

SUMMARY

of the doctoral thesis by Paweł Króliczek

titled: *Constitutional Function of the Supreme Court of the United States*

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The subject of the dissertation is the constitutional function, i.e. the actual role that the Supreme Court of the United States plays in the American political system. The aim of the dissertation is to analyze the factors that allowed it to occupy this unique position and to prove the thesis that the dominance of the Supreme Court in the American legal system results primarily from the primacy in the interpretation of the federal Constitution obtained as a result of evolutionary changes in the political system.

These evolutionary processes, often caused by extra-legal factors, can be summarized in several basic groups of issues. These are: 1) the influence of Anglo-Saxon constitutional traditions, transplanted to American soil in the 17th and 18th centuries and the reinterpretation of these model solutions in the colonial period and the first decades after 1776, especially through the rejection of the concept of legislative supremacy and the adoption of a written constitution; 2) the characteristic features of the American legal system that determine the distinctive nature of the constitutional review exercised by American courts, the most important of which are: references to the English ideas of common law and the ancient constitution which is a result of cooperation between many generations of judges and legislators, and their effects on the nature of the Supreme Court's adjudication in constitutional cases, i.e. the key role of the individual attitudes and views of Supreme Court justices, the multitude of methods of interpretation of the American Constitution that influence the contemporary way of reading its meaning, and the influence of the structure of the American judicial system and the horizontal and vertical application of the principle of *stare decisis non quia movere* on the subordination of other bodies of power to the constitutional decisions by the Supreme Court; 3) the relationship between the Supreme Court of the United States and the other elements of the Montesquie's triad of power, in particular the process of the Supreme Court taking over law-making powers in spheres in which Congress and other bodies participating in the traditional legislative process have shown passivity or incompetence; 4) the politicization of the Supreme Court's rulings in constitutional cases, manifested in the instrumental use of interpretative tools selected to achieve a specific effect, motivated by worldview or other extra-judicial considerations; 5) the effects of the Supreme Court's interference in spheres reserved in modern democracies for the parliaments elected by universal suffrage.

The research conducted and described in this study is intended to answer the question whether the current political system in the United States has not transformed into a juristocracy.

Verification of these thesis and goals were achieved by using five main research methods: dogmatic, historical, axiological, statistical and comparative. The dissertation consists of six chapters.

The first chapter begins with an analysis of the idea of higher law in the *polis* of ancient Greece, especially in Athens, where attempts to introduce formal control of the law can be found from the end of the 5th century BC. At that time, it was exercised by the people and had little in common with proceedings before an independent court. However, these solutions constitute the foundation on which all legal systems of the Western cultural circle are based. Another turning point for the considerations conducted there is the dispute over the Clarendonian Constitutions, which were to limit the privileges of the clergy in the medieval England. This conflict is an excellent example of the collision of two legal norms - in this case, the norm of secular and ecclesiastical law. The monarch then had to acknowledge the supremacy of the Pope and abandon the introduced reform. Over the next several hundred years, England became the arena of many conflicts, which led in the 17th century to a significant weakening of royal power in favor of the sovereignty of parliament. The described fragment of this dissertation is based primarily on the analysis of subsequent judgments of various Anglo-Saxon institutions and mechanisms that can be classified as factors influencing the formation of judicial review of law, with particular emphasis on the judgments in the cases of *Rous v. Abbot*, *Dr. Bonham* and *Godden v. Hales*. In this period, together with the colonization of the North America, the history of the United States also begins. The mercantile approach of the representatives of the metropolis was of key importance for the development of the judiciary in the colonies. The colonists abandoned the concept of parliamentary sovereignty, entrusting power in these territories primarily to governors representing the interests of the Crown. As a result, a new mechanism of control of legal acts of colonial legislatures by the Privy Council was created, previously unknown in the English system. The practice of the Privy Council, meeting in London and guided primarily by the economic interest of the metropolis, is the first case of control of law passed by the legislature operating in the territory of the present United States by an independent body. The first two chapters of this study are separated by a breakthrough event that marks the beginning of American statehood – the announcement of the Declaration of Independence in 1776.

The second chapter analyzes primarily the views of the creators of American statehood, who, in accordance with Enlightenment ideals, decided to adopt the concept of a written constitution, defining the boundaries of governmental power. This idea, fundamentally differentiating American from British constitutionalism, allowed for the formation of a system of judicial review of law developed first by state courts and then by the Supreme Court established in 1789. These considerations are crowned by a synthetic analysis of the already signaled as fundamental, although not groundbreaking judgment in *Marbury v. Madison*.

The third chapter discusses the jurisdiction of the Supreme Court of the United States, which has evolved since the beginning of its existence until the first decades of the 20th century, and the issue of its internal structure. The latter is primarily determined by two basic issues: 1) the status of Supreme Court justices i.e. of regulations related to the process of their election, the possibility of removing them from office, and the conditions for performing such an important office, and 2) the internal mechanisms of the functioning of the bodies of this institution, in particular the Chief Justice of the United States and its most important administrative officials. The analysis of the jurisdiction of the Supreme Court is an element that allows for combining the historical considerations that dominate the first part of the study and the issues related to its contemporary constitutional role and activity discussed in the remaining chapters. The division adopted in the description of the Supreme Court's jurisdiction separates the regulations concerning the Supreme Court itself from those related to the general principles shaping the federal judicial system, which is also directly related to the role of the Supreme Court. The fourth chapter of this dissertation primarily concerns the procedural aspects of the Supreme Court's review of federal and state legislation. The analysis concerns the institution of *writ of certiorari*, which is the basic instrument for initiating judicial review by the Supreme Court, and the procedure in such cases. The considerations in this part of the work are concluded with an analysis of the adjudication process and the effects of the Supreme Court judgments, which indicates fundamental similarities to the Kelsenian model of constitutional review. Another issue raised in this part is the concept of precedent, both in the horizontal and vertical sense, and the principle of *stare decisis non quia movere* in relation to its practical use.

Chapter five presents the most important methods of interpreting constitutional norms used in the Supreme Court's adjudication. It is worth noting that the precedent-setting nature of the American legal system is particularly strongly shaped, especially in the context of the systems of statutory law common in Europe, by the views of individual justices. The consequence of this state of affairs is the multitude of views on how to interpret the provisions

of a legal act adopted almost 250 years ago. For the sake of clarity of this dissertation, after explaining the concept of interpretation adopted in the text, the most important methods in the Supreme Court's case law are divided into two basic groups - conservative and activist. Among others textualism, originalism, Burkeanism and the concept of the Constitution as a living document are analyzed, together with the mechanisms and standards of review of contested provisions used in the Supreme Court's rulings.

The last, sixth chapter of this study is devoted to the supremacy of the Supreme Court, which it obtained by entrusting - or, in the opinion of some, usurping - the role of the final interpreter of the Constitution. This analysis was made in the context of the American concept of separation of powers, which, unlike in the parliamentary system, or primarily the parliamentary-cabinet system, does not prioritize the efficiency of the system, but its balanced nature. This seems to be an interesting starting point for assessing the constantly evolving role of the most important American tribunal. An important part of this chapter is also the presentation of the threats resulting from the dominance of the Supreme Court and possible solutions to this problem.

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