

## **Are “We, The People of the United States” the same as “My, Naród Polski”? Languages of American and Polish constitutions: similarities and differences.**

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“Our constitution was the second one in the world, right behind the American one” is a sentence that’s often proudly spoken in Poland. And increasingly often, the same phrase can be heard in conversations between Americans and Poles, as globalization leads to rapid increase in interactions between legal systems across the globe. Owing to several reasons such as: the role of U.S. Constitution as a single tangible document, the rich case law of the U.S. Supreme Court and the overall familiarity stemming from exposure to American popular culture, the American legal system superficially appears to be one of the easier among common law legal systems for a lawyer from continental Europe to grasp.

But are these values and principles truly so similar? Quite often, the peculiarities of American law leave Europeans, regardless of their legal background, baffled: the right to bear arms, death penalty, prison sentences of several hundred years length, and more recently, the clandestine methods employed in counter-terrorism both inland and abroad. In an attempt to locate the source of those differences, a constitutionalist must consider the idea that all the aforementioned rules have their grounds in relevant principles, if we assume the late R. Dworkins’ distinction of the two. And those principles, the origins of similarities and differences, are to be found in the very foundation of a legal system: the constitution.

A comparative analysis is one of the best tools a scholar can utilize to showcase characteristics of a legal document. In this particular case, the current Constitution of Poland shall serve as a comparative background. The Polish basic law is a fairly recent document, a product of several years of development and making difficult choices regarding, among others, the inspirations and traditions that were to be followed. Ultimately, the 1997 Constitution of Poland is primarily grounded, apart from its’ domestic predecessors, in the German *Grundgesetz*. However, its inspirations hail from many sources, for we find echoes of French, Finnish, Italian and not the least American legal thought. These echoes reverberate in the very opening paragraphs of both constitutions<sup>1</sup>, as the papers’ title shows. As we move further, we notice similar ideas and values: freedoms (of religion, of speech), rights (to peacefully assemble), separation of powers, and several others. We also notice several ideas common to both texts, yet worded and formulated differently: the American notion of “due process” as opposed to the ideas of “right to fair trial” and “democratic state ruled by law” found in the Polish Constitution. And as we look closer, we begin to notice concepts that at the first glance appear superficially identical, yet eventually reveal themselves to be fundamentally different. This paper seeks to explore some of the differences and similarities in semantics and resulting consequences in legal interpretation of both Constitutions in an attempt to explain the most striking disparities such as: the position of aliens<sup>2</sup> in respective legal systems and the constitutional source of abortion issue in Poland and U.S. In order to achieve this goal, the paper will recall landmark cases brought before the U.S. Supreme Court and Constitutional Tribunal of Poland, as well as both American and Polish jurisprudence.

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1 For the purposes of this paper, the U.S. Constitution shall be analyzed together with its’ amendments.

2 The term „alien” in a legal context refers to non-citizen residents of a country.