

英语注释本

The Rule of Law in the United States

# 美国法治面面观

□ 吴 耘 编注



北京大学出版社

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## **前 言**

随着中国加入世界贸易组织，中国与世界各国，特别是美国的文化交往和人员交流将会更加广泛和深入。可以预言，在这种背景下，国内英语学习将掀起新一轮的热潮。为越来越多的英语学习者提供优秀的英语读物，是我们英语教师义不容辞的责任。

英语学习不单单是语言学习，它同样是一种文化学习，特别是随着英语学习的深入和英语水平的提高，文化的成分越来越多。因此，许多中高级英语学习者渴望通过阅读有丰富内涵的知识性读物，来认识英语国家，特别是美国。同时，只有对美国有较为深入的了解和认识，才能更有效地掌握和运用英语，更加方便和自如地进行国际交流和交往。目前，国内有关介绍英语国家，特别是美国基本情况的英语读物已出版了不少，但有一定深度的、能够帮助读者更深入地了解美国社会本质和特性的英文读物还不够丰富。为满足读者的这一需要，编者选编了这本《美国法治面面观》。

不论是赞扬美国的人，还是批评美国的人，几乎没有人否认美国是个现代的法治国家。美国人的生活很大程度上是由法律来规范和调节的。显然，

法治的观念在美国已深入人心，甚至可以说是已经融入美国人的生命。那么，美国为什么能够建立起相对完备的法治？美国法治的基础何在？美国法治如何能够维系 200 多年之久而无根本的变化？法院、特别是最高法院对稳定的法治有什么样的贡献？围绕着这些问题，编者按美国法治的基石、制度、最高法院著名法官和判决四个部分，比较详尽和全面地介绍了美国法治的形成、发展、问题和前景。

在选材上，编者注意语言的规范和地道，行文的流畅和清晰，结构的完整和统一，内容的客观和合理。对于文中所涉及的法律术语、政治概念和历史背景及语言难点，尽可能做详细的注解，对有一定难度的句子，给出参考译文。本书可以作为大学高年级学生和研究生英语学习的泛读资料，也可作为国际政治、法律和外国历史等学科专业英语教材，还可以作为有关专业人士了解美国法律政治制度的入门书。

在本书的选编过程中，南京大学－约翰斯·霍普金斯大学中美文化研究中心任东来教授给予很多有价值的帮助。北京大学出版社郭力女士对这一选题的形成起了至关重要的作用。在此，对他们深表谢意。

南京大学大学外语部副教授

吴 耘

2002 年 3 月

# 目 录 *Contents*

## Part 1 The Rule of Law: the Foundations

### 第一部分 法治基石

---

<b>I The Declaration of Independence</b>	<b>/ 3</b>
《独立宣言》	
1. British Colonial Control	/ 5
2. Early Colonial Resistance	/ 7
3. Taxes on Tea	/ 9
4. First Continental Congress	/ 12
5. Hostilities Begin	/ 14
6. <i>Common Sense</i>	/ 16
7. Independence Resolution	/ 16
8. Jefferson's Declaration	/ 17
9. Impact of the Declaration of Independence	/ 20
<b>II The Constitution of the United States</b>	<b>/ 24</b>
《美国宪法》	
1. Forces that Shaped the Constitution	/ 26
2. The Constitutional Convention	/ 28
3. Ideas Behind the Constitution	/ 34
4. Struggle for Ratification	/ 36
5. Overview	/ 38

## **The Rule of Law in the United States**

### **◆ 美国法治面面观 ◆**

6. The Influence of the Constitution	/ 41
7. Interpreting the Constitution	/ 62
8. Amendments to the Constitution	/ 66
9. The Constitution Today	/ 68
<b>III The Bill of Rights</b>	<b>/ 71</b>
《权利法案》	
1. Rights Protected	/ 73
2. Origins of the Bill of Rights	/ 77
3. Debate Over the Constitution	/ 83
4. Interpretation	/ 87
5. Comparison with Laws in Other Countries	/ 89

## **Part 2 The Rule of Law: a System of Checks and Balances**

### **第二部分 制约与平衡**

---

<b>I The Congress</b>	<b>/ 93</b>
国会	
1. Powers of Congress	/ 95
2. Limits on the Powers of Congress	/ 99
3. Membership	/ 100
4. Congressional Sessions	/ 102
5. Structure and Responsibilities of the Senate	/ 103
6. Structure and Responsibilities of the House	/ 106
7. The Legislative Process	/ 108
8. Influences on the Legislative Process	/ 116
9. Congress in Comparative Perspective	/ 124
10. Congress through History	/ 126
11. Challenges Facing Congress	/ 144

<b>II The Presidency</b>	<b>/ 147</b>
总 统	
1. Term of Office and Qualifications	<b>/ 149</b>
2. Election to the Presidency	<b>/ 152</b>
3. Presidential Succession	<b>/ 160</b>
4. Responsibilities and Powers	<b>/ 162</b>
5. The Executive Branch	<b>/ 168</b>
6. The Life of the President	<b>/ 171</b>
7. History of Presidential Leadership	<b>/ 176</b>
<b>III The Supreme Court</b>	<b>/ 202</b>
最高法院	
1. Introduction	<b>/ 203</b>
2. Power of the Supreme Court	<b>/ 205</b>
3. Jurisdiction	<b>/ 206</b>
4. Judicial Review	<b>/ 208</b>
5. Membership	<b>/ 208</b>
6. Qualifications	<b>/ 209</b>
7. Appointment and Confirmation	<b>/ 210</b>
8. Removal from Office	<b>/ 213</b>
9. The Work of the Court	<b>/ 214</b>
10. How Cases Come before the Court	<b>/ 218</b>
11. Criteria for Selecting Cases	<b>/ 220</b>
12. Briefing and Oral Argument	<b>/ 223</b>
13. Analysis and Discussion	<b>/ 226</b>
14. Writing Opinions	<b>/ 226</b>
15. Effects of the Court's Decisions	<b>/ 229</b>
16. History	<b>/ 232</b>

## **Part 3 The Rule of Law: the Famous Supreme Court Justices and Decisions**

### **第三部分 最高法院著名大法官与判决**

---

<b>I The Famous Supreme Court Justices</b>	<b>/ 257</b>
最高法院著名大法官	
1. John Marshall	<b>/ 257</b>
2. Roger Brooke Taney	<b>/ 262</b>
3. William Howard Taft	<b>/ 264</b>
4. Oliver Wendell Holmes, Jr.	<b>/ 275</b>
5. Louis Dembitz Brandeis	<b>/ 276</b>
6. Charles Evans Hughes	<b>/ 278</b>
7. Earl Warren	<b>/ 280</b>
8. Thurgood Marshall	<b>/ 283</b>
9. William Hubbs Rehnquist	<b>/ 289</b>
10. Sandra Day O'Connor	<b>/ 290</b>
<b>II The Great Supreme Court Decisions</b>	<b>/ 291</b>
最高法院重要判决	
1. <i>Marbury v. Madison</i>	<b>/ 291</b>
2. Dred Scott Case	<b>/ 302</b>
3. Slaughterhouse Cases	<b>/ 311</b>
4. <i>Plessy v. Ferguson</i>	<b>/ 313</b>
5. <i>Schenck v. United States</i>	<b>/ 320</b>
6. <i>Brown v. Board of Education of Topeka</i>	<b>/ 325</b>
7. <i>Gideon v. Wainwright</i>	<b>/ 331</b>
8. <i>Miranda v. Arizona</i>	<b>/ 338</b>
9. <i>Roe v. Wade</i>	<b>/ 345</b>

## **Appendix I    Historic Documents**

### **附 录 一          历 史 文 献**

- 
- |   |       |
|---|-------|
| 1. The Declaration of Independence                | / 355 |
| 《独立宣言》  |       |
| 2. The Constitution of the United States          | / 361 |
| 《美国宪法》  |       |
| 3. The Presidents of the United States            | / 403 |
| 美国历届总统  |       |
| 4. The Judicial Organization of the United States | / 407 |
| 美国联邦司法机构  |       |
| 5. The Supreme Court Justice since 1789           | / 408 |
| 美国联邦最高法院法官  |       |

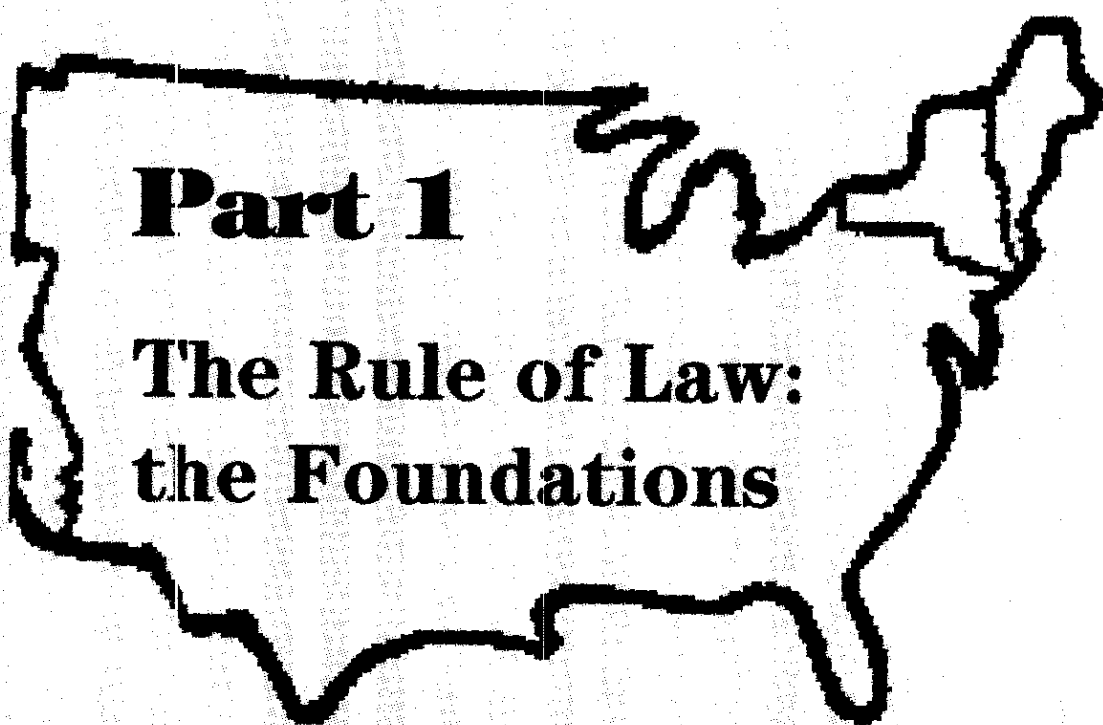
## **Appendix II    Maps**

### **附 录 二          地 图**

- 
- |   |       |
|---|-------|
| 1. The 13 British Colonies in North America | / 413 |
| 英属北美十三个殖民地                                  |       |
| 2. The Louisiana Purchase                   | / 414 |
| 路易斯安那购买地                                    |       |
| 3. The American Civil War                   | / 415 |
| 美国内战  |       |

# 第一部分

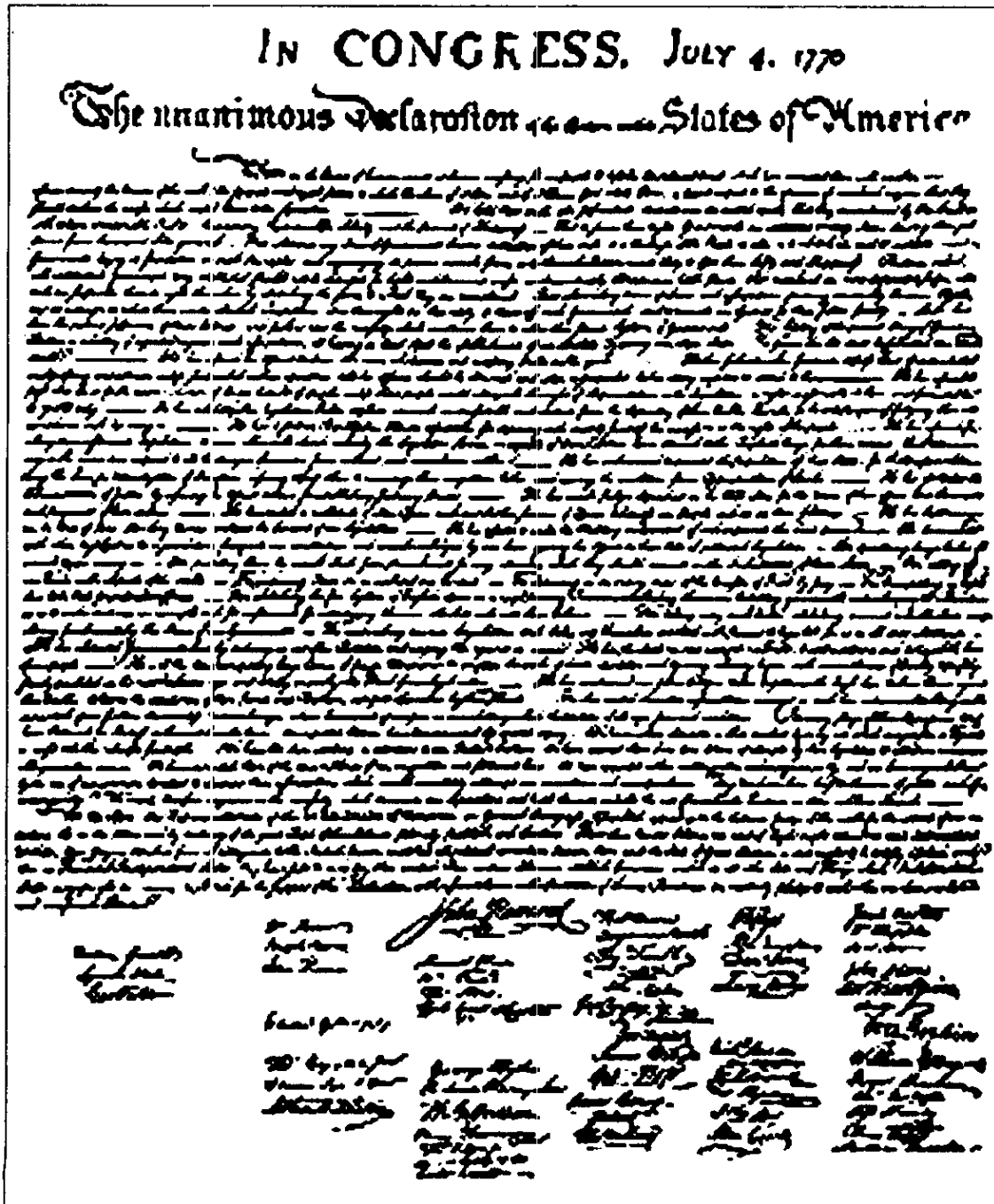
## 法治基石





# I The Declaration of Independence

## 《独立宣言》



《独立宣言》是英属北美 13 个殖民地人民宣布摆脱英国殖民统治,宣布独立的历史性文件,对世界历史也产生过重大影响。它“最重要的功能并不在于提出了新的政治思想或政府理论,而在于将原来欧洲启蒙运动时期产生的天赋人权和社会契约思想从一种抽象的理论转化为现实政治的原则,并通过后来的革命将其变成了新生美国宪政的理论基础。”<sup>①</sup> 因此,《独立宣言》实际上构成了美国人引以自豪的以法治国的一个重要思想基础。

阅读下面内容,你会了解到:

- 北美英属殖民地人民为什么会寻求独立?
- 美国革命与其他国家的革命有何不同?
- 《独立宣言》是如何形成的?
- 《独立宣言》的主要内容和思想是什么?
- 《独立宣言》受到什么思想的影响,同时它本身又产生出来什么样的影响?

**The Declaration of Independence**, document in American history used by the 13 British North American colonies<sup>②</sup> to proclaim their independence from Great Britain. The Declaration of Independence was adopted in final form on July 4, 1776. It can be divided into three parts: a statement of principle concerning the rights of man and the legitimacy of

① 王希:《原则与妥协:美国宪法的精神与实践》,第 60-61 页,北京大学出版社,2000。

② 这 13 个殖民地是 Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts, Maryland, South Carolina, New Hampshire, Virginia, New York, North Carolina, and Rhode Island, 参见所附地图 1。

revolution, a list of specific grievances against England's King George III, and a formal claim of independence.<sup>①</sup>

The document transformed the colonists' struggle with Great Britain from a defense of their rights as Englishmen to a revolution aimed at overthrowing the existing form of government.<sup>②</sup> It did not establish a structure of government and should not be confused with either the Articles of Confederation<sup>③</sup> or the Constitution of the United States<sup>④</sup>. For the American colonists, the declaration was an announcement to the rest of the world that the colonies were independent from Great Britain<sup>⑤</sup>; it also provided a rationale for this action. The goal was to solidify internal support for their struggle and to encourage external assistance from European powers<sup>⑥</sup> such as France.

## 1. British Colonial Control

A number of events led to the Declaration of Independence. The British-American triumph in the French and Indian

---

① ... a statement of principle ... of independence. ... 声明有关人的权利和革命合法性的原则, 历数对英王乔治三世的种种不满, 并宣布正式独立。

② The document transformed ... form of government. 《独立宣言》把[北美]殖民地人民反对英国的斗争从旨在保护他们作为英国人的权利变成了推翻现存政府的一场革命。

③ the Articles of Confederation: 《邦联条例》。北美 13 个殖民地宣布独立后订立的反英同盟条约, 1781 年 3 月生效。1788 年被美国宪法所取代。

④ the Constitution of the United States: 《美国宪法》。1787 年在美国费城制定, 1788 年经各州批准后生效。

⑤ that the colonies ... from Great Britain: 该定语从句修饰前面的 announcement。

⑥ European powers: 欧洲列强

War (1754 – 1763)<sup>①</sup> was particularly significant because it<sup>②</sup> not only caused France to lose its North American empire, but also led to <sup>③</sup> changes in Britain's relationship with its own colonies.

After the war, the British government decided to reorganize its overseas empire. The country was heavily in debt<sup>④</sup> because of war expenses; it needed money and felt that the colonies should pay a share of the defense of the colonies. In addition, the British found it<sup>⑤</sup> difficult to maintain control over the American colonies without a more centralized administrative system in North America. During the French and Indian War, several colonies had refused to cooperate fully in the war effort when their own borders were not immediately at risk<sup>⑥</sup>. Smuggling was also so rampant that the American customs service cost the British more money to run than it earned in revenue.<sup>⑦</sup>

The British government decided to maintain a 10,000-man army to protect the colonies from Native Americans and from any new French threat. The army could also help to maintain

---

① the French and Indian War (1754 – 1763): 法国和印第安人战争。这是英国和法国及其盟国在世界范围内争夺霸权的七年战争的一部分, 因法国与印第安人结成反英联盟, 故名。战争以法国的失败而告结束, 英国获得了一部分法属北美殖民地。

② it 在此代替前面的 triumph。

③ led to: 导致

④ heavily in debt: 负债累累

⑤ it 指代该句中的动词不定式短语 to maintain control over...。

⑥ were not immediately at risk: 副词 immediately 在此解释为“直接”。

⑦ Smuggling... in revenue. 走私活动如此猖獗, 以至于英国人用在北美殖民地海关上的开支超过了海关本身的收入。the American customs service 指英国在北美殖民地设立的海关机构。

British authority in the distant colonies. Parliament ordered the customs office to collect the taxes levied on imports<sup>①</sup>, usually called duties, more efficiently and passed the Sugar Act in 1764 and the Stamp Act in 1765<sup>②</sup> to raise revenue in the colonies to pay for one-half of this army. The rest of the money was to come from the British treasury. These laws made economic sense to the British,<sup>③</sup> who did not see them as direct threats to American liberty.

## 2. Early Colonial Resistance

Colonial Americans viewed the measures quite differently. Some colonists objected to the unaccustomed British enforcement of customs collections, and others spoke publicly against the Sugar Act, even though this new measure actually lowered the duty imposed by the Molasses Act.<sup>④</sup> (Despite lowering the duty, increased revenue was expected because collection would be strictly enforced.) But the Stamp Act led to the most serious resistance. This law, passed by Parliament in 1765, required the purchase of revenue stamps for legal documents and many

---

① levied on imports: 对进口产品征税。levied on imports 在此是过去分词短语, 作前面 taxes 的定语。

② the Sugar Act in 1764 and the Stamp Act in 1765: 1764 年《食糖法》(对食糖征税)和 1765 年《印花税法》(在法律文件、商业票据等票据上贴印花征税)。

③ These laws made economic sense to the British: 对英国人来说, 这些法律在经济上是说得通的。make sense to: 有道理

④ Some colonists... by the Molasses Act. 一些殖民地人民拒绝英国这一非同寻常的强制征收关税的做法, 另一些人则公开表明反对《食糖法》, 尽管这一新措施实际上降低了《蜜糖法》所规定的税率。the Molasses Act: 《蜜糖法》, 英国议会 1733 年通过对输入北美殖民地的蜜糖征税的法律。unaccustomed: 不寻常的, 不习惯的