影响美国历史进程的

经典案例

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天津大学出版社
TIANJIN UNIVERSITY PRESS

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Classic Lawsuits Influencing the Course of American History

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图书在版编目(CIP)数据

影响美国历史进程的经典案例/田耀主编. —天津:天津大学出版社,2009.7

ISBN 978-7-5618-3108-3

Ⅰ.影… Ⅱ.田… Ⅲ.案例—汇编—美国 Ⅳ.D971.2

中国版本图书馆 CIP 数据核字(2009)第 139344 号

出版发行 天津大学出版社
出 版 人 杨欢
地 址 天津市卫津路 92 号天津大学内(邮编:300072)
电 话 发行部:022-27403647 邮购部:022-27402742
网 址 www.tjup.com
印 刷 河北省昌黎县第一印刷厂
经 销 全国各地新华书店
开 本 148mm×210mm
印 张 11.25
字 数 386 千
版 次 2009 年 7 月第 1 版
印 次 2009 年 7 月第 1 次
印 数 1—4 000
定 价 20.00 元

序

美国经历了短短200多年的发展，一跃成为世界第一超级强国，鲜有国家可与之抗衡，这与其法律制度有着密切的关系，正所谓“法令行则国盛”。

本书以推动美国历史发展进程的一系列重要案件为主题，精心筛选了在美国极具影响力和代表性的40个案例，如奠定美国最高法院对宪法解释权的马伯里诉麦迪逊案，打破黑人、白人隔离教育的布朗诉托皮卡地方教育委员会案，还有轰动一时的“水门事件”等。这些案例主要涉及美国的政治、经济、教育、宗教、种族、女性权益及新闻等社会生活的各个方面。编者从案例发生的原因、解决途径、对美国社会的影响及对中国的借鉴价值等角度进行分析。

纵观国内外，同类书籍不胜枚举，如《美国经典案例解析》、《美国宪政历程：影响美国的25个司法大案》、《美国民事诉讼法的制度案例与材料》等。本书博采众长，集各家之经典，补各家之不足，希望能给大家以耳目一新之感。

本书不是一本个人理解上的关于美国法律的研究性著作，它更多地具有普及性读物的性质，力求深入浅出，雅俗共赏。本书内容翔实，选材经典，可以使读者置身于案例审理现场学习美国法律人的思维方法，从而提高自己的法律修养和对美国社会与文化有更全面的了解。本书可供普通高等学校本、专科学生及研究生使用，也可用作英语爱好者的课外读物。

2009年5月

Contents 目录

Unit One Political Cases
政治案例

1. Marbury V. Madison(1803)
马伯里诉麦迪逊案

Marbury V. Madison is a landmark case in United States law. It formed the basis for the exercise of judicial review in the United States under Article III of the **Constitution of the United States.**

In this greatest case in **Supreme Court** history the Court first asserted its right to declare a law of Congress unconstitutional. The events leading to this case began the night before President **John Adams** left.

The election of 1800 marked the rise of the **Jeffersonian Republicans.** President John Adams was bitter. He had just lost the election to Thomas Jefferson. The president and Federalists did not take their defeat easily. Indeed, they were greatly alarmed at what they considered to be the "enthronement of the rabble." Yet there was nothing much they could do about it before leaving office — or was there? As one of his last tasks in the office, Adams appointed some of his Federalist supporters to be judges. The Judiciary Act of 1789 gave him the power to do this. With the judiciary in the hands of good federalists, thought Adams and his associates, they could stave off the worst consequences of Jefferson's victory.

The outgoing **Federalist Congress** then created dozens of new federal judicial posts. By March 3, 1801, Adams had appointed and the

Senate had confirmed loyal Federalists to all these new positions. Adams signed the commissions and turned them over to **John Marshall**, his **Secretary of State**, to be sealed and delivered. Because Adams signed these appointments late that night on the last day in office, they were referred to as the "midnight appointments" and the judges as "midnight judges." Marshall had just received his own commission as Chief Justice of the United States, but he was continuing to serve as Secretary of State until Adams's term as president expired. Working right up until nine o'clock on the evening of March 3, Marshall sealed, but was unable to deliver, all the commissions. The only ones left were for the justices of the Peace for the District of Columbia. The newly appointed chief justice left these commissions for his successor to deliver.

Jefferson, now inaugurated as president, was angered by this "packing" of the judiciary. When he discovered that some of the commissions were still lying on a table in the Department of State, he instructed his new Secretary of State, James Madison, not to deliver them. Jefferson could see no reason why the District needed so many justices of the Peace, especially Federalist Justices.

Among the commissions not delivered was one for William Marbury. After waiting in vain, Marbury decided to seek action from the courts. Searching through the statute books, he came across Section 13 of the Judiciary Act of 1789, which authorized the Supreme Court "to issue writs of mandamus in cases warranted by the principles and usages of the law, to... persons holding office under the authority of the United States." A writ of mandamus is a court order directing an official, such as the Secretary of State, to perform a duty about which the official has no discretion, such as delivering a commission. So, thought Marbury, why not ask the Supreme Court to issue a writ of mandamus to force James Madison to deliver the commission? Mar-

bury and his companions went directly to the Supreme Court, and, citing Section 13, they made the request.

What could Marshall do? If the Court issued the writ, Madison and Jefferson would probably ignore it. The court would be powerless, and its prestige, already low, might suffer a fatal blow. On the other hand, by refusing to issue the writ, the judges would appear to support the Jeffersonian republicans' claim that the Court had no authority to interfere with executive. Would Marshall issue the writ? Most people thought so; angry Republicans even threatened impeachment if he did so.

On February 24, 1803, the Supreme Court delivered its opinion. The first part was as expected. Marbury was entitled to his commission, said Marshall, and Madison should have delivered it to him. Moreover, a writ of Mandamus could be issued by the proper court, even against so high an officer as the Secretary of State.

Then came the surprise. Section 13 of the Judiciary Act seems to give the Supreme Court original jurisdiction in cases such as that in question. But Section 13, said Marshall, is contrary to Article III of the Constitution, which gives the Supreme Court original jurisdiction only when an ambassador, other foreign minister or a consul is affected or when a state is a party. In other cases, the Court has only appellate jurisdiction.

Since Marbury was not an ambassador, a public minister or a consul, and since a state was not a party to the dispute, Chief Justice Marshall concluded that the Section of the Judiciary Act of 1789 that gave Marbury the right to go to the Supreme Court first to demand the delivery of his commission was unconstitutional. The Judiciary Act was adding to the original jurisdiction of the court by giving it permission to issue orders.

Marshall then posed the question in a more pointed way: Should

the Supreme Court enforce an unconstitutional law? Of course not, he concluded. The Constitution is the supreme and binding law, and the courts cannot enforce any action of Congress that conflicts with it.

The real question remained unanswered. Congress and the president had also read the Constitution, and according to their interpretation, which was also reasonable, Section 13 was compatible with Article III. Where did the Supreme Court get the right to say Congress and the president were wrong? Why should the Supreme Court's interpretation of the constitution be preferred to that of Congress and the president?

Paralleling Hamilton's argument in The Federalist, No. 78, Marshall reasoned: the Constitution is law; judges—not legislators or executives—interpret law; therefore, judges should interpret the Constitution. "If two laws conflict with each other, the courts must decide on the operation of each," he said. Cases dismissed.

On the surface, the decision was an act of great modesty. It suggested that the Court could not force the action of an executive branch official. It suggested that Congress had erred in the Judiciary Act of 1789 by trying to give the Supreme Court too much power. Beneath the surface, however, was a less modest act: the claim that judicial review was the province of the judicial branch alone.

Chief Justice Marshall's decision cleverly avoided making a ruling the Court could not enforce. The real issue was not whether Marbury got his job as justice of the Peace but whether the Supreme Court had the power to declare a law unconstitutional. With this decision, the Supreme Court established itself as a check on the legislative and executive branches. The Court would strike down any law that contradicted the Constitution.

Marbury never got his commission. His loss was the country's gain — the new concept of judicial review.

Marbury V. Madison thus established a precedent for the Supreme Court to determine the constitutionality of congressional legislation and to act as the final authority on the meaning of the Constitution. This doctrine of judicial review has been challenged many times, but it has weathered all the storms and survives to this day. Having established the precedent, Marshall never again disallowed an act of Congress — more than a half-century passed before the Supreme Court exercised this power again. But Marshall frequently applied the positive side of judicial review — that is, he reviewed and approved congressional legislation as constitutional.

Word and Expressions

assert	*v.*	维护，坚持
enthronement	*n.*	即位，登基典礼，就任主教的仪式
rabble	*n.*	临时聚集起来的人，暴民，[the rabble]下层民众，贱民
stave off		避开，挡开，延迟
inaugurate	*vt.*	为…举行就职典礼，开始，举行…仪式，创始，开幕，开张
writ	*n.*	公文，命令，票
mandamus	*n.*	(上级法院给下级法院的)执行令，命令书
appellate	*adj.*	受理上诉的

背景介绍

马伯里诉麦迪逊案发生于19世纪初，当时以亚当斯为首的联邦党与以杰斐逊为首的共和党之间的政治角逐正趋白热化。在1800年大选中，联邦党遭受重大的失败，不但失去了总统的宝座，同时也失去了国会的控制权，因而联邦党人就将希望寄托于联邦司法部门，企图挽回败局。亚当斯在任期终了前任命了42名治安法官。这些法官中，一些

人的任命状仓促之间未及发出。新上任的杰斐逊总统得知有 17 份治安法官的任命状仍滞留在国务院，便立即指令他的国务卿麦迪逊拒发这些任命状。马伯里便是其中一个。他举状要求新总统杰斐逊及国务卿麦迪逊交出任命状。

Notes to the Text

1. **Constitution of the United States 美利坚合众国宪法** Constitution of the United States 通称美国联邦宪法或美国宪法(U. S. Constitution)。它是美国的根本大法，奠定了美国政治制度的法律基础。美国宪法是世界上第一部成文宪法。1787 年 5 月美国各州(当时为 13 个)代表在费城(Philadelphia)召开制宪会议，同年 9 月 15 日制宪会议通过《美利坚合众国宪法》。1789 年 3 月 4 日该宪法正式生效。后又附加了 27 条宪法修正案。

2. **Supreme Court 最高法院** 美国联邦最高法院是全国最高审级，由总统征得参议院同意后任命的 9 名终身法官组成，其判例对全国有拘束力，享有特殊的司法审查(judicial review)权，即有权通过具体案例宣布联邦或各州的法律是否违宪；其中首席大法官在总统、副总统、众议院议长、参议院多数党领袖等不能行使职能的情况下，有资格临时代理乃至接任总统。

3. **John Adams 约翰·亚当斯** 约翰·亚当斯是美国的第 2 任(第 3 届)总统。亚当斯出生于 1735 年的马萨诸塞海湾殖民地。1772 年被选为马萨诸塞州众议员。参加两次大陆会议。1776 年参加《独立宣言》5 人起草委员会，是《独立宣言》的起草人之一，也曾参加宪法起草工作。革命战争期间，他作为外交官服务于法国和荷兰之间，并且帮助谈判和平条约。约翰·亚当斯是美国第 1 任副总统，后来又当选为总统。由于他任职期间在内政、外交方面均无显著成就，1800 年竞选总统时被托马斯·杰斐逊击败。

4. **Jeffersonian Republicans 杰斐逊民主共和党** 1792 年杰斐逊创立的民主共和党是现在美国民主党的前身，建党初期主要代表南方奴隶主、西部农业企业家和北方中等资产阶级的利益。19 世纪初，民

主共和党发生分裂，一派自称国民共和党，后来改称辉格党。以杰斐逊为代表的一派于1828年建立民主党，1840年正式定名为民主党。

5. **Federalist Congress 国会** 美国最高立法机关，由参议院和众议院组成。现有参议员100名、众议员435名。议员不得兼任其他政府职务。美国国会行使立法权，还拥有宪法所规定的其他权力，如对外宣战权、修改宪法权等。参众两院各自还拥有特殊权力。国会两院在各自议长主持下工作。众议院议长由全院大会选举产生，副总统是参议院的议长。两院均设有许多委员会，还设有由两院议员共同组成的联席委员会，国会工作大多在各委员会中进行。

6. **John Marshall 约翰·马歇尔** 约翰·马歇尔(1755年9月24日—1835年9月24日)是美国政治家、法学家。1799年至1800年为美国众议员，1800年6月6日至1801年3月4日出任美国国务卿，1801年至1835年担任美国最高法院第4任首席大法官，在任期内曾做出著名的马伯里诉麦迪逊案的判决，奠定了美国法院对国会法律的司法审查权的基础。

7. **Secretary of State 国务卿** 国务卿是美国国务院的最高领导人，总理外交国际事务。由于现今美国在全球各地的政治、经济、军事等影响力均远超出世界上其他国家，其外国事务相当庞杂，因此美国国务卿的权力职责大于其他一般国家的外交部长。一般将美国国务卿比作其他国家的政府首脑或外交部长，事实上都是不完全正确的。其职权比其他国家一般的外交部长大，但并不统领联邦政府(美国的政府首脑是美国总统)。

Questions

1. Which kind of basis did this case form?
2. Why did people believe this was the greatest case in the Supreme Court history?
3. What did the President John Adams do before leaving office?
4. What's the meaning of "midnight judges"?
5. Why did Justice Marshall make this kind of decision?

法律小常识

司法审查权

在马伯里起诉麦迪逊一案中，马歇尔在处理问题时很有策略：一方面避免了宪法危机，另一方面又宣布联邦最高法院具有司法审查权。司法审查权指的是联邦最高法院解释联邦宪法、审查联邦和州法律以及立法和行政机构的行为是否符合联邦宪法的权力。虽然司法审查权是美国司法制度最大的特点之一，但是联邦宪法对此却只字未提。司法审查权的发展并不是一帆风顺的。对于联邦最高法院如何行使这一权力，一直存在很大争议。很多学者认为争议的问题不是联邦最高法院是否应该行使司法审查权，而是它如何行使这个权力。乔治·华盛顿大学法学院教授玛丽·彻说："从司法审查权开始确立起，就有法官提出，即使联邦最高法院有司法审查权，也应该非常谨慎地行使这个权力。例如，它只有在发现明显错误而且是绝对必要的情况下，才能废除国会的某一法案。但是，也有法官指出，司法审查权的范围很广，联邦最高法院有义务保护每个公民的自由权，并且在政府各个机构中起到公断的作用。因此，联邦最高法院应该广泛地运用这一权力。在联邦最高法院审理的每一起案件中，几乎都存在这种辩论。"圣母大学政治学教授索蒂里奥斯·巴伯教授也认为，联邦最高法院的司法审查权适合美国的国情，而且将继续存在下去："司法审查权是非常特殊的有价值的机制，它满足了美国民众对法律一贯性和合法性的深刻需要。我认为，它是美国宪法这一皇冠上的一颗宝石。虽然我们每个人都有对联邦最高法院的判决持反对意见的时候，但司法审查权是必要的，我认为，它会继续存在下去。"

2. McCulloch V. Maryland (1819)
马卡洛诉马里兰州案

Constitutional controversies about the relative powers of the

states and the national government are a recurrent theme of American history. On several occasions, the Supreme Court of the United States addressed **federalism** issues. The Court first addressed the issue of the relationship between the states and the national government in 1819 in McCulloch V. Maryland.

In 1791 congress chartered a national bank, **the First Bank of the United States**, aimed great controversy. It was not a private bank like today's "First bank of such and such," but a government agency empowered to print money, make loans, and engage in many other banking tasks. The bank was hated by those opposed to strengthening the national governments' control of the economy. Those opposed — including Thomas Jefferson, farmers, and states legislatures — saw the bank as an instrument of the elite. Thomas Jefferson, who was then Secretary of State, opposed the bank, saying the authority to create it was "not among the powers specially enumerated by the Constitution." In contrast, **Alexander Hamilton**, who was Secretary of the Treasury, supported the bank and the power of Congress to establish it. He believed that the action of Congress was justified as an exercise of authority reasonably implied by the delegated powers. Despite the controversy, no legal challenge to the bank arose, and it operated until its charter expired in 1811.

Congress chartered the Second Bank of the United States in 1816. It, too, became the object of the controversy, particularly in the West and South. Critics accused the bank of corruption and inefficiency. They almost ruined thousands of investors. In response to the public outcry against the bank, a number of states passed restrictions on it or levied heavy taxes against it. Maryland, for example, required payment of an annual tax of $15,000 on the bank's **Baltimore** branch, which was a sum large enough to drive the bank out of business in the state. This, of course, was just what the Maryland legis-

lator wanted. When James W. McCulloch, the bank's cashier, refused to pay the tax, Maryland sued. When the state courts upheld Maryland's law and its tax, the bank appealed to the U. S. Supreme Court. John Marshall was the chief justice when two of the country's ablest lawyers argued the case before the Court.

The case presented two important constitutional issues: Does the national government have authority to charter a bank? And does a state have the power to tax an arm of the national government?

Daniel Webster argued for the national bank, and Luther Martin, a signer of the **Declaration of Independence**, argued for Maryland. Martin maintained that the Constitution was very clear about the powers Congress had (as outlined in Article I of the Constitution). The power to create a national bank was not among them. Thus, Martin concluded Congress had exceeded its powers and Maryland had a right to tax the bank. On behalf of the bank, Webster argued for a broader interpretation of the powers of the national government. The Constitution was not meant to stifle congressional powers, he said, but rather to permit Congress to use all means "necessary and proper" to fulfill its responsibilities.

Chief Justice John Marshall wrote the unanimous opinion of the U. S. Supreme Court. First, the Court upheld the authority of Congress to charter a bank on the basis of the doctrine of implied powers. Marshall noted that although the Constitution does not specially grant Congress authority to incorporate a bank, the Constitution does say that Congress may lay and collect taxes, borrow money, and raise and support armies. What, Marshall asked, if money raised in the North is needed in the South to support an army? The creation of a national bank to transport that money would be a "necessary and proper" step to that end. The power to charter the bank, Marshall held, was implied by the necessary and proper clause. Marshall also