

美国国务院国际信息局 编

金蔓丽 译

辽宁教育出版社

OUTLINE OF THE U.S. LEGAL SYSTEM



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A monument to the building of the United States

of the United States

of the United States

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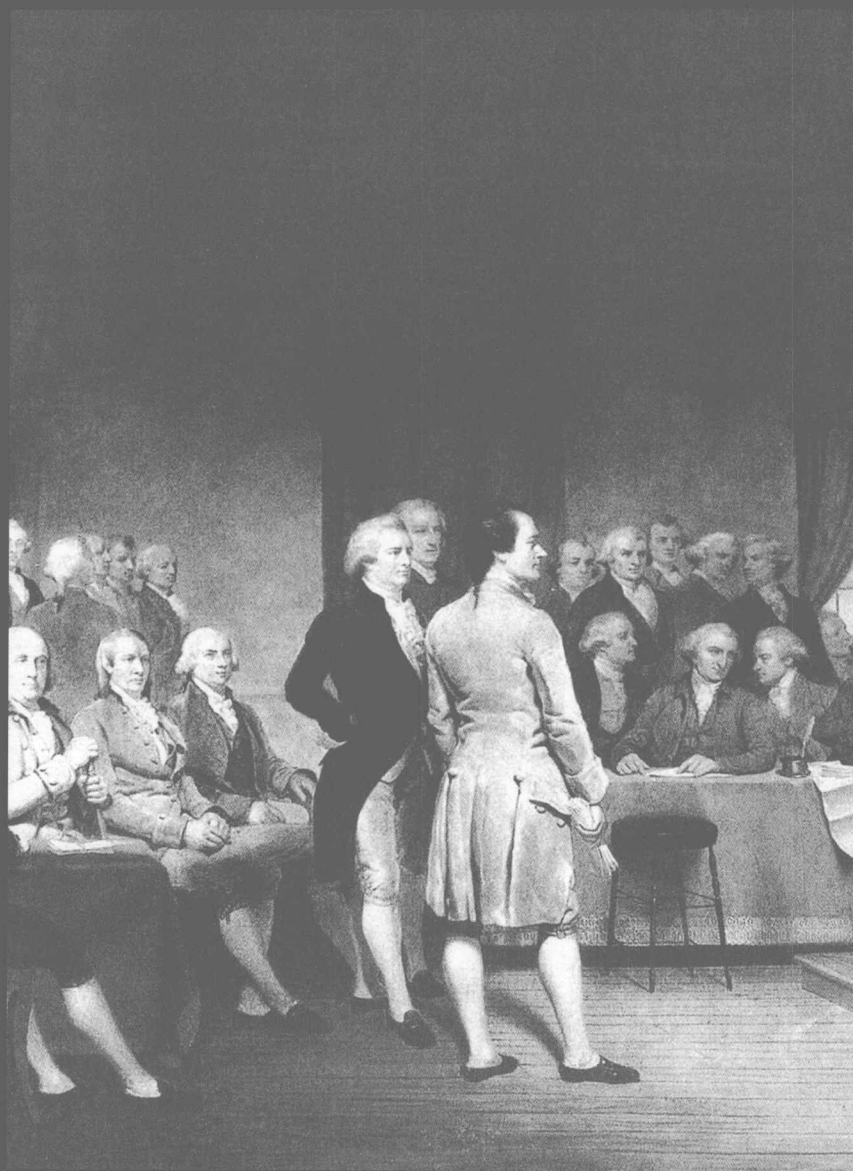
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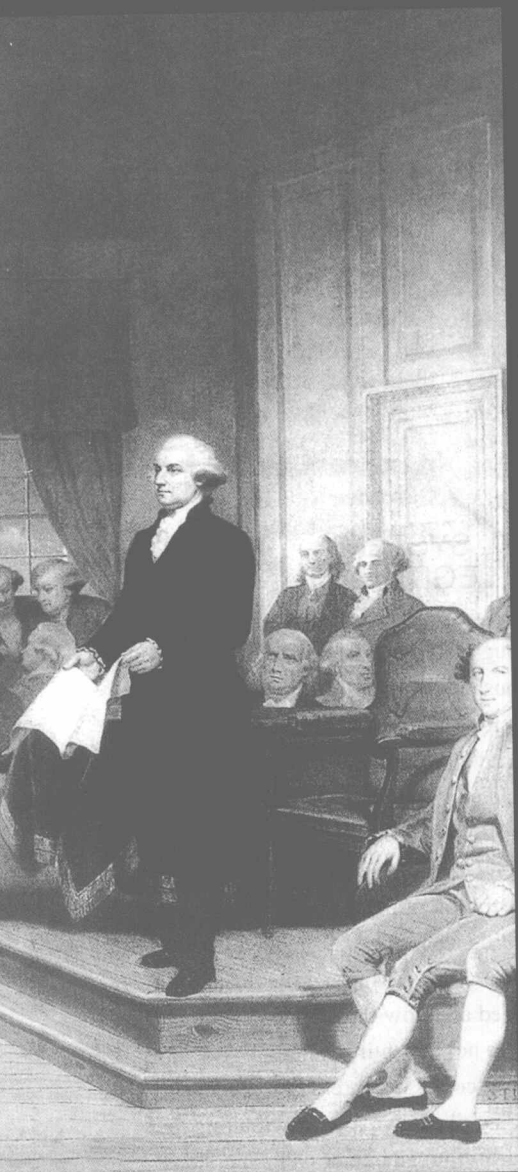
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In this scene from an 1856 painting by Junius Brutus Searns, George Washington(standing, right) addresses the Constitutional Convention, whose members drafted and signed the U.S. Constitution on September 17, 1787. The Constitution is the primary source of law in the United States.

朱尼厄斯·布鲁特斯·瑟恩
1856年所画。乔治·华盛顿（右侧
站立）在制宪会议上发表演讲。制
宪会议成员于1787年9月17日起
草并签署了《联邦宪法》。联邦宪
法是美国法律的基本渊源。

INTRODUCTION TO THE U.S. LEGAL SYSTEM

THE U.S. LEGAL SYSTEM— A MATTER OF LEGITIMACY

Every business day, courts throughout the United States render decisions that together affect many thousands of people. Some affect only the parties to a particular legal action, but others adjudicate rights, benefits, and legal principles that have an impact on all Americans. ^{判决, 裁决} Inevitably, many Americans may welcome a given ruling while others—sometimes many others—disapprove. All, however, accept the legitimacy of these decisions, and of the courts' role as final interpreter of the law. There can be no more potent demonstration of the trust that Americans place in the rule of law and their confidence in the U.S. legal system.

The pages that follow survey that system. Much of the discussion explains how U.S. courts are organized and how they work. Courts are central to the legal system, but they are not the entire system. Every day across America, federal, state, and local courts interpret laws, adjudicate disputes under laws, and at times even strike down laws as violating the fundamental protections that the Constitution guarantees all Americans.

美国法律制度简介

美国法律制度——合法性问题

几乎每个工作日,美国各地的法院都在做出裁决。整体上来说,这些裁决影响到成千上万的人。有些裁决只对某一特定诉讼的当事人产生影响,而一些针对权利、利益和法律原则做出的裁判,其影响可能及至所有的美国人。因此,很多美国人可能对某一裁判表示欢迎,而有些人——甚至多数人——会对其表示反对,这是不可避免的情况。然而,所有人都承认这些裁判的合法性,承认法院作为法律的最终解释者的正当性。没有什么能比这更加有力地反映出美国人对于法治的信任,以及对于美国法律制度的信心。

下面几页文字就要纵览这个制度,用很多篇幅去解释美国法院的组织机构及运作方式。法院是法律制度的核心,但绝不是全部法律制度。每一天,在美国各地,联邦、州以及地方法院都在解释法律,依法裁判纠纷,甚至有时候会推翻一些违背了宪法所赋予美国人民的基本保障的法律;同时,数以百万计的美国人在不经过法院

At the same time, millions of Americans transact their day-to-day affairs without turning to the courts. They, too, rely upon the legal system. The young couple purchasing their first home, two businessmen entering into a contract, parents drawing up a will to provide for their children—all require the predictability and enforceable common norms that the rule of law provides and the U.S. legal system guarantees.

This introduction seeks to familiarize readers with the basic structure and vocabulary of American law. Subsequent chapters add detail, and afford a sense of how the U.S. legal system has evolved to meet the needs of a growing nation and its ever more complex economic and social realities.

A FEDERAL LEGAL SYSTEM

OVERVIEW

The American legal system has several layers, more possibly than in most other nations. One reason is the division between federal and state law. To understand this, it helps to recall that the United States was founded not as one nation, but as a union of 13 colonies, each claiming independence from the British Crown. The Declaration of Independence (1776) thus spoke of “the good People of these Colonies” but also pronounced that “these United Colonies are, and of Right ought to be, FREE AND INDEPENDENT STATES.” The tension between one people and several states is a perennial theme in American legal history. As explained below, the U.S. Constitution (adopted 1787, ratified 1788) began a gradual and at times hotly contested shift of power and legal authority away from the states and toward the federal government. Still, even today states retain substantial authority. Any student of the American legal system must understand how jurisdiction is apportioned between the federal government and the states.

的情况下处理其日常事务，他们同样要依靠法律制度：当年轻的夫妇购买其第一处房产时，当两个生意人订立合同时，当父母立遗嘱时——所有这些情况，都要求法律具有可预见性，要求普通准则能够得以实施，而这些都是法治所能带来的，也是美国法律制度所保障的。

本章旨在使读者熟悉美国法律的一些基本框架和基本术语。后面几章会有一些详细的介绍，以使人们了解到，为了适应一个不断发展的国家及其日益复杂的经济和社会现实的需要，美国法律制度是如何演变的。

联邦法律制度

概述

美国法律制度包括几个层面，可能比大多数其他国家层面要多。其原因之一是联邦与州的法律体系的划分。要理解这一点，有必要回顾一下历史：美国不是作为一个整体的国家建立起来的，而是由13个从英联邦独立出来的殖民地通过联盟而建立的。因此，独立宣言（1776年）不仅提到“以各殖民地善良人民的名义”，而且进一步指出：“这些联合一致的殖民地从此是自由和独立的国家，并且按其权利也必须是自由和独立的国家”。一国人民与多个州之间的矛盾是美国法律历史上长期以来的永恒主题。美国联邦宪法（1787年通过，1788年批准）启动了一个渐进而有时竞争激烈的权力交替过程，在这个过程中，司法权力从州中分离出来，向联邦政府靠近，这在下面会做进一步解释。不过，即使在今天，各州仍然保留着实质性的权力。任何学习美国法律制度的学生都必须了解，司法管辖权是如何在联邦政府和州政府之间分配的。

The Constitution fixed many of the boundaries between federal and state law. It also divided federal power among legislative, executive, and judicial branches of government (thus creating a "separation of powers" between each branch and enshrining a system of "checks-and-balances" to prevent any one branch from overwhelming the others), each of which contributes distinctively to the legal system. Within that system, the Constitution delineated the kinds of laws that Congress might pass.

As if this were not sufficiently complex, U.S. law is more than the statutes passed by Congress. In some areas, Congress authorizes administrative agencies to adopt rules that add detail to statutory requirements. And the entire system rests upon the traditional legal principles found in English Common Law. Although both the Constitution and statutory law supersede common law, courts continue to apply unwritten common law principles to fill in the gaps where the Constitution is silent and Congress has not legislated.

SOURCES OF FEDERAL LAW

The United States Constitution

Supremacy of Federal Law

During the period 1781–1788, an agreement called the Articles of Confederation governed relations among the 13 states. It established a weak national Congress and left most authority with the states. The Articles made no provision for a federal judiciary, save a maritime court, although each state was enjoined to honor (afford "full faith and credit" to) the rulings of the others' courts.

The drafting and ratification of the Constitution reflected a growing consensus that the federal government needed to be strengthened. The legal system was one of the areas where this was done. Most significant was the "supremacy clause," found in Article VI:

宪法将联邦法律与州法律之间的许多界限确定下来。宪法将联邦权力在立法机关、行政机关和司法机关这几个领域中做出了划分（因此创造了各个机关之间的“分权”和“制衡”，以防止任何一个机关滥用职权，压制其他机关），对于整个法律制度，每个机关都有其独特的贡献。在该制度中，宪法还明确规定了国会可以通过的法律。

以上这些看起来似乎还不是十分复杂，其实，美国法律不仅仅包括国会通过的法律。在某些领域，国会还可以授权行政机构制定一些规则，对国会所制定的法律规定具体实施细则。此外，整个制度是建立在传统法律原则基础之上的，这些传统的法律原则可以从英国普通法中找到。尽管宪法和法律的地位优于普通法，但是，法院继续沿用不成文的普通法原则来规范那些宪法没有规定而国会又尚未立法的领域。

联邦法律渊源

美国宪法

联邦法律的最高效力

在1781年至1788年期间，13个州之间的关系是通过其协议来调整的，这个协议被称为《邦联条例》。这个协议建立了一个权力相对较弱的、全国范围的国会，而把大部分权力都留给了各州。该条例没有就联邦法院系统做出规定，只规定了海事法院，尽管每个州都被要求要尊重（“充分信任和尊重”）其他州法院的判决。

宪法的起草和批准反映了人们逐渐形成的共识：联邦政府的力量需要加强。而要强化联邦政府力量，法律制度是首先需要强化的力量之一。宪法第六条规定了“最高效力条款”，最具重要意义：

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. 只知 尽知

This paragraph established the first principle of American law: Where the federal Constitution speaks, no state may contradict it. Left unclear was how this prohibition might apply to the federal government itself, and the role of the individual state legal systems in areas not expressly addressed by the new Constitution. Amendments would supply part of the answer, history still more, but even today Americans continue to wrestle with the precise demarkations between the federal and state domains. 1/24

Each Branch Plays A Role in the Legal System

While the drafters of the Constitution sought to strengthen the federal government, they feared strengthening it too much. One means of restraining the new regime was to divide it into branches. As James Madison explained in *Federalist No. 51*, "usurpations are guarded against by a division of the government into distinct and separate departments." Each of Madison's "departments," legislative, executive, and judiciary, received a measure of influence over the legal system.

Legislative

The Constitution vests in Congress the power to pass legislation. A proposal considered by Congress is called a *bill*. (If a majority of each house of Congress—two-thirds should the President veto it—votes to adopt a bill, it becomes law.) Federal laws are known as *statutes*. The *United States Code* is a "codification" of federal statutory law. The Code is not itself a law, it merely presents the statutes in a logical arrangement. Title 20, for instance, contains the various statutes pertaining to Education, 有美 涉及

本宪法和依本宪法所制定的合众国法律,以及根据合众国的权力已缔结或将缔结的一切条约,都是全国的最高法律;每个州的法官都应受其约束,即使州的宪法和法律中有与之相抵触的内容。

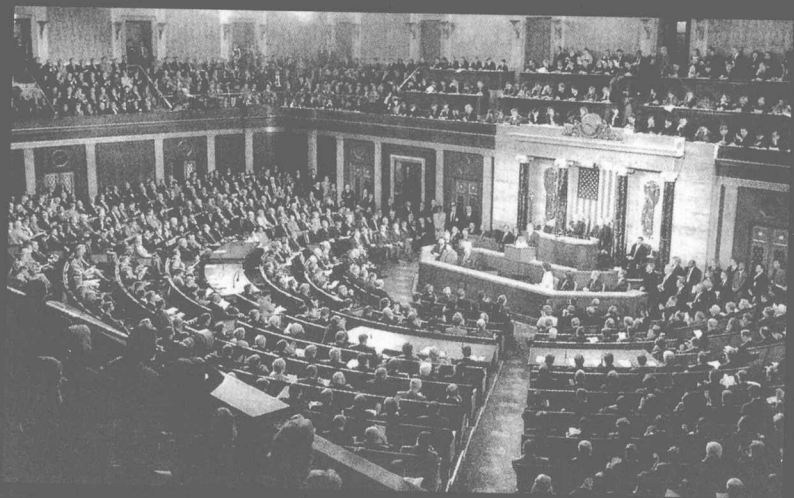
该条款设定了美国法律的首要原则:凡联邦宪法规定的内容,州的法律不得与之相抵触。该条款尚未明确的是,这种禁止性规定如何适用于联邦政府本身,以及在联邦宪法没有明确规定的领域,各个州法律体系可以发挥什么作用。这个问题可以通过修正案来得到部分解决,然而,迄今为止,美国人仍继续为联邦和州管辖范围的准确划分而争论不休。

各个机关在法律制度中都起一定作用

一方面,宪法的起草者们努力加强联邦政府的权力,另一方面,又担心给联邦的权力过大。限制这个新国家的一种方法就是将其划分成不同的机关。正如詹姆斯·麦迪逊在《联邦党人》第51篇中所指出的:“把政府权力分给几个分立的部门,以防止篡权的发生”。麦迪逊所谓的“部门”,即立法机关、行政机关和司法机关,都受到法律制度一定程度的影响。

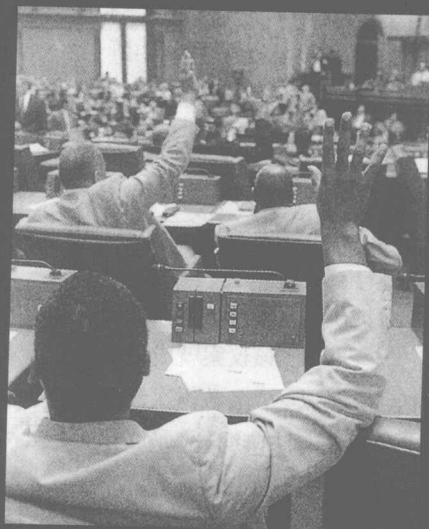
立 法

宪法授予国会通过法律的权力。国会提出的建议叫做议案。如果国会两院中每一院都以简单多数通过某一议案,该议案就成为法律——但是,如果总统否决该议案的话,必须以2/3多数再次通过才能成为法律。联邦法律通常被称为法律。《联邦法典编纂》是联邦法律的“法典化”,它本身不是法律,只是以符合逻辑的编排方式将法律整理出来。例如,其第20篇收集了与教育有关的各类法律,而



The Constitution has vested the power to pass legislation in Congress, here gathered in a joint session for President George W. Bush's budget speech in 2001. The executive power, in turn, is entrusted to the President.

宪法赋予国会通过立法的权利。两院在这里举行联席会议，听取总统乔治·W. 布什 2001 年的预算演讲。行政权力被委任给总统。



Laws passed by one of the 50 state legislatures, such as the New York State Assembly shown left during a roll call, apply only to the citizens of that state or outsiders who reside or do business there.

50 个州中，各议会（如左图中的纽约州议会）通过的法律只对本州公民或在该州有居所或经商的人适用。