

美國最高法院簡介

The United States Supreme Court



主筆人：文政大

本單元因應100年新制，新增法學英文一科而開闢，主筆人文政大老師曾留學美國，專業橫跨外交、法律與政治學，並同時具有學術與實務經驗，對教學充滿熱忱。希藉由文政大老師的背景知識，帶領考生們贏得滿意高分。

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壹、前言

本文節錄自美國知名的大眾(popular)法律類書籍《Your Handbook of Everyday Law》當中。本書自 1983 年出版至今已達五版，除了作為美國一般大眾理解法律的入門之外，本書也為東吳大學法律系採用，作為大學部英美法導論的指定用書之一。

本次法學英文教室節錄本書第二十九章，簡介美國最高法院(The United States Supreme Court)的重要沿革與地位。除本文之外，筆者亦列出重要字彙與全文翻譯，一方面可作為英美法知識的補充，另一方面也加強法律英文的閱讀與字彙能力。

貳、原文

Many People don't realize that the United States Supreme Court has played and is



now playing an unsung and unheralded but crucial role in the history of our country. The strongest leader of the Supreme Court, often called “the great chief justice,” John Marshall, brought strength, respect and stability to the Court.

In one of his first cases, *Marbury v. Madison* (1803), Marshall astutely found in favor of the Jefferson administration, but he annoyed Jefferson when he established in that case the power of the Supreme Court to pass on the constitutionality of acts of Congress.

So impressive were Marshall’s character, intellect, and influence on the Court, that members of the Court of opposite political beliefs followed Marshall’s thinking and reasoning. In *McCulloch v. Maryland* (1819), Marshall ruled on the superior power of the federal government over the power of a single state (Maryland). In the dramatic case of *Gibbons v. Ogden*, Marshall struck down New York’s legislative attempt to control steamboat traffic on the waters of New York State and established the broad power of the Congress to regulate commerce. He thus broadened the economic life of the young nation. Many of Marshall’s decisions (*Gibbons v. Ogden* was an exception) were unpopular, and there were times when Marshall was hung in effigy, but despite his temporary unpopularity, he changed the Court from a weak, uncertain body into a strong arm of the government, becoming an eminent tribunal with great traditions.

Marshall’s successor as chief justice, Roger Taney, was a brilliant judge who served with distinction as head of Supreme Court from 1806 until his death in 1864. Taney wrote many unpopular and historic decisions, chief among them the infamous Dred Scott decision, which held that blacks could not be citizens. The nation was sharply divided over slavery. The Dred Scott decision angered half of the nation, and many people felt that it precipitated the Civil War. Even though most of Taney’s decisions were not popular, however, as a judge he made an enduring contribution to the law of the land.

Despite the fact that Congress had passed a civil right act that prohibited racial discrimination in public places, and despite the express language of the Fourteenth Amendment to the Constitution, the Supreme Court held in 1888 that this civil rights act was unconstitutional. Then the Court went a step further and held in 1896 that Louisiana’s statute requiring “separate but equal” railroad accommodation for



blacks (Jim Crow cars) was proper. That was the famous case of *Plessy v. Ferguson*, which virtually upheld the legality of Jim Crow cars. The case was renowned for the dissent of Justice John Marshall Harlan, whose grandson sat on the Court in 1950s and 1960s. Justice Harlan in his dissent in *Plessy v. Ferguson* said, “Our Constitution is color blind.” Justice Harlan, the grandson, must have been very proud when the Supreme Court in the 1950s repudiated *Plessy v. Ferguson* and established legal racial equality. (see *Brown v. Board of Education*, p. 364.)

Although the Supreme Court was at low ebb during the late 1800s, it fostered industrialism in the American economy. The Court approved of due process and restrictions of government. The protection of business became very important in developing the nation in those formative years, Protection of property and freedom of contract were special concerns of the courts in the latter half of the last century and the first quarter of the twentieth century. Regrettably, the Supreme Court disapproved of early workmen’s compensation laws. The Court said, “Consider what the employer does. He invests his money. He takes all the risks of the venture. Now there is put upon him an immeasurable element that makes disaster inevitable.” The Court held that the workers compensation would “stifle enterprise, produce discontent, strife, idleness, and pauperism.” How wrong was the Supreme Court of those days. In the latter part of the 19th and the first quarter of the 20th century, the Supreme Court held unconstitutional over fifty national and over 200 state statutes. The court invalidated all sorts of reform legislation, social welfare laws, and law regulating hours of labor, prohibiting child labor, and establishing minimum wages. But worker’s compensation was a plan whose time had come. In 1916 the Supreme Court finally came to its senses and upheld workers’ compensation laws, which had spread from state throughout the nation. We had a reactionary Supreme Court in the second half of the century. Today we have a sensible court that has kept pace with modern legislation, a Court that construes the Constitution as a flexible document devised to serve the needs of people.

參、生字解析

1. astutely 聰敏地、精明地(adv.)
2. Jefferson administration 傑佛遜當局 (n.)



3. annoy 惹惱、使惱怒 (v.)
4. constitutionality 合憲性 (n.)
5. acts of Congress 國會立法法案 (n.)
6. reason 推論、推理 (v.)
7. rule on 判決 (v.)
8. superior power 優位權力 (n.)
9. strike down 打擊、擊倒 (v.)
10. legislative 立法的 (adj.)
11. attempt 意圖、企圖 (n.)
12. waters 水域 (n.)
13. commerce 商業 (n.)
14. broaden 加寬 (v.)
15. decision 判決 (n.)
16. exception 例外 (n.)
17. to hang in effigy 肖像高掛 (比喻不受歡迎) (n.)
18. temporary 暫時性的 (adj.)
19. unpopularity 不受歡迎 (n.)
20. eminent 適切的 (adj.)
21. tribunal 法庭 (n.)
22. successor 繼任者 (n.)
23. infamous 惡名昭彰的 (adj.)
24. held (hold 的過去分詞) 判決 (v.)
25. slavery 奴隸制度 (n.)
26. precipitate 促使、加速 (v.)
27. Civil War 美國內戰 (n.)
28. enduring 持續的 (adj.)
29. prohibit 禁止 (v.)
30. racial discrimination 種族歧視 (n.)
31. Fourteenth Amendment to the Constitution 憲法第十四號修正案 (n.)
32. unconstitutional 違憲 (adj.)
33. statute 州制定法 (n.)
34. require 要求 (v.)



35. accommodation (火車或飛機) 鋪位、訂位 (n.)
36. upheld (uphold 的過去分詞) 維持原判 (v.)
37. legality 合法性 (n.)
38. Jim Crow cars 黑人車廂 (n.)
39. renowned 為人熟知的 (adj.)
40. dissent 反對意見 (n.)
41. repudiate 拒絕接受 (v.)
42. low ebb 低潮 (n.)
43. foster 滋養、養育 (v.)
44. industrialism 工業主義 (n.)
45. approve of 肯定 (v.)
46. due process 正當法律程序 (n.)
47. restriction 限制 (n.)
48. Protection of property 財產保障 (n.)
49. freedom of contract 契約自由 (n.)
50. compensation 賠償、補償 (n.)
51. venture 收支 (n.)
52. immeasurable 無法評估的 (adj.)
53. inevitable 無可避免 (adj.)
54. stifle 使窒息 (v.)
55. strife 爭議 (v.)
56. idleness 懶惰 (n.)
57. pauperism 赤貧、貧困 (n.)
58. invalidate 撤銷(v.)
59. construe 推斷、解釋 (v.)

肆、全文翻譯

許多人並不知道美國最高法院在過去、現今都扮演著在我國歷史上未被歌頌、不為人知但卻重要的角色。最高法院最強而有力的領袖，通常被稱為「最偉大首席法官」的約翰馬歇爾，為最高法院帶來了力量、尊敬與穩定。在馬歇爾最初的一個案件，即 *Marbury v. Madison* (1803)，他精明地找出有利於傑佛遜當局的方式，但卻在該案建立了最高法院審核國會法案合憲性之權力



而惹惱傑佛遜。

深為馬歇爾對法院的特色、智慧與影響力所吸引，擁有相反政治信念的法院成員也遵循馬歇爾的思維與論理。在 *McCulloch v. Maryland* (1819) 一案，馬歇爾判決聯邦政府權力優於單一州政府（馬里蘭州）。在戲劇性的 *Gibbons v. Ogden* 一案中，馬歇爾打擊了紐約州的立法意圖以控制航行於紐約州水域之蒸汽船，並且建立了國會對商業識相更廣泛的規範權力。他也因此加寬了這個年輕國家的經濟生活。許多馬歇爾的判決（*Gibbons v. Ogden* 例外）都不受歡迎，因此有許多時候馬歇爾都因不歡迎而被肖像高掛。但儘管短暫不歡迎，他仍將法院自軟弱、不確定的機關改造成為政府強而有力的雙臂，而法院也成為擁有偉大傳統的適切法庭。

馬歇爾作為首席法官的繼任者 Roger Taney，是一個傑出的法官，自 1806 年上任至 1864 年辭世以前擔任最高法院的領導人。Taney 寫了許多不歡迎且具歷史性的判決，其中最知名的是惡名昭彰的 *Dred Scott decision*。該案判決黑人不能成為公民，整個國家因奴隸制度而呈現對立。*Dred Scott decision* 激怒了半數人民，許多人民更覺得該判決加速了內戰的爆發。雖然多數 Taney 的判決也不受歡迎，然而作為一個法官，他仍持續性地對本國法律提出貢獻。

儘管事實上國會已通過民權法案禁止公開場合的種族歧視，且儘管憲法第十四號修正案明文表達，最高法院仍於 1888 年判決該民權法案違憲，法院更於 1896 年進一步判決路易西安那州制定法要求對黑人「隔離但不平等」的火車鋪位措施是適當的。該判決為知名的 *Plessy v. Ferguson* 一案，該案垂直地維持對黑人車廂合法性的原判。該案為人熟知之處在於 Harlan 法官的不同意見，其孫 1950 及 1960 年代就坐在該案法庭中的座位。Harlan 法官在他的不同意見中表示：「我們的憲法應該是色盲。」Harlan 法官一定對最高法院其後廢除了 1950 年代的判決，並建立法律種族平等而深感驕傲。（參見布朗對聯邦教育局一案）。

儘管最高法院是在低潮在 19 世紀末，它仍促進了美國經濟的工業化。最高法院批准了正當程序和政府的限制。最高法院在上個世紀和二十世紀第一季，亦即發展國家中的成長期，對商業的保護成為非常重要的業務，也重視保護財產和契約自由的特殊關係。令人遺憾的是，最高法院拒絕早期工人賠償的法律。法院認為：「雇主不能不考慮他投資的錢。他必須負擔所有的創業風險，而現在則必須乘載於一個不可估量的元素，是不可避免的災害。」法院認為，工人的賠償將「扼殺企業、造成生產的不滿、爭鬥、遊手好閒者以及貧困。」那段日子的最高法院多麼錯誤！其後，19 世紀和 20 世紀，最高法院裁定違憲的五



十多個國家和 200 多個州制定法。法院撤銷各種改革立法、社會福利的法律，與勞動工時的法律，禁止童工，並制定最低工資。但是，工人的賠償計劃的時機已經到來。1916 年，最高法院終於恢復理智，制定甘蔗和維護工人的賠償法，從部分州蔓延至整個國家。在下半世紀，我們擁有一個反動的法院，但今天，我們擁有一個合理的法院跟上現代立法的步伐，一個充分解釋憲法作為靈活文件的法院以服膺人民的需要。

