



JAPANESE LEGAL SYSTEM PART II

DAY 1 (JUNE 4, 2018)

Kyoko Ishida

DAY 1

1. Review of Japanese Court System
2. The System of judges
3. Legal Education System in Japan
4. Legal Profession System (if we have time...)





REVIEW OF JAPANESE COURT SYSTEM



3. BRIEF HISTORY OF JAPANESE CONSTITUTION

1600-1868: The period of the Tokugawa shōguns; feudal political order with economic and social change occurring in a gradual manner. This period saw growing urbanization, the spread of popular education and the rise of the merchant class. **National Isolation Policy**

1868-1890: The early Meiji period (Meiji Restoration); rapid modernization and dramatic change of political, social, and economic institutions; meeting the challenge of the West by following its model.

1890-1945: Imperial Japan; constitutional policy with the emperor as reigning monarch; industrialization, urbanization, and an increasingly mobile society; drive for international status and world power, including imperialism in Asia and finally war with the United States.

1945-present: Contemporary Japan; democratic reform under Allied occupation (1945-1952); New Constitution (1947); stable political democracy (largely governed by LDP) and high economic growth in the sixties and seventies followed by political instability and recession in the early nineties.

CURRENT JAPANESE CONSTITUTION

1945 “Potsdam Declaration”

1945-1952 GHQ ruled

1947 Constitution of Japan enacted

Article 1. The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power.

Article 9. Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.



JAPANESE CONSTITUTION (2)

Article 13. All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.

DIET

Article 41. The Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State.

CABINET

Article 65. Executive power shall be vested in the Cabinet.



JAPANESE CONSTITUTION (3)

JUDICIARY

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

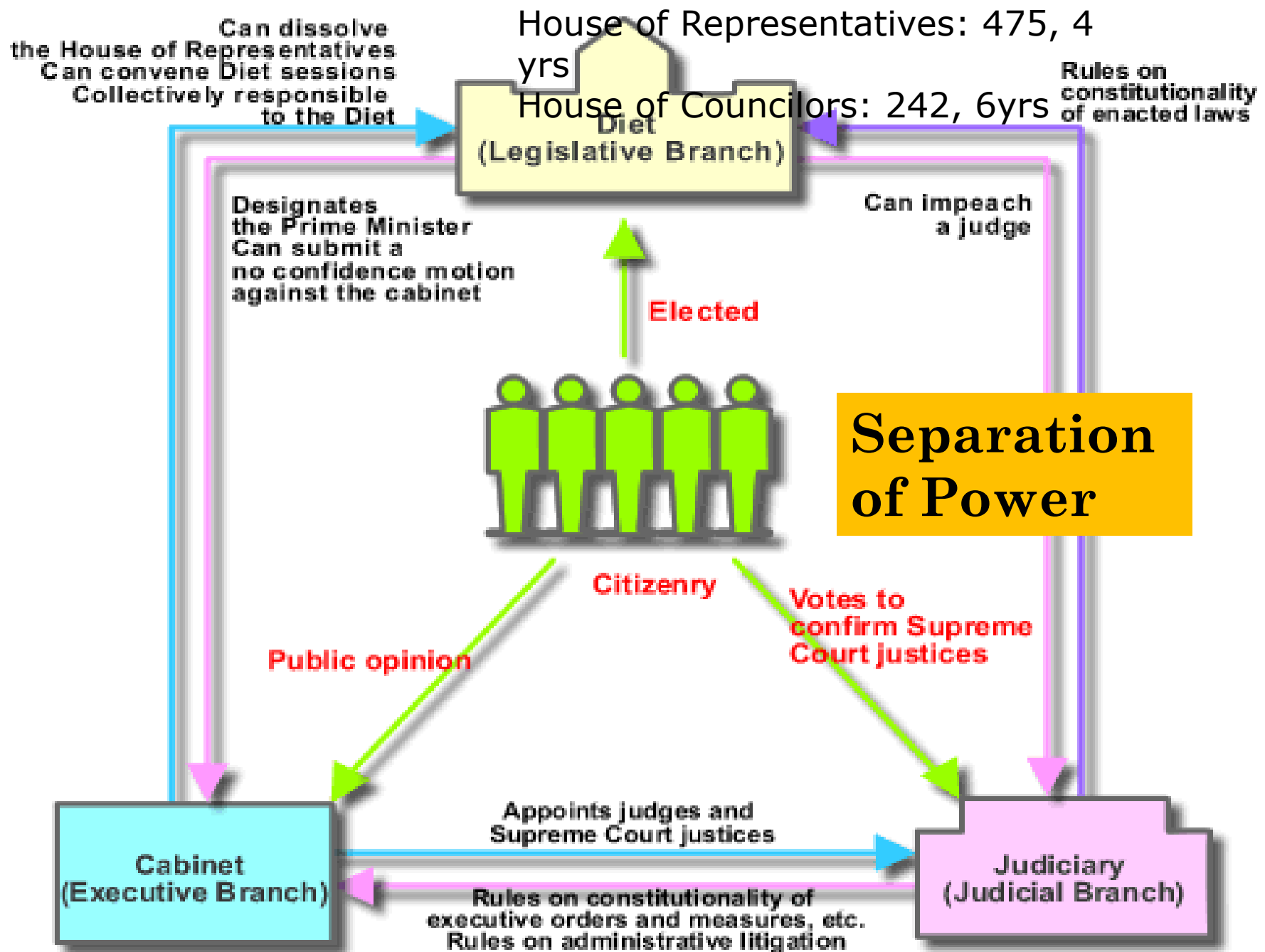
All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.



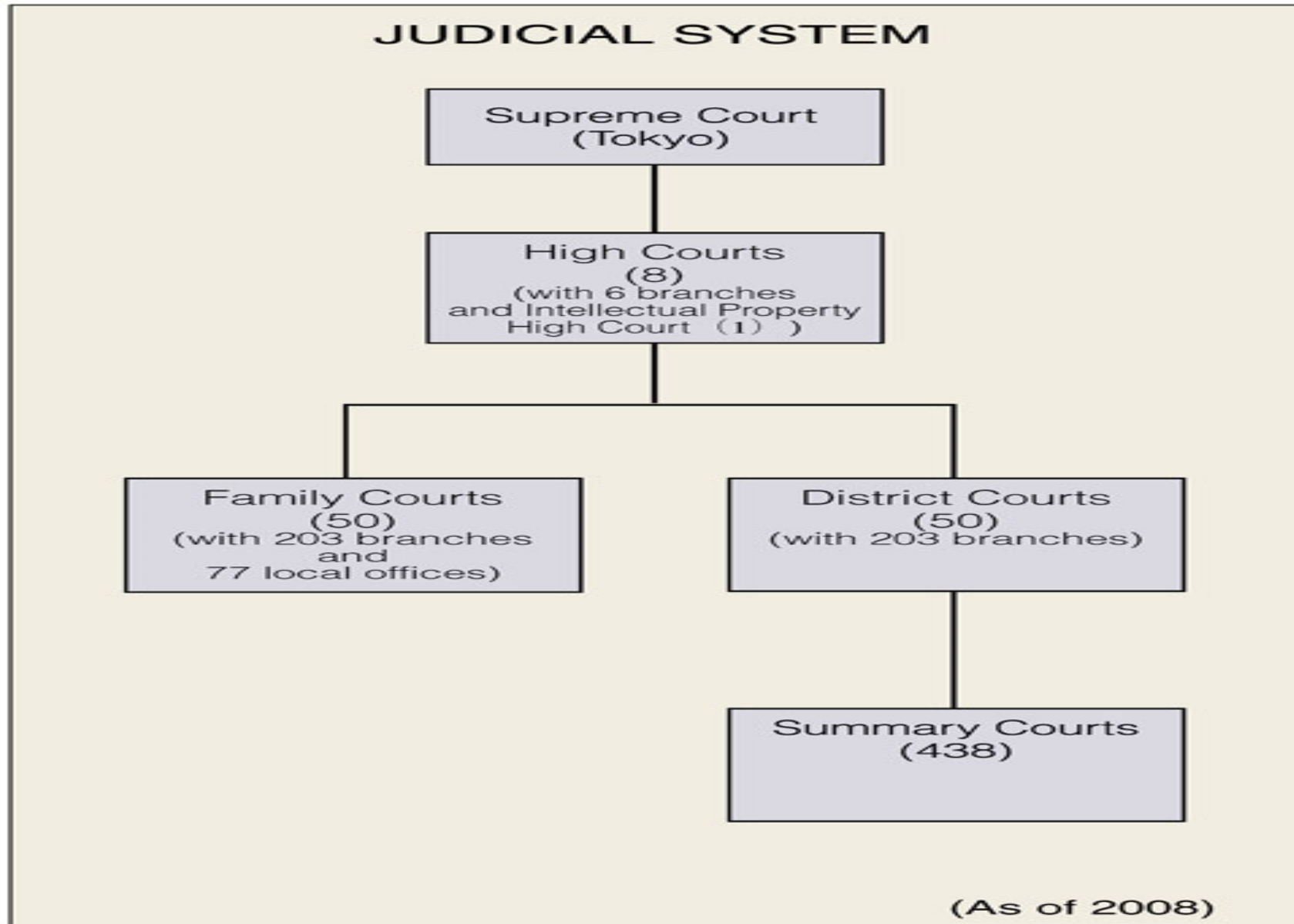
THREE BASIC PRINCIPLES

1. Popular sovereignty (*Kokumin shuken*) ➔ Art.1, Art.41-
2. Fundamental human rights (*Kihonteki jinken no soncho*) ➔ Art. 10-40
3. Pacifism (*Heiwa shugi*) ➔ Art.9





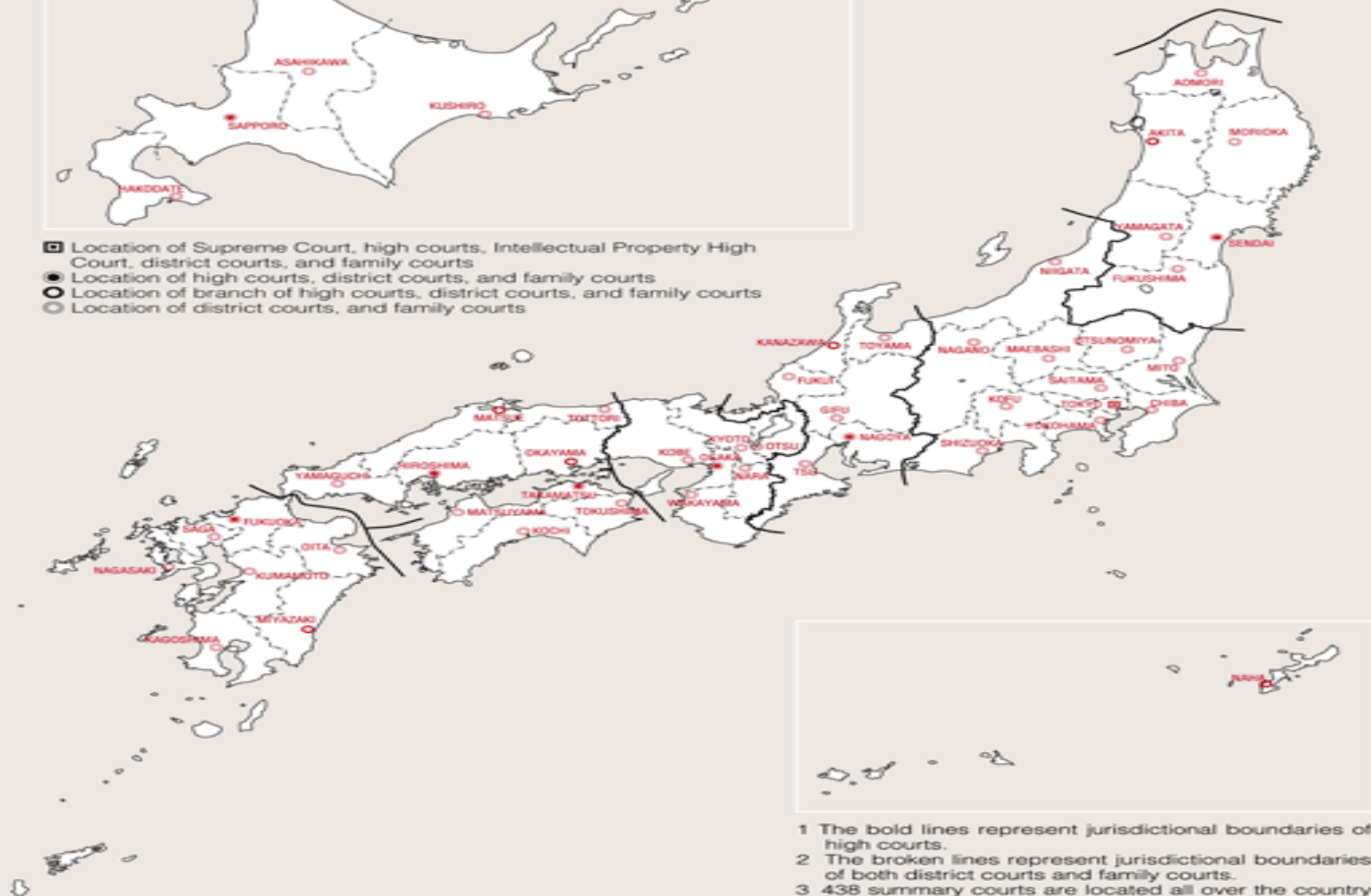
COURT SYSTEM IN JAPAN



Location of Courts in Japan



- Location of Supreme Court, high courts, Intellectual Property High Court, district courts, and family courts
- Location of high courts, district courts, and family courts
- Location of branch of high courts, district courts, and family courts
- Location of district courts, and family courts



- 1 The bold lines represent jurisdictional boundaries of high courts.
- 2 The broken lines represent jurisdictional boundaries of both district courts and family courts.
- 3 438 summary courts are located all over the country including the 50 locations divided by the broken lines indicated above.

(As of 2008)

LOCATION OF COURTS IN JAPAN

- Supreme Court: Tokyo
- High Courts: Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu.
- District Courts and Family Courts: Each prefecture (but Hokkaido has 4 district courts).
- Summary Courts: 438 summary courts are distributed throughout the country.





JURISDICTION OF EACH LEVEL OF COURTS



JURISDICTION OF SUMMARY COURTS

- There are 438 summary courts throughout the country.

The summary court has the original jurisdiction over civil cases involving claims for an amount not exceeding 1,400,000 yen and criminal cases of offenses punishable by fines or lighter punishment and other offenses, such as theft and embezzlement.


All cases in a summary court are handled by a single summary court judge.



DISTRICT COURTS

- There are 50 district courts in Japan having territorial jurisdiction over their respective districts, the area of which is identical to that of each prefecture (except Hokkaido, which is divided into four districts). The district courts have 203 branches in total.

The district court is generally the court of first instance, except for matters specifically coming under the exclusive original jurisdiction of other types of court. It also has appellate jurisdiction over appeals in civil cases lodged against judgments of summary courts and appeals lodged against orders and directions made at summary courts.



- In a district court, as a rule, cases are handled by a single judge, but a three-judge panel is required in the following instances:

(1) Cases in which a panel decides that "trial and decision (of this case) shall be made by a panel."

(2) Cases of crimes punishable by death penalty or imprisonment with or without work for life or not less than one year. Exceptions, however, are provided in cases of robbery, quasi-robbery, attempts to commit these crimes, or crimes of habitual robbery and theft with repeated conviction under the Act for Prevention and Disposition of Robbery, Theft, etc.

(3) Appeals against judgments in civil cases rendered by summary courts and appeals against orders and directions made at summary courts in civil cases.

(4) Cases designated as a panel cases by laws other than the Court Act which provides (1), (2) and (3).



HIGH COURT

High courts are located in eight major cities in Japan: Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Sendai, Sapporo, and Takamatsu. Each high court has its own territorial jurisdiction over one of eight parts of Japan. In addition, in April 2005, the Intellectual Property High Court was newly established as a special branch of the Tokyo High Court, which handles cases relating to intellectual property only. High courts, except for the Intellectual Property High Court, have jurisdiction over appeals filed against judgments rendered by district courts in the first instance or family courts and appeals against rulings, except those over which the Supreme Court has jurisdiction as provided specifically in the codes of procedure.



- In addition, a high court has original jurisdiction over administrative cases on election, insurrection (*bodo*) cases, etc. The Tokyo High Court also has exclusive original jurisdiction over cases to rescind decisions of such quasi-judicial agencies such as the Fair Trade Commission.

The Intellectual Property High Court exclusively handles cases relating to intellectual property as appeals from district courts in civil cases relating to patent rights and actions against trial decisions made by the Japan Patent Office.

Cases in a high court are handled by a three-judge panel in principle. In addition, insurrection cases, judges' disciplinary cases, and cases to rescind decisions of the Fair Trade Commission, and other cases are handled by a five-judge panel.



SUPREME COURT

- The Supreme Court is the highest court in the state and is composed of the Chief Justice and fourteen Justices.

The Supreme Court exercises appellate jurisdiction of final appeal, and appeals against a ruling as provided specifically in the codes of procedure. In addition, it has original and final jurisdiction in the proceedings involving the impeachment of commissioners of the National Personnel Authority.



- In civil and administrative cases, a final appeal to the Supreme Court may be lodged only on the grounds of violation of the Constitution and grave contraventions of provisions regarding the procedure of the lower courts, which are listed in the Code of Civil Procedure as the absolute reasons for the final appeal. The Supreme Court, however, may accept a case when the Court deems that it involves an important issue concerning the construction of laws and regulations, as the final appellate court upon a petition to do so.

Oral arguments and decisions in the Supreme Court are made either by the Grand Bench composed of all fifteen Justices sitting together or by one of the three Petty Benches, each composed of five Justices.


Nine or more Justices on the Grand Bench and three or more Justices on each Petty Bench shall constitute a quorum to hear and determine cases.



- The proceedings in the Supreme Court commence with the filing of a petition of final appeal by a party dissatisfied with the judgment of a lower court, generally of a high court. Since the Supreme Court primarily determines the question of law, it renders judicial decisions, as a rule, after an examination of documents alone (appellate briefs and records of the lower courts).

Where an appeal is groundless, the Supreme Court may dismiss the appeal without proceeding to oral arguments. If the Supreme Court finds it well-grounded, however, a judgment will be rendered after the oral argument is heard.

Every case on appeal is first assigned to one of the three **Petty Benches**. If a case proves to involve a constitutional issue, namely, an issue of the constitutionality of any law, order, rule, or disposition except when there is a precedent upon the same issue, the **Grand Bench** inquires and adjudicates on it.





WHEN A CASE IS REVIEWED AT THE GRAND BENCH

Court Act (Examination of the Full Bench and Petty Bench)

Article 10 Regulations of the Supreme Court shall determine which cases are to be handled by full bench and which by petty bench; provided, however, that in the following instances, a petty bench may not give a judicial decision

- (i) Cases in which a determination is **to be made on the constitutionality of law, order, rule, or disposition**, based on the argument by a party (except the cases where the opinion is the same as that of the judicial decision previously rendered through the full bench in which the constitutionality of act, order, rule, or disposition is recognized).
- (ii) Cases other than those referred to in the preceding item when any law, order, rule, or disposition is **to be decided as unconstitutional**.
- (iii) Cases where an opinion concerning interpretation and application of the Constitution or of any other laws and regulations is **contrary to that of a judicial decision previously rendered by the Supreme Court**.

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Constitution of Japan

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

recognized).

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(iii) Cases where an opinion concerning interpretation and application of the Constitution or of any other laws and regulations is **contrary to that of a judicial decision previously rendered by the Supreme Court**.

- How many laws have been decided as unconstitutional so far???



PRACTICE AND SIGNIFICANCE OF JUDICIAL REVIEW

- (1) April 4, 1973 尊属殺重罰規定違憲判決 Criminal Code Art.
- (2) April 30, 1975 薬局開設距離制限違憲判決 Pharmaceutical Affairs Act
- (3) April 14, 1976 衆議院議員定数不均衡違憲判決 (However, 事情判決 Jijo hanketsu) Public Election Act (1:4.99)
- (4) July 17, 1985 衆議院議員定数不均衡違憲判決 (However, 事情判決 Jijo hanketsu) Public Election Act (1: 4.40)
- (5) April 22, 1987 共有林分割制限違憲判決 Forest Act
- (6) September 11, 2002 郵便業務従事者免責規定違憲判決 Postal Services Act
- (8) September 14, 2005 在外国民選挙権制限違憲判決 Public Election Act
- (9) June 4, 2008 国籍法違憲判決 Nationality Act
- (10) September 4, 2013 非嫡出子相続規定違憲判決 Civil Code Art. 900
- (11) December 16, 2015 女性の再婚禁止期間違憲判決 Civil Code Art.




APRIL 4, 1973 尊属殺重罰規定違憲判決

SONZOKUSATSU JŪBATSU KITEI IKEN HANKETSU

○ Art.200 of Criminal Code:

← Constitution Art.14(1)

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.



**APRIL 30, 1975 薬局開設距離制限違憲判決 YAKKYOKU
KAISETSU KYORI SEIGEN IKEN HANKETSU**

- Regulation of Drug Store business under Art.6(2) of Pharmaceutical Affairs Act
- ← Constitution Art.22 (Freedom to choose occupation),
policing purpose should be subject to “strict standard.”)

Article 22. Every person shall have freedom to choose and change his residence and to choose his occupation to the extent that it does not interfere with the public welfare. ●

APRIL 14, 1976 衆議院議員定数不均衡違憲判決
SHŪGIIN GIIN TEISŪ FUKINKŌ IKEN HANKETSU

- Differences of one-vote values under the Public Election Act ← Constitution Art.14(1) and 44 (The value difference was 1:4.99)

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

JULY 17, 1985 衆議院議員定数不均衡違憲判決 SHŪGIIN GIIN TEISŪ FUKINKŌ IKEN HANKETSU

- Differences of one-vote values under the Public Election Act ← Constitution Art.14(1) and 44 (The value difference was 1:4.4)

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

**APRIL 22, 1987 共有林分割制限違憲判決 KYŌYŪRIN
BUNKATSU SEIGEN IKEN HANKETSU**

- Regulation of division of forest land under Forest Act
Art.186 ← Constitution Art.29 (subject to “reasonable”
standard.)

Article 29. The right to own or to hold property is
inviolable.

Property rights shall be defined by law, in conformity
with the public welfare.

Private property may be taken for public use upon
just compensation therefor.



SEPTEMBER 11, 2002 郵便業務従事者免責規定違憲判決

YŪBIN GYŌMU JŪJISHA MENSEKI KITEI IKEN HANKETSU

- Exemption of post officers from liability under Postal Act Art.68 and 73 ← Constitution Art.17

Article 17. Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official.

SEPTEMBER 14, 2005 在外国民選挙権制限違憲判決
ZAIGAIKOKUMIN SENKYO SEIGEN IKEN HANKETSU

- Regulation of the right to vote of Japanese living abroad under Public Election Act ← Constitution Art.15, 43, and 44

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

Article 43. Both Houses shall consist of elected members, representative of all the people.

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property or income.

JUNE 4, 2008 国籍法違憲判決 KOKUSEKIHŌ IKEN HANKETSU

- **Article 3 of the Nationality Act ← Constitution Art.14**

Article 3, para.1 of the Nationality Act

(Acquisition of Japanese Nationality by Legitimation)

A child who has acquired the status of a child born in wedlock as a result of the marriage of the parents and the acknowledgment by either parent and who is aged under 20 (excluding those who have been Japanese citizens) may acquire Japanese nationality by making a notification to the Minister of Justice, (omitted)

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

SEPTEMBER 4, 2013 非嫡出子相続規定違憲判決 HI CHAKUSHUTSUSHI SŌZOKUBUN KITEI IKEN HANKETSU

- Article 900 of Civil Code← Constitution Art.14

Civil Code (Statutory Share in Inheritance)

Article 900 If there are two or more heirs of the same rank, their shares in inheritance shall be determined by the following items:

(iv) if there are two or more children, lineal ascendants, or siblings, the share in the inheritance of each shall be divided equally; **provided that the share in inheritance of an child out of wedlock shall be one half of the share in inheritance of a child in wedlock**, and the share in inheritance of a sibling who shares only one parent with the decedent shall be one half of the share in inheritance of a sibling who shares both parents.

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

DECEMBER 16, 2015 女性の再婚禁止期間違憲判決

JOSEI NO SAIKON KINSHI KIKAN IKEN HANKETSU

- Article 733(1) of Civil Code← Constitution
Art.14

Civil Code Article 733

(1) A woman may not remarry unless six months have passed since the day of dissolution or rescission of her previous marriage.

Article 24. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.

With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.

PRACTICE AND SIGNIFICANCE OF JUDICIAL REVIEW

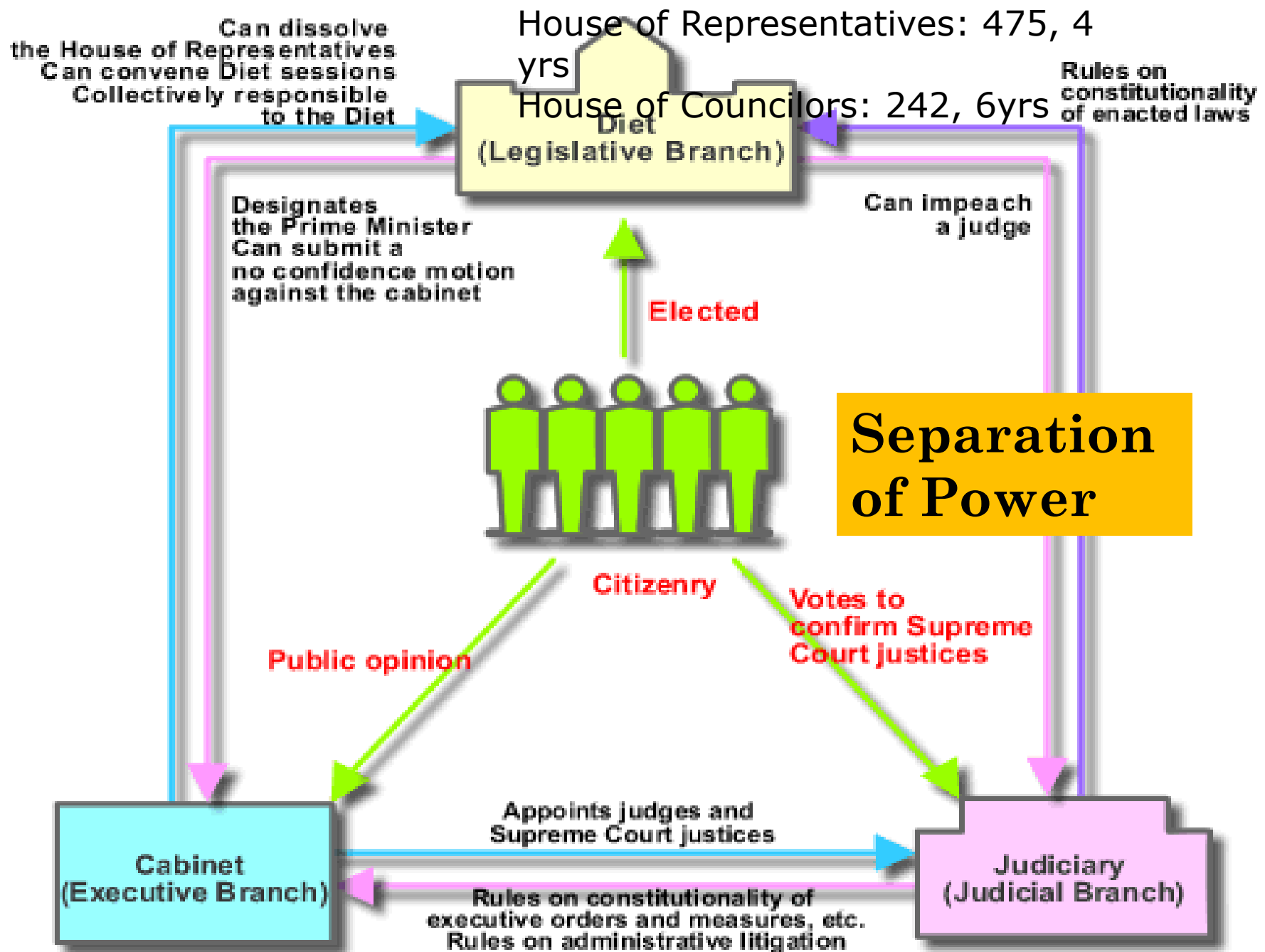
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SO FAR 11 CASES

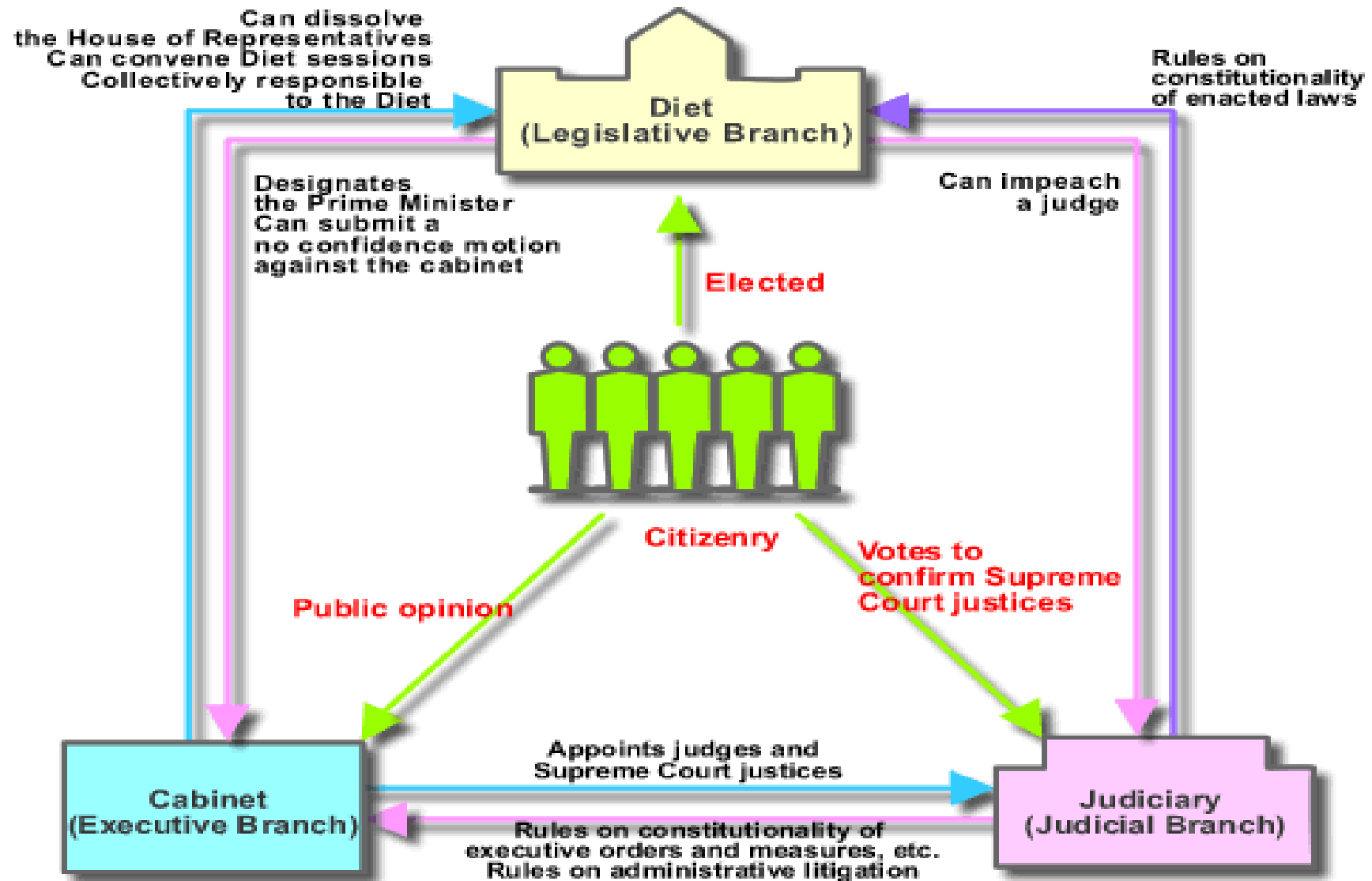
HAS THE SUPREME COURT CHANGED?

- Why 11 cases only???
- Can see any change??? From Judicial Passivism to Judicial Activism?





ROLE OF THE JUDICIARY





THE SYSTEM OF JUDGES



GENERAL PRINCIPLES UNDER THE CONSTITUTION

Chapter VI. Judiciary

Article 76. The whole judicial power is vested in a Supreme Court and in such inferior courts as are established by law.

No extraordinary tribunal shall be established, nor shall any organ or agency of the Executive be given final judicial power.

All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the laws.

Article 77. **The Supreme Court is vested with the rule-making power** under which it determines the rules of procedure and of practice, and of matters relating to attorneys, the internal discipline of the courts and the administration of judicial affairs.

Public procurators shall be subject to the rule-making power of the Supreme Court. The Supreme Court may delegate the power to make rules for inferior courts to such courts.

Article 78. **Judges shall not be removed except by public impeachment unless judicially declared mentally or physically incompetent to perform official duties. No disciplinary action against judges shall be administered by any executive organ or agency.**

GENERAL PRINCIPLES UNDER THE CONSTITUTION(2)

Article 79. The Supreme Court shall consist of a Chief Judge and such number of judges as may be determined by law; all such judges excepting the Chief Judge shall be appointed by the Cabinet.

The appointment of the judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment, and shall be reviewed again at the first general election of members of the House of Representatives after a lapse of ten (10) years, and in the same manner thereafter.

In cases mentioned in the foregoing paragraph, when the majority of the voters favors the dismissal of a judge, he shall be dismissed.

Matters pertaining to review shall be prescribed by law.

The judges of the Supreme Court shall be retired upon the attainment of the age as fixed by law.

All such judges shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.



GENERAL PRINCIPLES UNDER THE CONSTITUTION(3)

Article 80. The judges of the inferior courts shall be appointed by the Cabinet from a list of persons nominated by the Supreme Court. All such judges shall hold office for a term of ten (10) years with privilege of reappointment, provided that they shall be retired upon the attainment of the age as fixed by law.

The judges of the inferior courts shall receive, at regular stated intervals, adequate compensation which shall not be decreased during their terms of office.

Article 81. The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.

Article 82. Trials shall be conducted and judgment declared publicly.

Where a court unanimously determines publicity to be dangerous to public order or morals, a trial may be conducted privately, but trials of political offenses, offenses involving the press or cases wherein the rights of people as guaranteed in Chapter III of this Constitution are in question shall always be conducted publicly.



GENERAL PRINCIPLES UNDER THE CONSTITUTION(4)

- Independence of the judiciary**
- Independence of judges**
- Guarantee of the status**
- (some) public control**



NUMBER OF JUDGES

- International comparison of the number of judges
 - Fixed number 2,775 (As of March 31, 2017, except for summary court judges)
 - Citizen/Judge ratio: 45,742/1
 - In Germany: 4,048/1
 - In the US: 10,104/1
 - In France: 11,726/1
 - In the UK: 18,072/1



KINDS OF JUDGES

- Chief Justice of the Supreme Court : 1
- Justices of the Supreme Court : 14
- High Courts Presidents : 8
- Judges : 1,985
- Assistant judges : 1,000
- Summary court judges : 806

【Small question】 Recently, the number of female judges and assistant judges is increasing. Why? What kind of impacts does it have?



HOW JUSTICES ARE APPOINTED?

- Chief justice : Designated by the Cabinet and appointed by the Emperor.
- Justices: Appointed by the Cabinet and attested by the Emperor (Con.Art.6(2), 7(5)). Justices have to have national review for every 10 years. “highly intellectual and with legal knowledge” (Court Law, Art.41(1)).

<http://www.courts.go.jp/english/about/justice/index.html>



- High Court judges: appointed by the Cabinet and attested by the Emperor.

Appointment: 【任命】主として公務員に関して用いられる用語で、ある人を一定の地位又は職に就けること。

Attestation 【認証】一定の行為又は文書の成立あるいは記載が正当な手続によってなされたことを公の機関が確認、証明すること。憲法七条 に定める天皇の認証は、事実の存在に対する認識の表明と解されている。

- In order to become a high court judge, minimum of 10-year practice is required.



- Judges: Appointed by the Cabinet (based on the list prepared by the Supreme Court)
- 10-year-experience as a legal practitioner is required.
- Attorney-appointment system: In order to pursue the unitary system of the legal profession, the system was introduced in 2001. HOWEVER, not many attorneys apply for the position.(As of April 2015, there are 72 judges are working in the judiciary through this path.)

2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
3	5	10	8	4	5	6	4	6	1	5

2012	2013	2014	2015	2016	2017
6	4	4	1	3	2



- Assistant judges: Appointed by the Cabinet (based on the list prepared by the Supreme Court)
- Qualification is to complete judicial apprenticeship.
- Japan takes so-called “carrer-judge system” whereas in the US highly experienced attorneys serve as a judge.
- Summary court judges: Appointed by the Cabinet (based on the list prepared by the Supreme Court). HOWEVER, summary court judges are generally not the person who pass the bar exam. They are appointed among those who have worked as judicial clerk or administrator.

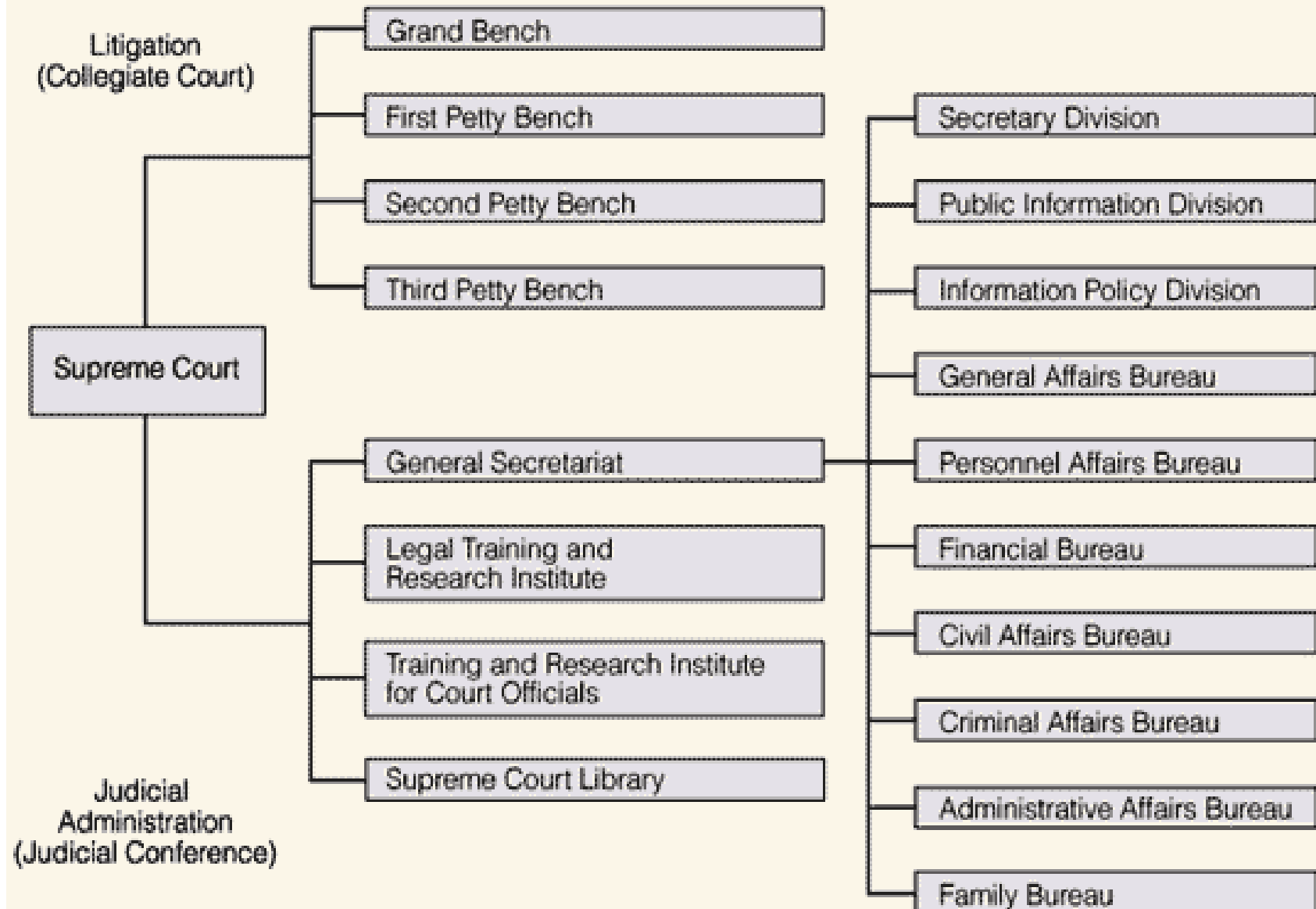


INDEPENDENCE OF THE JUDICIARY VS INDEPENDENCE OF THE JUDGES

- Every three years, judges are required relocation.
- Distribution of judges are handled by the General Secretariat of the Supreme Court.
- Naganuma Case: a judge who decided that the self-defense force is unconstitutional was ordered to serve as a single judge at the family court for 12 years.
- Study by Prof. Mark Ramseyer:



Organization Chart of the Supreme Court



DISCUSSION: COMPARE THE MERITS AND DEMERITS OF THE CARRIER-JUDGE SYSTEM AND THE UNITARY SYSTEM

