendments, introduce the supremacy clause and include the ratification requirements.

The first ten amendments to the US Constitution were adopted in 1791 and are commonly known as the "Bill of Rights". They limit the powers of the government and guarantee the citizens' basic rights and freedoms: freedom of religion, press, expression; the right to bear arms; the right to a speedy trial, the right to trial by jury etc. Other amendments were adopted between 1795 and 1992 and deal with various constitutional issues including the prohibition of slavery, the women's right to vote, powers to levy taxes, voting age, presidential term limits.

2.2. Federal legislation

Federal legislation consists of federal statutes passed by the both houses of Congress and signed by the President. At the term's end all the laws are published in a set known as United States Statutes at Large. All public laws are arranged in fifty titles in a United States Code (US Code).



Source: http://www.lexisnexis.com/help/cu/The_Legislative_Process/How_a_Bill_Becomes_Law.htm

2.3. State constitutions and legislation

Each of the 50 states has its own constitution. It is a supreme law within the state jurisdiction but has to be consistent with federal law. State legislation includes statutes, regulations, ordinances etc. They are passed by state legislatures according to the required procedure. Each state is an independent legal system but some areas are covered by

uniform laws, such as Uniform Commercial Code (UCC) harmonizing the law of commercial transactions in all the states.

2.4. Court rules

Court rules deal with procedural issues. The US Supreme Court has a congressional authority to issue rules of criminal and civil procedure for courts of appeals and district courts. The major set of national rules (with formal approval of the US Supreme Court and Congress) include: Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, Federal Rules of Appellate Procedure, Federal Rules of Evidence.[7]

2.5. Administrative regulations and decisions

At the federal level, most administrative rules and regulations are authorized by congressional delegation. The president also has direct constitutional power to issue some executive orders and proclamations which are normally authorized by the Congress. A presidential executive order may further delegate rule-making authority to an administrative agency. The acts are published in the Code of Federal Regulations (CFR).[8]

2.6. International treaties, executive agreements and customary international law

International treaties, that is treaties with foreign countries, are concluded on federal level only by the President with the consent of the Senate. Executive agreements are not submitted to the Senate. They constitute informal means by which president may conduct some economic or business transactions with other countries. The role of customary international law is not clear in the US, some guidelines are found in judicial decisions, such as the 1900 Paquete Habana case with

7 D.S. Clark, T. Ansay: Introduction to the Law of the United States, Kluwer Law and Taxation Publishers, 1992, p. 43

8 Ibidem, p. 44

famous statement of Justice Gray - "*International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction [...]*".[9]

2.7. Case law

Common law caselaw consists of all the court decisions and constitutes the lowest level in the hierarchy of American law.

Useful links:

The National Archives website with original text of the US Constitution

http://www.archives.gov/national-archives-experience/charters/constitution.html

The National Constitution Center

http://www.constitutioncenter.org/default.aspx

Uniform Commercial Code (UCC)

http://www.law.cornell.edu/ucc/ucc.table.html

United States Code (US Code)

http://www4.law.cornell.edu/uscode/

9 The U.S. Supreme Court, Paquete Habana, 175 U.S. 677 (1900), http://laws.findlaw.com/us/175/677.html

3. Structure of Law in the USA

BASIC DEFINITIONS:

Declaration of Independence - adopted on July 4, 1776 by thirteen American states announcing freedom from the British empire and declaring the birth of the United States of America.

Stare decisis - *stare decisis et non quieta movere* - to stand by the precedents and not to disturb settled issues.

Precedent - result of the given case solution when there is no basis in the written law or if this basis is not precise enough, it is taken from the previous court decision.

INTRODUCTION:

The structure of law in the United States of America is based on the principles brought by the British to the new land. It is a common law system originated from the English system and modified according to the circumstances in the colonies. After 1776 when the Declaration of Independence was declared, the new independent states proclaimed the validity of English law on their territories. The only exception with a different legal tradition can be found in Louisiana (sold to the US by Napoleon in 1803) as it followed the French route and codified its law according to the French model.

U.S. Supreme Court

ESCOBEDO v. ILLINOIS, 378 U.S. 478 (1964)[10]

Petitioner, a 22-year-old of Mexican extraction, was arrested with his sister and taken to police headquarters for interrogation in connection with the fatal shooting, about 11 days before, of his brother-in-law. He had been arrested shortly after the shooting, but had made no statement, and was released after his lawyer obtained a writ of habeas corpus from a state court. Petitioner made several requests to see his lawyer, who, though present in the building, and despite persistent efforts, was refused access to his client. Petitioner was not advised by the police of his right to remain silent and, after persistent questioning by the police, made a damaging statement to an Assistant State's Attorney which was admitted at the trial. Convicted of murder, he appealed to the State Supreme Court, which affirmed the conviction. […]

Barry L. Kroll argued the cause for petitioner. With him on the brief was Donald M. Haskell.

James R. Thompson argued the cause for respondent. With him on the brief were Daniel P. Ward and Elmer C. Kissane.

Bernard Weisberg argued the cause for the American Civil Liberties Union, as amicus curiae, urging reversal. With him on the brief was Walter T. Fisher. [378 U.S. 478, 479]

MR. JUSTICE GOLDBERG delivered the opinion of the Court.

The critical question in this case is whether, under the circumstances, the refusal by the police to honor petitioner's request to consult with his lawyer during the course of an interrogation constitutes a denial of "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment," Gideon v. Wainwright, 372 U.S. 335, 342, and thereby renders inadmissible in a state criminal trial any incriminating statement elicited by the police during the interrogation. […]

10 Escobedo vs Illinois 378 U.S. 478 (1964), http://laws.findlaw.com/us/378/478.html

We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement [378 U.S. 478, 489] which comes to depend on the "confession" will, in the long run, be less reliable 11 and more subject to abuses 12 than a system which depends on extrinsic evidence independently secured through skillful investigation.

We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect [378 U.S. 478, 491] has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment," Gideon v. Wainwright, 372 U.S., at 342 , and that no statement elicited by the police during the interrogation may be used against him at a criminal trial.

3.1. Common law vs civil law

The main characteristics of the civil law system describe it as based on general ideas formulated by the legislature in codes and statutes, where the legislation is the sole, legitimate source of law. When legislatures pass codes, they intend those codes to be a comprehensive statement of the entire law on the subject addressed. The role of the judge in this system is to apply the appropriate provisions of law to the case and come to a decision. The judge cannot fill the gaps with a new legal principle or set up new standards for future cases.

In contrast, the role of the judge in a common law system is more creative. There are legal acts which have to be applied but common law judges may decide on which law and how it should be applied in a particular case. They may build interpretation rules and fill the gaps with a new principle and this principle will be binding in the inferior courts.

Common law and civil law systems tend to learn from each other nowadays; even if lawyers have to use different methods and instruments to find answers to legal questions, the understanding of the law appears to be the same.

3.2. Doctrine of *stare decisis*

The doctrine of *stare decisis* dates back to at least 12th century and is based on the idea that cases should be decided the same way when their material facts are the same. It is a fundamental principle of a case law system that inferior courts are bound by the legal precedents established by earlier decisions of their superior courts.

In the American legal system:

1. State courts are bound:

- with respect to state law, by decisions of the superior state courts - ultimately the State Supreme Court
- with respect to federal law, by decisions of the geographically appropriate federal courts - ultimately the United States Supreme Court

2. Federal courts are bound:

- with respect to federal law, by decisions of the superior federal courts
- with respect to state law, by decisions of appropriate superior state courts (as long as those do not violate federal law)

The highest courts - state or federal - may depart from an earlier precedent established by them. The court may overrule the precedent and change the law. [11]

There are two parts of a judicial decision which have to be distinguished in order to understand and find a precedent properly. **Holding** (*ratio decidendi*) is a short statement summarizing a broader principle for which the case can be used to decide later cases. It usually

11 P. Hay, op. cit., p. 9

begins with the words "I hold" or "We hold". **Dictum** (*ober dicta*) is the part including other legal principles and explanations, legal views of the judges and it does not belong to the "binding" section.

The most difficult task to be performed during a process in American court room is to identify similarities and differences between the precedent and the new case to be decided. If cases are similar in important respects, a precedent should be followed, if they are different, it should be distinguished.

3.3. Judicial process in American common law system

There are two major procedures which judges follow in order to deal with a particular case properly.

If there is certain statutory law (for example an ABC Act of July 1996) to be applied, the procedure consists of three steps: 1. description of factual issues in the case, 2. application of a proper statutory provision, 3. issuing the court's opinion.

If the case is to be decided based on common law, where no statutory law can be applied, the procedure is more complicated: 1. search for precedent in earlier case law, and if none can be found - creation of a new precedent; 2. if a precedent already exists - an interpretation of the precedent in the light of the new case; 3. subsumption of the new case's facts with existing law, according to the s*tare decisis* or with the new precedent.[12]

3.4. How to find applicable case law?

Most decisions of the American courts are published in well arranged publications, both on federal (in the form of three collections - for the US Supreme Court and lower federal courts) and state (each state has its own collection) levels.

12 R. Tokarczyk, Prawo Amerykańskie, Warszawa 2007, p. 33

The American Law Institute put together the Restatements of Law where summaries of case law in designated areas of law such as torts, contracts, property etc. can be found.

The most convenient way to search for cases, as well as statutory law and law review articles, is to use the Westlaw or LexisNexis online research programs available only by subscription, which are very popular though quite expensive. A very good, free of charge search engine for American law is available at www.findlaw.com

Useful links:

Stare Decisis and Techniques of Legal Reasoning and Legal Argument

http://legalresearch.org/docs/perell.html

Legal News and Research

http://www.jurist.law.pitt.edu/

FindLaw search system

http://www.findlaw.com

4. The Federal System and Separation of Powers

BASIC DEFINITIONS[13]*:*

Federalism - the distribution of power in an organization (as a government) between a central authority and the constituent units.

Separation of powers - the constitutional principle that limits the powers vested in any person or institution. It divides governmental authority into three branches: legislative (Parliament or Senate), executive (President or Prime Minister and the Cabinet), and judiciary (Chief Justice and other judges).

System of checks and balances - a system that allows each branch of a government to amend or veto acts of another branch so as to prevent any one branch from exerting too much power.

INTRODUCTION:

American federalism should be analyzed on two levels: vertically and horizontally. The vertical aspect reflects the distribution of powers between the federal government and states. The horizontal aspect reflects interstate relations. The federal level of the United States political system is based on the division into three branches of power: legislative, executive and judicial. Those branches are linked by a unique mechanism called a "system of checks and balances" allowing the branches to challenge and control one another.

Article IV of the United States Constitution

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And

13 Webster Dictionary: www.merriam-webster.com/, Business Dictionary: www.businessdictionary.com

the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Section 3. New states may be admitted by the Congress into this union; but no new states shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. 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.

4.1. Distribution of powers between federal government and states

While creating the federal Union in the US Constitution, the independent states decided to delegate some competences to the federal Congress. Those **delegated powers** are enumerated in Art. I Section 8 of the Constitution and include the Congress' power to: lay and collect taxes, duties, imposts and excises, to regulate commerce with foreign nations, to coin money, to establish post offices and post

roads, to constitute tribunals inferior to the Supreme Court, to provide and maintain navy, etc. There is no such list for the state powers. A short explanation can be found in Amendment X to the Constitution: "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".

In practice, there are powers restricted to the states (reserved powers) such as the health care system, education, family matters and powers shared with the federal government (concurrent powers) such as taxes, the judiciary system and social aid programs. It was a vital role of the US Supreme Court to interpret the division of competences. In 1819 in M'Culloch vs Maryland[14] the doctrine of **implied powers** was established extending competences of federal Congress. It was based on the "necessary and proper clause" of Art. I Section 8 of the Constitution which gave to the Congress power 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".

Lastly, the "**inherent powers**" doctrine exists primarily to extend those competences of the President of the USA that were not included in the Constitution - such competences are intrinsic to the office.

4.2. Interstate relations

The US Constitution in Article IV provides two major clauses for the basic relations among the States. In Section 1 a **"full faith and credit" clause** can be found as the provision states: *"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"*. As a consequence for example, marriage concluded in one state is valid in another.

14 M'Culloch vs State of Maryland et al, 17 U.S. 316 (1819) http://laws.findlaw.com/us/17/316.html

Section 2 is dedicated to the **"privileges and immunities" clause** as it provides that *"the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states"*. Again, it was the task of the courts to analyze and explain in detail what are those privileges and immunities and the answer with a long list of fundamental rights (such as protection by the government or the right to acquire and posses property of every kind) was given in Corfield vs Coryell[15] delivered at the federal circuit court in 1823.

4.3. Separation of powers on federal level

There are three branches of power in the American political system. **Legislative branch** consists of the US Congress with two chambers: the House of Representatives (435 members) and the Senate (100 members). **Executive power** stays in the hands of the President of the US who appoints his Cabinet including the Vice-President and heads of executive departments (Department of State, Department of Commerce, etc.). The **Judicial branch** comprises of the US Supreme Court and the lower federal courts.

The separation of powers between those three branches is clearly demarcated in the US Constitution as Article I is dedicated to the Congress, Article II to the President and Article III to the courts. The competences of each branch come from the sovereign decision of the states therefore, the federal government has limited powers and every exercise of federal power must be traced back to the Constitution as to the source of the states' will.

4.4. System of checks and balances

The precise term of "system of checks and balances" cannot be found in the US Constitution; however it can be easily interpreted from the constitutional provisions that the founding fathers of the USA wanted the three federal branches of powers to influence one another

15 Corfield vs Coryell, 6 Fed. Cas. 546, no. 3230 C.C.E.D.Pa. 1823

and prevent one from taking overall control. The scheme below presents examples of checks and balances.

Separation of Powers in the United States of America - Checks and Balances

Legislative Branch

- Checks on the Executive
  - Impeachment power (House)
  - Trial of impeachments (Senate)
  - Selection of the President (House) and Vice President (Senate) in the case of no majority of electoral votes
  - May override Presidential vetoes
  - Senate approves departmental appointments
  - Senate approves treaties and ambassadors
  - Approval of replacement Vice President
  - Power to declare war
  - Power to enact taxes and allocate funds
  - President must, from time-to-time, deliver a State of the Union address
- Checks on the Judiciary
  - Senate approves federal judges
  - Impeachment power (House)
  - Trial of impeachments (Senate)
  - Power to initiate constitutional amendments
  - Power to set courts inferior to the Supreme Court
  - Power to set jurisdiction of courts
  - Power to alter the size of the Supreme Court
- Checks on the Legislature - because it is bicameral, the Legislative branch has a degree of self-checking.
  - Bills must be passed by both houses of Congress
  - House must originate revenue bills

  - Neither house may adjourn for more than three days without the consent of the other house
  - All journals are to be published

Executive Branch

- Checks on the Legislature
  - Veto power
  - Vice President is President of the Senate
  - Commander in chief of the military
  - Recess appointments
  - Emergency calling into session of one or both houses of Congress
  - May force adjournment when both houses cannot agree on adjournment
  - Compensation cannot be diminished
- Checks on the Judiciary
  - Power to appoint judges
  - Pardon power
- Checks on the Executive
  - Vice President and Cabinet can vote that the President is unable to discharge his duties

Judicial Branch

- Checks on the Legislature
  - Judicial review
  - Seats are held on good behavior
  - Compensation cannot be diminished
- Checks on the Executive
  - Judicial review
  - Chief Justice sits as President of the Senate during presidential impeachment

Source: http://www.usconstitution.net/consttop_cnb.html

Useful links:

American Federalism, 1776 to 1997: Significant Events

http://usa.usembassy.de/etexts/gov/federal.htm

Constitutional Topic: Separation of Powers

http://www.usconstitution.net/consttop_sepp.html

Constitutional Issues: Separation of Powers

http://www.archives.gov/education/lessons/separation-powers

5. The US Courts Structure

BASIC DEFINITIONS:

The US Supreme Court - the highest court in the American court structure, the final interpreter of the US Constitution.

Jurisdiction - the power, right or authority to interpret and apply the law.

Trial - the formal examination before a competent tribunal of the matter in issue in a civil or criminal case in order to determine such an issue.

INTRODUCTION:

As a consequence of the division of powers between the federal and state competences, the American judicial system operates on both levels. Federal courts deal with federal laws and state courts deal with the everyday business of their citizens according to the state law.

Article III of the US Constitution

Section 1 - Judicial powers.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office.

Section 2 - Trial by Jury, Original Jurisdiction, Jury Trials

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all Cases affecting Ambassadors, other public Ministers and Consuls; to

all Cases of admiralty and maritime Jurisdiction; to Controversies to which the United States shall be a Party; to Controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. (section modified by the 11th Amendment)

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3 - Treason

Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

5.1. State courts[16]

There are 50 state judicial systems in the USA. The state courts' organization and jurisdiction is defined in the local constitutions and laws therefore each state has its own judicial structure consisting of different courts.

16 Based on: A.M. Ludwikowska, R.R. Ludwikowski, Sądy w Stanach Zjednoczonych. Struktura i jurysdykcja, Dom Organizatora, Toruń 2008, pp. 89-93

As a rule, a three-tiered scheme can be observed in most states including:

1. the **trial court** (usually called the Superior Court, the District Court or the Circuit court),
2. the **Court of Appeals** (in some states, however, this level does not exist),
3. the **State Supreme Court**.

The trial courts can be divided, based on the scope of jurisdiction, into:

1. Courts of general jurisdiction - basic components of the state judicial system, assigned geographically to the administrative districts of the state.
2. Courts of limited general jurisdiction - in most states particular categories of cases are shifted to those courts, i.e. civil cases up to certain amount of money in controversy (i.e. US$ 25,000 in Maryland).
3. Courts with specialized jurisdiction - courts dealing with juvenile cases or probate courts.
4. Small claims courts - usually a division of courts of general jurisdiction, hearing cases dealing with a small amount of money (i.e. up to US$ 2,500in Arizona).

5.2. Federal courts[17]

The US Constitution gave the Congress power to establish federal courts other than the US Supreme Court and as a result, there are two levels of federal courts under the highest jurisdiction of the US Supreme Court: the trial courts and the appellate courts.

The United States **district courts** are the trial courts of the federal court system. There are total of ninety four federal judicial districts

17 Based on: Understanding The Federal Courts, Office for Judges Programs, Administrative Office of the US Courts 2003, available at: www.uscourts.gov

in the USA. The district jurisdiction reaches nearly all categories of federal cases including both civil and criminal matters. Each district includes a bankruptcy court as a unit of the district court. There are also two special trial courts with nationwide jurisdiction: the Court of International Trade and The United States Court of Federal Claims (claims against the United States).

The 94 judicial districts are organized into 12 regional circuits, each having one **United States Court of Appeal** hearing appeals from the district courts located within its circuit. In addition, the Court of Appeal for the Federal Circuit has nationwide jurisdiction to hear appeals in specialized cases such as those involving cases decided by the Court of International Trade or The United States Court of Federal Claims.

5.3. The United States Supreme Court

The United States Supreme Court consists of the Chief Justice of the United States and eight associate justices. At its discretion, and within certain guidelines established by the Congress, the Supreme Court each year hears a limited number of cases it is asked to decide. Those cases may begin in the federal or state courts, and they usually involve important questions about the Constitution or federal law.

5.4. Federal courts scheme

The US Supreme Court
Appellate Courts **U.S. Courts of Appeals** 12 Regional Circuit Courts of Appeal 1 U.S. Court of Appeals for the Federal Circuit
Trial Courts **U.S. District Courts** 94 judicial districts U.S. Bankruptcy Courts **U.S. Court of International Trade** **U.S. Court of Federal Claims**
Federal Courts and other entities outside the judicial branch **Military Courts (trial and appellate)** **Court of Veterans Appeals** **U.S. Tax Court** **Federal administrative agencies and boards**

Source: The US Courts: www.uscourts.gov

Useful links:

US Courts

http://www.uscourts.gov/

The National Center for State Courts

http://www.ncsconline.org/

The US Supreme Court

http://www.supremecourtus.gov/

6. Judicial Review in the American legal system

BASIC DEFINITIONS:

Judicial review - a constitutional doctrine that gives the power to a court system to annul legislative or executive acts which the judges declare to be unconstitutional.

Judiciary Act - statute establishing the US federal judiciary (national courts system) adopted in the first session of the US Congress in 1789.

INTRODUCTION:

An American model of judicial review is somehow unique in comparison to those implemented in Europe. European judicial review can be characterized as **centralized** (with one institution established specially to perform the review) and **abstractive** (where an abstract legal question can be brought to this judicial institution by selected state bodies or institutions). The judicial review in the USA is **decentralized** (all American courts can perform it over all the laws) and **concrete** (a constitutional question has to originate from a particular contradiction in the case).[18]

U.S. Supreme Court

MARBURY v. MADISON, 5 U.S. 137 (1803)[19]

Mr. Chief Justice MARSHALL delivered the opinion of the court. […]

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18 More on judicial review in comparative perspective: R.R. Ludwikowski: Main Models of Judicial Review in the Contemporary World: A Comparative Study., Economic & Legal Studies, Vol. XLVIII (1993), R. R. Ludwikowski: Prawo konstytucyjne porównawcze, Dom Organizatora TNOiK, Toruń 2000.

19 Marbury vs Madison, 5 U.S. 137 (1803), http://laws.findlaw.com/us/5/137.html

It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each. [5 U.S. 137, 178] So if a law be in opposition to the constitution: if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law: the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

If then the courts are to regard the constitution; and he constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply.

Those then who controvert the principle that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution, and see only the law.

This doctrine would subvert the very foundation of all written constitutions. It would declare that an act, which, according to the principles and theory of our government, is entirely void, is yet, in practice, completely obligatory. It would declare, that if the legislature shall do what is expressly forbidden, such act, notwithstanding the express prohibition, is in reality effectual. It would be giving to the legislature a practical and real omnipotence with the same breath which professes to restrict their powers within narrow limits. It is prescribing limits, and declaring that those limits may be passed at pleasure.

That it thus reduces to nothing what we have deemed the greatest improvement on political institutions-a written constitution, would of itself be sufficient, in America where written constitutions have been viewed with so much reverence, for rejecting the construction. But the peculiar expressions of the constitution of the United States furnish additional arguments in favour of its rejection.

The judicial power of the United States is extended to all cases arising under the constitution. [5 U.S. 137, 179] Could it be the

intention of those who gave this power, to say that, in using it, the constitution should not be looked into? That a case arising under the constitution should be decided without examining the instrument under which it arises?

This is too extravagant to be maintained.

In some cases then, the constitution must be looked into by the judges. And if they can open it at all, what part of it are they forbidden to read, or to obey?

There are many other parts of the constitution which serve to illustrate this subject.

It is declared that 'no tax or duty shall be laid on articles exported from any state.' Suppose a duty on the export of cotton, of tobacco, or of flour; and a suit instituted to recover it. Ought judgment to be rendered in such a case? ought the judges to close their eyes on the constitution, and only see the law.

The constitution declares that 'no bill of attainder or ex post facto law shall be passed.'

If, however, such a bill should be passed and a person should be prosecuted under it, must the court condemn to death those victims whom the constitution endeavours to preserve?

'No person,' says the constitution, 'shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.'

Here the language of the constitution is addressed especially to the courts. It prescribes, directly for them, a rule of evidence not to be departed from. If the legislature should change that rule, and declare one witness, or a confession out of court, sufficient for conviction, must the constitutional principle yield to the legislative act?

From these and many other selections which might be made, it is apparent, that the framers of the constitution - [5 U.S. 137, 180] contemplated that instrument as a rule for the government of courts, as well as of the legislature.

Why otherwise does it direct the judges to take an oath to support it? This oath certainly applies, in an especial manner, to their conduct in their official character. How immoral to impose it on them, if they were to be used as the instruments, and the knowing instruments, for violating what they swear to support!

The oath of office, too, imposed by the legislature, is completely demonstrative of the legislative opinion on this subject. It is in these words: 'I do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich; and that I will faithfully and impartially discharge all the duties incumbent on me as according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States.'

Why does a judge swear to discharge his duties agreeably to the constitution of the United States, if that constitution forms no rule for his government? if it is closed upon him and cannot be inspected by him.

If such be the real state of things, this is worse than solemn mockery. To prescribe, or to take this oath, becomes equally a crime.

It is also not entirely unworthy of observation, that in declaring what shall be the supreme law of the land, the constitution itself is first mentioned; and not the laws of the United States generally, but those only which shall be made in pursuance of the constitution, have that rank.

Thus, the particular phraseology of the constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the constitution is void, and that courts, as well as other departments, are bound by that instrument.

The rule must be discharged.

6.1. The origins of judicial review in the US

Since the first Judicial Act was passed in 1789, the US courts were entitled to decide whether state law was in accordance with the federal Constitution and to strike down acts which were in conflict with it. No such right existed with regards to reviewing federal law.

It was the opinion of the 1803 US Supreme Court (and the famous, brilliant reasoning of Justice Marshall) which for the first time decided that an act of Congress was unconstitutional and therefore null and valid. It stated clearly, based on the Supremacy Clause, that the Constitution was the supreme law of the land and all other laws must be in conformity with it. As a consequence, all judges have to refuse to apply the law violating the Constitution and have the power to declare laws unconstitutional having the US Supreme Court as a final interpreter of the Constitution.

6.2. Characteristics of the American judicial review

The major role in the American judicial review is taken over by the US Supreme Court. Since the American Constitution is quite short and consists of general provisions it is the role of the courts and especially the highest federal court to define the rights and obligations deriving from the constitutional articles. In other words, the US Supreme Court's opinions interpreting the US Constitution have the same legal effect as the interpreted norms and therefore they become the source of American constitutional law. [20]

There are three levels of judicial review in the United States:

1. federal level (federal law prevails over state law as stated in the Supremacy Clause in the US Constitution).
2. state level (all state laws have to be in accordance with state constitutions and local state courts have the right to control it).

20 A.M. Ludwikowska: System prawa Stanów Zjednoczonych, Dom Organizatora TNOiK, Toruń 1999, pp. 215-218

3. national level (the US Congress can not pass law in contrary to the Constitution - as one element of the "checks and balances" system, the US Supreme Court may declare the Congress' act unconstitutional).

The decision of the court is binding *inter partes* so it does not delete the unconstitutional provision but it creates precedent which in future may be followed by other courts or, in the case of the US Supreme Court, is binding to all the US courts.

6.3. Limitations of judicial review on federal level

Despite the unique freedom to interpret the Constitution given to all the US courts, the American judicial review faces restrictions, some included in the Constitution itself, others developed over time by the US Supreme Court. The most important restrictions include:

1. controversy - as stated in Art. III of the Constitution the judicial power is extended to cases and controversies, therefore the courts do not deliver advisory opinions
2. standing - the party questioning the constitutionality of the particular provision has to have the right to bring a suit and concrete legal interest in the case
3. mootness - with some exceptions, the parties must be in conflict throughout the case; a judicial review cannot be performed if the case is resolved
4. ripeness - a case cannot be hypothetical, it has to be based on a certain legal issue in an existing document or decision
5. the political question doctrine - as stated by the US Supreme Court, the judiciary will abstain from hearing any issue dealing with political questions.[21]

21 More about the limitations of the judicial review: A.M. Ludwikowska, id, pp. 218-224

Useful links:

Marbury vs Madison - Utah Educational Center

http://www.uen.org/core/socialstudies/marbury/

Exploring Constitutional Law

http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/home.html

Federal Judicial Center

http://www.fjc.gov/

7. Adversary jury trial

BASIC DEFINITIONS:

Plea bargaining - the negotiation of an agreement between the prosecutor and a defendant whereby the defendant is permitted to plead guilty to a reduced charge.

Voire dire - "to speak the truth", a term used to describe the process of jury selection.

Allen Charge - a term used, usually in the federal court context, to describe the instructions given to a jury when, after deliberation, it is unable to decide on a verdict.

INTRODUCTION:

The institution of the jury was brought to the United States along with the British common law practice and has become a major foundation of the American legal system. On a federal level it originates from the provisions of the US Constitution and has been strengthened and specified by the number of the US Supreme Court's decisions. The idea behind the jury is to make sure that every accused is tried not only by the judge but also by jurors consisting of regular people living in the particular community. This chapter will regard jury in criminal cases.

Key Supreme Court Cases concerning jury[22]

Strauder v. West Virginia, 100 U.S. 303 (1879). *The Court struck down a Virginia law limiting jury service to "all white male persons," as a violation of the equal protection guarantee of the 14th Amendment, though officials used covert discriminatory policies in some areas for many years to follow.*

22 Source: www.abanet.gov

Sheppard v. Maxwell, 384 U.S. 333 (1966). *The case of Sam Sheppard, the Cleveland doctor accused of killing his wife (that later spawned the television series "the Fugitive"), received such widespread publicity excoriating Sheppard and proclaiming his guilt, that the Court found that he did not receive a fair trial and overturned his conviction. For highly-publicized trials, the Justices held that trial courts must go to greater lengths to assure a fair trial, by changing the venue, sequestering the jury, and preventing the leaking of leads and gossip to the public, in order to find unbiased jurors and prevent them from being affected by outside opinions.*

Duncan v. Louisiana, 391 U.S. 145 (1968). *The Court applied the Fourteenth Amendment's due process guarantees to the states, and overturned Duncan's conviction. He had been given a sixty day prison sentence for a misdemeanor battery charge without the benefit of a jury trial, because the Louisiana Constitution required juries only in capital cases or cases in which imprisonment or hard labor could be imposed.*

Johnson v. Louisiana, 406 U.S. 356, and Apodaca v. Oregon, 406 U.S. 404 (1972). *The Court found that the Sixth Amendment guarantee of a jury trial, made applicable to the States by the Fourteenth Amendment, does not require that the jury's vote be unanimous.*

Taylor v. Louisiana, 419 U.S. 522 (1975). *The Court found "affirmative registration" for women for jury service, in which they were not automatically included on jury lists unless they registered, to be a violation of the Sixth Amendment guarantee of a jury drawn from a cross section of the community.*

Batson v. Kentucky, 476 U.S. 79 (1986). *The Supreme Court pronounced peremptory challenges based solely on race to be unconstitutional. In this case against a black man charged with burglary and receipt of stolen goods, all four black potential jurors were dismissed by the prosecution, and Batson was found guilty. The Supreme Court ruled that this was a violation of his 6th and 14th Amendment rights to a jury drawn from a cross section of the community and equal protection of the law.*

Lockhart v. McCree, 476 U.S. 162 (1986). *The Court found that excluding people who are unwilling under any circumstances to impose*

the death penalty during sentencing did not violate a defendant's Sixth and Fourteenth Amendment rights, as long as the remaining jurors are drawn from a fair cross-section of the community.

7.1. Grand jury and petit jury

According to Article III and Amendment VI to the Constitution, the accused in criminal prosecutions has the right to a speedy and public trial, by an impartial jury. In *Duncan v. Louisiana* in 1968 the Supreme Court extended this right also to state criminal proceedings. The right to jury in civil cases was given in the VIIth Amendment (if the controversy exceeds US$20).

There are two contemporary models of the jury functioning both on federal and state levels (however, state regulations differ with regards to the level of participation of the jury in trials): the **grand jury** (jurors hear evidence in criminal cases and decide whether to issue an indictment) and the **petit jury** (jurors decide upon the guilt of the defendant in criminal procedure).

Only in death penalty cases is the task of the jury to decide on the sentence (in some states this right has been given to the judge).[23] In other cases, the jury considers their verdict and it is the judge's role to decide on the adequate penalty.

A clear division can be observed between the function of the jury deciding on the facts and function of the judge deciding on the law (including the fundamental duty of the judge to make sure the jury works in accordance with the binding instructions and rules of evidence).

In practice, the majority of the criminal cases never make it to the court room but are settled based on so-called "plea bargaining", a specific negotiation between the prosecutor and defense.

23 H. Leiterman: The Citizens Jury, "Social Education", November/December 1999, pp. 462-464.

7.2. Jury selection

The process of selection of the jury is nowadays based on the random computer selection from lists of registered voters or licensed drivers. The duty of jury is mandatory to all, called to serve with some general exceptions (examples vary depending on state regulations and may include: physicians, public officials, those physically ill, non-citizens, etc.) Once the citizens are called to serve as jurors, an additional selection (called *voir dire*) is carried out, either by the judge (most often in federal courts) or by lawyers and judge. Two methods are used to exclude the juror: **challenge for cause** (when it is indicated that the person is unable to fairly hear and decide the case to meet the requirement of "impartiality" guaranteed by the Constitution) and **peremptory challenge** (the right to exclude a juror for no reason, used by the lawyers to exclude the most inconvenient candidates, lately reduced in many jurisdictions).

On a federal level in criminal cases the number of jurors is strictly delimited to twelve by the US Supreme Court. In state courts the number of jurors may vary and usually ranges between six and twelve.

7.3. Reaching the verdict

The judge in the courtroom cannot share his opinion concerning the evidence with the jury. The Federal Rules of Evidence include a number of control functions of the judge over the jury. The jurors are obliged by the judge to give a verdict based on the applicable law. If they violate this rule while considering their verdict, the accused may appeal and as a consequence initiate a new criminal procedure. The accused may not base his/her appeal on the conviction because this decision is binding but he/she can appeal, arguing that some particular legal provisions have been violated i.e. dealing with the jury instructions or refusal to admit important evidence in the case. However, when jurors depart from the law to acquit, even when the guilt was proven "beyond reasonable doubt", the Double Jeopardy Clause of the Fifth Amendment protects the defendant from being retried for that crime.

Such a competence of the jury is known as "jury nullification" and is a subject of many controversies.[24]

As a rule, the jurors' verdict must be unanimous (i.e. federal criminal cases). The US Supreme Court decided, however, that unanimity is not a constitutional requirement for the states, unless there are only six jurors in the case. The decision was left to state laws and presently most of them require unanimity. If the vote margin is not reached, the judge may instruct jurors with so called *Allen Charge* and send them back for more deliberations. The situation when jurors cannot reach the verdict is called a "hung jury" and may lead to a mistrial and new proceedings.

Useful links:

Handbook for Federal Grand Jurors

http://www.mdd.uscourts.gov/jury/docs/federalgrand.pdf

N.J. King: The American Criminal Jury

http://law.vanderbilt.edu/faculty/publication-pdfs/download.aspx?id=3069

An Introduction to Trial by Jury

http://www.crfc.org/americanjury/introduction.html

24 N.J. King: The American Criminal Jury, 62 Law&Contemp. Probs. 41 (Spring 1999), pp. 49-50.

8. Criminal Law and Procedure in the USA

BASIC DEFINITIONS:

Unreasonable search and seizure - search of an individual or his/her premises (including an automobile) and/or seizure of evidence found in such a search by a law enforcement officer without a search warrant and without "probable cause" to believe that evidence of a crime is present.

Due Process - a judicial requirement that enacted laws may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual — also called *substantive due process.*

Miranda Rights - the requirement set by the U. S. Supreme Court in Miranda v. Alabama (1966) that prior to the time of arrest and any interrogation of a person suspected of a crime, he/she must be told that he/she has: "the right to remain silent, the right to legal counsel, and the right to be told that anything he/she says can be used in court against him/her".

INTRODUCTION:

A substantial amount of criminal law used to be a part of state law. In 1962 the American Law Institute developed the Model Penal Code to stimulate and assist legislatures in making an effort to update and standardize the criminal law throughout the country. Many states have adopted the Model Penal Code into their law. At the moment, state jurisdiction and federal jurisdiction exist over different fields of criminal law. As a consequence, there is a federal criminal procedure used in federal courts and state criminal procedure used in local state courts. The basic rights of the accused in criminal cases are guaranteed by the Bill of Rights - the first set of amendments to the US Constitution.

US Constitution - Selected Amendments

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

8.1. Sources of criminal law and criminal procedure

The sources of criminal law and procedure in the United States include:

1. State criminal codes - adopted by state legislatures, usually based on the Model Penal Code.
2. Federal Criminal Code (Title 18 of the US Code) - divided into five sections: 1. Crimes, 2. Criminal Procedure, 3. Prisons and Prisoners, 4. Correction of Youthful Offenders, 5. Immunity of Witnesses.
3. Federal Rules of Criminal Procedure (promulgated by the US Supreme Court and transmitted to the Congress for adoption) - divided into nine parts dealing with preliminary proceedings, pre-trial arrangements, trial and post-conviction procedures.
4. The US Constitution (especially the "Bill of Rights") - granting fundamental rights to the accused.
5. Caselaw - interpretation of the statutory law and Constitution, especially the US Supreme Court's opinions.

8.2. Federal criminal law and state criminal law

The Federal Bureau of Investigation (famously known as the FBI) holds jurisdiction over violations of federal crimes. As the FBI introduces itself: The very heart of FBI operations lies in our investigations - which serve - as our mission states "*to protect and defend the United States against terrorist and foreign intelligence threats and to enforce the criminal law of the United States. We currently have jurisdiction over violations of more than 200 categories of federal law*"[25].

Those categories are listed in Title 18, Part I of the US Code in 123 Chapters dealing with different violations (i.e. Chapter 2: Aircrafts and motor vehicles, Chapter 51: Homicide, Chapter 103: Robbery and Burglary, Chapter 118: War crimes).

25 FBI website: http://www.fbi.gov/hq.htm

Other violations fall under state jurisdictions and are listed in state codes such as the Penal Code of California divided into four parts: 1. Crimes and punishments, 2. Criminal Procedure, 3. State prison and county jails, 4. Prevention of crimes and apprehensions of criminals.

8.3. Stages of criminal prosecution[26]

American criminal procedure is divided into two main parts: the investigatory phase (with the police and the suspect playing major roles) and adjudicatory phase (with legal profession taking over the scene).

The investigatory phase can be divided into further stages:

1. Search and Seizure - protected by the Fourth Amendment to the Constitution prohibiting unreasonable searches and seizures.
2. Interrogation - occurring whether at police stations or other places, guided by the Dues Process Clauses of the Fifth and Fourteenth Amendments and the right to legal assistance from the Fourteenth Amendment.
3. Identification Procedures, including handwriting and voice exemplars.
4. Arrest - based on a police determination that there is a probable cause to believe that the suspect committed a crime and is protected by the Miranda Rights.

The adjudicatory stage usually includes the following steps:

1. Issuance of a Complaint - prepared by the police or a prosecutor and filed with the court.
2. Probable Cause (Gerstein) Hearing - granting judicial determination of probable cause in the case of warrant-less arrest.

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26 Based on: J. Dressler, A.C. Michaels: Understanding Criminal Procedure, Vol. I, Lexis Nexis 2006, pp. 5-12.

3. First Appearance Before the Magistrate - when the suspect "without necessary delay" is taken before a judicial officer for a hearing called "initial arraignment".
4. Preliminary Hearings and Grand Jury Proceedings - those stages depend on the regulations of different state law, the grand jury may issue an indictment stating the charges and the relevant facts relating to them.
5. Arraignment - if an indictment is filed, the defendant is arraigned in open court and enters a plea to the offences charged in the indictment.
6. Pretrial Motions - variety of defenses, objections and requests which the defendant may file (for example that the venue of the prosecution is improper).
7. Trial - if the defendant does not plead guilty and the charges are not dismissed, a trial is held guided by the Fifth and Sixth Amendments.
8. Sentencing and Post-Trial Proceedings - the sentence imposed by the judge if the defendant is convicted may be challenged in the course of appeal and the procedure itself in the *habeas corpus* procedure if violation of the Constitution or federal law occurred.

Useful links:

The US Code Title 18 - Crimes and Criminal Procedure

http://www4.law.cornell.edu/uscode/18/usc_sup_01_18.html

Overview of federal criminal procedure

http://topics.law.cornell.edu/wex/Criminal_procedure

The California Penal Code

http://law.justia.com/california/codes/pen.html

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8. R. Tokarczyk: Prawo Amerykańskie, Wolters Kluwer, Warszawa 2007

10. Glossary

adversary (adj.)	-	opposite
apprenticeship (n.)	-	a system of training a new generation of practitioners of a skill
arraignment (n.)	-	accusation
binding (adj.)	-	compulsory; executed with proper legal authority
conclude (v.)	-	to come to an agreement on
credential (n.)	-	an attestation of qualification, competence
dean (n.)	-	the head of a division, faculty, college, or school of a university
discretion (n.)	-	individual choice or judgment
indictment (n.)	-	a formal written statement framed by a prosecuting authority and found by a jury (as a grand jury) charging a person with an offense
juvenile (adj.)	-	characteristic of children or young people
legitimate (adj.)	-	legal, lawful; acceptable; justified
mandatory (adj.)	-	obligatory
override (v.)	-	to over-rule, take precedence over
plea (n.)	-	a defendant's answer to charges made in court
premises (n.)	-	buildings and parts of a building
prevail (v.)	-	to predominate
unanimity (n.)	-	having the agreement and consent of all
vest (v.)	-	provide with power and authority

Based on:

Merriam-Webster: www.merriam-webster.com

Babylon: www.dictionary.babylon.com

11. Quiz

I. Decide if the following sentences are true or false (10 pts)

1. The Bill of Rights comprises eleven amendments to the US Constitution.
2. Higher level courts are bound by the legal precedents issued by earlier decisions of the lower level courts.
3. All the branches of power in the USA control one another thanks to a mechanism called the "system of checks and balances".
4. The American Constitution includes the list of powers delegated to the state authorities.
5. The "System of checks and balances" is precisely defined in the US Constitution.
6. The judicial structure in a particular state depends on the local constitution and laws.
7. The judicial review in the USA is centralized and abstractive.
8. The US Supreme Court is considered a final interpreter of the Constitution.
9. In the USA, it is always the jury's task to consider their verdict and the adequate penalty.
10. The duty of jury is compulsory.

II. Complete the extract with the words given below (5 pts)

Authority *Cases* *Citizens* *Ministers* *States*

The judicial Power shall extend to all _____, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their_____; to all Cases affecting Ambassadors, other public _____ and Consuls; to all Cases of admiralty and maritime Jurisdiction; to Controversies

to which the United States shall be a Party; to Controversies between two or more_____; between a State and Citizens of another State; between _____ of different States; between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects. (section modified by the 11th Amendment).

III. Match the phrases with the definitions given below. There are some extra words (5 pts)

amendment	*bar*	*case method*
judicial review	*Judiciary Act*	*precedent*
socratic method		*trial*

- result of a given case solution when there is no basis in written law or if this basis is not precise enough, it is taken from a previous court decision;
- whole body of lawyers, the legal profession;
- teaching method based on guided questioning;
- the formal examination before a competent tribunal of the matter at issue in a civil or criminal case in order to determine such an issue;
- statute establishing the US federal judiciary (national courts system) adopted in the first session of the US Congress in 1789.

IV. Match the columns (5 pts)

1) Supremacy	a) Rights
2) Bill of	b) powers
3) Separation of	c) Independence
4) Declaration of	d) Clause
5) Due	e) Process

V. Complete the gaps with an appropriate preposition (5 pts)

by *in* *of* *to* *with*

In all criminal prosecutions, the accused shall enjoy the right _____ a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained _____ law, and to be informed _____ the nature and cause of the accusation; to be confronted _____ the witnesses against him; to have compulsory process for obtaining witnesses _____ his favor, and to have the assistance of counsel for his defense.

Both glossary and quiz were prepared by Halina Sierocka.