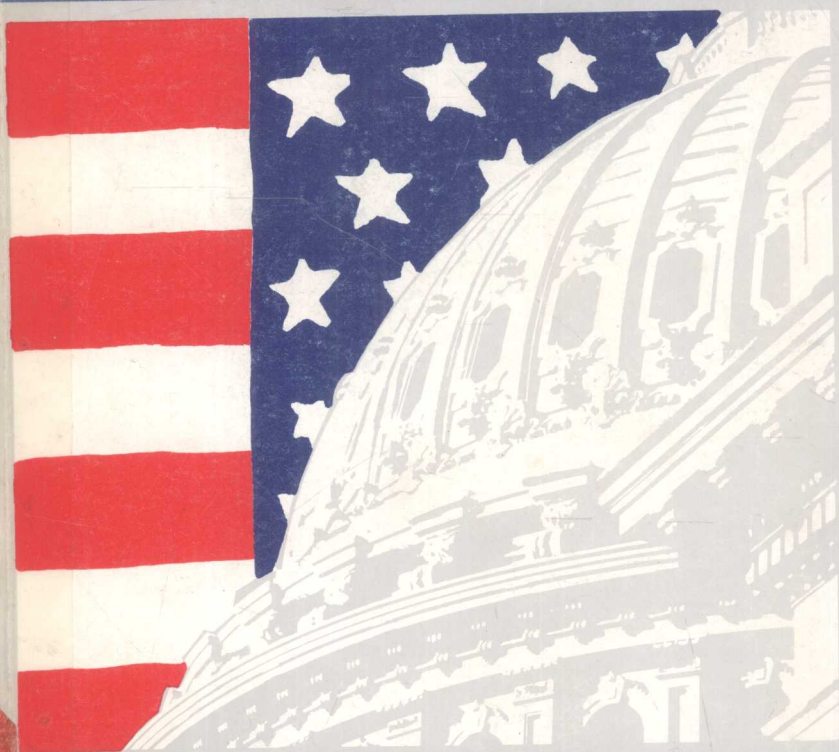


# 美國政府制度

歐內斯特·S·格里菲思著

史遲譯



Ernest S. Griffith

THE AMERICAN SYSTEM OF GOVERNMENT

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歐內斯特·S·格里菲思原著  
史遲譯

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## Chapter 1

### THE SPIRIT OF THE AMERICAN SYSTEM

To capture the spirit of the government of the United States is far from easy. Not only is this true for those accustomed to parliamentary governments such as that of Great Britain, it is true also for the Americans themselves.

Without departing far from the truth, one can describe the British system of government in relatively few words. There is the principle of concentration of responsibility, derived from the great number of voters but steadily narrowing as it goes upward: from the House of Commons (the part of Parliament elected by the people) to the majority political party, from party to Cabinet, from Cabinet to Prime Minister. In this situation a "government"—officials chosen by the party in power—can govern; the opposition party can act as critic and propose other policies. The necessary degree of expertness in government is provided by a permanent civil service under the Cabinet. No higher law such as a written constitution limits the range of parliamentary power. No irresponsible use of executive power is outside the area of parliamentary questioning.

The American system is more difficult to understand and briefly describe. It possesses a supreme and written constitution, which always places limits on governmental action. Some provisions of the constitution establish limitations upon all government. Moreover, the system is also a federal system, a union

## 第一章

# 美國制度的精神

要把握美國政府的精神可真不容易。這點非但熟悉英國那種議會政體的人士如此，就連美國人自己也不例外。

我們可以用幾句話概述英國政府制度，不會和事實有太大出入。英國採用責任集中原則，責任最初來自許許多多選民，但是愈往上，責任愈趨集中：從下議院（由人民選出的國會議院）到多數黨，從多數黨到內閣，從內閣到首相。在這種情形下，“政府”——由執政黨選任的官員——就可以執掌政務；反對黨可以對執政黨進行批評和提出其他政策。內閣下面設有永久性的文職人員，具有施政上所需的豐富經驗。英國沒有像成文憲法那樣更高的法律來限制議會的權力範圍。所有行政權力均在議會質詢範圍以內，不得隨意濫用。

美國制度便難懂得多，也不容易用幾句話概括。它具有一部至高無上的成文憲法，總是要對政府行動加以限制。有些憲法條款對整個政府制定了限制辦法。此外，美國制度又是一種

of states under a central government. Some parts of the constitution limit the national government and some limit the state governments. In addition, other provisions limit the various branches of the national government. In the British system, a parliamentary election also determines who shall be Prime Minister; but the American Constitution provides for separate election of President and Congress. This separation not only divided the power but seems to have given form to a permanent conflict between the executive and legislative branches of government. Being constitutional equals, each must defend its policy to the other. Combining all these various and independent elements, the system has produced what may be called "government by consensus." This is an unspoken requirement that major changes must have the support of more than a slight majority of the voting public.

Also in contrast to the British system, political leadership in America is very fluid. The role played by political party, while fairly strong in matters of organization, is increasingly weak in matters of policy. The power that always accompanies expertness is shared among the bureaucracy, the staffs of Congress, and private pressure groups. It is the principal theme of this book that these various and differing elements do, in fact, constitute a workable system, surprisingly suited in some ways to the needs of governing today.

It will assist our study if we take a general survey of the important elements of the American system before studying any of these interlocking elements in detail.

We give first place to the constitutional principle that laws of different kinds have different grades of



聯邦制度，在一個中央政府之下由各州組成的聯邦。憲法若干部份規定了中央政府的權限，若干部份規定了州政府的權限。還有其他條款規定全國政府不同部門的權限。依照英國制度，議會選舉還可以決定誰做首相；但美國憲法規定總統和國會要分開選舉。這種分別選舉非但將權力分開，而且似乎形成了政府行政部門和立法部門之間永久性的衝突。這兩個部門既然在憲法上地位相等，所以彼此之間要維護自己的政策。將這許多不同的和獨立的因素歸併起來，這便產生了所謂“人民同意統治”的制度。凡是重大改革，一定要有超過半數以上的選民支持，這是一種默契。

和英國制度相比，美國政治領導的流動性很大。政黨所發揮的作用，雖然在組織上頗為強大，但在決策上越來越加薄弱。由於經驗老到而產生的權力，為官員、國會職員和民間壓力集團所分享。本書的主旨，就是指出這些雜然紛陳的因素，事實上構成了一個可行的制度，在若干方面居然非常適合今日的政治需要。

如果我們先對美國制度的重要因素作一全面性的考察，然後再詳細研究其中任何相互關聯的因素，當有助於我們的研究。

我們首先要談到不同種類的法律，具有不同等級的重要性

importance. In Britain, all law has equal importance. The latest law enacted by Parliament may change or set aside any earlier law with which it disagrees. This is not so in the United States. Constitutional laws rank higher than other types of laws. They establish a standard which ordinary laws must follow. Amendment of these superior laws requires a special and much more difficult process.

This higher "constitutional law" includes elements that have given to American government many of its most characteristic features. First, it has established a zone of freedom, an area in which no government may legally operate. These provisions of the Constitution do whatever can be done by law to safeguard those individual rights which history has found to be the mark of a just and free society: freedom of speech and worship, the right of habeas corpus, freedom from the loss of life, liberty, or property, except by proper legal procedure, and protection from unreasonable searches and seizures.

Secondly, the federal principle rests on the Constitution. Constitutional law has divided the areas of permitted government action into that permitted only to the nation, that permitted only to the states, and that shared by both. This is something legally very different from a granting of powers by the British Parliament to local authorities, powers which may be taken away as easily as they are granted.

Thirdly, the Constitution establishes the machinery of the national government. That is, it names the major offices and organizations of the government, describes how they must be selected, and assigns their powers and duties. This assignment has been based on two principles which seem to conflict. The first principle is the separation of powers into legislative, executive,

這個憲法原則。在英國，一切法律都同樣重要。英國國會制度的最新法律，如與較早的法律有所抵觸，則可更改或擱置較早的法律。美國的情形就不一樣。憲法高於其他法律。由憲法宣示的標準，其他法律都須遵從。修正憲法要經過一種特殊和困難得多的程序。

這種地位較高的“憲法”，有些成份使美國政府具有許多獨有的特色。首先，它建立了一個政府不得依法干預的自由地帶。這些憲法條款已竭盡所能，透過法律來保障個人權利。人類歷史證明這些個人權利正是公平和自由社會的標誌：言論和信仰自由，人身保護權，除非依據正當法律程序，不得剝奪人民的生命、自由或財產，以及保護人民不受無理搜查和拘捕。

其次，聯邦原則依據的是憲法。憲法把許可的權限加以劃分，有的只屬於國家，有的只屬於各州，有的由國家和各州分享。在法律上，這和英國國會授權地方當局大相徑庭，這種權力得來不難失去亦易。

第三，憲法設立了全國政府的機構。那就是說，它列舉政府主要機構，規定其選舉方式，給它們分派了權力和職責。這種分派根據的是兩個似乎互相抵觸的原則。第一個原則是將權力劃分為立法、行政和司法。第二個是制衡原則，根據這個原

and judicial. The second is the principle of checks and balances, by which the executive and legislative branches share certain powers that might more reasonably seem to belong to one or the other. These are the two principles of American government which are most often criticized and most difficult to understand. They have frequently been a cause of confusion and conflict. They have resulted in great differences in the relationship between President and Congress.

It is obvious to us today that a system of laws of different rank, such as the Constitution provided, demanded interpretation, even though the Constitution was itself silent on this point. This role has been assumed by the Supreme Court. Its decisions are the final authority as to what is or is not permitted either to the nation or the states; what is or is not a proper action by Congress or the President.

Yet the Constitution is only partly or indirectly the parent of much of the American system. The "unwritten Constitution" of custom and use has had a major role. Custom has changed separation of powers and checks and balances into something quite different, that is, a situation in which one branch must defend its use of power before its constitutional equal.

Then, too, power is itself distributed in a complicated pattern among different institutions. This results in a group of customs which together might be called "government by consensus." This means that major changes in public policy are made only if they have the support of substantial elements in each of the major geographic regions and major economic groups into which the country is divided. This gives a quality of conservatism to the government nationally moderated by freedom to experiment by individual

則，行政和立法部門分享若干權力，而這些權力似乎更應屬於其中一個部門。美國政府這兩個原則最常受到批評，也最難了解。因此常常引起混淆和衝突。它們也導致了總統和國會之間的重大不和。

現在我們顯然知道，如憲法所規定的不同等級的法律制度，是需要加以解釋的，儘管憲法本身對這點沒有明確規定。這項任務一直都由最高法院負起。關於國家或各州有權或無權做什麼事情，國會或總統的行動是否適當，最高法院的決定是最後的決定。

但憲法只是美國制度的部份或間接根源。習慣上使用的“不成文憲法”一直都在擔當重要的角色。習慣已使三權分立和制衡原則完全變了樣子。那就是說，一個政府部門必須對在憲法上具有同等地位的另一個政府部門，維護自己行使職權的權力。

此外，權力本身也以複雜的形式分配在不同的機構中，結果就形成了一些慣例，合在一起可以稱“人民同意的統治”。這就是說，公共政策如有重大改變，必須得到國內各主要地區和主要經濟集團大部份人的支持。這使全國政府有了一種保守的品質，但因各州享有進行改革試驗的自由而減輕了這種保守

states.

Political party is not mentioned in the Constitution. Nevertheless, it has proved to be the great organizer. It organizes the administration of a President. It organizes most of the legislatures, especially Congress. It has an important part in organizing relations between legislature and executive. It organizes the voting public in the selection of public officials.

The American Constitution is like the steel beams that form the frame of a great building. The details are ever-changing. So also are many of the important elements, but these change more slowly. The structure as a whole remains largely untouched, though the nation has grown from a thinly populated group of separate states along the Atlantic coast to a world power.

No one should be misled by the widely discussed conflicts and surface imperfections of the American government into underrating the merit of its Constitution. Its faults tend to be more noticeable than those of most other constitutions. Its merits are more difficult to understand. That it has many great merits would seem to be indicated by the long-lasting results. This Constitution, mostly unchanged, has continued to exist for more than 187 years—longer than any other written constitution still in use. Under it, and in part because of it, a nation of mixed and restless people has developed a nation and a continent, achieved a standard of living the highest the world has ever known, given the masses of people greater opportunities educationally and economically than any other people, preserved the great freedoms, and assumed an international leadership and international obligations as no other nation in history.

性。

憲法沒有提到政黨。儘管如此，事實證明政黨極富組織力。政黨組織了總統的行政機構，組織了大部份的立法機關，尤其是國會。它在安排立法和行政部門之間的關係上扮演着重要的角色。它把選民組織起來挑選官員。

美國憲法就像建造高樓大廈的鋼樑。細枝末節在不斷改變。許多重要組成部份也在改變，不過這些改變比較緩慢。雖則這個國家從大西洋沿岸幾個人口稀少的州，發展成一個世界強國，但整個結構大體上並沒有多大改變。

我們不能因人們廣泛討論美國政府內部衝突和表面缺陷而受到錯誤指引，因而低估了美國憲法的優點。它的缺點往往比許多別的憲法的缺點更引人注目，它的優點則較難了解。它具有許多偉大優點，這似乎可以從它的成績長久存在這一點看得出來。這部憲法，大部份沒有改動過，已繼續存在了一百八十七年以上——其歷史比任何其他仍在使用的成文憲法都長。在這部憲法指引之下，一部份也因為有了這部憲法，一群民族複雜和好動的人，開發了一個國家和一片大陸，達到全世界有史以來最高的生活水準，使群眾在教育和經濟上所獲得的機會勝過任何其他民族，維護了重要的自由，承擔了史無前例的國際領導地位和國際義務。

## Chapter 2

### THE WRITTEN CONSTITUTION

The American Constitution of 1789 was a product of 18th century political theory, especially the ideas of John Locke and Montesquieu. Government should be limited, Locke said. It was an agreement freely made which could be ended under certain conditions. The rights of man which came from nature or God were supreme and to be encouraged. Separation of powers was one of Locke's and Montesquieu's ideas, so it was clear that the new constitution would include three branches of government—legislative, executive and judicial. This had been the familiar experience of the 13 colonies before they united, and was characteristic of the state constitutions that were written before the Federal Constitution. Many of these state constitutions also contained "bills of rights"—laws which protected men's natural rights.

Many practical provisions were included in the Constitution to assure that the United States would in fact be a nation, instead of the loose union as it had been under the earlier Articles of Confederation. That agreement had created a Congress of the United States with strictly limited governing powers. Its members were not elected by the people, but chosen by the state legislatures. This Congress had no independent taxing power; to pay its bills, it either depended upon grants from the states or issued paper money, which rapidly lost much of its value. Commerce between the states was seriously limited because the states taxed such trade; nevertheless, the



## 第二章

# 成文憲法

一七八九年的美國憲法，是十八世紀的政治學說，特別是約翰·洛克和孟德斯鳩思想的產物。洛克說，政府權力應受限制。這是一種自由締結的契約，可以在某種情況下解除。天賦或上帝賦與的人權至高無上，要加以鼓勵。分權是洛克和孟德斯鳩的一個觀念，所以新憲法會包括立法、行政和司法三個政府部門，也就不言而喻了。十三個殖民地未聯合以前，已經有過三權分立的經驗，這也是在聯邦憲法以前所制定的各州憲法的特徵。這些州憲，有許多也含有“民權法案”——保護人民天賦權利的法律。

憲法裡包括許多切合實際條款，保證合衆國確實成爲一個國家，而不是像不久前在“邦聯條款”下的散漫結合。根據聯邦條款成立的合衆國國會，統治權極其有限。國會議員不是由人民選出，而是由州立法機關選派。那個國會沒有獨立的徵稅權力；國會付帳要依靠各州資助，或是發行紙幣，而紙幣很快便貶值。州與州間的貿易受到極大妨礙，因爲各州對這種貿易