# 論司法審查的政治界限: 美國「政治問題原則」初探\*

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考諸各國憲政體制與經驗,司法審查制度乃是落實憲法優位原則的重要機 制之一。惟從權力分立的觀點以言,司法審查仍應有其界限,避免侵犯立法與 行政二權的固有領域。關於司法審查的界限問題,較具爭議者,乃法院對於所 謂「政治問題」是否應有所節制而不予審查。對此學說及實務上立論繁多,其 中最常被提出討論者,要屬所謂「政治問題原則」(political question doctrine)。此一原則係由美國聯邦最高法院 (Supreme Court) 以判例逐步發展而 成,於美國司法實務上頗具引領作用,殊有研究的價值。在內容上,本文以美 國聯邦最高法院的判決爲重心,採用「歷史考察」及「類型分析」二種方法, 先擇幾個具有主導性的判例及若干重要判決,依其判決作成年代的先後順序, 略沭其案情及判決要旨,以綜攬法院見解的遞嬗過程。其次,就美國聯邦最高 法院歷來判決的內容,試作類型分析,並略加評述,以闡明此一原則的旨趣、 內涵及其問題所在。由於我國大法官制度在職權上及實際運作上,與德國聯邦 憲法法院頗多類似之處,故本文特就「政治問題原則」於德國的適用情形,附 加論述,俾有所比較。最後,本文從「功能取向」的觀點出發,剖析「政治問 題原則|應有的內涵與適用原則,期能提供我國司法院大法官從事釋憲工作的 參考。

關鍵詞:司法審查,政治問題原則,權力分立、功能取向思考

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## Judicial Review and Politics: A Study on the "Political Question Doctrine" of the United States Supreme Court

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#### ABSTRACT

This Paper is primarily concerned with the problems of justiciability of political matters. Through carefully reviewing the cases of the United States Supreme Court about "the political question doctrine," this paper seeks to provide some viewpoints on limits to judicial power. First, it discribes and discusses some leading cases on the political question doctrine. Secondly, it analyzes the major types of decisions made by the United States Supreme Court. Thirdly, this paper deals with the theories and praxis of the political question doctrine in Germany as a comparative analysis. And finally, via a functional approach to the role of the court with regard to the other branches of the government, this paper tries to formulate some limits on judicial power, and offers this alternative formulation to the Council of Grand Justices of the R.O.C. for further discussion.

Key Words: judicial review, the political question doctrine, separation of powers, functional approach