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# Introduction: Enlightenment Roots of American Law

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The anthropocentric orientation of the Age of Enlightenment and the recognition of reason as the main instrument in the cognition of the world certainly had a huge impact on the development of vitally important legal and political institutions and mechanisms. Among the basic ideas of the Enlightenment, understood as a philosophical movement that emerged in Europe during the seventeenth and eighteenth centuries, are rationalism, empiricism, individualism, and the idea that people had certain natural rights. Although Europe is considered the birthplace of Enlightenment thought, Enlightenment ideas went beyond the old continent, reaching various corners of the world, including, of course, America, and undoubtedly had a significant influence on the legal and political system of the United States. The United States of America was formed on the basis of the ideas and fundamental beliefs of Montesquieu, Jean-Jacques Rousseau, and Voltaire (and others). The Enlightenment emphasizes the basic rights of the individual, such as liberty, equality, and property, placing the individual at the center and using them as a point of reference. This resulted in the development of the concept of human rights as universal and inalienable, as reflected in many constitutions and declarations of human rights, including the Declaration of the Rights of Man and of the Citizen during the French Revolution and in the United States Declaration of Independence. In addition, philosophers like Montesquieu developed the theory of the separation of

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powers, which resulted in the establishment of constitutional government. In the United States, the Constitution established a system for the separation of powers and introduced innovations such as the independence of the judiciary and limits on the power of those governing.

The Declaration of Independence, penned in 1776, stands as a notably lucid and concise articulation of the Enlightenment ideals that had emerged during the eighteenth century. It was profoundly shaped by both the European Enlightenment and domestic philosophical thinking, which sought to apply scientific methodologies to the realms of politics, science, and religion. This intellectual movement emphasized religious tolerance and the restoration of literature, art, and music to their rightful positions as significant subjects of study in academia. The American Enlightenment not only laid the intellectual groundwork for the American Revolution but also served as the catalyst for the composition of the Declaration of Independence. Prominent figures in the American Enlightenment, including political luminaries such as John Adams, James Madison, Alexander Hamilton, Benjamin Franklin, and Thomas Jefferson, held Enlightenment principles in high regard. These Enlightenment philosophers placed a premium on ideals like equality, freedom, and individual rights. In response to the British government's perceived failure to ensure equal rights for the American colonies, Thomas Jefferson, under the influence of John Locke's philosophy, incorporated into the Declaration of Independence demands for the rights to life, liberty, and the pursuit of happiness.<sup>1</sup>

James Madison, conversely, directly integrated Enlightenment concepts into the Bill of Rights, championing the freedoms of speech, religion, and assembly. The framers of the US Constitution drew inspiration from the social contract theories of philosophers such as Rousseau, Locke, and Montesquieu. In the spirit of Enlightenment thought, American thinkers called into question the unchecked authority of both church and state. They distanced themselves from the ongoing power struggles between these entities and asserted that the church should not intrude on an individual's temporal aspirations. Furthermore, they maintained that a government, elected by the people, must act in the best interests of its citizens, or it would be subject to overthrow. Consequently, the US government was structured into three branches, in accordance with Montesquieu's ideas, with the express goal of establishing a system of checks and balances. This system has endured as a hallmark of American governance, ensuring the protection of individual liberties and the prevention of undue concentration of power.

Nowadays, the United States is often presented in contrast to Europe, especially in the context of the political systems and legal solutions used in these two regimes. This is because they seem extremely different and distant yet derive their

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<sup>1</sup> Harold J. Berman, "The Impact of the Enlightenment on American Constitutional Law," *Yale Journal of Law & the Humanities* 4, no. 2 (1992): 311–34.

roots from the same Enlightenment principles and ideas. Through the awakening of a sense of independence and the desire to separate from Britain, Americans, with a special role accorded to the founding fathers, created a separate state based on the world's first constitution. Even at its outset, one can feel the not-inconsiderable influence of Enlightenment ideas expressed through the oft-repeated phrase "We the people." This already shows the timeless nature of this document, in which power was invested in the people, whose representation of the will became the president. Reflected in just these three words was the idea proposed by philosophers like Locke and Rousseau, which suggested that governments derive their legitimacy from the consent of the governed. It thus established a government based on the will of the people.

The Constitution reflects many key Enlightenment principles and ideas. It was based on popular sovereignty, which asserts that the ultimate authority and power of the government derive from the consent of the governed, the separation of powers advocated by Enlightenment philosophers like Montesquieu, respect for the rights that were contained within the Bill of Rights, thus emphasizing the importance and value of the individual in Enlightenment thought, and much more factors. The foundation of the US Constitution is firmly grounded in the tenets of Enlightenment philosophy, embracing and integrating many of its fundamental principles and concepts. The framers of the Constitution were driven by a profound commitment to establishing a government that would serve as a bulwark against any encroachment on individual rights, thus advancing the cause of liberty, and curbing the latent dangers of despotic rule. Their visionary work was intricately woven into the fabric of Enlightenment ideals, which aspired to bring about a fairer and more rational society guided by reason and the fundamental dignity of individuals. Many other democratic legal and political systems in Europe were shaped by the same values. Although today it seems that these systems are sometimes almost radically different, we can find their common roots. Moreover, it is not the case, as it is out of the systems' common roots that its contemporary problems arise, which also consist of current political and legal tendencies.

In order to present the issue of the influence of the Enlightenment traditions on the political and legal system of the United States and the system as such, along with its key rights and freedoms, as fully as possible, this monograph is divided into three parts. The first part, "Ideas and Interpretations," presents the ideological basis, the influence of the founding fathers on the shape of the American system, and the roots and foundations on which the basic institutions were established. The second part, "Legal and Political System and Its Consequences," deals with issues regarding the formation of power and its control based on Montesquieu's principle of the separation of powers. This separation of powers, as outlined in *The Spirit of the Laws*, greatly influenced the structure of the United States government, emphasizing the importance of separating powers among the legislative, executive, and

judicial branches to maintain a system of checks and balances and prevent tyranny. In this case, researchers have focused particular interest on the impeachment procedure or the relationship between the legislative and executive branches in the context of the budget process. Congressional oversight has its roots in the system of checks and balances established by the Founding Fathers in the US Constitution, which grants Congress the power to legislate and appropriate funds.

The separation of powers within the US Constitution is bolstered by a system of checks and balances, a fundamental cornerstone of the American system of government. Each branch, whether it be legislative, executive, or judicial, possesses mechanisms that allow it to influence and monitor the actions of the other branches. For instance, should the President exercise their veto power, Congress retains the ability to override it with a two-thirds majority vote, ensuring that decisions are not unilateral. Congress also holds the power to impeach and remove a sitting President or federal judge, further underscoring the accountability of executive and judicial officials. Meanwhile, the President's authority to appoint federal judges and justices is subject to Senate confirmation, guaranteeing that these important roles are performed judiciously. The judiciary itself possesses the power of judicial review, enabling it to declare laws or executive actions unconstitutional, thus safeguarding the integrity of the Constitution. Finally, Congress wields the power of the purse, allowing it to control the budget and funding for government operations, which can be used as a means to influence and oversee the executive branch's policies and priorities. This intricate system of checks and balances ensures that no single branch becomes overly dominant and that the principles of liberty, accountability, and stability remain paramount within the US government.

The last part of this monograph—"Liberties, Rights, and Procedures," presents texts collected from authors that deal not only with rights as such but also with contemporary problems confronting the basic rights, freedoms, and related legal-political procedures formed under the Constitution and case law. Undoubtedly, a key role in regard to the American system of rights and freedoms is played by The Bill of Rights, the first ten amendments to the Constitution, which explicitly protects individual rights such as freedom of speech, freedom of religion, and freedom of the press, a right to a fair trial. These rights are rooted in Enlightenment principles that emphasized the importance of individual liberties. However, these rights today face different problems. The above chapter describes, among other issues, the problem of underage illegal immigrants, a wave of whom is flooding America, as well as the impact of paid education on the crisis of legal education, and the issue of the right to abortion in the context of the *Dobbs v. Jackson Women's Health Organization* ruling, which moved almost the entire world.

This monograph discusses in a particularly unique way the Enlightenment influence on the shape and development of the legal institutions and politics of the Unit-

ed States. Beginning with the historical aspects underpinning the system, moving through the system itself to the contemporary problems faced by the United States in the context of some of its most fundamental rights and freedoms, the reader gains an understanding of the legal and political system of the United States of America. In addition, due to the wide range of topics touched upon in the studies by various authors, a summary is not included at the end of this book.