

分权与制衡：司法

最高法院的职权范围演变

相关案例

言论自由的边界

New York Times VS. Sullivan (1964)

NYT VS. U.S. (1971)

Phelps VS. Snyder (2009)

Citizens United VS. FEC. (2010)

民权保护的边界

Brown VS. Board of Education (1954)

UC VS. Bakke (1978)

Grutter VS. Bollinger. (2003)

政府经济行为的边界

McCulloch VS. Maryland (1803)

Schechter Poultry VS. U.S. (1935)

NFIB VS. Sebelius (2012)

合众国的司法权，属于最高法院和国会随时规定和设立的下级法院。最高法院和下级法院的法官如行为端正，得继续任职，并应在规定的时间得到服务报酬，此项报酬在他们继续任职期间不得减少  
—— 宪法第三条：司法权 第一款

司法权的适用范围包括：由于本宪法、合众国法律和根据合众国权力已缔结或将缔结的条约而产生的一切普通法的和衡平法的案件；涉及大使、公使和领事的一切案件；关于海事法和海事管辖权的一切案件；合众国为一方当事人的诉讼；两个或两个以上州之间的诉讼；（一州和他州公民之间的诉讼）不同州公民之间的诉讼；同州公民之间对不同州让与土地的所有权的诉讼；一州或其公民同外国或外国公民或国民之间的诉讼。

涉及大使、公使和领事以及一州为一方当事人的一切案件，最高法院具有第一审管辖权。对上述所有其他案件，不论法律方面还是事实方面，最高法院具有上诉审管辖权，但须依照国会所规定的例外和规章。

除弹劾案外，一切犯罪由陪审团审判；此种审判应在犯罪发生的州内举行；但如犯罪不发生在任何一州之内，审判应在国会以法律规定的的一个或几个地点举行。—— 宪法第三条：司法权 第二款（上述三条）

对合众国的叛国罪只限于同合众国作战，或依附其敌人，给予其敌人以帮助和鼓励。无论何人，除根据两个证人对同一明显行为的作证或本人在公开法庭上的供认，不得被定为叛国罪。

国会有关宣告对叛国罪的惩罚，但因叛国罪而剥夺公民权，不得造成血统玷污，除非在被剥夺者在世期间，也不得没收其财产。—— 宪法第三条：司法权 第三款（上述两条）

宪法

"The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither force nor will .... The judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution .... The judiciary is ,beyond comparison, the weakest of the three departments of power .... [and] the general liberty of the people can never be endangered from that quarter." —— 联邦党人文集 七十八篇

Judicial Review (司法审查)

司法部门有权审查立法机关和行政机关的法令是否合宪

案例：Marbury VS. Madison

1803年“司法审查权”的诞生

SEC . 13 .... The Supreme Court shall also have ... power to issue ... writs of mandamus（职务执行令），in cases warranted by the principles and usages of law, to any courts appointed, or persons holding office, under the authority of the United States. —— Judiciary Act of 1789

" You seem ... to consider the judges as the ultimate arbiters of all constitutional questions; a very dangerous doctrine indeed, and one which would place us under the despotism of an oligarchy. Our judges are as honest as other men, and not more so. They have, with others, the same passions for party, for power, and the privilege of their corps ... Their power [is] the more dangerous as they are in office for life, and not responsible, as the other functionaries are, to the elective control. The Constitution has erected no such single tribunal, knowing that to whatever hands confided, with the corruptions of time and party, its members would become despots. It has more wisely made all the departments co-equal and co-sovereign within themselves." —— 1820, 杰斐逊对司法审查的批评

"司法至上主义"

The candid citizen must confess that if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made .... the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal. —— Abraham Lincoln