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RECHT BERATUNG WEITERBILDUNG

Introduction to US business law

2./3. US Constitution/Trump

FS 2026

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News from last week!

- > War in Iran! (Declaration?)

- > Drop law suits against 4 law firms with ties to Democrats!
(limiting their access to federal government)

Repetition last class (I)

- > The rise of the USA
 - > I. WW
 - > Black Thursday 1928
 - > New Deal
 - > II. WW
 - > Civil rights movement
 - > Vietnam
 - > Cold war
 - > Trump!
-

Repetition last class (II)

- > Common law
 - > Americanisation
 - > Pierson vs. Post
 - > Articles of Confederation
 - > The new Constitution!
 - > Famous Presidents
 - > Sister republics
-

Some of the «Founding Fathers» of the USA

- > **George Washington** (1732-1799, general, political leader, statesman, «Father of the country»)
 - > **Thomas Jefferson** (1743-1826, lawyer, diplomat, architect, philosopher, 3rd President, author of the declaration of independence, Louisiana purchase)
 - > **Alexander Hamilton** (1755-1804, legal scholar, military commander, banker, first secretary of treasury, leader for constitutional change, Federalist papers, musical)
 - > **John Adams** (1735-1826, 2nd President, leader of the American revolution)
 - > **John Jay** (1745-1829, first Chief Justice, Federalist Paper)
 - > **James Madison** (1751-1836, 4th President, main author of the Constitution, Federalist Paper)
 - > **Benjamin Franklin** (1706-1790, printer, philosopher, scientist, founder of Penn, against slavery)
-
- > etc.



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The US Constitution from 1789

US Constitution (I)

- > Preamble
 - > Art. I – Legislative Branch
 - > Art. II – Executive Branch
 - > Art. III – Judicial Branch
 - > Art. IV – Relations of the States
 - > Art. V – Amending the Constitution
 - > Art. VI – National Debts
 - > Art. VII – Ratifying the Constitution
-

Legislative – Art. I

- > Specific powers in constitution (exclusive federal powers)
 - > F.e. war, interstate commerce, tax, tariffs, etc.
 - > Regulation (necessary & proper) – weak scrutiny by courts
- > In addition shared power with states (f.e. tax)
- > States can regulate if completely internal
- > States can not discriminate
- > On states - Dormant commerce clause (interstate commerce)
 - > Weak scrutiny when state law affects interstate commerce if law pursues a legitimate state interest, overweighting burden on commerce
 - > If there is no less-burdensome mean
- > Senat some additional powers

Executive – Art. II

- > Foreign affairs
- > Commander in chief of armed forces
- > Domestic (pardons, appointment of federal offices)
- > Power to carry out law, not to make law
- > Veto (2/3 in each house)
- > Appointment of federal officers
- > Impeachment (House 2/3, Senat 2/3)
 - > Reasons (treason, bribery, high crimes, misdemeanors)
- > Immunity (civil, executive privilege)
 - > Nixon case (immunity subordinate to need evidence in criminal trial)
 - > Trump case (extensive immunity as long as related to office)

Judiciary – Art. III

- > Federal courts
- > Supreme court
 - > Original jurisdiction
 - > Appellate jurisdiction
- > Supremacy clause
 - > State courts must follow federal law
- > Non-judiciable cases (political questions esp. Foreign affairs)
- > Constitutional review
 - > Marbury v. Madison

Art. IV - VII

- > Art. IV – Relations of the States
 - > Art. V – Amending the Constitution
 - > Art. VI – National Debts
 - > Art. VII – Ratifying the Constitution
-

Declaration of Independence - US Constitution

- > They work together
 - > Although 11 years apart
 - > Declaration = purpose, goals of USA
 - > Constitution = bylaws (Statuten)
-

Bill of Rights

- > The Constitution has been amended 27 times since 1789.
- > In 1789, James Madison proposed twelve amendments to the First Congress. Congress approved these amendments as a block in September 1789 and eleven states had ratified ten of them by the end of 1791.
- > These ten amendments are known collectively as the United States Bill of Rights
- > Much of the initial resistance to the Constitution came, not from those opposed to strengthening the federal union, but from statesmen who felt that the rights of individuals must be specifically spelled out.

27 Amendments

- > Amendments to the Constitution subsequent to the Bill of Rights cover a wide range of subjects.
- > One of the most far-reaching is the fourteenth, ratified in 1868, which establishes a clear and simple definition of citizenship and guarantees equal treatment under the law.
- > Other amendments have limited the judicial power of the national government; changed the method of electing the president; forbidden slavery; protected the right to vote; extended the congressional power to levy taxes to individual incomes; and instituted the direct election of U.S. senators.
- > The most recent amendments include the twenty-second, limiting the president to two terms in office;
- > The twenty-third, granting citizens of the District of Columbia the right to vote for the President and the Vice President;
- > The twenty-sixth, lowering the voting age to 18

US Constitution (2)

Amendments

- > 1-10 Amendment - Bill of Rights (1791)
 - > 1: Freedom of speech, press, assembly (important)
 - > 2: right to bear arms (controversial)
 - > 3: Housing of soldiers
 - > 4: Search and arrest warrants
 - > 5: rights in criminal cases (important)
 - > 6: rights to a fair trial
-

US Constitution (3)

Amendments

- > 7: rights in civil cases
 - > 8: bails, fines and punishments (death penalty)
 - > 9: Rights retained by the people
 - > 10: powers retained by the states and the people
 - > 11: lawsuits against states (1798)
 - > 12: election of the President and Vice-President (1804)
 - > 13: (formal) abolition of slavery (1865) in whole USA
-

US Constitution (4) Amendments

- > 14: civil rights (1868) (important)
 - > 15: black suffrage (1870)
 - > 16: income taxes (1913)
 - > 17: direct election of senators (1913)
 - > 18: prohibition of liquor (1919)
 - > 19: woman suffrage (1920)
 - > 20: terms of the President and Congress (1933)
-

US Constitution (5) Amendments

- > 21: repeal of prohibition (1933)
 - > 22: limitation of Presidents to 2 terms (1951)
 - > 23: suffrage in the District of Columbia (1961)
 - > 24: poll taxes (1964)
 - > 25: Presidential disability and succession (1967)
 - > 26: suffrage for eighteen-year-olds
 - > 27: Congressional salaries (1992)
 - > Proposed 1789
-

22nd Amendment

«No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of President more than once.»



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The US Constitution – not loved but needed
2 combined structures of limiting the federal
government

2 Fundamental Principles to limit the power of federal Government

- > The US constitution (1789) was a direct answer to dissatisfaction with the British colonial government
 - > Therefore, directed toward limiting the powers of (federal) government rather than enhancing them
 - > 2 fundamental principles
 - > Federalism
 - > Separation of powers
-

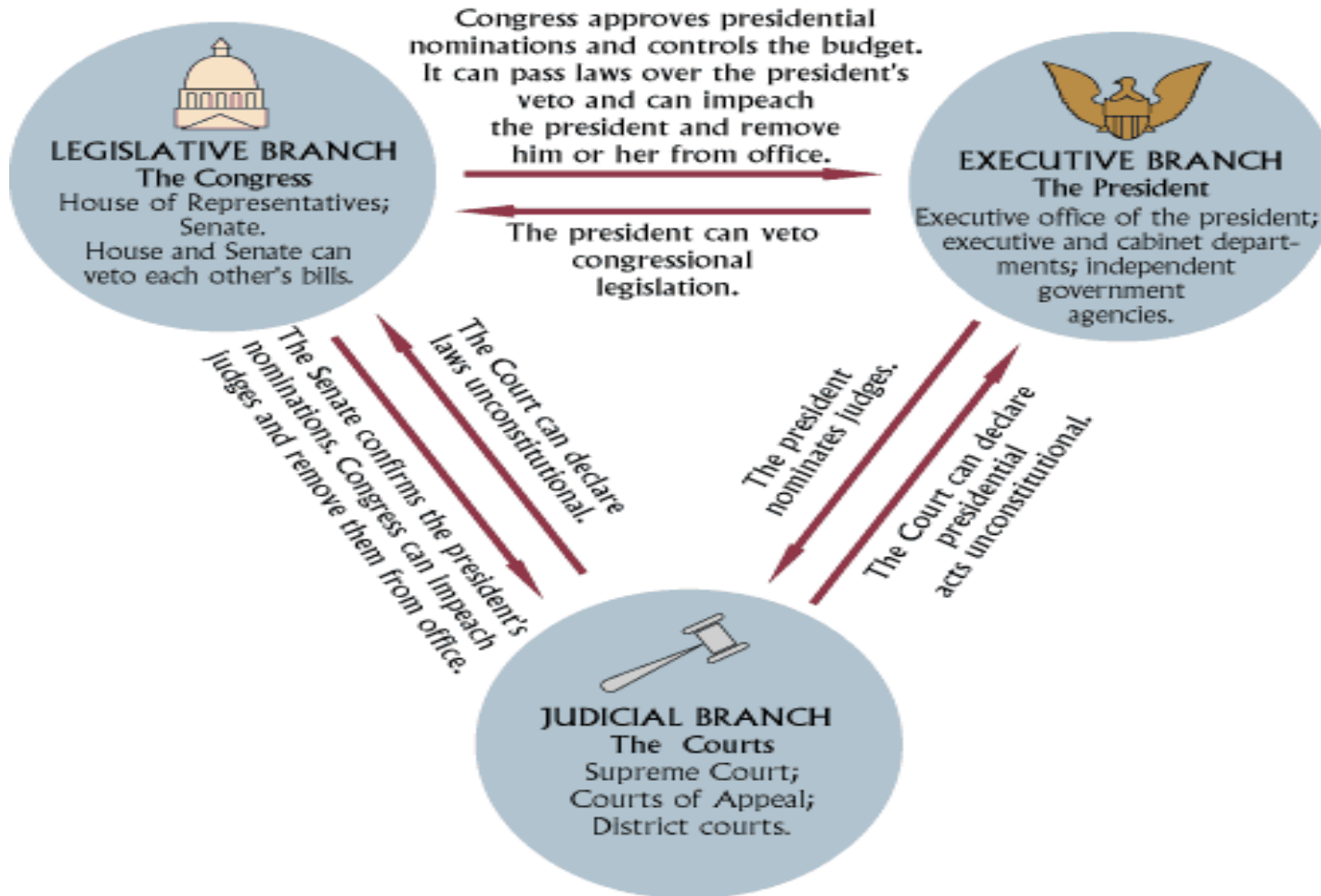
Federalism

- > Limiting governmental power by fragmenting it
 - > Enoumerated powers
 - > Art. 1 Section 8, 9 and 10 USC
 - > State vs. Federal government
 - > Balance of powers
-

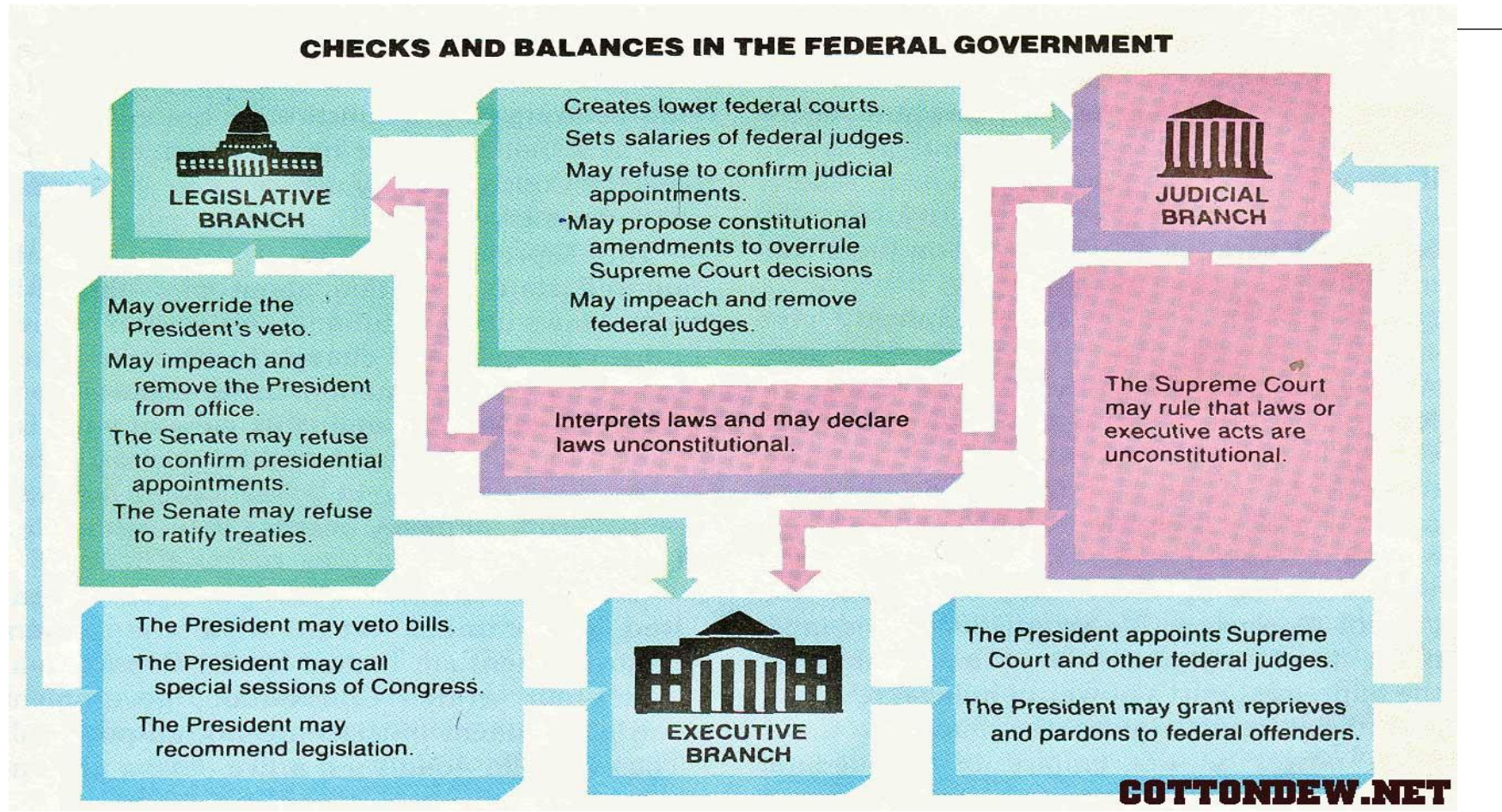
Separation of powers

- > Separation of powers and checks and balances
 - > Limiting the authority of each branch of Federal government to act without the concurrence of the others
 - > 3 branches
 - > Congress
 - > President
 - > Supreme Court
-

Checks and balances



Checks and balances



Congressional powers

- > Art. 1, Section 8 USC
 - > 18 clauses
 - > Commerce clause (clause 3)
 - > Wide interpretation (impact on interstate trade)
 - > Necessary and proper clause (clause 18)
 - > All laws that are necessary to implement other const. powers
 - > Wide interpretation
- > Supremacy Clause (Art. VI, Section 2)
 - > Art. VI, Section 2 USC
- > ~~Tarif case (2026): Court held that Consitution reserves tariffs expl. to Congress, clear wording necessary to change that~~

Powers of the President

- > Art. II USC
 - > The executive branch
 - > Commander in Chief
 - > Treaty, Judges (Senate)
 - > State of the Union
 - > Etc.
-

Third branch – the federal Courts

- > Art. III USC
 - > US Supreme Court and inferior Courts
 - > 12 Courts of Appeal
 - > District Courts
 - > Jurisdiction
-

Checks and balances

- > Does it always work?

- > Works only if branches want to check on each other
- > Strong position of the courts
 - > Are the courts the most powerful branch of US Government?
- > Exemple for the world?
- > Switzerland?

How Supreme Court became supreme

> Marbury v. Madison (1803)

> Facts:

- > Marbury got appointed by the outgoing Secretary of State John Marshall as justice of peace in DC
 - > Republicans v. Federalists
 - > The new secretary of State James Madison did not deliver the already signed and sealed document, based on a statutory act
 - > Marbury applied directly to the Supreme Court as provided by the Judiciary Act of 1789
 - > Chief Justice was John Marshall (!) - Bad luck!
-

How Supreme Court became supreme (2)

- > Constitution is the fundamental law of the land
 - > In cases of conflict between it and a statute, „an Act of the Legislature repugnant to the Constitution is void“
 - > Moreover, „it is emphatically the province and duty of the judicial department to say what the law is“.
 - > Judicial review is exercised not only by the SC but also by the lower federal courts and the state courts.
 - > Actions of the executive branches of government as well as those of Congress and the state legislature are subject to judicial review! (Marbury, Tariffs, etc.)
-

Other important cases re separation of powers (1)

- > U.S. v. Nixon (1974)
 - > Criminal trial against Nixon aides
 - > Tapes of White House conversations
 - > Nixon: separation of powers
 - > Court: no, Marbury v. Madison
 - > No general immunity for Presidents
 - > Court can decide what is needed
 - > Balancing White House confidentiality v. evidence in a pending criminal trial
-

Other important cases re separation of powers (2)

> 23-939 Trump v. US (07/01/2024)

- > On July 1, 2024, the Court ruled in a 6–3 decision that presidents have absolute immunity for acts committed as president within their core constitutional purview, at least presumptive immunity for official acts within the outer perimeter of their official responsibility, and no immunity for unofficial acts.

> International Emergency Economic Powers Act

- > Two weeks ago the USSC decided that it is Congress to decide about tariffs!



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Trump and the rule of law!

Donald Trump – a special President! (1)

- > Special President like never before
- > He seems to believe he is always winning, always smarter, always right and he doesn't care much about traditions, rules and conventions ... and the law
- > In his view the President is the executive and he can decide everything
 - > Dep of Justice
 - > Tarifs, War, Central Bank, Pardon, Immigration (ICE), etc
- > And that the executive is at his disposal
 - > departement of Justice, law firms, Comey, etc.
 - > Ending pending cases
- > checks and balances?
 - > Courts, parliament (billonaires friends)

Donald Trump – a special President! (2)

- > Using laws against wording (tariffs, war)
- > Pardon bad guys (Drug dealers, former foreign presidents, himself?)
- > Unbalanced wealth distribution (tax, antitrust, obama care)
- > Telling false facts about the election
 - > Finding 12'000 votes!
 - > USSC: Absolute immunity!!
 - > «Under our constitutional structure of separated powers, the nature of Presidential power entitles a former President to absolute immunity from criminal prosecution for actions within his conclusive and preclusive constitutional authority. And he is entitled to at least presumptive immunity from prosecution for all his official acts. There is no immunity for unofficial acts.»

Donald Trump – a special President (3)

- > 2 impeachments – politically motivated?
 - > 1st impeachment: Dirt on Biden
 - > 2nd impeachment: January 6th
 - > 3rd impeachment?
- > Gerrymandering (Texas, California)
- > Never go back! Never apologize! - Attention shifting constantly? .
- > On front pages every day – FIFA freedom price!
- > Freedom of press? (Jimmy Kimmel, CNN?)
- > Jeffrey Epstein files?
- > Etc etc etc
- > 3rd Presidency?

Next time

US court systems / Jurisdiction

Thank you – see you next week!