

The American Federal Courts

美国联邦法院

According to the Federal Constitution, the “judicial power of the United States” is vested in “one Supreme Court and in such inferior courts as the Congress may from time to time...establish” (Art. III (1)). 根据联邦宪法，美国的司法权属于“一个最高法院”以及有时由国会建立的一些下级法院。The Supreme Court is thus the only federal court specifically guaranteed by the Constitution and not subject to legislative abolition.因此，联邦最高法院成为唯一受美国宪法保障的联邦法院，不能通过立法废除。However, the Constitution does not provide for the number of its members.但是，宪法并没有规定联邦最高法院的法官人数。This is established by ordinary legislation and the membership of the Court has in fact varied from six to ten to its present membership of nine justices.其人数由一般立法来决定。于是，联邦最高法院的法官人数也先后从六人调整到十人，现在则固定为九人。The Congress may likewise curtail the competence of the Court since the Constitution only provides an enumeration of cases in which the Court has jurisdiction as a court of first instance (“original jurisdiction”) but expressly leaves the question of the Court’s appellate jurisdiction to legislation (Art. III (2), paragraph 2). 由于宪法仅仅规定了联邦最高法院享有一审管辖权的案件，而明确地把上诉管辖权的问题留给了立法机构，因此国会同样也要限制该法院的管辖权(《宪法》第三条第二款)。The question is still controversial whether Congress could, for instance, deprive the Court of *all* appellate jurisdictions. 国会是否有权剥夺联邦最高法院受理**所有**上诉管辖权的问题，至今仍存争议。In fact, however, the Court possesses comprehensive appellate jurisdiction which, in federal cases, is limited only by few constitutional provisions and by the Court’s own traditions and, in all other cases, by but two statutory preconditions.事实上，尽管享有广泛的上诉管辖权，但是鉴于其传统以及案件是否涉及违宪的规定，美国联邦最高法院受理的案件往往数量有限。至于其他案件的受理，则需要满足法律规定的两个前提条件。

Inferior federal courts are created by statute. 下级联邦法院由法律设立。They may also be abolished by legislation or be curtailed in their jurisdiction.也可以通过立法来废除这些法院，或者限制其司法管辖权。However, this legislative freedom is

subject to a constitutional limitation, developed by the case law: with few exceptions, courts established by statute must be “Article III courts“, that is, they must satisfy the conditions of Article III of the Constitution which guarantees the independence of the courts.然而，这种创设下级法院的立法自由必须受到宪法的限制，并根据判例法不断完善：几乎没有例外的是，依法设立的法院必须以“《宪法》第三条”的规定为依据，即必须满足《宪法》第三条规定的条件，以保证这些机构的独立性。

Apart from a few exceptions, to be mentioned below, there are no separate court systems in the United States, such as in Germany, with special subject matter jurisdiction for such areas as labor, administrative or social welfare law. 除了下面提及的少数例外，美国对于劳动法、行政法或者社会福利法等特殊领域的司法管辖权，没有设立单独的法院体系。这一点与德国相同。Instead, the federal courts are courts of *general* jurisdiction irrespective of whether the case concerns a civil, criminal, commercial or other matter.相反，美国联邦法院对民事、刑事、商业以及其他案件则享有**普遍的**司法管辖权。

The federal courts, consist, in the first instance, of U.S. *District Courts* which exist in every state.联邦法院也包括作为一审法院的**美国地方法院**，存在于美国各州。In the more populous states there may be several U.S. District Courts in which case the State may be divided (and the division reflected in the designation of the Court) into a “Northern” and a “Southern” (or “Western” and “Eastern”) “District”.在人口众多的各州，一州可能会有若干地方法院（反映出法院的指定名称），分别划分为“南区”和“北区”（或者是“西区”或“东区”）。As a rule, several judges belong to each District; however, cases are tried before a single judge.一般来说，一区法院由若干法官组成，但是基本上采用独任法官审理案件。

Appeals from decisions of the District Courts are heard by a *U.S. Court of Appeals* which has jurisdiction over several States and their U.S. District Courts. 对地方法院判决不服的上诉案件将由美国上诉法院审理。上诉法院对其负责管辖的各州和地方法院的案件享有司法管辖权。The jurisdictional area of a Court of Appeals is called a “Circuit” (there are currently eleven circuits) and the proper designation of a particular Court of Appeals is according to its circuit number, for instance: “Court of Appeals for the Second Circuit”. A less formal reference would speak of “the Second Circuit”.上诉法院行使司法管辖权的区域叫做“巡回区”（美国

全国共有 11 个巡回法院)。某个具体上诉法院的正确名称正是依据它的巡回区数字，例如“第二巡回上诉法院”，其非正式名称为“第二巡回区”。Three judges normally participate in proceedings before a Court of Appeals; in special cases the membership of the Court sit *en banc*. 上诉法院受理的案件一般由三名法官负责庭审，而特殊案件则由**全体**出庭法官审理。

The U.S. Supreme Court is the final appellate court. 联邦最高法院是美国的终审上诉法院。Unlike some European counterparts, it is not divided into chambers, but always sits with full memberships. 与欧洲法院不同，美国联邦最高法院并没有划分为多个议事庭，而是全体法官一起审理合议案件。A right of appeal to the Supreme Court exists only in few cases. 只有极少数的案件才有权上诉到联邦最高法院。As a rule the Court allows review by granting the party's "petition for a writ of certiorari". 通常情况下，法院通过给予一方当事人复审令来审查案件。The affirmative vote of four (of the nine) justices is needed for a grant of "certiorari". 联邦最高法院签发复核令需经其(9 名法官中的)4 名以上的法官同意。In deciding whether to grant certiorari, the Court is guided by a variety of considerations, many involving questions of policy. 法院在决定是否同意签发复核令时需要考虑多种因素，其中会涉及一些政策问题。They include, for instance, the urgency (and importance) to establish a national rule for the questions in issue as well as the need to resolve conflicts between or among Courts of Appeal. 例如，这些因素包括对案件中的争议问题设立一项全国性的规定是否有其紧迫性（和重要性），以及在上诉法院间解决这些冲突的必要性。Neither the Constitution nor federal legislation establishes criteria for the granting or denial of certiorari nor need the Court give reasons for a negative decision. 美国宪法及联邦立法均未设立法院能确定是否批准复核令的标准。因此，联邦最高法院在拒绝这种复核令时无需说明原因。The following statistics illustrate the access to, and the caseload of, the Supreme Court: During its 1973/74 term, the Court decided 527 cases on the merits; in 3349 cases it declined to allow an appeal or to grant certiorari; it had not ruled on 1203 cases by the end of the term. 以下统计数据可以说明上诉到联邦最高法院的案件及数量：在 1973 年到 1974 年间，最高法院依据案件的实际需要审理了 527 起案件；驳回上诉或拒绝签发复核令的案件为 3,349 起；到该年度末，法院还有 1203 起案件尚未做出判决。

The Court's decision on applications for appeal or certiorari is usually rendered *per curiam*. 联邦最高法院对于上诉或复核令的申请决定通常依据多数法官的意见。The decision on the merits, in contrast, takes the form of an opinion issued by one of the justices voting with the majority. Other members of the majority either join in this opinion or, in the case of differences with respect to the reasons for the decision or to its intended reach, may issue "concurring opinions".相比之下,法院对案件的评判则采取一名法官签发意见,多数法官投票决定是否支持。对此观点有不同意见或不赞成其通过的多数法官成员也可以发表“并存意见”。In the latter case, the judgment will be supported, in its result, by several opinions; this circumstance may make it difficult to determine what constitutes the "rule of the case". 在一种情况下,这个判决会被若干意见所支持并构成最终判决,但这种情形可能对确定“案件规则”产生难度。Justices who disagree with the result reached by the majority may issue "dissenting opinions" and do so frequently in practice. 不同意大多数人支持的意见的法官可能会提出“反对意见”。这在实践中经常发生。In the case that there is no majority, that is, the Court is evenly split (for instance, when one justice has not participated because of illness or conflict of interest or when there is a vacancy on the Court), the result reached by the lower court will not be disturbed. 倘若联邦最高法院对案件无法形成多数意见,也就是说,双方意见的人数对等(例如某位法官因生病、有利害冲突或一名法官职位空缺而未参加庭审),那么下级法院的判决结果将不予更改。When there is a majority, the Court will affirm or reverse the lower court's decision and, if appropriate, send the case back to it (e.g., "reversed and remanded"). The Court will usually not itself enter a judgment, for instance by modifying the lower court's judgment.当形成多数意见时,联邦最高法院维持或推翻下级法院的判决;必要时可以将案件退回一审法院(撤销原判并发回重审)。联邦最高法院自己通常不会直接做出判决,例如修正下级法院的判决。

In addition to the federal courts of general jurisdiction there exist a number of more specialized judicial tribunals.除了享有一般管辖权的联邦法院,美国还存在一些专门法院。On the same level with the Courts of Appeals (i.e., with review by the Supreme Court) there exist *the Court of Claims* and *the Court of Customs and Patent Appeals*.这些与上诉法院同级(由最高院负责审查)的法院包括索赔法院、海关及专利上诉法院等。The formers has jurisdiction over claims against the federal

government (but not exclusively, because District Courts also have jurisdiction for such claims); the subject matter of this jurisdiction extends in the main to tax and compensation claims. 索赔法院对美国联邦政府享有管辖权（但不具有专属管辖权，因为美国地方法院对此类案件也享有管辖权）；这种管辖权所涉及的事项主要包括税收和赔偿请求。The Court of Customs and Patent Appeals is competent for the supervision of decisions of two administrative agencies (*the Patent Office and the International Trade Commission*) and of a lower court in customs matters, the *Customs Court*. 海关及专利上诉法院主要负责监督美国两个行政机构(美国专利局和美国国际贸易委员会)的决定和下级海关法院处理的关税问题。On the same level with the Customs Court, that is comparable to U.S. District Courts, there exist *the Tax Court and the Courts of the Territories*, in each case with review by the appropriate Court of Appeals of the ordinary court system. 与海关法院同级、却与美国地方法院相当的法院还包括税收法院和海外属地法院。这些法院审理的所有案件都由普通法院体系里的相关上诉法院来审查。The District court, finally, has certain limited supervisory functions with respect to the *Court of Military Appeals* in that it hears petitions for a writ of *habeas corpus* from decisions of that court. 最后，地方法院对军事上诉法院审理的人身保护权案件所做出的判决，享有有限的监督权。Appeals again go to the regular Courts of Appeals. 该类案件的上诉依旧由一般的上诉法院受理。“Professional judges” in this context rather means that federal judges are appointed for life by the President with the advice and consent of the Senate and, after their appointment, enjoy the guarantees of Article III of the federal Constitution mentioned above and can be removed from office only by means of the impeachment procedure. “职业法官”在这种情况下是指那些由参议院提议和同意并经总统任命的联邦法官。这些法官一旦被任命即享有上述联邦宪法第三条的所提及的权利保障，只能通过弹劾程序才可能免除其职务。This is in contrast to the practice followed in the States, to be discussed below in many of which judges are still elected. 这与美国许多州仍然选任法官的情况相反，我们将在下面讨论这一点。

All federal judges are professional judges.所有的联邦法官都是职业法官。Although some federal judges do come from appellate State courts or lower federal courts, the majority of federal judges are still appointed from among leading practitioners,

politicians, or law teachers. 尽管一些联邦法官来自上诉法院或联邦下级法院,但是大多数被任命的联邦法官主要从优秀的执业者、政治家、或法学教师中产生。

In the United States, all of the States have a complete judicial hierarchy which consists of three levels of courts in many States, in some of states only of two. 美国各州都有一套完整的司法体系,许多州都设立了三级不同的法院,而一些州只有两级法院。Designation of these courts is often confusing: courts of first instance are usually called District Court, Circuit Court, Superior Court, in Pennsylvania Court of Common Pleas and, particularly important, in New York Supreme Court. 这些法院的名称往往非常混乱:一审法院通常被称为地方法院、巡回法院、高级法院,宾夕法尼亚州甚至称之为民事诉讼法院,特别重要的是,纽约称之为最高法院。

They are courts of general jurisdiction with the exception that in some States, particularly in New York, there exist special courts or branches of courts of first instance which deal with specialized subject matter; these are, for instance, the *Family and Domestic Relations Courts*, *Probate Courts* and *Surrogate's Court*. 这些一审法院享有普遍的司法管辖权,但有一些州除外。特别是在纽约,有一些特别法院或一审法院的分院来受理一些涉及特殊标的物的案件:比如家庭关系法院、遗嘱检验法院和代理法院。In some States there also exist special inferior courts which are subordinated to the regular courts of first instance. These are *Police Courts*, *Traffic Courts*, and *Small Claims Courts*. 一些州还存在一些特别的下级法院,它们隶属于传统的一审法院,包括治安法庭、交通法庭和小额索赔法庭。The last named exist in order to relieve the ordinary courts of first instance and possess jurisdiction for small claims defined as those involving claims below a certain dollar amount, for instance \$ 1,000; their main characteristic is their informal procedure. 小额索赔法庭的存在是为了缓解普通一审法院的负担,主要负责受理那些标的额低于一定金额,例如 1000 美元以下的案件。其主要特点是采用非正式的程序审理案件。Review of their decision takes place in the courts of first instance which, in these cases, do not function as appellate tribunals but try the case anew (*trial de novo*). 一审法院负责审查小额索赔法庭的判决,但这并非是作为上诉法院的职能,而是对案件的重审。

The appellate tribunal in those States in which there is a middle level court is the Court of Appeal, in New York the Appellate Division of the Supreme Court (that is, an

appellate division of the original court of first instance). 上诉法庭在一些有中级法院的州是指上诉法院，而在纽约州则被称为最高法院上诉庭。Final appellate jurisdiction,(both in systems with only two levels of courts and in those with three) is the Supreme Court of the state, with the following different designations in some states: Connecticut – Court of Errors, Massachusetts – Supreme Judicial Court, New York – Court of Appeal. In two States, Oklahoma and Texas, there exist two supreme courts, one for civil and one for criminal matters.案件最终的上诉管辖权（包括两个级别和三个级别的法院）属于该州的高等法院，只是有些州对此法院的名称称谓存在以下差别：康涅狄格州、马萨诸塞州和纽约州分别称之为复审法院、最高法院和上诉法院。阿克拉荷马和德克萨斯两州各有两个最高法院，分别负责审理民事和刑事案件。

In most States judges are elected or, if appointed to a vacancy, confirmed in their office by election. 大多数州的法官都是通过选举或者被任命产生。In a few States even non-lawyers can be elected judges to lower courts, especially to inferior courts. 在少数州，甚至不是律师的人也能被选为级别较低法院的法官，特别是低级法院。The idea of elected judges is controversial at the present time. 选举法官的观点在今天备受争议。The problem is solved in practice in many States by the fact that the terms of office of judges are relatively long, for instance ten years in Illinois, fourteen years in New York, and twenty years in Pennsylvania for judges of the highest courts, or by the fact that re-election amounts more to confirmation in office rather than election, that is, takes place without an opposing candidate.这一问题实际上在许多州得以解决：设立法官较长的任期，例如，伊利诺伊州的法官任期为 10 年，纽约州是 14 年，宾夕法尼亚州最高法院的法官任期是 20 年。或者是，在没有其他竞争对手的情况下，选任法官实际上是对法官任期的确认。
