IRSTI 10.91

Isabekov A.K.[1], Otynshiyeva A.A.[2],
Makhambetsaliyev D.[3], Castellino J.[4]

[1]Candidate of Legal Sciences, Associate Professor
[2]PhD student, Lecturer, e-mail: aidana-best91@mail.ru
[3]1st year student, e-mail: mahambetsaliev@mail.ru
Law Faculty, al-Farabi Kazakh National University, Kazakhstan, Almaty
[4]PhD, Professor of Law, Middlesex University, United Kingdom, London

THE ROLE OF THE US SUPREME COURT IN THE LEGAL SYSTEM

The purpose of the article on the topic of judicial law-making in the USA, which attempts to invade the educational process and intensify the study of the History of State and Law of Foreign Countries, is devoted to the US Supreme Court – the founder of constitutional justice and one of the pillars in the system of separation of powers. This is a unique judicial institution with an exceptional degree of influence, about which America's famous political writer Alexis do Tocqueville stated that "never before have any people had such a powerful judicial authority". For the reader, the phenomenon of the US Supreme Court is interesting in several ways. First, from the point of view of the evolution of American law and the judicial system in all its dynamics and contradictions. Secondly, in terms of implementation of judicial activity, complex thought processes of finding the right precedents and arguments in a particular case, reaching (if possible) a compromise between judges and colleagues. Judge activity should be interpreted not only as based on law, but also subject to ideological and political influences. Objective: to identify the features of the law-making activities of the US Supreme Court, since judicial law-making in science remains an unsolved problem. Finally, it is very important to look at the US Supreme Court in the eyes of American history as an institution that has the potential to come into conflict with both the legislature and the executive branch. On the other hand, it is important to understand the logic of filling vacancies in the Supreme Court by the executive branch. In the course of continuing in this country, the search for the causes of negative political and legal phenomena, attention is drawn to the interpretation of the federal Constitution by the US Supreme Court, in general, to the activities of this court, which performs the law-making function, is alien to it and is constitutionally unfounded. However, many issues remain insufficiently studied, among them the role of the US Supreme Court in constitutional lawmaking, the very phenomenon of judicial lawmaking.

Key words: lawmaking, jurisdiction, Supreme Court, USA, legislature.

Исабеков А.К., Отыншиева А.А.[2],
Махамбетсалиев Д.[3], Кастеллино Дж.[4]

[1]заң ғылымдарының кандидаты, доцент
[2]докторант, оқытушы, e-mail: aidana-best91@mail.ru
[3] курс студенті, mahambetsaliev@mail.ru
заң факультеті, әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.
[4]PhD, профессор, Миддлсекс университеті, Ұлыбритания, Лондон қ.

АҚШ жоғарғы сотының құқықтық жүйедегі рөлі

Мақала Америка Құрама Штаттарында соттардың заң шығармашылығын қалыптастыру тақырыбына арналған. Мақсаты – АҚШ Жоғарғы Сотына – конституциялық әділеттілікті негізін қалаушы және өкілеттіктерді бөлу жүйесіндегі маңызды институтқа арналған. Американдық саяси жазушы Алексис Токвилл аталмыш институтты айрықша дәрежеде ықпалы бар бірегей сот мекемесі «бұрын ешқашан осындай қуатты сот билігі болған жоқ» деп мәлімдеді. Оқырманға АҚШ

Жоғарғы сотының феномені бірнеше жолмен қызықты. Біріншіден, оның барлық динамикасы мен қарама-қайшылықтарында американдық заң мен сот жүйесінің эволюциясы тұрғысынан өзекті. Екіншіден, сот ісін жүргізу барысында, белгілі бір жағдайда дұрыс прецеденттер мен дәлелдерді табудың күрделі ойлау үдерісі судьялар мен әріптестер арасында ымыраға түсуге мүмкіндік береді. Мақсаты: АҚШ Жоғарғы Сотының заң шығарушы қызметінің ерекшеліктерін анықтау, өйткені ғылымдағы сот құқықтарын сақтау шешілмеген мәселе болып қала береді. Ақырында, американдық Жоғарғы сотқа американдық тарихты заң шығарушы ретінде де, атқарушы билікпен де қақтығысуға мүмкіндік беретін мекеме ретінде қарастыру өте маңызды. Екінші жағынан, атқарушы билік Жоғарғы сотқа бос орындардың толтыру логикасын түсіну маңызды. Бұл елде жалғасуда теріс саяси және құқықтық құбылыстардың себептерін іздестіру, АҚШ Жоғарғы соты федералдық Конституцияның түсіндірілуіне назар аударады, тұтастай алғанда заң шығарушы функциясын орындайтын осы сот іс-қимылына, оған жат нәрсе жоқ және конституциялық негізсіз. Дегенмен, көптеген мәселелер әлі күнге дейін жеткіліксіз зерттелуде, оның ішінде конституциялық заңнамадағы АҚШ Жоғарғы Сотының рөлі, соттық заң шығарудың ең маңызды феномені.

Түйін сөздер: заң шығару, юрисдикция, Жоғарғы сот, АҚШ, заң шығарушы орган.

Исабеков А.К.[1], Отыншиева А.А.[2],
Махамбетсалиев Д. [3], Кастеллино Дж.[4]

[1]кандидат юридических наук, доцент
[2]докторант, преподаватель, e-mail: aidana-best91@mail.ru
[3]студент 1-го курса, e-mail: mahambetsaliev@mail.ru
юридический факультет, Казахский национальный университет им. аль-Фараби,
Казахстан, г. Алматы
[4]д.ю.н., профессор, Университет Миддлсекс, Великобритания, г. Лондон

Роль Верховного Суда США в правовой системе

Цель написания работы по теме судебного правотворчества в США – активизировать изучение истории государства и права зарубежных стран. Она посвящена Верховному Суду США – родоначальнику конституционного правосудия и одной из опор в системе разделения властей. Это уникальное судебное учреждение с исключительной степенью влияния, о котором знаменитый политический бытописатель Америки Алексис до Токвиль заявил, что «никогда еще ни у одного народа не было столь могущественной судебной власти». Для читателя феномен Верховного Суда США интересен в нескольких аспектах. Во-первых, – с точки зрения эволюции американского права и судебной системы во всей ее динамике и противоречиях. Во-вторых, – в плане осуществления судейской деятельности, сложных мыслительных процессов отыскания нужных прецедентов и аргументов по конкретному делу, достижения (если это возможно) компромисса между судьями-коллегами. Судейскую деятельность при этом следует интерпретировать не только как основанную на праве, но и подверженную идеологическим и политическим влияниям. Цель работы – выявить особенности правотворческой деятельности Верховного Суда США, поскольку судебное правотворчество в науке остается нерешенной проблемой. Наконец, очень важно взглянуть на Верховный Суд США глазами американской истории как на учреждение, потенциально располагающее возможностями вступить в конфликт и с законодательной, и с исполнительной властью. С другой стороны, важно понять логику заполнения вакансий в Верховном Суде со стороны исполнительной власти. В ходе продолжающихся в этой стране поисков причин негативных политико-правовых явлений внимание обращается на толкование федеральной Конституции Верховным Судом США, в целом на деятельность этого суда, исполняющего правотворческую функцию, ему несвойственную и конституционно незакрепленную. Однако многие вопросы остаются недостаточно изученными, среди них и роль Верховного Суда США в конституционном правотворчестве, сам феномен судебного правотворчества.

Ключевые слова: законотворчество, юрисдикция, Верховный суд, США, законодательная власть.

Introduction

Elements of the "dual status" of this Court (the highest appellate instance in the system of general courts and the body of judicial constitutional oversight) are prerequisites for judicial law-making implemented by the US Supreme Court in conjunction with its other functions. Judicial lawmaking by the US Supreme Court is defined as an activity whose content is not only a decision on the contradiction or non-contradiction of an act of the US Constitution, but also the creation of legal

precedents in the process of interpretation that contain binding legal requirements for all subjects. The US Supreme Court creates new and revises existing constitutional precedents, including those adopted by the Court itself at previous stages. The revision of precedents is carried out indirectly, by modifying them, based on the obiter dictum, and in the aspect of improving the constitutional doctrines. However, there are no official constitutional grounds for the law-making of the US Supreme Court.

Main part

Constitution and common law in the activities of the US Supreme Court.

The American Revolution is considered to be a phenomenal event of the end of the XVIII century. Flowing in the form of a national liberation movement, it not only struck at the powerful maritime colonial power, Great Britain, but also consolidated and developed the democratic tendencies inherent in pioneering society. She for the first time demonstrated in practice the merits of the federal structure of the state and the mechanism of separation of powers.

It should be noted that the judiciary in the thoughts and actions of the founding fathers of the United States initially took far from the first place. So it was in the spring – summer of 1787, when the US Constitution was developed in the atmosphere of sharp debates at the convention in Philadelphia and a complex mechanism of checks and balances was created. The same can be said about the classic collection of propaganda articles written by A. Hamilton, J. Madison and J. Jay, which received the name "Federalist": out of 85 essays, only 6 are devoted to the judiciary (No. 78 – 83). However, even then their author, A. Hamilton, had to respond to some critical arguments of opponents of the draft Constitution. In particular, he justified the idea that since the judiciary is the weakest compared to the other two branches of government, "one must take the greatest care to enable it to defend against them." It was argued that the courts should serve as intermediary bodies between the people and the legislature, so that, among other things, they would keep it within the limits of the competences granted to them. At the same time, Hamilton paid great attention to the permanent tenure of judges (that is, until such time as they behave "impeccably") and their sufficient material content. (Hamilton, 1994)

The completion of the ratification campaign in individual states, during which supporters of the Constitution and state centralization won, allowed the first elections to the Congress and the first elections of the President of the United States. It was then that the need arose to complement the meager provisions of the US Constitution on the judiciary. (Marbury v. Madison, 1803)

As a matter of fact, the Constitution of 1787 determined: "The judicial power of the United States is granted to the Supreme Court and to such a number of lower courts that Congress may, if necessary, establish and establish." In accordance with this, the country's highest legislative body began to develop a law on legal proceedings.

During the debates in the US Congress of the 1st convocation, it turned out that not all congressmen consider expedient the existence of an extensive system of federal courts. Thus, despite objections from state advocates (including Article 25, which provided for challenging decisions of state courts in the US Supreme Court), the Court of Justice Bill became law on September 24, 1789. According to it, district courts were established along with the US Supreme Court , which consisted of one federal district judge, and two members of the US Supreme Court, thus symbolizing a certain synthesis of judicial hierarchies of officials at various levels. At the next, lower level of the federal courts, there were 13 federal district courts that could impose a whip punishment of no more than $ 100 or be imprisoned for a term of no more than 6 months.

As for the Supreme Court, it was supposed to consist of a chief judge and 5 judges and was called to meet at a session in the capital of the American state twice a year.

The US Constitution reserved for federal courts the following jurisdiction cases: "Judicial authority extends to all cases that are governed by common law and justice law and arise on the basis of this Constitution, laws of the United States, and contracts concluded or concluded on their behalf; for all matters concerning ambassadors, other officials and consuls; for all matters relating to the admiralty and maritime jurisdiction; on disputes a party in which are the USA; disputes between two or more states; between any state and citizens of another state; between citizens of one state, setting their morals on lands ceded by other states, and between a state or its citizens and foreign states, citizens or subjects. " (Osakwe, 2000)

So, in the "first approximation", statically, the structure of American law, is as follows.

1. Sources of law, primarily the US Constitution, laws and judicial precedents.

2. Institutes of law, among them institutions of private law, institutions of public law, integrated institutions.

3. Material and procedural law as the foundation of law-making activity and law in general.

4. Two levels of lawmaking (legal acts of the federation and states) in accordance with the constitutional principle of federalism.

Selecting the elements of the structure of American law in a dynamic projection, examining them through the prism of law-making activity, we define them briefly, with a view to further characterization in this section.

(1) Foundation of the structure in the form of common law.

(2) Constitutionalism and its principles as the main source of lawmaking.

(3) The role of legislation in lawmaking.

(4) Some trends in the development of administrative rulemaking.

Foundation of the structure in the form of a general (private) law. One of the main factors of the unity of the legal system is the tradition of common law, as the basis of law in general. Under the general law in a broad sense, they mean the case law, casual, judicial, private, mainly procedural (written law either needs judicial interpretation, or is drawn up in the style of judicial precedents with numerous provisions of dispositive nature). (Schwartz, 1993)

In other words, along with judicial precedent, law in American law (federal and state laws, the main body of legislation, and the Constitution itself) has structural elements of common law, primarily based on private law principles and the corresponding presentation style. Such a tradition is borrowed from English law from the time of the colonial period and has been developing to the present. The development of American common law is carried out, firstly, through the formation of its own (non-English) American judicial precedents as a normative source of law. Secondly, this was largely due to the decisions of the US Supreme Court. The Supreme Court broadly interpreted (interpreted) the provisions of the US Constitution, in part, with a view to extending the general law at the federal level.

The decision of the judges, especially between the 1930s and 1960s, stipulated that state courts should decide cases not only in accordance with the constitution or laws of their state, but also in accordance with the "supreme law of the country" (Article VI of the US Constitution). Under the supreme law should not be understood only federal law. Many lawyers in the United States believe that federal agencies cannot form an array of common law. (Constitution, 1993)

Common law in medieval English is formed as a private and procedural law, based on the regulation of procedural requirements and forms of filing claims. The main purpose of the person who applied for judicial protection was to determine the form of the claim, since each claim was considered according to a specific procedure. Moreover, the outcome of the case is often crucially dependent (in the absence of any developed legislation) on the choice of procedural form. According to R. David, in England "judicial protection preceded the law."

The long absence of legislation in the modern sense has led to another peculiarity of English, and subsequently the emerging American law. On the one hand, the judges were free to justify their decision and followed the principles of rationality, justice, and often the rules of canon law. On the other hand, on such a limited, without developed legislation, foundation, they realized the danger of arbitrariness and began to follow earlier decisions on cases with similar circumstances. In other words, the precedents (of the higher, Westminster courts) in England became the basis of the English legal system.

Since the beginning of the 19th century, the connection between the US law and English common law began to weaken. The USA has its own research school (D. Kent, D. Storey), whose treatises on American law played an important role in achieving a uniform understanding of law in different states. Since 1820, in the United States began, initially unofficial, the publication of the decisions of American courts. Since 1896, the decisions of the US Supreme Court are published in the official collection of court decisions U. S. Reports. (Warren, 1937)

In the twentieth century and in the new century, the precedent rules (rules of common law) are actively applied by American courts in not all areas of regulation, such as in delicate law, when considering the obligations of causing harm. But common law in the broad sense of the word, as "the right created by judges," retains a fundamental role in the modern US legal system. It acts "not so much as a set of precedents, but as a kind of judicial method of regulating social relations", as a special style of legal thinking, for which there is a high degree of law-making activity of the courts. At the core of the common law tradition, enshrined in the provisions of the US Federal Constitution, is the priority of judicial interpretation and private law regulation. Based on the "judicial" nature of the law. U. Burnham identifies such a feature as the legitimacy of the process of judicial lawmaking.

Nevertheless, questions of the admissibility of judicial law-making, the relationship between federal law and state law, the role of statutory legislation, the role of common law in the American system, the competence of federal and state courts arise constantly throughout the history of the state and US law. These are the most important constitutional issues, the solution of which is not found "definitively", "absolutely" and, in turn, depends on the interpretation (interpretation) of the federal Constitution by the US Supreme Court.

In 1938, during the period of low activity of the Presidential Administration F. Roosevelt, who implemented the new course and created, along with the Parliament, the US Congress, an extensive system of federal legislation, the US Supreme Court, which has the power to interpret the Constitution, considered this issue. The court thus emphasized the preservation in the sphere of private law of legislative functions and law-making powers, the regulation of "private law relations", as covering almost all types of regulation of public relations, including relations with the state, behind the states. (Statute, 1845)

Common law, in accordance with this 1938 Court decision, is formed at the state level. However, this statement is not absolutely true, in particular, because the American courts do not observe as strictly as in England the rule of connectedness by precedent. It would be a mistake to consider common law as a set of binding precedents in the English sense. The role of legislation in the United States is more significant than in the UK.

In the United States in the context of legal dualism extending to the spheres of lawmaking, the law of understanding and the law of application at the present stage, there are two trends in the development of constitutional law and both are related to the interpretation of the Constitution by the US Supreme Court.

The first trend is adherence to constitutional principles in the form in which they were conceived by the founders of the constitution: guarantees of freedom and property, preservation of federalism and separation of powers. To achieve it, it is necessary to limit the interpretation of the idea of the founding fathers and the use of the letter of the law (the original interpretation, in accordance with the intention of the creators of the written US Constitution).

The second trend is the enrichment and development of constitutional principles in the new historical conditions that required government intervention in economic relations. To achieve this second, so difficult to achieve the goal, a new interpretation of the constitution was required, which for the first time took place in the beginning of the 19th century in the US Supreme Court under the chairmanship of John Marshall. The court made an extraordinary decision on two crucial issues. Firstly, the court appropriated the authority to determine the compliance of the law with the Constitution and thereby determine its validity. Secondly, the court established a doctrinal provision on implied powers, i.e., those powers that are not clearly indicated in the text of the Constitution, but stem from a general judicial assessment, are a logical way out of constitutional interpretation. Thus, the judicial power of the United States becomes the "first among equals." The US Supreme Court implicitly, by applying the doctrine of "implied powers", permits (appropriates) for itself law-making powers. (Bickel, 2000)

The role of the judiciary is extremely high. The basis for this are constitutional, historical, political factors and features of all elements of the legal structure. Moreover, the courts in America carry out such functions that are not specified in the Constitution, primarily the function of judicial lawmaking. The very concept of the power of the court is linked to the ability to check, change or create norms (of a case-law nature), which in other systems belong to the exclusive powers of parliament as a legislative body.

The US Supreme Court, although it opposed many of F. Roosevelt's reforms (repealed the provisions of the Industrial Recovery Act of 1933 and opposed the administrative reform itself in the second half of the 1930s), but in general, recognizing the need for state – legal regulation, took the position of silence on the issue of delegation, therefore, on vesting administrative bodies with legislative and judicial powers. This position was recorded later – in 1938 by the US Supreme Court in the decision on the case of United States v. Howard (United States Rel Willoughby v. Howard, 1938)

The US Constitution and the precedents of the US Supreme Court are the most important source of administrative law (as well as other institutions of law). By a highly sophisticated interpretation of the federal Constitution, the Supreme Court of the United States, in fact, authorized the transfer (delegation) of legislative and judicial powers to administrative bodies. The interpretation of the provisions of the V and XIV Amendments to the US Constitution was of great importance for administrative law (in its understanding as protecting the subjective rights of citizens in relations with state bodies). This provision

on “public benefit” (“public use”) – coinciding in meaning with such concepts (worked out by the judges by interpreting the US Constitution) as “dominant, (irresistible) public interest”, “general welfare”, “public benefit”, etc.

The new interpretation of the relevant provisions of the Constitution, relating to the most important principles, became the basis for filing lawsuits against state institutions and their employees in the event of damage to a citizen. In addition, the new interpretation means the right of the federal government to pass laws in order to implement the constitutional principles of public benefit and the common good (legislation having a social context). (Dorf, 2007)

The US Supreme Court has repeatedly recognized the duty of administrative courts to follow the rules of civil procedure in cases involving government bodies, but noted that their main role is to evaluate legal facts in the sense of compliance of actions of managers with the rule of law. Speaking of lawmaking, it is impossible to overestimate the provision of legislative (rule-making) and judicial functions by an administrative body. The administrative agencies themselves, bearing in mind judicial control and parliamentary control, do not seek to go beyond the scope of their powers.

Flexible, but “blurry” approaches to the activities of administrative bodies give rise to the need for control over administrative activities on the part of all branches of government legislative, executive and judicial. The forms and methods of such control are established in view of the absence of administrative justice in accordance with the French (European) example. Judges act in a more sophisticated way. Firstly, they do not verify the facts and circumstances, secondly, they do not verify the application of the law. The main criterion for judges is a violation of justice, common law requirements. Their goal is to protect property and the space of inner freedom. As before, in the structure of American law, judicial control remains the most notable feature. However, one should not exaggerate the effectiveness of judicial control. As in Europe, a citizen who has suffered from the actions of government bodies goes to the appropriate higher institution and then, having exhausted the means of administrative protection, goes to court. (Safonov, 2007)

It is important that American law formalizes the authority of administrative bodies (judges, quasi-judicial bodies) to conduct court hearings in compliance with procedural guarantees. From here and resonant value of judicial precedents Goldberg v. Kelly and Matthews v. Eldridge, in decisions on which the US Supreme Court decided to use the rules of the civil procedure for non-payment of social benefits. The decision entailed the right of judicial protection in the full procedure for certain categories of beneficiaries and the possibility of filing claims against the social security authorities. In addition, in the event of non-observance of justice by decisions of administrative judges, the texts of American laws expressly state the right of courts of general jurisdiction to review decisions of administrative courts. (Goldberg v. Kelly, 1970sa)

Constitutional review and judicial lawmaking.

When studying the American legal system, the question arises: how and why are judges of the US Supreme Court appointed and not elected to repeal the laws of the US Congress elected by a majority of the people? After all, Article III of the US Constitution, which is sometimes referred to, revealing the origins of constitutional oversight, does not mention the right of the US Supreme Court to declare the laws of Congress and the states to be invalid. And if there is no so-called “judicial veto” with regard to Congress laws and state legislatures, then what is the basis for the power of judicial constitutional oversight, the right of the US Supreme Court to control the actions of the executive and legislative branches? The authority, which is clearly not fixed as the most important constitutional principle in contrast to the principles of federalism and the separation of powers, but is unswervingly exercised and little is in doubt. In this case, if the institution of constitutional review has become an integral part of the US legal system, the following two questions arise. Is judicial constitutional review a model formulated by the US Supreme Court itself, does it have signs of legal fiction, or does this institution and the corresponding authority of the US Supreme Court have a real basis in the written constitution? And if the Court is entitled to suspend the operation of the law, then what are the methods for implementing such a decision, what is the role of constitutional judicial lawmaking and constitutional judicial precedent in American law?

Require clarification of the relevant concepts and terms. In American jurisprudence, in educational and scientific literature, there is no concept of “constitutional control”, but everywhere they talk about judicial review. Etymologically, the English “review” (review, revision) is translated closer to supervision than to control. Supervision lexically implies a more consistent and “lasting” procedure with long-term requirements, and control (with sense similarity to supervision) may differ by an emphasis

on verification, "one-time" and targeted. Judicial constitutional review, when there are procedural requirements expressed and legally established in judicial precedents in accordance with the text of the constitution, has evolved into one of the main legal institutions in the legal system under consideration. Three arguments are inextricably linked with the essence of this element of the legal system.

Firstly, the dominant role of the constitutional right "permeating" the entire US legal system. Secondly, the status of the US Supreme Court, which provides that this supreme body in the system of courts of general jurisdiction deals with issues of constitutional significance (the consideration of the "federal issue", to which, apart from the interaction of states and the center, concerns the fundamental rights, including rights). Thirdly, constitutional control is exercised primarily as a judicial control with appropriate judicial, rather than political functions. (Oakland, 2000)

The emergence of the institute of constitutional control as an integral part of the US legal system took place simultaneously with the formation of constitutionalism as the basis of the American state during the discussion and adoption of the federal Constitution, and its ratification by the states. Most American authors, applying various arguments, argue that the US Supreme Court, having found no undoubted grounds for the judicial constitutional review in the text of the Constitution, "appropriated" the powers of control. J. Burns states: "It is (answering the question when and under what circumstances I" assigned ") about the role of the Chairman of the US Supreme Court, J. Marshall, who made the main contribution to the consideration of the case of Marbury v. Madison.

Court ruling in Marbury v. Madison ruled that the authority of the US Supreme Court, and not of Congress and the President, to make a judgment about what is right. "

Respecting the opinion of J. Burns, we note that not only John Marshall's vision, but factors of objective significance led to the emergence of judicial constitutional control. The presence of a written Constitution with amendments and constitutional precedents requiring interpretation as an argument, coincides with the argument of J. Marshall, and reflects the peculiarity of American law (as opposed to English constitutional law), its mainly written character. J. Marshall, argued that any written law invariably means the possibility of its application; consequently, the interpretation, which implies the authority of the US Supreme Court to exercise judicial control by interpreting the Constitution. Without such control, the constitution turns into a declarative document, filled with symbols. If there is no judicial control over the execution of the Constitution, the legislature will inevitably revise the Constitution. This is neither bad nor good. Dorf argues that the abolition of (hypothetical) judicial control may even increase the responsibility of the US Congress on the interpretation of the Constitution (which, in his opinion, will benefit the legislative activity) on the implementation of the constitution. Dorf concludes that the argument that the written character of the Constitution itself is the basis of judicial control is highly dubious. According to M. Dorf, the US Congress in its practical activities adopts laws, it does not interpret the US Constitution, although it could do this in accordance with the Constitution. Congress deliberately "silent" about the US Constitution and this is the basis of the legitimacy of constitutional control exercised by judges. (Burns, 2010)

It is necessary to agree with M. Dorf that the third argument is the most convincing argument about the existence of grounds in the text of the Constitution. Section 2 of Article III of the US Constitution states: "Judicial power in the United States belongs solely to the Supreme Court and to those courts that are set by the Congress from time to time." First, it becomes clear which court of law, and after the creation of other federal courts in the US, which other bodies have the authority to interpret the US Constitution. Solving conflicts in the framework of national law and the federal question is impossible without the interpretation of the Constitution. Secondly, M. Dorf asserts, the phrase about the nature of the cases accepted for consideration and the grounds for their resolution ("by common law and justice") orders that the requirements of procedural justice be put in the first place. (Dorf, 1980) From this it can be deduced that judicial review (control) presupposed the use of such a way of interpreting the Constitution, which at that time was inherent in American law, according to basic features, common law. And this guarantees procedural rights, the requirements of procedural justice, extracted from the first documents of constitutional significance in the American colonies. It would seem that the US Supreme Court should apply the same methods as all other courts interpreting statutes. However, the phrase in Section 2 of Article III that the Court considers all cases arising under the law of the United States provides additional grounds for judicial control. The following phrase gives even greater reasons for judicial control: "Judges in each state must follow the highest law of the country, even if the

constitution of a single state says otherwise." This is where the direct recommendation to repeal laws that do not comply with the federal Constitution. (US Constitution)

Conclusion

Completing the study of lawmaking activities of the US Supreme Court in the second half of the 20th and early 21st centuries, two main directions can be distinguished: judicial activism, assuming judicial lawmaking and judicial conservatism in the form of judicial restrictions. We have to state the legal uncertainty, and to a certain extent, the not completely legal nature of these concepts that have become established in the lexicon of American lawyers. Judicial activism, constantly criticized for the ideological and political component and the deviation from the letter of the US Constitution. The US Supreme Court, especially the Warren Court, in the opinion of judges with conservative views, pushed aside the objective, based on the "stare decisis" doctrine, the rationale for the decisions, guided by out-of-order (political and other) goals. Guided, among other things, by protecting the interests of various social groups, elite groups or protest movements, striving for constitutional legitimization of all new rights despite the duty of judges to follow judicial self-restraint, the text of the US Constitution, and not extralegal factors. Studying this work, recognizing the great importance of procedural equality and procedural justice, I conclude with a different assessment of the vector of development of American law. The action not only of the US Supreme Court, but also of the US Congress, will not be fair due to the unequal representation of social groups in parliament and the rigid binding of judicial methodology to natural justice. Theoretically, when Judges of the US Supreme Court abandon constitutional restrictions in the form of obligations under Article III of the Constitution, the consideration of cases solely in accordance with common law and justice, they open the way for judicial law-making, which, abstractly speaking, is not the best and not the best option for legal stability. . Evaluation of judicial activities, therefore, depends on the objectives of self-restraint. The US Supreme Court is still close to this position on the widespread use of procedural safeguards as a doctrinal method. The most important feature of American law is legal, dualism, corresponding to the dualism of judicial methodology, existence in the unity of legal formalism and legal liberalism with elements of judicial lawmaking.

Considering the scientific activities of the US Supreme Court allowed me to conclude that there are conflicting ideological meanings and sometimes opposite objectives, which makes it difficult to accomplish the task of maintaining stability and stability. In other words, the goals of the Supreme Court cannot be achieved in a conservative way. This indicates the need to find new interpretative meanings and the need to apply judicial lawmaking.

References

Bickel A. (2000) The Least Dangerous Branch. The Supreme Court and the Barof Political // Harvard University Press. – p. 177

Burns J.M. (2010) Packing the Court. – Journal of Public Law. – 4(1). – p. 29

Constitution and legislation. (1993) M. – p. 37

Dorf M. (1980) Constitutional Law. – p. 41-42; Sivachev N.V. Languages E.F. The latest history of the United States. – M. – p.11

Federalist (1994) Political essays by Alexander Hamilton, James Madison and John Jay. – M., – p. 503

Goldberg v. Kelly (1970) 397 U. S. 254; Matthews v. Eldridge (1976) 424 U.S. 319. – p.8

Osakwe K. (2000) Judicial precedents in the history of the US Supreme Court. Comparative jurisprudence in the schemes: General and special part. – p.56

Oxford Introduction to U.S. Law. Constitutional law (2000) N. Y., Oakland: Oxford University Press. –. – p. 235

Marbury v. Madison (1803) 5 U.S. 137; Ageeva E.A., Salomatin A.Yu (2008) US Supreme Court, chaired by E. Warren as an example of a neoliberal activist approach to constitutional justice // Jurisprudence. – 6. – p.218

Safonov V.N. (2007) The US Constitution and the Social and Economic Rights of Citizens. M. – p.7

Schwartz B., Lesher S. (1983) Inside the Warren Court. Yarden City. – N.Y., USA. – p. 89

The Public Statutes at Large of the USA (1845) 1 // Boston. – p.73-86

United States Rel Willoughby v. Howard (1938) 302 U.S. 445

US Constitution (2000) Article III Section 2

Warren C. (1937) The Supreme Court in the US History. – 1. – Boston. – p. 8-11